



December 10, 2018

Ms. Samantha Deshommes, Chief  
Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

**RE: DHS Docket No. USCIS-2010-0012;**

**Proposed Rule on Inadmissibility on Public Charge Grounds**

Dear Ms. Deshommes:

The Colorado Department of Public Health and Environment, the Colorado Department of Human Services, the Colorado Division of Insurance, part of the Department of Regulatory Agencies, the Colorado Department of Local Affairs, and the Colorado Department of Health Care Policy and Financing are writing to express opposition to the U.S. Department of Homeland Security's proposed rule on public charge determinations. The proposed rule's inclusion of Medicaid, Supplemental Nutrition Assistance Program (SNAP), and housing assistance in public charge review is inconsistent with the core public health values of the State of Colorado. This proposed rule threatens Colorado's ability to ensure healthy pregnancies, births, child development, and access to vital health care and nutritious food. We urge the Department to withdraw this proposed rule.

The mission of the Colorado Department of Public Health and Environment (CDPHE) is to protect and improve the health of Colorado's people and the quality of its environment. CDPHE houses the Colorado Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program, Maternal and Child Health, and a wide range of critical programs that promote the behavioral and physical health of families and children.

The mission of the Colorado Department of Human Services (CDHS) is to, in collaboration with partners, design and deliver high-quality human and health services that improve the safety, independence, and well-being of the people of Colorado. CDHS houses the Office of Economic Security, which provides income, nutritional and support services to those in need.

The mission of the Colorado Department of Health Care Policy and Financing (HCPF) is to improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources. HCPF oversees and operates Health First Colorado (Colorado's Medicaid Program), Child Health Plan Plus (CHP+), and other public health care programs for Coloradans who qualify.

The mission of the Colorado Department of Local Affairs (DOLA) is to strengthen Colorado's communities and help build capacity by providing strategic training, research, technical assistance, and funding to localities. DOLA contains the Division of Housing, which administers Colorado's Section 8 Housing Choice Vouchers, Project-Based Rental Assistance and emergency shelter programs.

The mission of the Colorado Division of Insurance (DOI) is to promote compliance and enforce laws in order to help protect consumers. The Division works to ensure that Coloradans have access to health insurance, maintaining the state's low uninsured rate of 6.6%, and to keep health insurance rates as affordable as possible.

We appreciate this opportunity to share our views on this potential policy change.

**The proposed rule should be withdrawn.** Programs like Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and emergency shelter assistance have not historically been considered in immigration determinations, including public charge review. This is for good reason. These programs ensure that families, including U.S. citizen children living with an immigrant parent have access to medical care, adequate nutrition, and safe shelter. Seeking a basic standard of living for your children should not be a condition of remaining in the country.

The proposed rule would leave millions of people, including Coloradans, without enough food, necessary health care, or safe stable housing. This undermines the health and economic security of thousands of Colorado families.

The proposal would make, and has already made, immigrants and their families afraid to use programs that support their basic needs, including programs that keep them healthy and safe, and save all taxpayers money. This is preventing and will continue to prevent immigrants from using programs that their tax dollars help support, preventing access to essential health care, nutritious food, and secure housing.

The fear created by the proposal would extend far beyond the immigrants targeted in the proposal. A widespread "chilling effect" is already making families fearful and causing them to withdraw from benefits in response to rumors and reports. Many Coloradans could lose access to nutrition support, necessary health care, and secure housing. This will do unacceptable harm to our fellow Coloradans, communities, and state and local economies.

**The proposed public charge rule will result in fewer families receiving the positive benefits of SNAP.** Families, even U.S. citizen family members, will fear that participation will affect a loved one's ability to stay or enter the country and will therefore disenroll or forgo enrolling in SNAP. This will further exacerbate food insecurity, which impacts all of us.

SNAP is a critical source of support for struggling households. Research shows that SNAP lifts people out of poverty, reduces hunger and obesity, and improves school attendance, behavior, and achievement.<sup>1</sup>

Food insecurity is associated with some of the most common and costly health problems in the U.S., including diabetes, heart disease, obesity, hypertension, chronic kidney disease, and depression. In 2014, the U.S. had \$178 billion in avoidable health care, educational, and lost work productivity costs attributable to hunger and food insecurity.<sup>2</sup> Restricting access to SNAP would increase avoidable costs attributable to hunger and food insecurity. These costs impact all of us as taxpayers.

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<sup>1</sup> Food Research & Action Center, *Hunger and Health: The Role of the Supplemental Nutrition Assistance Program in Improving Health and Well-Being*. 2017. <http://www.frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>.

<sup>2</sup> Bread for the World Institute, *Hunger Report: The Nourishing Effect: Ending Hunger, Improving Health, Reducing Inequality*. 2016. <http://hungerreport.org/2016/wp-content/uploads/2015/11/HR2016-Full-Report-Web.pdf>.

