KAISER PERMANENTE®

December 10, 2018

Samantha Deshommes
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

Submitted via erulemaking portal at: www.regulations.gov

RE: DHS Docket No. USCIS-2010-0012 – "Inadmissibility on Public Charge Grounds"

Dear Ms. Deshommes:

Kaiser Permanente appreciates the opportunity to provide comments to the Department of Homeland Security (the "Department") in response to the Notice of Proposed Rulemaking, *Inadmissibility on Public Charge Grounds* (the "NPRM").[1] Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia.[2]

Kaiser Permanente is committed to delivering high quality health care services to our members and is focused on the total health of the 65 million people residing in the communities we serve. We are concerned the NPRM threatens the health of individuals and communities by expanding the definition of "public charge" to include numerous public benefit programs and resources that are vital to creating the conditions of health. Our country's health system was not designed to accommodate such a punitive proposal that would require individuals to avoid care and coverage for which they are otherwise eligible. We are concerned by anticipated increases in uninsured rates and higher emergency department utilization, which will lead to higher health care costs and worse health care outcomes for all. The proposed regulation jeopardizes access to safe, high quality medical care that is delivered by Kaiser Permanente's more than 22,000 physicians every day. We urge the Department to withdraw the proposed rule, and we request that the Department's longstanding guidance on public charge remain in effect.

The NPRM targets certain immigrant applicants for visas or those seeking adjustment of status to become lawful permanent residents in the United States who are "likely at any time to become a public charge." While the Department acknowledges the NPRM puts immigrants at risk for "worse

[1] 83 Fed. Reg. 51114 (Oct. 10, 2018).
[2] Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation's largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente's members.

One Kaiser Plaza
Oakland, CA 94612

health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence,"[3] among other negative follow-on effects, Kaiser Permanente believes the NPRM understates its consequences.

Negative Impacts to the Total Health of Communities. Kaiser Permanente recognizes that excellent medical care alone is not sufficient to create healthy communities and that the social, economic, and environmental determinants of health play a significant role. To bring about demonstrable improvements in health, we work with others to create health-promoting physical, social, and economic environments. For example, we partner with community groups and clinics to facilitate the enrollment of eligible members in nutrition assistance programs; we support investments in safe, stable, and affordable housing; and we advocate for policies that promote well-being. This work helps us execute on Kaiser Permanente's commitment to health equity and total health.

The expansive definition of "public benefit" in the NPRM, however, would create major disincentives for individuals and their families to access critical components of health, including medical care and coverage through Medicaid, subsidized medicines through the Medicare Part D Low-Income Subsidy (LIS), and healthy food and stable housing supported by public benefits for which they are eligible.

Significant Coverage Losses Beyond Targeted Population. Kaiser Permanente is a mission-driven organization committed to universal coverage. We believe in building on the progress made over the last decade, with tens of millions of people gaining access to health care following enactment and implementation of the Affordable Care Act (ACA). We believe the NPRM substantially threatens this progress toward universal coverage.

Research on federal welfare reform, local immigration-enforcement efforts, and state-level policies excluding immigrants from access to public services and benefits suggests that the NPRM would affect enrollment in public benefits programs far beyond the targeted population. The NPRM does not consider the "chilling effect" on eligible individuals who may not be directly implicated by the proposed rule but who will disenroll from public programs due to confusion, fear and misinformation about the proposal. While the Department acknowledges a "chilling effect" followed the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), leading to a 21-54 percent decline in enrollment of eligible legal immigrants in public benefits programs, it did not factor such an effect into its public benefits disenrollment estimates in the NPRM.[4]

Kaiser Permanente provides Medicaid care and coverage to nearly one million members across our regions and we are concerned by any loss of access to care and coverage for our members. The Department estimates 142,136 eligible noncitizens will disenroll from Medicaid programs or forgo enrollment due to the proposed rule change.[5] However, we believe this figure greatly

[3] 83 Fed. Reg. at 51270.
[4] *See id.* at 51266.
[5] *Id*. at 51267.

underestimates the impact to Medicaid. An analysis conducted by Manatt Health estimates that, based on 2016 data, 13.2 million Medicaid and CHIP enrollees would be subject to the "chilling effect" of the NPRM.[6] Of those individuals likely affected, 6.7 million are the citizen children of noncitizen family members enrolled in the programs. A Kaiser Family Foundation study anticipated coverage losses in the range of 15-35 percent for these groups.[7] Applying a midpoint estimate of 25 percent to the prospective coverage losses would result in 1.5 million newly uninsured citizen children in Medicaid alone.

