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December 7, 2018

U.S. Citizenship and Immigration Services

Department of Homeland Security

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Attn: CIS No. 2499–10; DHS Docket No. USCIS– 2010–0012

Inadmissibility on Public Charge Grounds

Dear Chief Deshommes:

Advisory Board

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Introduction:

The Florida Health Justice Project, Inc. (FHJP) appreciates the opportunity to comment on 83 FR 51114, “Inadmissibility on Public Grounds.” Our mission is to help ensure access to health care and to improve health outcomes, with a focus on vulnerable low-income Floridians. We have expertise in political science, econometrics, poverty health law, health care, and public health. We also have long-standing experience in the outreach and education efforts that have been conducted in Florida over the last twenty years in order to help ensure that U.S. children in mixed-status households are enrolled in the Florida Medicaid and Child Health Insurance (CHIP) programs. (Our CVs are attached as Attachment A).

We have reviewed the proposed rule, analyzed Florida-specific data relevant to the proposed rule, reviewed prior and current research related to the rule, and talked with impacted stakeholders statewide, as well as with elected officials in South Florida. We have also had multiple conversations with local and state health care

providers and social workers who have shared first hand descriptions of how concerns over the proposed rule have already caused their patients to forego health care coverage and treatment.

Based on all of the above, we conclude that the proposed rule will have a profoundly adverse impact on the health outcomes of a tremendous number of Floridians. Individuals who were not born in the United States, as well as U.S. citizens in mixed status households will feel the harm.¹ Additionally, the rule will adversely impact local economies—particularly in South Florida.

Please note that our comment includes citations to numerous published articles. In lieu of physically attaching these source materials; please consider the articles cited in footnotes as included in the administrative record.

The Proposed Rule is a Radical Change in Current Policy:

We strongly oppose the proposal to expand the definition of “public charge” and of “public benefits.” These changes undermine a system of benefits and support systems for which low-income Florida residents are lawfully eligible.

Current long-standing policy defines “public charge” as someone who has become or is likely to become “primarily dependent on the government for assistance,” and the only public benefits that could be considered currently are:

- Cash assistance (Supplemental Security Income “SSI” or Temporary Aid to Needy Families “TANF”) or
- Long-term institutional care.

¹ By “mixed-status,” we refer to families whose children are citizens, but one or both of the parents are not.

The rule would radically change the definition to apply to anyone who is likely to use more than a minimal amount of certain cash, health, nutrition or housing benefits and would expand the benefits that could be considered to include:

- Medicaid (with limited exceptions)
- Supplemental Nutrition Assistance Program (SNAP),
- Medicare Part D Low Income Subsidy, and
- Housing assistance (public housing and Section 8).

In addition, the rule would also negatively weigh certain factors, including whether a person:

- Has income of less than 125% of the Federal Poverty Level
- Is younger than 18 or older than 60
- Has a large family, and
- Has a critical medical condition without insurance coverage.

In addition, the proposed rule would positively weigh other factors, including whether a person:

- Has income above 250% of the FPL, and
- Demonstrates English proficiency.

We are concerned that this proposal unfairly changes our immigration system to favor the wealthy and would discriminate against people of color who tend to have lower incomes and be less proficient in English. The public charge inquiry should continue to be limited to whether an individual was primarily dependent on cash benefits or government-funded institutionalization for long-term care. This focus on primary dependence on subsistence benefits appropriately considers the accepted aim of public charge determinations and does not arbitrarily penalize individuals' use of supplemental benefits for which they are lawfully eligible. By contrast, the proposed rule's expansive new definition of "public benefit" within the public charge context ignores this longstanding framework and undermines the longstanding intent of public charge determinations.

Further, there is no rationale offered for the 250% of federal poverty level threshold. A family of four at 250% FPL only earns approximately \$63,000 a year. Florida's economy, however, relies heavily on minimum wage jobs. Many Floridians, including many immigrants, who are working full time as farmworkers, hotels maids, waiters, etc., and who are paid minimum wage fail to achieve the 125% threshold. This income test

makes it more difficult for these individuals and/or their family members to receive the public benefits for which they are eligible and very much need, i.e. Medicaid, SNAP and housing assistance. This undermines the sound public policy that was considered when the legislation establishing those benefits programs was passed.

