



December 10, 2018

Submitted via www.regulations.gov

Samantha Deshommès, Chief
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

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to
Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Ms. Deshommès:

Whitman-Walker Health (Whitman-Walker or WWH) hereby responds in opposition to the October 10, 2018 Notice of Proposed Rulemaking, 83 Fed. Reg. 51,114, proposing dramatic, injurious and ill-founded expansions of “public charge” grounds for denying certain forms of immigration relief and visas. The expansions threaten the ability of many immigrants in the U.S. and their families to access health care, adequate nutrition, housing and other necessities – and make it much more difficult for them to become or remain self-sufficient and economically productive members of the community. They threaten the public health of our Nation and undercut efforts to address the HIV epidemic and other infectious diseases. They will have harsh effects on particularly vulnerable persons, including persons with HIV and other disabilities; lesbian, gay, bisexual and transgender (LGBT) individuals and families; women and other survivors of domestic violence and trafficking; and racial and ethnic minorities whose first language is not English. Fundamentally, the proposed rule threatens our aspiration to be a pluralistic, diverse and welcoming Nation, and the welcoming and humanitarian intent of our immigration laws.

A determination by immigration officials that an individual is or is likely to become a “public charge” bars that person from obtaining a visa to enter the U.S.; from adjusting their status in certain ways once they have entered the U.S.; and from adjusting their immigration status to that of Lawful Permanent Resident. The proposed rule would dramatically expand the definition of “public charge” that has been in effect for almost twenty years. An individual would be determined to be a “public charge” not only if they receive government cash assistance or are reliant on government support for long-term institutionalization – tests that have been in

effect for many years – but also if they receive or have received even small amounts of assistance under a range of public health care, nutrition, or housing assistance programs. Moreover, the Department is proposing new tests under which an individual would be barred as *likely* to become a “public charge” if their income falls below a certain threshold, if they have a medical condition that may be costly to treat (unless they can prove they have private health insurance); if they have a large family; if they lack English proficiency; if they are a child or a senior; or are flagged as economically suspect in other ways. These proposals jeopardize the economic security, health, and well-being of all immigrants and threaten the Nation’s public health. We urge that the proposed rule be withdrawn in its entirety, and that longstanding principles clarified in field guidance issued in 1999 remain in effect.

Interest and Expertise of Whitman-Walker Health

Whitman-Walker Health is a Federally Qualified Health Center providing primary medical care, HIV specialty care, mental health care and substance abuse treatment services, dental care, community health services, youth and family services, and legal services to individuals and families throughout the greater Washington, DC metropolitan area. WWH provides high quality, affirming health care to more than 16,000 individuals annually, including more than 3,000 people living with HIV. Approximately 60% of our patients and clients identify as gay, lesbian, bisexual, or transgender (LGBT). Although our patients and clients come from every income level, substantial numbers are lower-income. Moreover, significant numbers of our patients and others receiving our health-related services are foreign-born.

Because of our commitment to holistic health care, which includes addressing the legal and social determinants of health, for more than 30 years our in-house Legal Services Department, with the assistance of hundreds of volunteer attorneys throughout the area, has provided a wide range of immigration-related services to WWH patients and other foreign-born LGBT and HIV-affected individuals and families. Because of the difficult circumstances in which they have come to the U.S. – for instance, fleeing persecution in their countries of birth – many if not most of our immigration clients and foreign-born health care patients have limited means, particularly until their lawful immigration status is established and they are able to make new lives for themselves and becoming fully contributing members of our society. In addition to Legal Services, WWH also has a dedicated Public Benefits and Insurance Navigation (PBIN) Department to assist patients and DC residents with eligibility and enrollment for health insurance and other supportive benefits to reduce cost of care. The PBIN staff are bi-lingual (English/Spanish or English/Amharic) to address our Latinx and Ethiopian patients (our largest cohorts of foreign-born patients).