SNAP brought more than \$728 million in federal dollars to Colorado in 2016 which resulted in more than \$1.2 billion in economic impact.<sup>3</sup> Reducing participation in this critical support program will hurt local economies and be felt by communities across Colorado, from farmers to grocers to consumers.

The consequences of food insecurity are especially detrimental to the health, development, and well-being of children.<sup>4</sup> SNAP is a critical source of support for millions of preschool-age children and their families. The rule will prevent parents from accessing the nutrition needed for their own health and the health and development of their children. Decades of research have shown how proper nutrition in the early years is critical to healthy development and lifelong outcomes. Research also shows the inextricable link between the health of a parent and the health of their child. Families experiencing food insecurity may need to use coping strategies to stretch insufficient budgets (e.g., underusing medicine, forgoing food for a special medical diet, or diluting or rationing infant formula due to cost considerations). These coping strategies exacerbate existing disease and compromise health.<sup>5</sup>

**The proposed rule would have immediate health consequences for pregnant women, mothers, infants and young children.** CDPHE administers the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). While the proposed rule does not include WIC as written, the program has already seen families reluctant to enroll with the WIC program due to fears of public charge in Colorado. Many families have voluntarily withdrawn from the program despite being eligible. In addition, decreased participation in SNAP and Medicaid is likely to have a profound impact on WIC's ability to serve all eligible participants with less administrative burden through adjunctive eligibility. Participation in WIC has declined over the past few months, when previously, Colorado WIC participation was increasing.

Since its establishment in the early 1970s, WIC has consistently supported healthy pregnancies, positive birth outcomes, and child development. WIC's targeted nutrition intervention and breastfeeding support during the prenatal, perinatal, and postpartum periods has significant short and long-term health gains for both the mother and child. WIC's nutrition intervention and breastfeeding support has a strong record of reducing the instance of preterm birth<sup>6</sup>, preventing infant mortality<sup>7</sup>, and increasing breastfeeding rates.<sup>8</sup> Congress specifically noted "[t]he preventive aspects of the WIC program are among its strongest virtues."<sup>9</sup> A wide body of research validates the role that WIC plays in ensuring healthy pregnancies and birth outcomes, ameliorating nutritional deficits in infants, and promoting positive health outcomes for young children.

WIC works together with other public assistance programs to alleviate poverty, ensure access to healthcare, and provide adequate nutrition for children. Indeed, Congress recognized the nexus between WIC and other public assistance programs when developing certification requirements. The Child Nutrition Act specifically authorizes WIC as adjunctively eligible to SNAP and Medicaid, thereby reducing initial certification requirements and paperwork.<sup>10</sup> Nearly 75 percent of WIC participants are adjunctively eligible, and WIC clinics rely on streamlined enrollment and certification procedures to reach this segment of the eligible

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<sup>3</sup> Hunger Free Colorado, *Good News for Coloradans Who Need Food Stamps*. 2017.

<http://cclponline.org/wp-content/uploads/2017/08/RELEASE-Rule-change-good-news-for-Coloradans.pdf>

<sup>4</sup> Food Research & Action Center, *The Impact of Poverty, Food Insecurity, and Poor Nutrition on Health and Well-Being*. 2017.

<http://www.frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>

<sup>5</sup> Ibid

<sup>6</sup> H. Hilary, et al., *Can targeted transfers improve birth outcomes? Evidence from the introduction of the WIC program*, (95 *J. of Public Economics* 813,) 2011.; Ralitzza Gueorguieva, et al., *Length of prenatal participation in WIC and risk of delivering a small-for-gestational-age infant: Florida, 1996-2004*, (13 *J. of Maternal Child Health* 479,) 2009.; Marianne Bitler & Janet Currie, *Does WIC Work? The Effects of WIC on Pregnancy and Birth Outcomes*, (1 *J. of Policy Analysis & Mgmt.* 73,) 2005.

<sup>7</sup> Kathryn Fingar, et al., "Reassessing the Association between WIC and Birth Outcomes Using a Fetuses-at-Risk Approach," (21 *J. Maternal and Child Health* 825,) 2017.

<sup>8</sup> U.S. Department of Agriculture, *WIC Participant and Program Characteristics 2016*, 2018.

<https://fns-prod.azureedge.net/sites/default/files/ops/WICPC2016.pdf> (indicating that breastfeeding initiation rates in WIC increased from 42% in 1998 to 71% in 2016, reflecting the introduction of the breastfeeding peer counselor program in 2004); U.S. Department of Agriculture, *WIC Infant and Toddler Feeding Practices Study - 2: Infant Year Report*, 2017.

