



Dec. 10, 2018

Submitted via www.regulations.gov

Samantha Deshommnes, 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

The **Wisconsin Aging Advocacy Network** is a collaborative group of individuals and associations working with and for Wisconsin's older adults to shape public policy to improve their quality of life.

Core member organizations:

Aging and Disability Professionals Association of Wisconsin (ADPAW)

Alzheimer's Association SE Wisconsin Chapter

Wisconsin Adult Day Services Association (WADSA)

Wisconsin Association of Area Agencies on Aging (W4A)

Wisconsin Association of Benefit Specialists (WABS)

Wisconsin Association of Nutrition Directors (WAND)

Wisconsin Association of Senior Centers (WASC)

Wisconsin Institute for Healthy Aging (WIHA)

Wisconsin Senior Corps Association (WISCA)

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

Dear Ms. Deshommnes,

The Wisconsin Aging Advocacy Network (WAAN) writes in response to the Department of Homeland Security's Notice of Proposed Rulemaking to express our opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. The proposed rule would cause serious harm to older immigrants and their families, localities, states, and health care providers and facilities. With no justification given by the Department for proposing changes to the public charge rule, we urge that the rule be withdrawn in its entirety and the current long-standing principles remain in effect.

The WAAN members represent Wisconsin organizations funded under the Older Americans Act, as well as other groups and individuals with an interest in and commitment to advocacy on behalf of older people. There are currently estimated to be over 1.3 million adults age 60 or older in Wisconsin.¹ According to state immigration data profiles, 5% of Wisconsin's population are foreign-born and approximately 12% of this population are age 65 and older.² The WAAN does not want the health and well-being of current and future older adults immigrants or their family members and caregivers compromised because of changes to the public charge rule.

The proposed rule represents a massive change in current policy – yet no evidence has been provided to justify the changes.

- Under current policy, a public charge is defined as an immigrant who is "likely to become *primarily* dependent on the government for subsistence." The proposed rule expands the definition to include any immigrant who "receives one or more public benefits."
- Additionally, only cash "welfare" assistance for income maintenance and government funded long-term institutional care are taken into consideration in the "public charge" test currently – and only when it represents the majority of a person's support. If the rule is finalized, immigration officials could consider a much wider range of government programs in the "public charge" determination. This change may deter older adults from accessing needed help with housing, food, health care, and prescription drug costs.

Contact WAAN

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¹ <https://www.dhs.wisconsin.gov/aging/demographics.htm>

² <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WI>

The rule also makes other major changes, such as introducing an income test and placing negative weight on factors that have not been relevant previously and that will make it more difficult for seniors to pass.

- The proposed rule details how age (young and old) or having a treatable medical condition could be held against immigrants seeking permanent legal status.
- The rule also indicates a preference for immigrants who speak English (a challenge for many older immigrants) and introduces an arbitrary income test that treats even full-time work at low wages as failing to contribute to society.

If this rule were implemented, it will be nearly impossible for older adults to pass the “public charge” test under the new criteria.

- The number of parents of U.S. citizens who have been admitted as legal permanent residents nearly tripled between 1994 and 2017 and now account for almost 15% of all admissions and almost 30% of family-based admissions.
- Under the proposal, many U.S. citizens would no longer be able to welcome their own parents into the country, even after they signed a commitment to support them.
- Many older immigrants play a critical role in helping to care for grandchildren and other family members and should not be labeled a *burden* because of their age or income status.

The proposed rule would cause major harm to older immigrants and their families and communities.

- Out-of-pocket healthcare expenses makeup a significant proportion of many older adults’ personal budgets. Medicare is a lifeline for most seniors, including immigrant seniors who have worked for many years in the U.S. and earned this benefit. While Medicare provides coverage for hospital, doctors’ visits, and prescription drugs, many Medicare beneficiaries rely on other programs to help them afford remaining out-of-pocket costs.
 - Almost 1 in 3 Medicare beneficiaries enrolled in Part D prescription drug coverage get “Extra Help” with their premiums and copays through the low-income subsidy.³
 - Nearly 7 million seniors 65 and older are enrolled in both Medicare and Medicaid, and 1 in 5 Medicare beneficiaries relies on Medicaid to help them pay for Medicare premiums and cost-sharing.⁴
- Medicaid is the primary payer for long-term services and supports. Without access to Medicaid home and community-based services fewer older adults will be able to remain

³ Kaiser Family Foundation, Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing (May 17, 2018), available at www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.

