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December 10, 2018

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Chief, Regulatory Coordination Division, Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Avenue NW, Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, Inadmissibility on Public Charge Grounds  
(published October 10, 2018; 83 Fed. Reg. 51114)

The Autistic Self Advocacy Network<sup>1</sup> appreciates the opportunity to offer comments on the Department of Homeland Security (DHS)'s proposed rule. The proposed rule would define "public charge" as the term is used in § 212(a)(4) of the Immigration and Nationality Act and would broaden the number and types of public benefits considered when DHS determines whether or not an alien entering the country, applying for a green card, or applying for another adjustment of status is "likely to become a public charge."<sup>2</sup> Additionally, the proposed rule would define the manner in which DHS must conduct the public charge inadmissibility determination, including how it analyzes the mandatory factors it must consider such as, for example: age, health, and family status.<sup>3</sup>

ASAN opposes this proposed rule, as it discriminates against immigrants with disabilities and their families and would lead to the exclusion of the vast majority from the United States. The rule effectively treats the receipt of any public benefit and the existence of a disability as negatives that reduce a person's worth — a notion which is prejudiced and offensive. People with disabilities, including immigrants with disabilities, have inherent value and should be treated equally under the law. United States immigration law should, in keeping with the values of the Americans with Disabilities Act and Rehabilitation Act, not treat disabilities or medical needs as barriers to immigration and citizenship.

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<sup>1</sup> ASAN, a 501(c)(3), non-profit organization, is the nation's leading self-advocacy organization by and for autistic people ourselves. Our mission is to advance the social and civil rights of Autistic people and other individuals with disabilities. For more information on ASAN, go to <http://autisticadvocacy.org/>

<sup>2</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51116, 51159 (proposed October 10, 2018) (to be codified at 8 C.F.R. §§ 103, 212, 213, 214, 245, 248).

<sup>3</sup> 83 Fed. Reg. at 51178.

**ASAN strongly objects to the proposed rule’s expansion of the number and types of public benefits considered relevant to the determination of whether someone is “likely to become a public charge.”**

Under current law, only “cash assistance” (such as for example Temporary Assistance for Needy Families (TANF) benefits, state and local cash assistance programs, and receipt of Supplemental Security Income (SSI)), and institutionalization at “government expense” are considered relevant to public charge determinations.<sup>4</sup> The proposed rule’s new definition of “public benefit” would expand it to include many benefits that are often utilized by people with disabilities, including: Medicaid, Supplemental Nutrition Assistance Program (SNAP) benefits, and Section 8 housing assistance.<sup>5</sup> In addition, the proposed rule will eliminate the current high threshold at which benefits are considered barriers to immigration, replacing it with a standard that may encompass even minimal receipt of public benefits.

This proposal, if enforced, is nearly guaranteed to have a highly negative impact on the health and welfare of immigrants with disabilities. People with disabilities are disproportionately likely to be low-income,<sup>6</sup> and are also much more likely to receive some classes of government benefits. For example, in 2015 people with disabilities made up 26 percent of SNAP participants.<sup>7</sup> People with disabilities are also particularly in need of benefits that help us find accessible, affordable housing. According to The Arc, a national nonprofit which serves people with intellectual and developmental disabilities, 1 in 3 recipients of Section 8 Housing Choice Vouchers are people with disabilities below age 62.<sup>8</sup> Counting these benefits as relevant will likely have a chilling effect on immigrant application for benefits they are legally entitled to receive, thereby damaging their health, economic security, and potentially their ability to work. In fact, according to the Henry J. Kaiser Family Foundation, there was already some evidence that growing concerns among immigrants about application to “health, nutrition, and other programs” led to disenrollment or the avoidance of enrollment into these programs.<sup>9</sup>

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<sup>4</sup> U.S. Citizenship and Immigration Services, “Public Charge,” <https://www.uscis.gov/greencard/public-charge> (last updated October 16, 2018).

<sup>5</sup> 83 Fed. Reg. at 51163-51174 (describing the proposed rule’s rationale for the benefits it proposes to include in public charge inadmissibility determinations).

<sup>6</sup> Nanette Goodman, Bonnie O’ Day, and Michael Morris, National Disability Institute, *Financial Capability of Adults with Disabilities: Findings from the FINRA Investor Education Foundation National Financial Capability Study 7* (Dec. 11, 2017) (finding that adults with disabilities were more likely to live in poverty than those without disabilities).

<sup>7</sup> Steven Carlson, Brynne Keith-Jennings, and Raheem Chaudry, *SNAP Provides Needed Food Assistance to Millions of People with Disabilities*, Center for Budget and Policy Priorities (June 14, 2017), <https://www.cbpp.org/research/food-assistance/snap-provides-needed-food-assistance-to-millions-of-people-with->

<sup>8</sup> The Arc, *Housing Issues for People with Disabilities*, <https://www.thearc.org/what-we-do/public-policy/policy-issues/housing> (last visited December 7, 2018).

<sup>9</sup> Henry J. Kaiser Family Foundation, *Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage*, (September 24, 2018), <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge->

The proposed rule's inclusion of Medicaid as one of the considered types of benefit is particularly concerning to the I/DD community. Under current law, only institutionalization that is funded through Medicaid counts for the purposes of public charge determinations.<sup>10</sup> The proposed rule would instead count *any* use of Medicaid, with the exception of emergency services and services provided by schools under the Individuals with Disabilities Education Act (IDEA).<sup>11</sup>

These exemptions do not remotely address the full spectrum of purposes Medicaid serves in the lives of people with disabilities. Medicaid often serves as a means for working immigrant families to attain health care services or address coverage gaps. While the majority of immigrant families have at least one working member, they are less likely to work in industries that provide health insurance coverage.<sup>12</sup> As a result, immigrant families are more likely to utilize Medicaid and the Children's Health Insurance Program (CHIP).<sup>13</sup> Since Medicaid provides access to vital preventative care and primary care, Medicaid coverage also reduces the need for high-cost emergency services in the future. Consequently, including Medicaid among the benefits to be considered would damage the health of the immigrant members of an already medically fragile population and ultimately increase rather than reduce healthcare costs.

