

December 10, 2018

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

Submitted via www.regulations.gov

RE: Comments on DHS Docket No. USCIS-2010-0012 – Notice of Proposed Rulemaking on “Inadmissibility on Public Charge Grounds”

We are submitting public comment on behalf of the Fenway Institute at Fenway Health. The Fenway Institute works to make life healthier for those who are lesbian, gay, bisexual, and transgender (LGBT), people living with HIV, and the larger community. We do this through research and evaluation, education and training, and policy analysis. We are the research division of Fenway Health, a federally qualified health center (FQHC) and Ryan White Part C HIV clinic in Boston, MA that serves about 30,000 patients each year. As a FQHC, we serve all patients regardless of their ability to pay, including low-income people and immigrants.

We are writing to express our profound concern about the Administration’s Notice of Proposed Rulemaking regarding public charge determinations. This proposed regulation may deter individuals—including our own patients—from addressing their health care needs and those of their families. This will ultimately lead to worse health outcomes, higher costs, and reduced productivity. As these impacts are inconsistent with our mission and goals as a community health center, we urge that the Administration reconsider this proposal.

According to the Massachusetts League of Community Health Centers, in 2017, 44% percent of Massachusetts health center patients were insured through Medicaid, 30% had subsidized and private coverage, another 11% were Medicare beneficiaries and nearly 15% remained uninsured. Forty-two percent were better served in a language other than English. Seventy-three percent of patients had incomes below 200% of the FPL. As these numbers demonstrate, health centers like Fenway Health in Massachusetts, as well as health centers across the country, often serve as the healthcare home for the most medically underserved patients, including those individuals and families that will be most impacted by this public charge proposal.

The proposed rule attacks immigrants as well as low-income people and families, and it could have terrible consequences for their health and well-being. As written, the rule radically lowers the historical standard for determining whether someone is “likely to become a public charge.” Under current policy, only cash welfare assistance and government funded long-term care can be taken into consideration in the “public charge” test. The proposed rule would alter the test

dramatically. Any person who seeks or uses a wide range of life-saving health and human services programs, from housing assistance to health care (including treatment for HIV/AIDS) to anti-hunger and anti-poverty benefits, could be deemed a public charge as such, could face barriers to maintaining or improving their immigration status.

Because of this proposed rule, immigrants who rely on these services to live healthy and productive lives may forego these services in order to avoid being considered a public charge. Furthermore, this proposed rule will have a chilling effect that extends far beyond the individuals that are actually subject to public charge determinations. For example, immigrant parents may be afraid to utilize programs like SNAP or WIC in order to feed their US citizen children because they are afraid of the impact it would have on their immigration status. This rule will result in individuals being deterred from addressing their basic health needs, ultimately leading to worse health and developmental outcomes for them, their children, and their communities.

The proposed rule could also damage the financial viability of community health centers like Fenway Health, as well as increase the cost for US taxpayers. As a FQHC, Fenway Health will not turn any patient away, regardless of insurance coverage or ability to pay. If the proposed rule is implemented, immigrants who are deterred from enrolling themselves or their children in Medicaid or CHIP for fear of being deemed a public charge will still be seen at Fenway Health and other community health centers. However, the health center would no longer receive Medicaid or CHIP reimbursement to help cover the cost of their healthcare. In the long run, this could damage the financial viability for community health centers across the country. This is a problem because we are the safety net healthcare system for 25 million people, including 7 million children. Furthermore, as a result of this proposed rule, immigrants may defer seeking necessary health services. Individuals who delay necessary healthcare more often end up in the emergency room and require more costly treatment. If those costs are covered under emergency Medicaid, US taxpayers will pay those increased costs.

Because of our mission at Fenway Health, we are especially concerned about how this proposed rule could negatively affect the health and well-being of immigrants who identify as LGBT. Immigrants make up a significant population of the LGBT community. The Williams Institute at UCLA School of Law estimates there are 637,000 LGBT-identified individuals among the adult authorized immigrant population.¹ There are an estimated 24,700 non-citizens who are part of a same-sex couple with a U.S. citizen; a quarter of the couples are raising children.

As noted above, this proposed rule could cause immigrants to defer necessary medical treatment. This concern would be amplified for LGBT immigrants, because anti-LGBT discrimination in healthcare is already common and acts as a barrier to seeking necessary medical treatment. A survey conducted by Lambda Legal found that 56% of LGB respondents and 70% of transgender and gender-nonconforming respondents reported having at least one discriminatory experience—such as refusal of service, harsh or abusive language, being blamed for their health status, etc.—in a healthcare facility.² The survey also found that a higher proportion of LGBT people of color

¹ Gary J. Gates, “LGBT Adult Immigrants in the United States,” (The Williams Institute, 2013) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf>

² Lambda Legal. 2010. *When Health Care Isn’t Caring: Lambda Legal’s Survey of Discrimination against LGBT People and People with HIV*. New York: Lambda Legal.

and/or low-income people reported experiencing discriminatory care. These experiences of discrimination act as a barrier to seeking necessary care in the first place, and if the proposed rule passes, LGBT immigrants will only be deterred even further from seeking healthcare that they need.

