December 10, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

RE: CIS No. 2499-10; DHS Docket No. USCIS-2010-0012 Inadmissibility on Public Charge Grounds

Dear Secretary Nielsen:

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the Department of Homeland Security's proposed rule, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (October 10, 2018).

MACPAC is a non-partisan legislative branch agency that provides policy and data analysis and makes recommendations on a wide range of topics related to Medicaid and the State Children's Health Insurance Program (CHIP). The Commission also is charged with reviewing proposed regulations and identifying "factors that adversely affect, or have the potential to adversely affect, access to care by, or the health status of, Medicaid and CHIP beneficiaries." Consequently, our comments focus entirely on the proposed rule's potential effects on Medicaid and CHIP, and provide information on how these programs are designed and operate under both federal and state rules.

The proposed rule referenced above would change the definition of public charge for purposes of immigration status. Specifically, it would change the definition of who may be considered a public charge from an individual who is primarily dependent on public benefits to an individual who receives one or more public benefits. In addition, the proposed rule would expand the list of public benefits that can be considered in a determination of public charge to include Medicaid.

While the proposed rule does not change Medicaid regulations or affect immigrant eligibility for Medicaid, the new definition of public charge is likely to adversely affect Medicaid beneficiaries, health care providers, and states. If finalized, the rule has the potential to:

- restrict access to care for those entitled to Medicaid coverage;

- increase uncompensated care for providers; and
- have downstream fiscal and administrative implications for states and localities.

We discuss each of these issues in greater detail below.

Over the years, states and the federal government, as well as a variety of stakeholders including community organizations and health care providers, have made concerted efforts to simplify application processes and encourage eligible, but unenrolled individuals to apply for coverage. For example, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, P.L. 111-3) established outreach and enrollment grants that provide support to states, tribes, and community-based organizations for a variety of outreach and enrollment activities as well as provided performance bonuses to eligible states to promote enrollment of eligible but unenrolled children. Such activities led to significant increases in the number of children with health insurance coverage (MACPAC 2017). This proposed rule has the potential to reverse some of these gains by discouraging eligible individuals from seeking coverage due to fear of the negative immigration consequences of being deemed a public charge.

As of 2016, more than 3.5 million non-citizens were covered under Medicaid and CHIP (SHADAC 2018). In order to qualify for the full range of benefits offered under Medicaid, immigrants must be qualified aliens, such as refugees, asylees, or lawful permanent residents after a five-year waiting period.[1] In addition, 5.8 million citizen children with a non-citizen parent were covered by Medicaid and CHIP (Artiga et al. 2018a). Both non-citizens and citizen children of non-citizen parents may be discouraged from applying for or continuing enrollment in Medicaid and CHIP if they believe this will affect their own or a family member's immigration status. This chilling effect was documented following passage of welfare reform in 1996, when there was a decline in immigrant participation in public benefits, even among those who remained eligible.[2]

The Department of Homeland Security (DHS) suggests enrollment will decline by 142,000, assuming that only those seeking to adjust their status will be affected. Based on the prior experience following welfare reform, however, the Commission considers this to be an underestimate of the likely effect. Estimates suggest that the chilling effect of the rule could result in 2.1 million to 4.9 million Medicaid and CHIP enrollees in families with at least one noncitizen disenrolling and an estimated 875,000 to 2 million citizen children with a noncitizen parent ending coverage despite being legally eligible (Artiga et al. 2018a and 2018b). In addition, DHS estimates that disenrollment will decrease federal Medicaid payments to the states by about $1.1 billion annually. However, given the potential for a larger effect on coverage, the associated decline in federal funds is also likely to be greater.

Reductions in coverage are likely to result in increased uncompensated care costs for hospitals, community health centers, and other safety net providers, with substantial variation by state and locality based on immigrant population. At the same time, pending reductions in disproportionate share hospital payments are already exerting downward pressure on safety net hospitals. Immigrants and their families

may also forgo preventive or routine care, which could lead to the need for more costly services by these providers.

State Medicaid agencies would also likely face some additional administrative tasks and costs to mitigate the dampening effects of the proposed policy on enrollment, such as changing or expanding outreach and educational activities, training eligibility workers to educate applicants and respond to questions, and revising applications and notices.

