



## ♥ Ensuring a Place at the Table for Every Family

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Andrew Parker, Branch Chief  
Residents and Admissibility Branch  
Residents and Naturalization Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
DHS, 5900 Capital Gateway Drive  
Camp Springs MD 20746

Re: **Public Charge Ground of Inadmissibility, Advance Notice of Proposed Rulemaking, DHS Docket No. USCIS– 2021–0013, RIN 1615–AC74 (August 23, 2021).**

Dear Chief Parker:

On behalf of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE), we are submitting these comments in response to the above-captioned ANPRM.

National PLACE and our 70 local, state and national member organizations are committed to ensuring that families and family-led organizations are at the table when decisions regarding children and families are being made, and that our voices, experiences, and perspectives meaningfully influence those decisions. We have reviewed the Advance Notice of Proposed Rulemaking and include our thoughts below. Our primary goal is to strengthen the voice of families and family-led organizations at decision-making tables on issues impacting our nation's children and families, especially those who face the greatest challenges and have the poorest outcomes, including children with disabilities, children of color, immigrant children, low-income children, and LGBTQ+ children, and their families.

In addition to our comments below which are focused on the role of families of immigrant children, youth, and adults, National PLACE supports the comments of the Consortium for Citizens with Disabilities, of which we are a member, as well as comments of many organizational members of the Leadership Conference for Civil and Human Rights, of which we are also a member.

## **Introduction**

We appreciate the opportunity to comment on the Department's Advance Notice of Proposed Rulemaking concerning its public charge rule. As noted by CCD in their comments, "the public charge rule reflects an ugly history of xenophobia, racism, and prejudice against people who are impoverished, and it is at odds with the founding principles of the United States. While elimination of the rule is a matter for Congress, we urge DHS to adopt the narrowest possible interpretation of the rule within its authority, to avoid needless harms to our immigrant communities, including immigrants with disabilities."

The public charge rule is not only of serious concern to National PLACE because of its inappropriate use to target immigrants for adverse treatment based on their disabilities, but also because it places immigrant parents in an untenable position regarding accessing services and supports for their children and for themselves for fear of being labeled a public charge that would lead to a decision to deny them the right to stay in the US – including if they have children who are US citizens.

While National PLACE notes that the current Administration's decision to return to the 1999 Field Guidance on a temporary basis is an important move to avoid the most dramatic forms of discrimination and the most draconian outcomes for children and families, it is still far from equitable and continues to place families and their children in grave jeopardy. National PLACE strongly urges the US Department of Human Services to do several vital things. First, DHS should narrow its reading of the health factor. Second, DHS should narrow its consideration of public benefits. Finally, DHS should do all within its power to inform Congress of the life-disrupting impact of even the 1999 field guidance on children and families so that Congress has the information it needs to change this discriminatory, abusive law.

## **The Health Factor**

Even the 1999 Field Guidance's limitation on consideration of health to past or present long-term institutionalization at government expense is discriminatory against families who have family members with significant disabilities or special healthcare needs, which should be explicitly prohibited by disability anti-discrimination laws. And as CCD noted, "Even considering people who are currently institutionalized, many are institutionalized not based on a clinical need but based on the lack of available community-based services. For many immigrants this is particularly common; many remain needlessly in nursing facilities, psychiatric hospitals, and institutions for people with intellectual and developmental disabilities at the expense of states because their ineligibility for Medicaid prevents them from transitioning to community services. These individuals should not be penalized and considered to be a public charge because of states' choices to pay for their care in institutions rather than in community settings." Even if DHS does continue to consider long-term institutionalization, it should not do so unless DHS can demonstrate that the individual had "a meaningful, affordable and available option to receive home and community-based services instead of institutionalization. That is the most feasible way to ensure that the public charge rule is implemented in a manner that does not conflict with the integration mandate of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act."

## **Consideration of Public Benefits**

National PLACE strongly urges DHS to limit the consideration of public benefits, including Medicaid and SSI, to avoid discrimination, including on the basis of disability.

As the comments of CCD note, “Consideration of Medicaid benefits would amount to disability-based discrimination. Medicaid benefits are essential to many people with significant disabilities. Indeed, Medicaid is the only source of coverage for disability-related long-term services and supports, as these services are typically not covered by commercial insurance. These services, far from creating primary dependence on the government, enable many people with disabilities to work and be self-sufficient. In fact, the Medicaid Buy-In program is specifically designed to ensure that people with disabilities can work without sacrificing the health services that they need. In addition to services such as personal care, home health, and peer support that enable people with disabilities to go about their daily lives, Medicaid also covers services such as supported employment that are specifically designed to help people secure and maintain work. It is also a critical supplement to more than 12 million older adults on Medicare. Considering Medicaid benefits would have a severely disproportionate effect on people with disabilities and would not be a meaningful indicator of long-term primary dependence on the government for subsistence.”