In California, home to the largest Medicaid-covered population in the country, recent estimates by the UCLA Health Center for Policy Research projected the "chilling effect" would reach 2.1 million Medi-Cal enrollees.[8] Again applying a 25 percent rate of disenrollment, this would result in the loss of approximately 530,000 enrollees and up to nearly $1 billion in federal support for Medi-Cal. For Kaiser Permanente, the "chilling effect" could lead to over 26,000 of our Medi-Cal members in California losing access to care and coverage.[9]

In fact, Kaiser Permanente is already seeing the "chilling effect" of this proposed rule. We have heard from across our regions that some Medicaid-eligible individuals are rejecting enrollment in Medicaid. As an illustration of the NPRM's impact, callers to our Medicaid Assistance Center have expressed concern about the federal government receiving their personal information; fear they would be unable to apply for U.S. citizenship if they applied for Medicaid; and the belief that as an immigrant they should or could not receive any help from the government due to "political concerns."[10]

Similarly, we believe the Department has grossly underestimated the potential coverage losses in Medicare. The Department estimates 26,755 noncitizen enrollees will reject Medicare Part D Low-Income Subsidies (LIS) for which they are eligible.[11] Kaiser Family Foundation research shows that a growing number of Part D enrollees are receiving LIS (also known as "Extra Help"), with nearly 12 million enrollees receiving subsidies in 2016.[12] Kaiser Permanente has approximately 1.6 million members in our Medicare Advantage and Medicare Cost plans, virtually all of which

---

[6] Manatt Health, "Medicaid Payments at Risk for Hospitals under the Public Charge Proposed Rule," Nov. 2018 (estimating a total of 13.2 million total Medicaid and CHIP enrollees subject to the "chilling effect," including 4.4 million noncitizen children and adults, 2.1 million citizen adults, and 6.7 million citizen children with one or more noncitizen family members also enrolled in the programs). Available at: https://www.manatt.com/Manatt/media/Documents/Articles/Medicaid-Payments-at-Risk-for-Hospitals-Under-the-Public-Charge-Proposed-Rule_Manatt-Health_Nov-2018.PDF.

[7] Kaiser Family Foundation, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid, Oct. 2018. Available at: http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.

[8] UCLA Center for Health Policy Research, "How Proposed Changes to the 'Public Charge' Rule Will Affect Health, Hunger and the Economy in California," Nov. 29, 2018. Available at: https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf.

[9] Kaiser Permanente market share analysis utilizing UCLA Center for Health Policy Research "chilling effect" estimates in California's Medi-Cal program.

[10] Feedback aggregated from membership calls to the Kaiser Permanente Medicaid Assistance Center through Dec. 3, 2018.

[11] 83 Fed. Reg. at 51267.

[12] Kaiser Family Foundation, "Medicare Part D in 2016 and Trends Over Time," Sept. 16, 2016. Available at: http://files.kff.org/attachment/Report-Medicare-Part-D-in-2016-and-Trends-over-Time.

include a Medicare Part D drug plan linked to the medical plan. Nearly 200,000 of our members are receiving the LIS premium and/or cost sharing subsidies. Members who fear that applying for or continuing LIS could put their immigration status in jeopardy could reject the assistance, possibly resulting in unaffordable out of pocket drug costs—potentially hundreds or thousands of dollars more per year, depending on their clinical conditions and prescriptions. Further, as members' drug coverage is connected to their medical coverage, losing access to the Part D subsidy could force them to leave their Medicare plan entirely.

Reducing Coverage Will Harm Health. A decline in insurance coverage rates will inevitably lead to lower health care utilization rates for screening and preventive services, including routine check-ups, immunizations, and cancer screenings.[13] Prescription adherence would also be negatively impacted. Such avoidance of needed health care would lead to worse health outcomes and higher costs for such patients and increase the chance of outbreaks of disease in our communities. The health risks of coverage losses are particularly heightened for pregnant women. Research shows there is a strong correlation between lower rates of insurance coverage among pregnant women and reductions in the use of pre-natal and post-natal care, leading to higher rates of low birth weight, infant mortality, and maternal morbidity.[14] The anticipated losses of coverage would also lead to increases in uncompensated care and heavier emergency department usage, which would drive up costs for all insured persons and taxpayers.