Many of Whitman-Walker’s patients, and legal clients, would be adversely affected by the proposed harsh expansions in the public charge rule. Forcing many to choose between

adjusting their immigration status on the one hand, or keeping their medical benefits, food assistance and/or housing assistance on the other hand, would undermine their own health and the health of their families, and make it more difficult and costlier for WWH to continue to provide the health care that they need.

By Harming Immigrants Otherwise Eligible to Adjust Their Own Status or That of Family Members, the Proposed Rule Would Harm Us All by Jeopardizing the Public Health and Imposing Additional Costs on Taxpayers and Inhibiting Economic Growth

The proposed rule would not only target lower-income people and people with serious illnesses seeking to enter the U.S., but many individuals and families already in our country and otherwise eligible to adjust their status and would be a bar for many of them to obtain lawful permanent resident status for themselves or their families. Discouraging or penalizing reliance on public health programs, and programs that affect health – including nutrition and housing – affect the ability of those individuals to remain or become healthy, self-sufficient, employed and fully contributing members of our society. Public benefit programs often contribute – even with short-term use of these benefits – to a path of self-sufficiency. Many immigrants who may depend on one or more such program in the short run ultimately become lawful permanent residents and become economically self-sufficient and no longer dependent on those programs. If even temporary reliance on those programs becomes a bar to adjustment of status and many immigrants will either forego health-related benefits for which they are eligible, hurting them economically and putting their health at risk, or forego adjustment of status, or both.

Harms to public health. Public health is advanced by programs that advance the health of everyone in the community – that provide everyone with access to health care and encourage everyone to be regularly screened and everyone with treatable conditions to engage in treatment. We all benefit from a society in which everyone is healthy. HIV and other sexually transmitted diseases are a prime example. Medicaid and other medical, nutritional and housing assistance programs make it easier for HIV-positive people to learn their condition and engage in care and become virally suppressed, which reduces new transmissions. This is also the case for other sexually transmitted diseases, tuberculosis, and other transmissible conditions. Moreover, there are new medical interventions – such as Pre-Exposure Prophylaxis or PrEP, which prevents HIV infection when taken regularly under the supervision of a medical professional – which prevent diseases but are difficult if not impossible to obtain without public or private health insurance. Penalizing reliance on Medicaid or other public benefit programs that make it easier for people to afford health care or that directly affect their health – such as SNAP and housing assistance – not only harm the health of immigrants and their families, but the health of others as well.

These harms to public health would be exacerbated by the proposal to treat a wide range of serious but treatable medical conditions, including HIV infection, as negative factors that

weigh in favor of an adverse public charge determination. Under the proposed rule, immigration officials would consider an individual more likely to become a public charge if they have been “diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with their ability to provide for and care for themselves, to attend school, or to work.” Proposed § 212.22(b)(2). However, many serious medical conditions, including HIV infection, are now quite treatable. For HIV, timely access to expert medical care, and adherence to well-established drug treatment regimens, can result in suppression of the virus, which maintains or restores the patient’s health and “their ability to provide for and care for themselves, to attend school, or to work.” Viral suppression also renders them non-infectious even if engaging in unprotected sex. Forcing a person living with HIV to choose between obtaining health care and their immigration status would be a public health disaster. HIV treatment is prohibitively expensive in the U.S. without insurance or other public assistance. Under this rule, individuals are likely to forgo medical treatment for fear of a public charge determination. This would not only be devastating to the health of the individual but would also have negative health consequences on the community at large. Disruptions in adherence to a patient’s drug regimen may make them more likely to infect others and may harm their own health by resulting in viral mutations that are resistant to established antiretroviral drugs.

Economic harms. By discouraging individuals and families from relying on public programs that make it possible for them to seek regular medical care, the proposed rule is likely to result in more people becoming sicker and needing more expensive medical care at later stages, and to become less able to work and contribute to society economically. Moreover, imposing additional barriers on individuals otherwise eligible to become lawful permanent residents will also reduce their employability, incomes and taxpaying capacity. All these effects would adversely impact our economy.