Additionally, and as discussed more fully below, the effects of this proposed rule would not just be confined to immigration status determinations. Rather, the proposed rule will also create a chilling effect among legal permanent residents and their families, making them fear enrolling themselves or their family members in government programs because they misinterpret how it will be applied (see next section). The overall population health of Florida communities, particularly in South Florida will be hurt as family members in mixed households will stop using public benefits, even though they are not directly targeted by the proposed rule.

FHJP's mission is to reduce barriers to access and improve health outcomes. This proposed rule—with its expanded definition of public charge and negative consideration of income, illness, disability, age, gender, and language-- creates new barriers. Our state already has a higher rate of uninsured and individuals lacking access to care than the national average.² We strongly oppose this policy, which would take Florida in the wrong direction by creating barriers and harming health outcomes.

Chilling Effect: Statistical Analysis and Anecdotal Evidence

While the rule directly impacts immigrants seeking admission to the U.S. and lawful permanent residency (LPRs), there is the aforementioned “chilling effect,” which causes families to withdraw from benefits programs (or forego the opportunity to enroll) due to fear and confusion—even if they are not directly impacted by the rule. For example, a large proportion of LPRs, even though they are technically not targeted by the rule, are already anxious about their legal status³ and are prone to be confused into thinking that

² U.S. Census Bureau, “Uninsured Rate by State” (U.S. Department of Commerce, September 13, 2018), <https://www.census.gov/library/visualizations/2018/comm/acs-uninsured-map.html>.

³ Samantha Artiga, Petry Ubri Published: Dec 13, and 2017, “Living in an Immigrant Family in America: How Fear and Toxic Stress Are Affecting Daily Life, Well-Being, & Health,” The Henry J. Kaiser Family

the rule will directly affect them.⁴ Political scientists have repeatedly shown that most people are uninformed about public policies and are prone to draw incorrect inferences about the substance of policies and their consequences.⁵

History and research have already shown that the rule will have a substantial chilling effect. For example, research from the late 1990s demonstrated that immigrant families' participation in Medicaid and SNAP significantly declined after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, also referred to as "welfare reform.")⁶ Research from 2001 found that Miami, as one of the

Foundation (blog), December 13, 2017, <https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/>.

⁴ Michael Hiltzik, "A Punitive Trump Proposal Stokes Panic among Immigrants — Even before It's Official," Los Angeles Times, August 24, 2019, sec. Business, <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-public-charge-20180824-story.html>; Daniel Chang, "Proposed Change to Immigration Rule May Push Florida Kids out of Safety Net," Miami Herald, October 10, 2018, sec. Health Care, <https://www.miamiherald.com/news/health-care/article219730825.html>; Liz Robbins, "How Trump's Plan for Immigrants on Welfare Could Hurt a Million New Yorkers," The New York Times, August 14, 2018, sec. New York, <https://www.nytimes.com/2018/08/13/nyregion/welfare-immigrants-trump-public-charge-rule.html>; Nick Miroff, "Trump Proposal Would Penalize Immigrants Who Use Tax Credits and Other Benefits," Washington Post, March 28, 2018, sec. National Security, https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html.

⁵ Michael X. Delli Carpini and Scott Keeter, *What Americans Know about Politics and Why It Matters* (New Haven: Yale University Press, 1996); Milton Lodge and Charles S. Taber, *The Rationalizing Voter* (Cambridge: Cambridge University Press, 2013); Brendan Nyhan and Jason Reifler, "When Corrections Fail: The Persistence of Political Misperceptions," *Political Behavior* 32, no. 2 (June 2010): 303–30, <https://doi.org/10.1007/s11109-010-9112-2>.

⁶ Michael E. Fix and Jeffrey S. Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform," Report (Washington D.C.: Urban Institute, March 1, 1999), <https://www.urban.org/sites/default/files/publication/69781/408086-Trends-in-Noncitizens-and-Citizens-Use-of-Public-Benefits-Following-Welfare-Reform.pdf>; Namratha R. Kandula et al., "The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants," *Health Services Research* 39, no. 5 (October 2004): 1509–26, <https://doi.org/10.1111/j.1475-6773.2004.00301.x>; Neeraj Kaushal and Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants: Welfare Reform and Health Insurance of Immigrants," *Health Services Research* 40, no. 3 (May 24, 2005): 697–722, <https://doi.org/10.1111/j.1475-6773.2005.00381.x>; see also, Danilo Trisi & Guillermo Herrera, *Ctr. on Budget & Pol'y Priorities ("CBPP") Administration Actions Against Immigrant Families Harming Children Through Increased Fear, Loss of Needed Assistance* (2018), https://www.cbpp.org/research/poverty-and-inequality/administration-actions-against-immigrant-families-harming-children#_ednref12 (noting how immigrants' fear of government causes chilling effects).

cities with a high percentage of foreign-born residents and mixed status families, was particularly impacted.⁷ As discussed more below, current research demonstrates that Miami will again be hard hit.

