

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

November 2, 2020

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

**Submitted via [regulations.gov](https://www.regulations.gov)**

**RE: CIS No. 2655-20; DHS Docket No. USCIS-2019-0023; RIN: 1615-AC39: Comments in Response to Proposed Rulemaking: Affidavit of Support on Behalf of Immigrants.**

Justice in Aging is responding to the above referenced Department of Homeland Security (DHS) Notice of Proposed Rulemaking, “Affidavit of Support on Behalf of Immigrants.”

Justice in Aging is a non-profit organization with the mission of improving the lives of low-income older adults living in the United States. For 47 years, we have used the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Our mission is to secure the opportunity for older adults to live with dignity, regardless of financial circumstances—free from the worry, harm, and injustice caused by lack of health care, food, or a safe place to sleep.

Using our expertise in Social Security, Supplemental Security Income, Medicare and Medicaid, we work to strengthen the social safety net and remove the barriers low-income seniors face in trying to access the services they need. We also provide technical expertise to thousands of advocates across the country on how to help low-income older adults access the programs and services they need to meet their basic needs. Our advocacy centers on populations that have traditionally lacked legal protection, including people of color, people with limited English proficiency (LEP), women, and LGBTQ individuals.

We strongly oppose the proposed changes to the Affidavit of Support policy because they will deter families from supporting their parents and grandparents’ path to green cards and citizenship. The proposed changes will increase costs, cause confusion, delays and fear, and deter older immigrants and U.S. citizens as well as their families from accessing health care and nutrition benefits for which they are eligible. We also oppose DHS’s proposal to add additional paperwork requirements for applications to federal agencies that are already stretched thin. Instead, DHS should find ways to make the immigration application process easier so that it can catch up on its backlog of cases.

Our comments include citations to supporting research and documents for the benefit of DHS in reviewing our comments. We direct DHS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed rulemaking.

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**I. The proposal will deter families, including U.S. Citizens, from welcoming their parents and grandparents.**

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.<sup>1</sup> The proposed policy will make it harder for U.S. citizens and permanent residents to welcome their parents and grandparents to the U.S. to live together. Such a move disregards the value of intergenerational families who support each other and fails to account for the costs of separating these families. Many older adults play critical roles caring for their grandchildren and other family members, often enabling others to work.

**II. The proposed policy would deter older immigrants and U.S. citizens, as well as their families, from relying on health care and nutrition benefits.**

Under the proposed rule, DHS would disregard sponsors' incomes and require a joint sponsor if they or a member of their household have used public benefits anytime within 36 months of executing the Affidavit of Support. The public benefits considered include Medicaid, CHIP, SNAP, SSI and TANF, which are critical to the well-being of older adults and families. This new standard will further harm older adults and families by deterring both immigrants and U.S. citizens from using benefits for which they are eligible in order to preserve the ability to sponsor or joint sponsor a family member in the future.

If older adults forgo SSI and TANF to preserve their ability to sponsor family members, they may no longer be able to afford rent and other basic needs. This would likely increase poverty and housing instability and make it more difficult for older adults and their families to thrive financially. If older adults forgo Medicaid to preserve their ability to sponsor family members, they may no longer be able to afford their care and services, including Medicare copays, oral health care, transportation, and long-term services and supports. Without this coverage, seniors are likely to skip routine care and develop more serious health care conditions, which would endanger their own wellbeing, put financial strain on their families and increase the cost of care. If older adults and families fear being penalized for accessing nutrition assistance programs, more older adults will be food insecure and at risk of poor nutrition, which can cause or exacerbate other health conditions and unnecessarily burden the healthcare system.

The vast majority, 91 percent, of family-based immigrants are sponsored by U.S. citizens. U.S. citizens, whether native born or naturalized, do not face public benefits eligibility restrictions based on their immigration status. A recent study revealed that in just a single year, 3 in 10 U.S. born citizens received Medicaid, SNAP, SSI, TANF or housing assistance.<sup>2</sup> It also showed that

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<sup>1</sup> Dept. of Homeland Security, Office of Immigration Statistics, 2017 Yearbook of Immigration Statistics, Table 7, [www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf](http://www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf).