The Proposed Expansions of the Public Charge Bar Would Particularly Harm Especially Vulnerable Communities

The sweeping changes in the proposed rule amount to a sea change in U.S. immigration policy. By biasing public charge determinations against lower-income people, people with health conditions or disabilities, people with a number of children, people with limited English proficiency, children and seniors, the proposed rule targets particularly vulnerable communities in ways that undercut long-established public policies and National values, and the humanitarian, inclusive values that underlie many of our immigration laws and policies. The individuals who are singled out for adverse determinations are actually those more likely to benefit from public medical, nutrition and housing support programs in order to become self-sufficient and fully contributing Americans. Erecting obstacles that undermine self-sufficiency ultimately promotes

reliance on public programs – having the exact opposite result from the intended purpose of this rule.¹

Discrimination against persons with disabilities. One of the most concerning aspects of the proposed rule is the weighing of treatable medical conditions and other disabilities as negative factors in the public charge determination process. This perverse innovation explicitly singles out people with disabilities and chronic health conditions and perpetuates the false assumption that a medical diagnosis is solely determinative of an individual’s current abilities and future prospects.

While health has always been a factor in the public charge test, the proposed rule codifies a new standard that would target most people with disabilities – including people with intellectual and developmental disabilities, psychiatric disabilities, or physical disabilities who need personal care services. Most people with disabilities will have this factor weigh against them in the public charge determination. In the reverse, the preamble states that absence of a diagnosis of such a condition would be a positive factor. Moreover, the harmful impact of this new health standard is intensified against people with disabilities when combined with a person’s ability to pay for their health care costs (which is an element in the assets factor) and with the ability to pay for medical costs or have them covered under private insurance (which is a “heavily weighed negative factor”).

This explicit bias against people with disabilities flies in the face of long-established laws and policies that seek to combat stigmatization and discrimination against people living with disabilities, and to assist their full integration into society: including the Americans With Disabilities Act and the Rehabilitation Act. It would weaken and corrode our commitment to these goals to single out immigrants with disabilities, living in our communities and otherwise eligible to become lawful permanent residents, and impose a barrier to their adjustment of status because of their disability.

Disproportionate impact on LGBT immigrants and other victims of persecution and abuse. Discrimination and bias based on a person’s sexual orientation and gender identity contribute to lower incomes and greater economic insecurity for LGBT people and their families. By treating income, employment history and credit history as important factors in a public

¹ The proposed rule would also treat as a negative factor, tending support a public charge determination, having applied for and received a waiver of filing fees for immigration relief based on inability to pay. This obviously contradicts the policy of waiving filing fees based on low income, and would discourage eligible individuals from applying for waivers of fees that would otherwise make applications for relief unaffordable.

charge determination, the proposed rule would exacerbate that injustice by weighing lower income and economic insecurity against them.²

Immigrants make up a significant population of the LGBT community. The Williams Institute estimates there are 637,000 LGBT-identified individuals among the adult authorized immigrant population.³ There are an estimated 24,700 non-citizens who are part of a same-sex couple with a U.S. citizen; and a quarter of these couples are raising children.

LGBT people, including those who are immigrants, experience rampant workplace discrimination. Half of the U.S. population lives in a jurisdiction without explicit nondiscrimination laws prohibiting employment discrimination based on sexual orientation and gender identity.⁴ 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 percent reported experiencing this discrimination in pay or promotions.⁵ Sixteen percent of respondents to the 2015 U.S. Transgender Survey reported losing their job due to their gender identity or expression.⁶ Respondents to that survey also reported a 15 percent unemployment rate, which was three times higher than the unemployment rate for the total U.S. population at the time.⁷

Discrimination faced by LGBT people hurts their ability to attain and maintain economic security, making support systems that help them feed themselves and their families, access health care, and keep a roof over their heads critical to their basic well-being and safety. These faith-

² Although asylees and refugees, including LGBT asylees and refugees, are exempt from the public charge bar when applying for adjustment on that basis, they can still be adversely affected by the public charge rule when seeking a family-based or employment-based adjustment.