Estimate of Potential Number of Floridians Impacted by the Rule

Using data from the 2012-2016 5-year American Community Survey Public Use Microdata Sample, Manatt Health estimated that the potentially impacted population in Florida is approximately 2.1 million people, including 609,000 children. Miami-Dade County is estimated to have 693,000 residents (26% of the population) potentially impacted. These estimates are based on the families with at least one non-citizen and earned income less than 250% of the federal poverty level.⁸

In addition to Manatt's Florida specific analysis, we have also analyzed the expected loss of health insurance and food assistance among U.S. born Florida children with one or both immigrant parents, a subset of the larger potentially chilled population. Using data from the 2016 American Community Survey, we estimate that, depending on the disenrollment rate, between 46,007 and 107,351 Florida children in mixed-status families will lose health insurance because their families will disenroll them from Medicaid or the Children's Health Insurance Program (CHIP). Between 23,000 and almost 54,000 of them live in South Florida. For more information about our methodology, please refer to the attached policy brief on health insurance losses due to the proposed rule: "Proposed Changes to the Public Charge Rule Will Cause Significant Loss of Health Care Coverage for Florida Children." (Attachment B).

⁷ Leighton Ku & Alyse Freilich, Kaiser Family Found., Caring for Immigrants: Health Care Safety Nets in Los Angeles, New York, Miami, and Houston 7 at 13-15 (2001), <https://aspe.hhs.gov/system/files/pdf/72701/report.pdf>.¹

⁸ Manatt, Phelps & Phillips, LLP, "Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard" (Manatt, Phelps & Phillips, LLP, October 11, 2018), <https://manatt.com/insights/articles/2018/public-charge-rule-potentially-chilled-population>.

By chilling Medicaid enrollment, the proposed rule will diminish access to preventive services; care management, and primary care.⁹ Moreover, research has shown that when children in low income families receive Medicaid (with its requirement for Early and Periodic Screening, Diagnosis and Treatment), they are more likely to perform well in school,¹⁰ have fewer emergency department visits and hospitalizations as adults,¹¹ and, ultimately as adults, earn more and pay more in taxes.¹²

In addition to suffering from loss of health care coverage, tens of thousands of Florida's children in mixed-status families will grapple with food insecurity if this rule goes forward. We estimate that between 35,043 and 81,768 will disenroll from SNAP. As with the loss of health coverage, the impact in South Florida is particularly severe. It is estimated that half of those children who will lose SNAP live in the Miami Metropolitan area. For more information on our analysis, please see attached brief titled: "Proposed Changes to the Public Charge Rule Will Push Thousands of Children Out of the Supplemental Nutrition Assistance Program (SNAP)." (Attachment C).

Losing SNAP benefits will harm these children's short- and long-term development. Their families will be forced to spend more money on food and less on utilities and other

⁹ Karina Wagnerman, Georgetown University Center for Children and Families, Medicaid: How Does it Provide Economic Security for Families? (Mar. 2017), <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Medicaid-and-Economic-Security.pdf> Julia Paradise, Kaiser Family Foundation, Data Note: Three Findings about Access to Care and Health Outcomes in Medicaid (Mar. 2017), <https://www.kff.org/medicaid/issue-brief/data-note-three-findings-about-access-to-care-and-health-outcomes-in-medicaid>.

¹⁰ Sarah R. Cohodes et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," *Journal of Human Resources* 51, no. 3 (August 2016): 727–59, <https://doi.org/10.3368/jhr.51.3.1014-6688R1>.

¹¹ Laura R. Wherry et al., "Childhood Medicaid Coverage and Later-Life Health Care Utilization," *The Review of Economics and Statistics* 100, no. 2 (May 2018): 287–302, https://doi.org/10.1162/REST_a_00677.