<https://fns-prod.azureedge.net/sites/default/files/ops/WIC-ITFPS2-Infant.pdf> (indicating that WIC moms stick with breastfeeding longer - a key public health goal. Between 1998 and 2013, the WIC breastfeeding rate at one month postpartum rose by 85%, and the rate for 3-12 month-old babies more than doubled during the same period).

<sup>9</sup> 124 Cong. Rec. S11467 (daily ed. July 21, 1978) (statement of Sen. McGovern).

<sup>10</sup> 42 U.S.C. § 1786(d)(2)(A)(ii), (iii).

community.<sup>11</sup> Decreased participation in SNAP or Medicaid is likely to have a profound impact on WIC's ability to serve all eligible participants by introducing new barriers to access.

Medicaid covers nearly half of all births in the United States,<sup>12</sup> including 71 percent of WIC participants,<sup>13</sup> and provides vital prenatal services for pregnant women, covers delivery costs to ensure safe birth outcomes, and offers postpartum support for breastfeeding mothers.

Nearly all states have recognized Medicaid's vital role as a provider of maternal and infant care, raising the income eligibility threshold for pregnant women and young children well above the limit for non-pregnant adults.<sup>14</sup> Multiple studies confirm that early childhood access to Medicaid and SNAP improves health. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications.<sup>15</sup> Children with access to Medicaid have fewer absences from school, are more likely to graduate from high school and college, and are more likely to have higher paying jobs as adults, contributing to the economy.<sup>16</sup>

### **The proposed rule will revoke vital health care for hundreds of thousands of Coloradans.**

These proposed changes will impact citizen children as well as children with a range of legal immigration statuses. Citizen children with immigrant parents are a large and growing segment of the U.S. child population. Over 19 million children in the U.S. - one out of every four- have a non-citizen parent, and nearly nine in ten of those (86 percent) are citizens.<sup>17</sup> Medicaid and SNAP are an important source of care and nutrition for these children. Nationally, over eight million citizen children with an immigrant parent have Medicaid or the Children's Health Insurance Program (CHIP) coverage.<sup>18</sup> An analysis by the Colorado Health Institute projects 75,000 Coloradans could lose health coverage under the rule change, with two thirds, or 48,000, of those being children.<sup>19</sup> In addition to the rule's potential impact on Medicaid and CHIP, we expect the chilling effect to apply to other programs like the state's Colorado Indigent Care Program (CICP), which provides discounted health services.

The Department of Homeland Security explicitly requested comments on whether CHIP should be included in public charge review. In addition to millions of children, CHIP serves about 370,000 pregnant women each year.<sup>20</sup> It is our view that the inclusion of CHIP in public charge review would exacerbate the negative public health effects of the proposed rule and lead to significant administrative burden. We strongly recommend that CHIP be explicitly exempted from public charge determinations, and other programs, such as WIC, should not be used in the totality of circumstances test.

### **The proposed rule will have a chilling effect on children participating or applying for Child Nutrition Programs in schools and child care.** In Colorado, some school districts are reporting a decline in applications

<sup>11</sup> U.S. Department of Agriculture, *WIC Participant and Program Characteristics 2016*, 2018.

<https://fns-prod.azureedge.net/sites/default/files/ops/WICPC2016.pdf>

<sup>12</sup> Kaiser Family Found, *Implementing Coverage and Payment Initiatives: Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2016 and 2017*, 2016. <http://files.kff.org/attachment/Report-Implementing-Coverage-and-Payment-Initiatives>

<sup>13</sup> U.S. Department of Agriculture, *WIC Participant and Program Characteristics 2016*, 2018.

<https://fns-prod.azureedge.net/sites/default/files/ops/WICPC2016.pdf>

<sup>14</sup> *Medicaid (See CMS), Medicaid, CHIP, and BHP Eligibility Levels*, 2018.

<https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-eligibility-levels/index.html>

<sup>15</sup> Children Health Watch, *Report Card of Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive*, 2018.

<http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf>

<sup>16</sup> Karina Wagnerman, Alisa Chester, and Joan Alker, *Medicaid is a Smart Investment in Children*, (Georgetown University Center for Children and Families, March,) 2017. <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>

<sup>17</sup> The Kaiser Family Foundation, "Proposed Changes to 'Public Charge' Policies For Health Coverage," February 13, 2018, <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

<sup>18</sup> Samantha Artiga & Anthony Damico, *Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies*, (Kaiser Family Foundation, April 18,) 2018.

<https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/>

<sup>19</sup> Colorado Health Institute, *Changing the "Public Charge" and Health Insurance in Colorado*, 2018.

<https://www.coloradohealthinstitute.org/research/changing-public-charge-and-health-insurance-colorado>

<sup>20</sup> March of Dimes, *CHIP Coverage for Pregnant Women*, 2013.