The notice of proposed rulemaking asks for comment on the inclusion of CHIP as a public benefit for the purposes of a public charge determination. If CHIP were included, the Commission would have the same concerns as raised above regarding Medicaid: coverage losses and increased burdens on health care providers and states. Importantly, however, families often do not know whether their child is enrolled in Medicaid or CHIP. Most states cover children under Medicaid with CHIP funds, and many have made efforts to design and brand their child health programs so there is no distinction between the programs. And, depending on the state, families may have a younger child enrolled in Medicaid and an older one enrolled in CHIP. As such, it is likely that at least some of the enrollment effects anticipated in Medicaid will also occur in CHIP, even if that program is not included as a public benefit.

Variation in how states have designed and operate their Medicaid and CHIP programs also means that families and individuals will be affected differently depending on where they reside. An individual with income at 110 percent of the federal poverty level in New Mexico would be eligible for Medicaid and at risk of a public charge determination, while an individual in neighboring Texas at the same income level would be eligible for premium tax credits and would not.

Under the proposed rule, a public charge determination would consider whether an individual has applied for benefits. However, given that all states are required to use a single, streamlined application for health coverage programs (including Medicaid, CHIP, and subsidized exchange coverage), individuals may not be aware that they are applying for Medicaid, for example, when submitting an application through healthcare.gov (42 CFR 435.907(b)). Finally, the proposed rule would exempt certain services, such as those provided in a school. However, in order for children to receive Medicaid-funded services in a school, they must be enrolled in Medicaid. As a result, the exemption may not provide relief if that was intended by the drafters.

Sincerely,

Penny Thompson
Chair

cc: The Honorable Alex M. Azar II, Secretary, U.S. Department of Health and Human Services
Seema Verma, Administrator, Centers for Medicare & Medicaid Services
The Honorable Orrin G. Hatch, Chairman, Committee on Finance, U.S. Senate
The Honorable Ron Wyden, Ranking Member, Committee on Finance, U.S. Senate
The Honorable Greg Walden, Chairman, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Frank Pallone Jr., Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Michael Burgess, Chairman, Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Gene Green, Ranking Member, Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives

Endnotes

[1] Specifically, Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193, also referred to as welfare reform) classified immigrants for purposes of eligibility for public benefits as either qualified immigrants or non-qualified immigrants. Qualified immigrants include legal permanent residents, refugees, asylees, immigrants whose deportation is being withheld, Amerasians, Cuban/Haitian entrants, and victims of a severe form of trafficking. Non-qualified immigrants include unauthorized immigrants and immigrants in the country temporarily such as students or tourists. States must also cover qualified immigrants who are veterans and active duty military, their spouse, surviving spouse, and children. Legal permanent residents entering after August 22, 1996, are generally barred from receiving full Medicaid benefits for five years, after which coverage becomes a state option.

[2] Some of this decline was due to the fact that the law restricted eligibility among recent lawful permanent residents, but the legislation also served as a deterrent to enrollment for immigrants who remained eligible, but chose not to apply for benefits out of fear for the negative immigration consequences of being deemed a public charge (Batalova et al. 2018).

References

Artiga, S., A. Damico, and R. Garfield. 2018a. *Potential effects of public charge changes on health coverage for citizen children.* San Francisco, CA: Kaiser Family Foundation. http://files.kff.org/attachment/Issue-Brief-Potential-Effects-of-Public-Charge-Changes-on-Health-Coverage-for-Citizen-Children.

Artiga, S., R. Garfield, and A. Damico. 2018b. *Estimated impacts of the proposed public charge rule on immigrants and Medicaid.* Washington, DC: Kaiser Family Foundation. http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.

Batalova, J., M. Fix, and M. Greenberg. 2018. *Chilling effects: The expected public charge rule and its impact on legal immigrant families' public benefits use.* Washington, DC: Migration Policy Institute. https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

Medicaid and CHIP Payment and Access Commission (MACPAC). 2017. *Recommendations for the Future of CHIP and Children's Coverage.* January 2017. Washington, DC: MACPAC. https://www.macpac.gov/publication/recommendations-for-the-future-of-chip-and-childrens-coverage/.

State Health Access Data Assistance Center (SHADAC), University of Minnesota, American Community Survey (ACS) public use microdata sample (PUMS) files. statehealthcompare.shadac.org.