Additionally, the NPRM could lead to financial instability for safety-net institutions. Several studies have found major reductions in uncompensated care and improved financial status at safety-net institutions in states that expanded Medicaid under the ACA. However, the proposed rule would drastically decrease the number of those who are insured by Medicaid, resulting in negative downstream effects that would jeopardize the financial stability of those hospitals. With safety-net hospitals also providing the primary source of care for those who are ineligible for Medicaid, we could see an even greater strain on the health care system as safety-net hospitals would no longer have the resources to treat the higher uncompensated volume of patients.

Impossible Burden on Plans and Providers. Kaiser Permanente is also deeply concerned the NPRM would create an impossible situation for plans and providers as they would be forced to weigh the potential immigration consequences of providing access to necessary health care. Health plans will need to consider whether to continue to advise that individuals remain enrolled in Medicaid or Medicare Part D LIS plans for which they are eligible. Physicians and other clinicians will be challenged to provide medically necessary care that could be perceived to amount to a "public charge" and lead to adverse immigration consequences. Consider a legal immigrant who gives birth to a Medicaid-eligible child who needs neo-natal intensive care. Today, the hospital would likely work with the mother to enroll the child in Medicaid, but due to the "chilling effect" of the NPRM, the mother might fear that enrolling her child in Medicaid would adversely affect her immigration status. Likewise, it would be unfathomable to advise Medicaid and Medicare Part

[13] Mitchell H. Katz, MD, Dave A. Chokshi, MD, "The 'Public Charge' Proposal and Public Health Implications for Patients and Clinicians," *Journal of the American Medical Association*, Nov. 27, 2018. Available at: https://jamanetwork.com/journals/jama/fullarticle/2705813.

[14] Krista M. Perreira, Ph.D, Hirokazu Yoshikawa, Ph.D, and Jonathan Oberlander, Ph.D, "A New Threat to Immigrants' Health – the Public Charge Rule," *New England Journal of Medicine*, Sept. 6, 2018. Available at: https://www.nejm.org/doi/full/10.1056/NEJMp1808020.

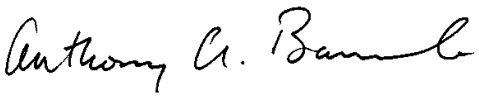
D LIS patients who rely on coverage to access life-saving medicines, including patients with diabetes, cancer or HIV, to stop taking their medications or drop their coverage altogether.

Moreover, the health system, and in particular the health reforms under the ACA, were not designed to accommodate such a punitive proposed rule that would require individuals to avoid care and coverage for which they are otherwise eligible. For example, the single streamlined application simplified the Medicaid enrollment process and fundamentally intertwined the Medicaid application process with the private individual marketplace through the exchanges. Under the NPRM, even applying for or receiving an eligibility determination for public benefits programs would be considered a negative factor in a public charge inadmissibility determination.[15] It would be an additional burden for individuals to seek or apply for marketplace coverage in a different context other than through the programs and portals around which the entire system is built.

Although many of these harmful impacts have been recognized in the preamble and supporting documentation with the proposed regulation, the Department asserts that these are necessary changes needed for self-sufficiency among immigrants. That goal of self-sufficiency, however, must be weighed against the overall impact of these changes on not only immigrants, but the communities in which they live, the providers that serve them, and the substantial cost implications to the health care system that comes with it.

Thank you for the opportunity to comment on the Department's proposed rule on *Inadmissibility on Public Charge Grounds*. Please feel free to contact me at Anthony.Barrueta@kp.org or (510) 271-6835 with questions; or Shannon McMahon at Shannon.McMahon@kp.org or (202) 216-1900; or Gabriela Ventura Gonzales at Gabriela.M.Ventura-Gonzales@kp.org or (916) 491-2021.

Sincerely,



Anthony A. Barrueta
Senior Vice President, Government Relations

[15] *See* 83 Fed. Reg. at 51291.