¹²David W. Brown, Amanda E. Kowalski, and Ithai Z. Lurie, "Medicaid as an Investment in Children: What Is the Long-Term Impact on Tax Receipts?" (Working Paper, January 2015), <https://doi.org/10.3386/w20835>.

daily necessities, which can push them further into poverty.¹³ Recent research by economists shows that children in SNAP families perform poorly in school towards the end of the benefit cycle because the family cannot ration the benefits to extend over the whole period.¹⁴ Thus, losing the benefits completely will inflict far greater damage on their children's academic performance and their cognitive and emotional development.

Anecdotal Evidence of Chilling Effect in Florida:

We have spoken with several social workers who work with low-income patients in different regions of Florida. They have described a profound level of fear in mixed status households. Most typically, we have heard of parents foregoing enrollment of their U.S. citizen children in Medicaid. These parents, including those who are in this country lawfully and have a path to citizenship, are afraid to seek medically necessary care for themselves or their children.

For example, two parents, who are lawfully present in the country, have a child who is a citizen and eligible for Medicaid. The parents were encouraged to enroll their baby in Medicaid, but they were afraid to do so. They looked at private insurance plans but could not afford any of the available plans. Unfortunately, the baby required an ER visit and hospital observation, and the family had no insurance. We have heard of multiple other examples of children who are eligible for coverage being taken off of Medicaid or not enrolling. These anecdotal reports raise a serious alarm regarding the expected increase in uncompensated care--not to mention the worsened health outcomes--short and long term-- of citizens of this country. It should also be underscored that these examples of the rule's chilling effect concern individuals who have received accurate information regarding the fact that receipt of Medicaid by an eligible child will not impact the other family members immigrations cases. Thus, even if there were a massive public education and outreach campaign, Florida's children, families, and critical health

¹³ Krista M. Perreira, Hirokazu Yoshikawa, and Jonathan Oberlander, "A New Threat to Immigrants' Health — The Public-Charge Rule," *New England Journal of Medicine*, August 2018, <https://doi.org/10.1056/NEJMp1808020>.

¹⁴ Chad Cotti, John Gordanier, and Orgul Ozturk, "When Does It Count? The Timing of Food Stamp Receipt and Educational Performance," *Economics of Education Review* 66 (October 2018): 40–50, <https://doi.org/10.1016/j.econedurev.2018.06.007>.

care provider systems are already being harmed from the proposed rule. These harms will no doubt worsen should the rule go forward.

We participated in the massive public outreach campaign in the late 1990s clarifying that receipt of Medicaid, CHIP, WIC, food stamps, et cetera would have no adverse impact in a public charge determination of any family member. And at that time, unlike the present, we had the benefit of clear guidance from the federal government that was geared to counter the chilling effect of PWRORA and help ensure enrollment of eligible individuals. Nonetheless, it was still difficult to restore enrollment of eligible children to the pre PRWORA levels.

The Children’s Health Improvement Program (CHIP) Should Remain Excluded:

For many of the same reasons that we oppose including receipt of Medicaid, SNAP, and housing benefits in the proposed rule, we also oppose the inclusion of CHIP (referred to as KidCare in Florida). KidCare is a program for working Florida families who earn too much to be eligible for Medicaid without a share of cost. Making its receipt a negative factor in the public charge assessment or including it in the “public charge” definition would extend the problematic reach of the proposed rule further to exclude moderate income working families and applicants likely to earn a moderate income at some point in the future.

Including CHIP in a public charge determination would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effects discussed above. Approximately 436,651 Florida depend on KidCare.¹⁵ Yet many eligible citizen children will likely not enroll if their parents are concerned that receipt of CHIP coverage would subject someone in their family to a public charge determination.

In addition, including CHIP in a public charge determination would undermine the intent of both Congress and the Florida Legislature. In 2009, Congress’ expanded coverage

¹⁵ Kaiser Family Foundation, “Total Number of Children Ever Enrolled in CHIP Annually” (Henry J. Kaiser Family Foundation, June 19, 2018), <https://www.kff.org/other/state-indicator/annual-chip-enrollment/>.

to lawfully present children and pregnant women by giving states the option to cover under Medicaid and CHIP, with regular federal matching dollars, for lawfully residing children and pregnant women during their first five years in the U.S (Section 214 of the 2009 Children’s Health Insurance Program Reauthorization Act (CHIPRA)). The Florida Legislature chose to enact this option for children in recognition of the public health, economic, and social benefits of ensuring their access to care and the importance of continuous coverage especially for young children. Child health experts recommend 16 well-child visits (more heavily concentrated in the first two years) before the age of six to monitor their development and address any concerns or delays as early as possible.¹⁶ As noted by the Center for Children and Families, a child’s early life experiences have a lasting impact on his or her development and life trajectory, and the first months and years of a child’s life are marked by rapid growth and brain development.¹⁷

DHS notes that the reason it does not include CHIP in the proposed rule is that CHIP does not involve the same level of expenditures as other programs that it proposes to consider in a public charge determination and that non-citizen participation is relatively low.¹⁸ However, the size of the government’s expenditure on a particular program is irrelevant to the assessment of whether a particular individual may become a public charge. A public charge determination must be an individualized assessment, as required by the Immigration and Nationality Act. Reducing government expenditures through the public charge rule undermines the intent of programs duly enacted by Congress.