As explained at length in the comments of the National Health Law Program and others in this proceeding, the expansions of public charge would also have serious, adverse effects on women, including those with T or U Visas, because the abuse they have experienced often has seriously affected their incomes, work history, credit history.

³ 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>.

⁴ Movement Advancement Project, “Local Employment Nondiscrimination Ordinances,” 2015. <http://lgbtmap.org/file/policy-spotlight-local-NDOs.pdf>.

⁵ 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>.

⁶ *Id.*

⁷ *Id.*

based and familial-based resources are ignored under the proposed rule's income test. This is even truer for LGBT immigrants who face additional challenges due to their multiple and intersecting identities – including LGBT people who are racial minorities or who are living with HIV or other disabilities. Non-citizens in same-sex couples who are in the labor force have lower median annual personal incomes than their naturalized citizen counterparts.⁸ In effect, this proposed rule would by penalize LGBT immigrants for systemic workplace discrimination.

The Proposed Rule is Having Widespread, Damaging Impacts on Immigrant Individuals and Families Even Now

The proposed rule has already created widespread fear and confusion in immigrant communities, including those served by Whitman-Walker. In the current climate of hostility towards immigrants, individuals and families have already begun foregoing critical services and benefits. At Whitman-Walker and at other District of Columbia health centers, immigrants are requesting assistance with disenrollment from not only means-tested programs implicated by the current rules, but from any public program out of fear of potential negative consequences on their future adjustment of status. The chilling effect of this proposed rule is stark, creating fear broadly in the immigrant communities even for immigrants who would not be subject to a public charge assessment. The simple fear and risk of using government benefits jeopardize the basic health and wellbeing of immigrants. These fears not only impact the immigrants themselves who are foregoing needed services, but also public health – as the services being avoided include HIV treatment and HIV prevention programs as well as primary care and maternal, infant and child health care.

Confusion about the proposed rule may also lead U.S. citizens and permanent residents and groups of immigrants who are not subject to the public charge rule (such as refugees and asylees) to believe they would need to terminate their subsidized health care in order to remain eligible to petition for their family. There is strong evidence, cited in the NPRM itself, that many people whose eligibility for benefits was not directly affected by the Personal Responsibility and Work Opportunity Act of 1996 nonetheless were deterred from participating in programs.⁹ The NPRM further states that people may be less able to take their medications as prescribed, or put off

⁸ 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>.

⁹ 83 Fed. Reg. at 51,266, citing Genser, J. (1999). *Who is leaving the Food Stamps Program: An analysis of Caseload Changes from 1994 to 1997*. Washington, DC: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation; and Fix, M.E., and Passel, J.S. (1999). *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994–1997*. Washington, DC: The Urban Institute.

medical care, resulting in more emergency room visits and increased disease.¹⁰ Foregoing preventive and maintenance health care leads to greater strains on the U.S. health care system, and results in more uncompensated care. Overall, the rule will drive *up* health care costs and other economic costs, not reduce them.

Conclusion

For these reasons, we urge that the rule be withdrawn in its entirety, and any efforts to amend the longstanding principles clarified in field guidance issued in 1999 should focus on policies that strengthen rather than undermine the ability of immigrants to support themselves and their families. Current law, policy, and guidance already provide restrictive eligibility criteria for immigrants and public benefit programs.

Respectfully submitted,

A handwritten signature in cursive script that reads "Daniel Bruner".

Denise Hunter, Staff Attorney

Erin M. Loubier, Senior Director for Health and Legal Integration

Amy Nelson, Director of Legal Services

Daniel Bruner, Senior Director of Policy

¹⁰ 83 Fed. Reg. at 51,270.