<https://www.marchofdimes.org/materials/chip-coverage-for-pregnant-women-may-2014.pdf>

for Free and Reduced Price School Meals due to families' reluctance to complete the form. The Child and Adult Care Food Program (CACFP) also uses these applications to determine the amount of financial support received by center-based child care providers, and in many cases, the eligibility of the center to participate in CACFP. Given the decline in applications reported by other programs, we expect to see a decline in families willing to complete the forms in CACFP center-based child care programs. Overall, reduced applications in child care and school settings results in less federal nutrition funding to support healthy meals for children, the local retail and agriculture food economy, and revenue for child care businesses.

In CACFP, many family child care home providers use area eligibility criteria based on school free and reduced data to determine if their home child care can receive CACFP benefits at the higher rates of reimbursement for food. If there is a decline in submitting meal benefit applications in the school district, this may negatively impact the number of home providers eligible to receive CACFP's higher tier of reimbursement.

The proposed rule puts forth daunting disincentives that will leave millions- including many U.S. citizen children- without access to benefit programs that address their basic needs. Other programs, like WIC, may not be explicitly included in the proposed rule, but the overriding fear within immigrant communities will functionally nullify the distinction. For that reason, we urge the Department to explicitly exclude programs like WIC and CHIP from public charge review. However, that exemption alone is not sufficient. The implicated programs, including Medicaid, SNAP, and housing subsidies provide vital assistance to families. These programs help families with the costs of delivering a baby in a hospital, purchasing a full basket of food at the grocery store, and putting a roof over their child's head. Time and time again, these programs are demonstrated to work not only by reducing the financial stressors on low-income families, but improving the health, nutrition, and economic security of families with young children. For these reasons, we cannot support this potential change and strongly urge the Department to withdraw the proposed rule.

**The proposed regulation would increase the number of uninsured children and families and negatively impact the health insurance market.** As previously noted, an estimated 75,000 Coloradans are expected to become uninsured due to the "chilling effects" of the proposed rule, and the majority of the newly uninsured will be children who are U.S. citizens or lawful immigrants that are eligible to be insured through public programs.<sup>21</sup> This is especially troubling in light of the report issued by Georgetown University's Center for Children and Families, which shows that the number of uninsured children in the country increased in 2017 for the first time in nearly a decade.<sup>22</sup>

The Georgetown report cites policy decisions by the federal government that led to the increase in the uninsured rate. The main policies that the report points to were the attempts to repeal the Affordable Care Act, the unprecedented delay by Congress to fund the Children's Health Insurance Program (CHIP) causing CHIP to temporarily lapse, and, reinforcing the CHI study, several federal policies targeting immigrant communities "...detering parents from enrolling their eligible children in Medicaid or CHIP despite the fact that most of these children are U.S. citizens."

Many of the individuals and families that are likely to lose coverage if this rule takes effect will not be able to afford coverage in the commercial market as they currently qualify for public programs due to their income. If these individuals and families are unable to find coverage, it will almost certainly lead to an increase in medical bankruptcies in Colorado as well as an increase in uncompensated care for Colorado hospitals. History shows us that as uncompensated care increases, hospitals seek to recover losses from the commercial market. That will lead to increasing premiums in the commercial market as insurers cover increased hospital costs.

Most importantly, when individuals and families lose health insurance coverage, they lose access to preventive care, such as prenatal care, and they lose treatment for chronic conditions such as diabetes. Once again this is most troubling for the children that this rule will endanger. The negative health outcomes for the children impacted by this rule very well may follow them for the rest of their lives.

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<sup>21</sup> Colorado Health Institute, *Changing the "Public Charge" and Health Insurance in Colorado*, 2018.

<https://www.coloradohealthinstitute.org/research/changing-public-charge-and-health-insurance-colorado>

<sup>22</sup> Alker, Joan and Olivia Pham. *Nation's Progress on Children's Health Coverage Reverses Course*. (Georgetown University Health Policy Institute Center for Families and Children, November,) 2018.

[https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018\\_Final\\_asof1128743pm.pdf](https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018_Final_asof1128743pm.pdf).

In conclusion, the proposed rule itself states that, “There are a number of consequences that could occur [...] Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children [...] and increased rates of poverty.”<sup>23</sup> This proposal will result in worse health, education, and economic outcomes for thousands of Coloradans and impact us all. It should be withdrawn to avoid causing undue harm to communities in Colorado and across the nation.

Sincerely,



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**Karin MCGOWAN**  
Interim Executive Director  
Colorado Department of Public Health and  
Environment



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**Reggie BICHA**  
Executive Director  
Colorado Department of Human Services



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**Michael CONWAY**  
Insurance Commissioner  
Colorado Department of Regulatory Agencies

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<sup>23</sup> Department of Homeland Security, *Proposed Rule: Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,270, 51,277 (Oct. 10, 2018).