The proposed rule introduces a new test for income, where earning under 125% FPL percent of the federal poverty level (\$31,375 annually for a family of 4) would be considered a negative factor in deciding whether an immigrant could be granted a green card or permanent residency. LGBT people, including those who are immigrants, experience widespread workplace discrimination which hurts their ability to attain and maintain economic security. Half of the US population lives in a jurisdiction without explicit nondiscrimination laws prohibiting employment discrimination based on sexual orientation and gender identity.³ A 2017 survey found that 1 in 5 LGBT people experienced discrimination due to their sexual orientation or gender identity when applying for jobs and 22% reported experiencing this discrimination in pay or promotions.⁴ Sixteen percent of respondents to the 2015 U.S. Transgender Survey reported losing their job due to their gender identity or expression.⁵ Respondents to that survey also reported a 15% unemployment rate, which was three times higher than the unemployment rate for the total U.S. population at the time.⁶ In effect, this proposed rule would punish LGBT immigrants for systemic workplace discrimination.

LGBT people are also more likely to depend on programs that could lead to a public charge determination under the proposed rule. The Williams Institute found that LGBT people are more likely than non-LGBT people to report experiencing food insecurity,⁷ and a CAP survey found LGBT survey respondents and their families are more than twice as likely to report receiving SNAP benefits.⁸ The CAP survey also found that LGBT people and their families are more likely to receive Medicaid. While 12.9% of non-LGBT people surveyed reported receiving Medicaid benefits, 20% of LGBT people reported receiving Medicaid.⁹ The survey also found LGBT respondents and their families relied on housing assistance at 2.5 times the rate of non-LGBT respondents.¹⁰ Penalizing immigrants for actual or predicted usage of a wide-range of supplementary assistance in their lifetimes, as the proposed rule would do, will likely disproportionately impact LGBT immigrants and their families.

³ Movement Advancement Project, “Local Employment Nondiscrimination Ordinances,” 2015.

<http://lgbtmap.org/file/policy-spotlight-local-NDOs.pdf>

⁴ Sejal Singh and Laura E. Durso, “Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways,” (Center for American Progress, 2017)

<https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>

⁵ James SE, Herman JL, Rankin S, Keisling M, Mottet L, Anafi M. The Report of the 2015 U.S. Transgender Survey. 2016. Washington, DC: National Center for Transgender Equality

⁶ *Id.*

⁷ Taylor N.T. Brown, Adam P. Romero, and Gary J. Gates, “Food Insecurity and SNAP Participation in the LGBT Community,” (The Williams Institute, 2016) <https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/>

⁸ Caitlin Rooney, “Protecting Basic Living Standards for LGBTQ People,” (Center for American Progress 2018) <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

⁹ *Id.*

¹⁰ *Id.*

We are also especially concerned with how this proposed rule will affect the health and well-being of immigrants living with HIV. Under the proposed rule, an immigrant's health, including HIV status, will be considered when determining whether the applicant is likely to be able to work, attend school, care for themselves, or require expensive care or institutionalization. Forcing a person living with HIV to choose between using subsidized healthcare programs and their immigration status could cause a public health disaster. HIV/AIDS treatment is prohibitively expensive in the United States without assistance. Under this rule, we will likely see individuals forego their medical regimen for fear of a public charge determination. This will not only be devastating to the health of the individual, but will also have negative health consequences on the community at large, as disruptions in HIV care and treatment—especially resulting in reduced adherence or medication rationing—can lead to drug resistant strains of HIV and increased transmission of HIV. The proposed rule is terrible public health policy.

In summary, this proposal would have numerous effects that are in direct contradiction to Fenway Health's mission of providing high-quality, affordable healthcare to all medically underserved populations, including LGBT immigrants and immigrants living with HIV. For these reasons, the Department should immediately withdraw its current proposal and instead advance policies that strengthen rather than undermine the ability of immigrants to support themselves and their families in the future.

Sincerely,

Darlene Stromstad, FACHE
Interim Chief Executive Officer, Fenway Health

Kenneth Mayer, MD, FACP
Co-chair and Medical Research Director, The Fenway Institute
Director of HIV Prevention Research, Beth Israel Deaconess Medical Center
Professor of Medicine, Harvard Medical School

Jennifer Potter, MD
Co-Chair and LGBT Population Health Program Director, The Fenway Institute

Carl Sciortino, MPA
Vice President of Government and Community Relations, Fenway Health

Sean Cahill, PhD
Director of Health Policy Research, The Fenway Institute

Tim Wang, MPH
Health Policy Analyst, The Fenway Institute