⁴ Kaiser Family Foundation, Medicaid Enrollment by Age, www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1¤tTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

living at home with their families and in their communities where they want to be and where care can be provided most cost-effectively.

- Medicaid also provides critical access to oral health care, vision care, transportation, and other services Medicare does not cover, and older adults often cannot afford.
- Low-income seniors also benefit from programs such as Section 8 rental assistance and SNAP (FoodShare in Wisconsin) to help meet their basic needs.⁵ If immigrant families are afraid to access nutrition assistance programs, more older adults will be food insecure and at risk of unhealthy eating which can cause or exacerbate other health conditions and unnecessarily burden the healthcare system.

This proposed rule further threatens the well-being of our direct care workers, many of whom are immigrants. This workforce is already facing shortages of crisis proportions.

- An estimated one million immigrants work in direct care, making up a quarter of the direct care workforce.⁶ These direct care jobs tend to be part time and low-wage. In Wisconsin, 51% of healthcare workers and 38% of nursing home workers utilize public benefits programs to support themselves and their families.
- If care workers need to use these programs to supplement their low-wage work, they may be prevented from coming to the U.S. in the first place. Without access to these critical benefits many care workers may be unable to afford to remain the U.S. Older Americans and people with disabilities are already without access to the caregiving they need in many parts of the state and country, further reducing the direct care workforce would further exacerbate these needs and result in more people requiring urgent medical and rehabilitation care (where worker shortages also present concerns).

Although the proposed rule acknowledges that the public charge *determination* is supposed to be *prospective*, the proposed *criteria* used to determine whether an applicant will be a public charge are *retrospective*.

- As news of the proposed rule changes spread, individuals and families have already begun to withdraw from benefits or have made decisions not to apply for needed benefits (evidenced by declining enrollment rates) due to fear of the consequences of their program participation.
- Discouraging older adults and their families from receiving health, nutrition, housing, or educational supports for their children and grandchildren will only make it harder for them to achieve economic security in the future.

⁵ See Justice in Aging, Supporting Older Americans' Basic Needs: Health Care, Income, Housing and Food (Apr. 2018), available at www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-Americans%E2%80%99-Basic-Needs_Health-Care-Income-Housing-and-Food.pdf.

⁶ Robert Espinoza, PHI, Immigrants and the Direct Care Workforce (June 20, 2017), available at <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>.

- Significant trust issues arise when advocates encourage immigrant populations to access needed benefits, as the proposed rule changes are not in effect, only to later learn the federal Administration has already begun to enforce a set of changes it made to the State Department’s Foreign Affairs Manual (“FAM”) in January 2018. The changes made to this set of instructions which dictate how consular officers are to determine whether a visa applicant is likely to become a public charge if admitted to the United States now tips the scale in favor of barring immigrants from the country if they have used any of a host of federal, state, or local programs—making it much harder for immigrants to reunite with their families. Specifically, the changes dramatically expand the range of benefits that may be considered by consular officials, referring to “public assistance of any kind”; they also permit consular officers to look at the receipt of those benefits by the applicant’s entire household; and they decrease the weight a consular officer is permitted to give to a financial sponsor’s agreement to support the applicant.⁷

For all the reasons detailed in the comments above, the Department should immediately withdraw its proposal, and dedicate its efforts in the future to advancing policies that support—rather than undermine—immigrant older adults, their families, and the workers who care for them. Improving the quality of life for older adults and their families and caregivers and creating communities that thrive depend upon families being able to stay together and people of all ages having access to the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me to provide further information.

Sincerely,



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⁷ https://law.baltimorecity.gov/sites/default/files/2018-11-28_FAM_Change_Complaint_AS-FILED.pdf