Division for Early Childhood

of the Council for Exceptional Children

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December 10, 2018

Samantha Deshommes, Chief

Regulatory Coordination Division

Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Ave, N.W.

Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22,

Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Ms. Deshommes:

The Division for Early Childhood (DEC) of the Council for Exceptional Children submits the following comments in response to the October 10, 2018 notice by the Department Homeland Security of its proposed rule setting forth new “public charge” grounds for inadmissibility. DEC is the largest membership organization focused solely on the development and education of young children (ages birth–8) with or at risk for disabilities and other special needs and their families.

DEC strongly opposes this proposed rule, as it will diminish children’s access to adequate nutrition, healthcare, stable housing which will negatively impact their health and development. ***DEC recommends that it be withdrawn in its entirety.***

For many years, U.S. immigration law has used the term “public charge” to mean a person primarily dependent on the government for subsistence. This proposed rule would change the definition of who may be deemed a public charge, and as a result denied entrance to the United States or lawful permanent residency. The proposed rule vastly expands this definition of public charge to include individuals who simply receive one of the enumerated nutrition, healthcare, or housing benefits. Under the proposal, the Department of Homeland Security would consider an applicant’s use of benefits beyond the existing standards of cash assistance and long-term institutional care to include Medicaid, the Supplemental Nutrition Assistance Program (SNAP), housing assistance and, Medicare Part D subsidies.

These critical public benefit programs included in the expanded definition of “public benefit” contribute to the healthy development of children. Childhood is a formative period of development, and children need access to enough healthy foods, safe and stable housing, and adequate healthcare to grow up healthy and strong. Decades of research show the positive impact of public benefits—such as Medicaid, and SNAP—on children’s long-term health and their economic security. When children get access to these programs, they are both healthier, ready to learn in school and early childhood programs and their families have more money in their budget to spend on basic needs.

While only the use of benefits by an individual would be considered under the proposed rule, and not their dependents, there is simply no way to implement this rule without direct harm to children, including U.S. citizen children. Parents’ own wellbeing is an important determinant of children’s health and development. Children do better when their parents are healthy and economically stable. The destabilizing effect of this rule would harm parents who lose access to benefits and their children who will be directly impacted.

Children of immigrants represent a large and growing share of children in the United States. About 9 million children under age 8, approximately 26% of all young children in the U.S. live with one or more immigrant parents. About 94% of these children are U.S. citizens. Clearly, the experiences, development, and education of children of immigrants are consequential for our entire country. Our future is tied to their health and wellbeing, as well as their success in school and later careers.

Of significant concern to DEC is the likelihood that the proposed rule would exacerbate widespread fear of accessing public programs and service to millions of children and adults, beyond those subject to the “public charge” test. The proposed regulation are likely to make immigrant families fearful to seek programs that support their basic needs as well as the needs of their children, regardless of the legal status of their children. The draft regulation itself states clearly the possibility of individuals refusing or disenrolling in benefits because of fear of the impact on their immigration status. This would likely lead individuals, including parents of U.S. citizen children to withdraw or disenroll from benefit programs that support their health, wellbeing, and financial security causing their families to forego food, health, or housing benefits out of fear that receiving them would jeopardize the legal status of a family member. This will have a direct and harmful effect on young children and their families. When families refuse benefits needed by their children (such as a father refusing SNAP or a pregnant woman refusing Medicaid) their children suffer as well.

The inclusion of Medicaid as a program that can disqualify someone from gaining citizenship or maintaining a visa in the U.S. will have immediate repercussions for children’s healthcare access inside and outside of schools and early childhood programs for children with disabilities. While early childhood and school-based Medicaid services are technically excluded from impacting a child’s future status in the U.S. by this regulation, programs are already challenged in annually enrolling children and youth into the Medicaid/CHIP program and obtaining parental consent that allows programs to be reimbursed by Medicaid for the direct healthcare services they provide children. Schools and early childhood programs deliver health services effectively and efficiently to children since these programs are where children and youth spend most of their days. Increasing access to healthcare services through Medicaid improves healthcare and educational outcomes for children and youth including immigrant children and particularly those with disabilities. Providing healthcare and wellness services for immigrant children and youth through Medicaid programs helps enable these children and youth to become employable, attend higher-education and be productive contributors to society.

Since the news of the proposed regulation broke over the last few months, some local programs are reporting that some parents who are fearful about the impact of the public charge regulations are proactively revoking consent for programs to bill Medicaid for costly services under the Individuals Disabilities Education Act (IDEA) that programs provide to children and youth who qualify for early intervention and special education. Medicaid reimbursement for early intervention and special education services is a critical funding source for programs. Programs with large numbers of immigrant children and youth will struggle to meet their commitments under IDEA if parents refuse to give their consent to billing Medicaid due to the fear of negative consequences to their immigration status.

DEC strongly disagrees with the provision in the proposed rule that specifies consideration of an individual’s “physical or mental conditions 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.” This expansive language singles out persons with a disability and is very troubling, raising issues of discrimination.

Finally, the notice of proposed rulemaking also asked whether accessing the Children’s Health Insurance Program (CHIP) should also impede a child’s or family’s ability to stay in the U.S. The answer is a resounding no. The health program, which was just reauthorized on a bipartisan basis in Congress, has provided an invaluable service to immigrant children and particularly those with disabilities by ensuring that they can access healthcare providers and address health issues early. If families are deterred from participating in the CHIP program, the children and youth will be more reliant on emergency health services for basic medical care and lack the preventative care that can ensure they do not need emergency services in the future. Reducing the likelihood that families seek medical care for their children when appropriate is a serious public heath mistake that would result in unnecessary and costly long-term expenses.

DEC believes that all young children and their families deserve the fundamental security provided by adequate food, healthcare, and housing. Investing in these essential needs and encouraging access to them keeps children with disabilities learning and engaged in important developmental and educational activities and their families strong and contributing members of society. **For all the above reasons, we urge you to withdraw this harmful proposed rule in its entirety.**

Thank you for the opportunity to submit comments on this important matter. DEC is available and willing to provide any additional information that may be needed. Feel free to contact us if we may be of further assistance.

Sincerely,

Peggy Kemp

Executive Director