National PLACE also agrees with CCD that DHS should avoid consideration of benefit programs that specifically target people with disabilities, such as Supplemental Security Income (SSI), as well as consideration of healthcare, housing, or nutrition assistance. Since almost half of US-born citizens received one of the benefits in the 2019 rule in their lifetime, it is clear that these benefits are not an appropriate indicator that a person will be primarily dependent on the government long-term. And not accessing these benefits causes significant harm to children and families, including citizen children whose parents fear accessing healthcare, housing or nutrition assistance to which they and/or their children are entitled due to fear of being labeled a public charge. The attacks on immigrants under the previous Administration and the discussions about and changes to the public charge rule under that Administration led to tens of thousands of immigrant parents not accessing benefits that were critical to their children’s development. This Administration must do its utmost to encourage parents to access all the benefits to which they and their children are entitled in order to support the healthy development of their children and their capacity to grow up to be contributing members of our economy and society.

Even if DHS feels compelled to consider receipt of some public benefits, it must restrict that consideration to current receipt of such benefits. Again, past receipt of public benefits does not indicate a likelihood that a person will need or receive them in the future. Benefits like TANF are time-limited or expire after a period of time unless an individual meets work requirements. National PLACE also strongly urges DHS to only consider receipt of federal benefits as opposed to state benefits. The purpose of the public charge rule was to protect federal government resources vs. state or local resources.

National PLACE also strongly supports the responses of CCD to the specific questions posed in the ANPRM, and notes that the children, youth, young adults, parents and families served by our members would disproportionately be negatively impacted by even the 1999 version of the public charge rule not only because of their disability or special healthcare needs but also because of their national origin, race, language, age, and socio-economic status.

### **Racist Implications of the Public Charge Rule**

It is important to note that the Public Charge rule has been implemented in racist ways. For example, data published by the Department of State on Immigrant Visas (IV) issued and refusal rates for IVs pursuant to INA 212 (a)(4) demonstrate that the refusal ratio is significantly lower for Europeans (mostly White) than for Blacks/Asians/Latinos, in part because of the racist application of the rules.

In fact, there is no way the rule can be uniformly and fairly applied because (a) there is a great deal of officer discretion, (b) it is not necessarily based on evidence but often on a prospective evaluation of what may happen in the future (leading to the inevitable consideration within the context of the officer's own opinions or beliefs, and (c) implicit bias is rampant throughout all of our policing systems including the immigration system.

## **Conclusion**

In conclusion, we appreciate the opportunity to comment on the Advance Notice of Proposed Rulemaking regarding Public Charge Ground of Inadmissibility, but strongly urge DHS and the Administration to interpret the law as narrowly as possible to minimize the harm to children and families, especially those who already face the greatest challenges to meaningful, sustainable lives. The members of National PLACE see daily the harmful impacts on children and families when immigrants are discouraged from seeking physical and mental health care, nutrition, or housing benefits for which they are eligible. As noted above, our members also saw the devastating impacts of the discussions about and the adoption of the 2019 public charge rule that caused fear and confusion among the immigrant community and significant reduction in the extent to which immigrant families interacted with the government even in areas that were not covered by that rule, and even for families who were citizens and thus not subject to the public charge test for naturalization. This chilling effect was particularly harmful, not only to immigrant children and families, but to all of our communities because of how it reduced immigrant access to healthcare related to COVID-19. And even though the 2019 rule stopped being implemented in early 2021, that chilling effect continues. Pregnant and parenting women are not accessing WIC benefits. Families are not accessing SNAP benefits or free or reduced school lunch even for their eligible children. This will have devastating impacts on these children and families, and on our larger society, for decades to come.

Finally, National PLACE strongly recommends that any decisions made about access of children and families to public benefits, services, and resources be conducted with the active and meaningful participation of representatives of the very immigrant parents and families who will be most impacted by those decisions as well as the family/parent, immigrant, disability, and other organizations that provide them with information and support and represent their interests. For any questions or for additional information about this letter and its recommendations, please contact Diana Autin, Executive Director of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE), at [dautin@parentsatthetable.org](mailto:dautin@parentsatthetable.org).

Sincerely:



Diana MTK Autin, Executive Director  
On behalf of National PLACE