



**NCAPIP**  
National Council of Asian  
Pacific Islander Physicians

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November 28, 2018

U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

Comments in Response to Proposed Rulemaking  
Inadmissibility on Public Charge Grounds  
DHS Docket No. USCIS-2010-0012

Dear U.S. Citizenship and Immigration Services:

The National Council of Asian Pacific Islander Physicians (NCAPIP) unequivocally opposes the proposed changes to the public charge law,<sup>1</sup> and urges the Department of Homeland Security (DHS) to immediately withdraw this proposal because of its significant adverse consequences on the health and well-being of Asians and Pacific Islanders (APIs), and other immigrant communities throughout the U.S. and U.S.-associated jurisdictions in the Pacific.

Background and Interest of National Council of Asian Pacific Islander Physicians in this Proposed Regulation

NCAPIP is a national health policy organization that represents physicians committed to the advancement of the health and well-being of Asian American, Native Hawaiian, and Pacific Islander communities. NCAPIP's board members and physician networks include recognized leaders of national, state, and local physician organizations, medical groups, and independent practice associations. NCAPIP's board members and physician networks include both primary care physicians (general internists, family physicians, and pediatricians) as well as specialty

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<sup>1</sup> 83 Fed. Reg. 51110 (October 10, 2018), <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

physicians. NCAPIP's board members and physician networks practice in a variety of settings, including solo and small group physician practices, multi-specialty medical groups, community health centers, local health departments, private and public hospitals, integrated health delivery systems, and academic health centers.

This issue is both a professional and personal issue for our organization. NCAPIP's board members and network physicians are immigrants and refugees, and the sons and daughters, grandsons and granddaughters, and other descendants of immigrants and refugees. As physicians at the forefront of caring for immigrant and refugee patients, we are distressed that patients are deferring care based on the fear that their own, or their loved ones', immigration status would be adversely affected. Deferred care means delayed diagnosis and worsening of treatable conditions, leading to needless suffering and avoidable morbidity and mortality.

#### The Proposed Regulation Would Have Adverse Impacts on Asians and Pacific Islanders

Today, three out of ten new permanent residents are from Asia and Pacific Island nations.<sup>2</sup> Forty percent of the millions of individuals and families waiting in backlogs for family-based immigration are from Asia and Pacific Island nations.<sup>3</sup> These immigrants are vital to the diversity and health of our nation, becoming contributing members of their neighborhoods and communities. For example, API physicians trained in their home countries who continue their training here in the U.S. (international medical graduates) often provide vital primary care to medically underserved populations, serving in medically underserved areas.<sup>4</sup> These physicians use both family and other immigration pathways to gain permanent immigration status in the U.S., and then reunite with their families from their home countries.

The proposed regulation would re-define the public charge test in unprecedented and extreme ways. While on its face, the proposal uses the underlying immigration law's language of a "totality of circumstances" test, it re-defines how the test will be used for *every* applicant for permanent resident status, regardless of whether that applicant has used any of the expanded list of public benefits. The proposed regulation adds to, and weighs against *all* applicants, factors that will most likely restrict and reduce overall levels of immigration to the U.S. As a result, the proposal is a drastic and unjustified expansion beyond the current public charge test, which only considers whether an applicant is likely to *rely primarily on government cash assistance programs for subsistence income* or institutionalized support, and does not have a sponsor's affidavit of support, or changes in the applicant's totality of circumstances that would make them no longer likely to continue such primary reliance on such governmental cash assistance for subsistence income in the future.<sup>5</sup>

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<sup>2</sup> Department of Homeland Security, Yearbook of Immigration Statistics 2016, <https://www.dhs.gov/immigration-statistics/yearbook/2016>

<sup>3</sup> Department of State, Annual Report of Immigrant Visa Applicants, 2017, [https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem\\_2017.pdf](https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf).