<sup>2</sup> Center on Budget and Policy Priorities, "Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come or Stay in the U.S." (May 30, 2019), [www.cbpp.org/research/poverty-and-inequality/trump-administrations-overbroad-public-charge-definition-could-deny](http://www.cbpp.org/research/poverty-and-inequality/trump-administrations-overbroad-public-charge-definition-could-deny).

approximately 43 to 52 percent of U.S. born people participated in at least one of these programs in a 20-year period from 1997-2017.<sup>3</sup>

Immigration policies that create consequences for immigrants and their family members if they use a public benefit create a chilling effect that spreads far beyond those directly impacted. For example, before and after implementation of the 2019 Public Charge Rule, we heard from advocates and providers across the country that older immigrants and their families have disenrolled from benefits and stopped accessing services that they are eligible for because they fear accessing these benefits will negatively impact their immigration status. An interview with 16 health center leaders in September 2019, found that nearly half (47%) reported a decline in Medicaid enrollment by immigrant patients starting in 2018.<sup>4</sup>

Moreover, historical evidence from the 1996 PRWORA policy changes demonstrates that providing information to the public cannot prevent these damaging consequences because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S. citizen children in mixed status families, participation dropped dramatically.

This proposed rule will increase the confusion and fear among families that the public charge rule has caused, and make it harder and more costly for agencies and community based organizations to communicate accurate information about the policies because the list of programs that could disqualify an individual from serving as a sponsor is different from the programs taken into account for the public charge determination.

Furthermore, ambiguity about the meaning of “household member” in this section of the rule will also increase the chilling effect. It is unclear whether the use of benefits by any member of the sponsor’s household triggers the restriction, or whether it applies only to a household member who executes a “Contract Between Sponsor and Household Member.”

Finally, we are deeply concerned that DHS is introducing a policy that makes people afraid to enroll in programs that provide health care, nutrition, or other assistance they need to stay healthy during a public health emergency. Instead of penalizing sponsors for accessing health care, nutrition, or other public benefits, our national policy should encourage people to make sure their families are healthy, fed, and safe. Therefore, we urge DHS not to finalize this policy to penalize sponsors for using benefits.

### **III. The Department fails to adequately evaluate the impacts of the proposed regulation**

DHS does not provide a rigorous qualitative discussion or reliable quantitative estimates of the proposed rule’s overall impact, making it impossible for us and others to understand and comment on the justification of the regulation or its effects. DHS fails to adequately evaluate the impacts of the proposed regulation, including in its discussion of costs and benefits in the

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<sup>3</sup>*Id.*

<sup>4</sup> Kaiser Family Foundation, “Impact of Shifting Immigration Policy on Medicaid Enrollment and Utilization of Care Among Health Center Patients,” (Oct 15, 2019), [www.kff.org/medicaid/issue-brief/impact-of-shifting-immigration-policy-on-medicaid-enrollment-and-utilization-of-care-among-health-center-patients](http://www.kff.org/medicaid/issue-brief/impact-of-shifting-immigration-policy-on-medicaid-enrollment-and-utilization-of-care-among-health-center-patients).

preamble. In fact, the only costs that are actually reported are the direct and opportunity costs of the time spent filing the required forms.

The Office of Management and Budget has published a primer that summarizes what is involved in a cost-benefit analysis as required under Executive Order 13563, Executive Order 12866, and OMB Circular A-4. DHS has completely failed to meet this regulatory standard. Among the Department's most glaring omissions is an adequate analysis of the regulation's impact on program participation as discussed above and reduction in immigration benefits.

However, we know the opportunity cost from studies that have assessed the benefits of program participation. For example, research has found that greater Medicaid eligibility has saved the lives of over 19,000 adults ages 50 to 64<sup>5</sup> and increases the amount individuals pay in taxes.<sup>6</sup> Similarly, spending on SNAP for seniors has been shown to reduce hospitalization costs.<sup>7</sup>

#### **IV. Conclusion**

These proposed changes would create red tape and fear that will deter family members and others from serving as sponsors and ultimately limit family-based immigration. By increasing burdensome paperwork, allowing sponsors' and co-sponsors' personal information to be shared, making sponsors afraid to enroll in critical public benefits and health care programs, and warning ominously about fines and liability, the proposed rule will deter family members and others from serving as sponsors and joint sponsors and thus make it more difficult for families to be together.

For these reasons, Justice in Aging urges DHS to withdraw the proposed rule. If any questions arise concerning this submission, please contact Natalie Kean, Senior Staff Attorney, at [nkean@justiceinaging.org](mailto:nkean@justiceinaging.org).

Sincerely,



Jennifer Goldberg  
Deputy Director

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<sup>5</sup> Center on Budget & Policy Priorities, Medicaid Expansion Has Saved at Least 19,000 Lives, New Research Finds (Nov. 6, 2019), <https://www.cbpp.org/research/health/medicaid-expansion-has-saved-at-least-19000-lives-new-research-finds>.

<sup>6</sup> Brown et al., "Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood," Yale University Dept. of Economics (June 2018), <http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf>.

<sup>7</sup> Samuel et al., "Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization: The Case of Maryland," *Population Health Management*, 21(2), 88–95, <https://doi.org/10.1089/pop.2017.0055>.