Additionally, Medicaid is one of the only sources of funding for long term services and supports in the community, which state Medicaid programs provide through their home and community-based services (HCBS) waivers.<sup>14</sup> Long term services and supports in the community are absolutely critical for many people with disabilities affecting self-care, such as intellectual disabilities, developmental disabilities, mobility impairments, and complex medical needs. They provide us with the support that we need to live independent and productive lives in the broader community of people without disabilities and are particularly essential in enabling us to find and maintain employment. Given that the vast majority of people with disabilities would not be able to pay for these services without the aid of Medicaid, the publication of such an unjust rule is akin to both explicitly excluding people with disabilities from the country and denying those already present in the country access to community living and access to employment.

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[policies-for-immigrants-implications-for-health-coverage/#footnote-274689-13](#) [hereinafter "Kaiser Family Foundation"].

<sup>10</sup> U.S. Citizenship and Immigration Services, "Public Charge," <https://www.uscis.gov/greencard/public-charge> (last updated October 16, 2018).

<sup>11</sup> 83 Fed. Reg. at 51168-169.

<sup>12</sup> Kaiser Family Foundation.

<sup>13</sup> *Id.*

<sup>14</sup> Centers for Medicare and Medicaid Services (CMS), *Home & Community Based Services*, <https://www.medicaid.gov/medicaid/hcbs/index.html> (last visited December 10, 2018).

**ASAN opposes the proposed rule’s new standard for weighting the “health” factor in public charge determinations, which explicitly singles out and discriminates against immigrants with chronic conditions and disabilities.**

Under § 212(a)(4) of the INA, when determining whether or not an immigrant is “likely to become a public charge,” DHS must evaluate the “age, health, family status, assets, resources, and financial status; and education and skills” of the immigrant.<sup>15</sup> The proposed rule contains a means through which DHS employees are to consider these mandatory factors.<sup>16</sup> While DHS would be required under the proposed rule to use a “totality of the circumstances” test to evaluate each immigrant, with no one factor being dispositive, the rule also describes *in what way* DHS is supposed to evaluate each factor.<sup>17</sup>

ASAN strongly objects to the way in which the proposed rule would evaluate the “health” factor. Under the proposed rule, DHS must consider “whether the alien has any physical or mental condition that . . . is significant enough to interfere with the person’s ability to care for him- or herself or to attend school or work, or that is likely to require extensive medical treatment or institutionalization in the future.”<sup>18</sup> DHS’ justification for this change within the proposed rule makes it clear that such conditions would be viewed as strongly negative.<sup>19</sup> Intellectual and developmental disabilities *by definition* impact a person’s ability to attend school and/or work in some way. Almost any immigrant subject to public charge determinations with a diagnosed intellectual or developmental disability would therefore, under the proposed rule, have their disability weighed against them.

The rule’s provisions with respect to heavily weighted factors do not just *disadvantage* immigrants with disabilities — they deliberately target them for exclusion from the country. DHS would consider a lack of financial means to pay for the medical costs relating to such a condition (without reliance on public benefits), or a lack of private insurance to pay for such costs, to be a “heavily weighted negative factor.”<sup>20</sup> Because private insurance

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<sup>15</sup> Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4) (LEXIS through Pub. L. 115-277, approved 11/3/18).

<sup>16</sup> 83 Fed. Reg. at 51178 (describing the proposed “totality of the circumstances” test).

<sup>17</sup> *Id.* at 51179-51210) (describing how DHS should evaluate each factor).

<sup>18</sup> 83 Fed. Reg. at 51182.

<sup>19</sup> See 83 Fed. Reg. at 51182 (“An alien’s medical conditions may impose costs that a person is unable to afford, and may also reduce that person’s ability to attend school, work, or financially support him or herself. Such medical conditions may also increase the likelihood that the alien could resort to Medicaid...”).

<sup>20</sup> 83 Fed. Reg. at 51200-203.

almost never covers the long-term services and supports that people need in order to live in the community, people with long-term care needs will face steep barriers to entering or remaining in the country.

The provision may additionally violate the Rehabilitation Act, which prohibits disability-based discrimination in federal programs. While the proposed rule takes great pains to explain that it does not violate the Rehabilitation Act because “the alien’s disability is treated just as any other medical condition that affects an alien’s likelihood,” this creates a completely artificial distinction between medical conditions and disabilities that the Rehabilitation Act itself does not make.<sup>21</sup> Under the Rehabilitation Act, practically any medical condition that “is significant enough to interfere with the person’s ability to care for him- or herself or to attend school or work, or that is likely to require extensive medical treatment or institutionalization” would be considered a protected disability.

ASAN urges the Department of Homeland Security to rescind this Proposed Rule and to consider alternatives that do not discriminate against immigrants with disabilities. For more information on ASAN’s positions with respect to immigration and the welfare of immigrants with disabilities please contact Samantha Crane, Director of our Legal and Public Policy Team, at [scrane@autisticadvocacy.org](mailto:scrane@autisticadvocacy.org).

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<sup>21</sup> See 83 Fed. Reg. at 51184 (“DHS has determined that considering ... an applicant’s disability diagnosis ... is not inconsistent with federal statutes and regulations with respect to discrimination, as the alien’s disability is treated just as any other medical condition ... an alien with a disability is not being treated differently, or singled out...”).