<sup>4</sup> Carroll AE. Why America needs foreign medical graduates, New York Times, October 6, 2017, <https://www.nytimes.com/2017/10/06/upshot/america-is-surprisingly-reliant-on-foreign-medical-graduates.html>

<sup>5</sup> Perreira KM, Yoshikawa H, Oberlander J. A new threat to immigrants' health - the public-charge rule. *N Engl J Med.* (2018); 379(10)901-903, <https://www.nejm.org/doi/full/10.1056/NEJMp1808020>

Fwd.US, a national organization of business leaders, calls the proposed regulation:

“...a backdoor, administrative end-run to substantially reduce legal immigration that, if implemented, will hurt our entire country. This policy will cost the United States in the long run by limiting the contributions of hardworking immigrants who could become legal residents, and no one is better off because of it. The proposed changes would create a subjective criteria and overly-bureaucratic process when making a public charge determination. It is another underhanded attempt to force cuts to legal immigration, ultimately hurting our communities and country.”<sup>6</sup>

By weighing negatively many factors that are highly relevant for API applicants for permanent resident status, the proposed regulation will most likely result in limiting the number of API individuals and families who are allowed to enter the U.S., and who are allowed to remain and achieve permanent resident status. Under the proposed regulation, applicants who are under 18, over age 61, have any medical condition, have less education, have limited English proficiency, have lower household incomes, and have poor credit histories will have all those factors negatively weighed against them. Receipt of Medicaid, Supplemental Nutrition Assistance Program (SNAP), Medicare Part D subsidies, and public housing support also will be heavily weighed negative factors against them.

If implemented, this proposal would disproportionately and adversely impact APIs since one in three APIs are limited English proficient, and many APIs use the family immigration categories for their children under age 18 and parents over age 61. The Migration Policy Institute reports that 38 percent of recent lawful permanent residents from Asia did not speak English well or not at all, and 20 percent did not have a high school diploma, which would have been used as negative factors against them.<sup>7</sup> Nine percent of recent lawful permanent residents from Asia were under age 18 or over age 61, which would have been negative factors against them. Thirty percent of recent lawful permanent residents from Asia had household incomes below 125 percent of the Federal Poverty Guidelines, which would have been another negative factor against them. Considering just the age, education, English language proficiency, and household income factors in the proposed new public charge test, 28 percent of recent lawful permanent residents from Asia would have had at least one of these negative factors against them, another 25 percent would have two of these negative factors, and another 16 would have three or more of these negative factors against them. Overall, 69 percent of recent lawful permanent residents from Asia would have had negative factors under the proposed new definition.

In addition, the proposal would equate any person with any medical condition as effectively having a “pre-existing condition” that disqualifies them for permanent resident status, unless they can demonstrate private health insurance or financial resources to pay for all “reasonably anticipated medical costs”, an impossible test to meet. This would have a profound impact on racial and ethnic minorities, including APIs, who because of many social determinants of health, disproportionately experience an increased incidence of chronic conditions, including diabetes, cancer, and heart disease. The use of medical conditions against applicants for permanent

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<sup>6</sup> <https://www.fwd.us/news/fwd-us-statement-on-trump-administrations-proposed-changes-to-public-charge-policy/>

<sup>7</sup> Capps R, Greenberg M, Fix M, Zong J. Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration, Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>

resident status would add to the number and percentage of potential API applicants that would be at risk of being denied that status.

In addition, the Migration Policy Institute has estimated that there are 1.4 million APIs who are not yet U.S. citizens and who are members of families who use Medicaid and the Children's Health Insurance Program (CHIP).<sup>8</sup> In addition, 523,000 APIs who are not U.S. citizens are members of families who use SNAP to access affordable food for their families. The proposed regulation explicitly counts use of Medicaid and SNAP against a person's permanent resident status, and seeks comment on whether CHIP should be added to the list of negatively weighted programs. Medicaid and CHIP are programs that provide access to basic health care for individuals, children, and families that allow them to work, have better economic futures, and maintain our collective public health.<sup>9</sup> Accordingly, hundreds of thousands of future API applicants for permanent resident status would be subject to this significantly expanded public charge test, and adversely impacted by the proposed regulation.

#### The Proposed Regulation Adversely Impacts Citizens of Freely Associated States

Furthermore, the proposed regulation also would apply to citizens of the Freely Associated States (FAS), namely, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. Under international treaties (Compacts of Free Association), FAS citizens have a unique right to freely enter and exit, and reside indefinitely, in the U.S. (and U.S. Pacific jurisdictions, including Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). There are over 61,000 FAS citizens currently residing in the U.S. and its associated Pacific jurisdictions.<sup>10</sup> FAS citizens seeking to enter (or re-enter) the U.S. would have to meet the new proposed public charge test. While FAS citizens are not eligible for Medicaid, Medicare, or SNAP, they are eligible for public housing assistance.<sup>11</sup>

#### The Department of Homeland Security Admits Adverse Health and Economic Impacts from Proposed Regulation

Even the DHS concedes that, as a result of its intent to scare eligible individuals and families into dis-enrolling from, or failing to enroll, in health, nutrition, and housing programs, the proposed rule could lead to "worse health outcomes, including prevalence of obesity and malnutrition, especially for pregnant and breastfeeding women, infants, and children" and "increased prevalence of communicable diseases, including among members of the U.S citizen population who are not vaccinated." 83 Fed. Reg. at 51270. Moreover, DHS itself admits that

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<sup>8</sup> Migration Policy Institute, Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use, June 2018,

<https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families> The proposal asks for comments whether CHIP should be one of the listed public benefits that should be considered under the public charge test; we oppose adding CHIP to the list.