We believe the benefits of excluding CHIP, along with the other non-cash benefits included in the proposed rule, clearly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

¹⁶ Elisabeth Wright Burak, “Promoting Young Children’s Healthy Development in Medicaid and the Children’s Health Insurance Program (CHIP)” (Washington D.C: Georgetown University Health Policy Institute: Center for Children and Families, October 2018), <https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf>.

¹⁷ Id.

¹⁸ 83 Fed. Reg. at 51174.

Impact on Florida health providers and safety net:

The proposed rule will lead to an increase in the amount of uncompensated care that Florida providers must deliver. Following PRWORA, safety-net providers including public hospitals, community health centers, nonprofit charitable hospitals, and local health departments reported losing Medicaid patients and revenue while the number of uninsured patients rose.¹⁹ These providers already care for a disproportionately high number of low-income immigrant populations compared to other types of health care providers. More uninsured patients will likely present at emergency rooms, shifting the cost of providing care onto safety-net health systems, many of which are already struggling financially.²⁰ This is particularly problematic in states such as Florida that have not expanded Medicaid under the ACA. Providers could cut back on services vital to the larger community to stay afloat.²¹ Such change in providers' behavior reduces access to health care services for entire populations, not just for those attempting to avoid adverse public charge determinations.²²

Examples of Economic Impact:

¹⁹ Leighton Ku and Alise Freilich, Caring for Immigrants: Health Care Safety Nets in Los Angeles, New York, Miami and Houston, Kaiser Family Foundation, <https://aspe.hhs.gov/system/files/pdf/72701/report.pdf>.

²⁰ Dhruv Khullar, Zirui Song, and Dave A. Chokshi, "Safety-Net Health Systems At Risk: Who Bears The Burden Of Uncompensated Care?," Health Affairs Blog: Health Equity (blog), May 10, 2018, <https://www.healthaffairs.org/doi/10.1377/hblog20180503.138516/full/>.

²¹ Wendy E. Parmat, Health Affairs Blog: The Health Impact of the Proposed Public Charge Rules, <https://www.healthaffairs.org/doi/10.1377/hblog20180927.100295/full/>.

²² Cindy Mann, April Grady, and Allison Orris, "Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule" (Washington, D.C.: Manatt, Phelps & Phillips, LLP, November 2018), <https://www.manatt.com/Manatt/media/Media/PDF/White%20Papers/Medicaid-Payments-at-Risk-for-Hospitals.pdf>.

The proposed rule will also significantly hurt Florida's economy as our hospitals will lose hundreds of millions of dollars in revenue and the state loses thousands of jobs.²³ In October of this year, the Fiscal Policy Institute released a report measuring how the rule will impact the national economy as well as economics in each of the fifty states. Florida's residents may lose between \$399 to \$931 million dollars in federal funds, depending on disenrollment rates from government programs. The ripple effects of these losses will total between \$742 million to \$1.732 billion of spending being taken out of the economy and losses of between roughly 5,000 to 11,800 jobs.²⁴

Conclusion and request:

For all of the above reasons, we urge you to withdraw the proposed rule and to preserve the status quo as it is articulated in the 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds 64 Fed. Reg. 28689.

Sincerely,

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²³ Fiscal Policy Institute, "'Only Wealthy Immigrants Need Apply:' How a Trump Rule's Chilling Effect Will Harm the U.S.," Report (New York: Fiscal Policy Institute, October 10, 2018), <http://fiscalpolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf>; Fiscal Policy Institute, "Economic and Fiscal Impacts of Reduced Food and Medical Assistance: Three Scenarios" (Fiscal Policy Institute, October 10, 2018), <http://fiscalpolicy.org/wp-content/uploads/2018/11/50-states-economic-impact-of-public-charge-1.pdf>

²⁴ Id