<sup>9</sup> Katz MH, Chokshi D. The "public charge" proposal and public health implications for patients and clinicians. *JAMA*. Published online October 1, 2018, [doi:10.1001/jama.2018.16391](https://doi.org/10.1001/jama.2018.16391)

<sup>10</sup> U.S. Department of Interior, Interior Assistant Secretary Discusses Health Care Coverage Options with Representatives from the Freely Associated States of Micronesia, Marshall Islands, and Palau Living in Hawaii and U.S. Mainland, November 10, 2016, <https://www.doi.gov/oia/interior-assistant-secretary-discusses-health-care-coverage-options-representatives-freely-0>

<sup>11</sup> FAS citizens also can apply for permanent resident status in the U.S., e.g. through a U.S. citizen or permanent resident family member; the proposed public charge test would also be applied to such applications.

the proposed regulation could lead to “increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment”, “reduced prescription adherence”, and “increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.” Finally, DHS acknowledges that the proposal could lead to “increased rates of poverty and housing instability” and “reduced productivity and educational attainment” among individuals applying for permanent resident status, and their families. 83 Fed. Reg. at 51270. As physicians, we note that these health and economic impacts - admitted by DHS itself - are sufficient reasons to withdraw the proposed regulation.

#### National Health Care Organizations Oppose this Proposed Regulation

The American Medical Association has concluded that the proposal “will likely reverse the public health gains we have made in the last several decades in areas such as vaccinations, control of infectious diseases, and access to healthier foods...Physicians from every state and specialty this year reaffirmed their opposition to these proposed changes, recognizing that they would decrease access to medical care and health insurance for immigrants.”<sup>12</sup> The American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians, and American Psychiatric Association have jointly stated that “many of the patients served by our members almost certainly will avoid needed care from their trusted providers, jeopardizing their own health, and that of their communities.”<sup>13</sup> These national physician organizations have noted that “the proposed regulation will not only threaten our patients’ health, but as this deferred care leads to more complex medical and public health challenges, will also significantly increase costs to the health care systems and U.S. taxpayers.” These leading national physician organizations have concluded that this proposal “puts a governmental barrier between health care providers and patients, and stands in sharp contrast to the mission each of our organizations shares: ensuring meaningful access to health care for patients in need.”

Similarly, the American Hospital Association has warned that the proposed regulation could threaten both individual and public health: “foregoing care can exacerbate medical conditions leading to sicker patients and a higher reliance on hospital emergency departments. In turn, this could drive up costs for all purchasers of care.”<sup>14</sup> America’s Essential Hospitals has added that the proposal “jeopardizes the health of millions of legal residents nationally and threatens the stability of hospitals and the communities they serve...the proposal only would reduce access to...vital health services and lead to worse health outcomes.”<sup>15</sup> Finally, the Association of American Medical Colleges has noted: “the proposed rule also could impede access to housing and food, two social determinants of health, making existing health disparities even worse for many underserved populations.”<sup>16</sup>

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<sup>12</sup> <https://www.ama-assn.org/ama-statement-linking-safety-net-benefits-immigration-status#skip-link>

<sup>13</sup> <https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/equality/ST-GroupSix-Public%20Charge-092218.pdf>

<sup>14</sup> <https://www.aha.org/press-releases/2018-09-24-aha-statement-public-charge-proposal>

<sup>15</sup> <https://essentialhospitals.org/general/public-charge-proposal-jeopardize-care-millions-drive-costs/>

<sup>16</sup> <https://news.aamc.org/press-releases/article/aamc-statement-proposed-changes-public-charge-rule/>

Accordingly, the National Council of Asian Pacific Islander Physicians unequivocally opposes this proposed regulation, and urges the Department of Homeland Security to immediately withdraw this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Ho Luong Tran". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ho Luong Tran, MD, MPH  
President and CEO