



October 22, 2021

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

The Honorable Alejandro Mayorkas  
Secretary of the U.S. Department of Homeland Security  
Washington, DC 20528

Re: Covered California Comments in Support of the Advance Notice of Proposed Rulemaking: Public Charge Ground of Inadmissibility (USCIS-2021-0013)

Secretary Mayorkas:

Covered California is pleased to submit comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) seeking input on the development of a future regulatory proposal regarding the definition of public charge. Covered California supports the proposed principles in the ANPRM and, as discussed below, encourages the Department of Homeland Security (DHS) to especially focus on ensuring that individuals who are eligible for health coverage can confidently apply for and receive those benefits, without undue burden or fear for their future. To achieve this, it is critical that DHS clearly define the benefits that do not count against income maintenance, such as Supplemental Nutrition Assistance Program (SNAP), Children's Health Insurance Program (CHIP), Medicaid, and Affordable Care Act (ACA) premium subsidies for health coverage through an Exchange. Such a rule will ensure all communities receive the benefits and care they are eligible for, which is needed now more than ever.

Covered California supports the proposed principles that DHS will utilize as it develops a definition of public charge that: (1) is consistent with law; (2) is easily understood; (3) is straightforward to apply in a fair, consistent, and predictable manner; (4) reflects consideration of relevant national policies; and (5) will not unduly impose barriers for noncitizens seeking admission or adjustment of status in the United States. Covered California recommends that DHS prioritize clarity and access to care in its proposed rule to avoid confusion and reduce potential impacts of the chilling effect on enrollment to ensure individuals receive the care they deserve and are eligible for.

Since enacting the Immigration and Nationality Act in 1952, Congress has continually worked to define what it means to be considered a public charge, including what public benefits and services are factored into a public charge determination. The most recent changes to public charge policy were codified in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which provides that, "any alien who, in

the opinion of the...Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.” Amidst confusion, in 1999, the Department of Justice issued field guidance that sought to clarify the term public charge in immigration law, formally linking it to the receipt of federal, state, and local public benefits. Specifically, this guidance specified that individuals are likely to become a public charge when they receive public cash assistance for income maintenance or institutionalization for long-term care at government expense. This guidance also prohibited immigration officials from considering benefits not used for income maintenance in the determination, such as SNAP, CHIP, Medicaid, and rental assistance.

In 2019, overturning this longstanding public policy governing how individuals’ use of public benefits may affect their ability to enter the United States or adjust to legal permanent resident status, DHS issued a rule that drastically redefined the public charge determination. The rule broadened the assistance programs to be considered in public charge determinations to include previously excluded health, nutrition, and housing programs, and outlined other factors to be considered. As a result, the new policy strongly discouraged individuals from not only applying for legal immigration, but also seeking and benefiting from critical public assistance. Covered California enrollment partners, including navigators, agents, and community partners throughout the state, observed that individuals across immigrant communities were afraid to apply for health coverage through Covered California, and some even disenrolled from their current coverage based on concerns that the rule would negatively affect them. Fortunately, after several legal challenges led to a court order vacating the rule nationwide, DHS announced it would return to prior policies guided by welcoming immigrants, restoring trust in the immigration system, and promoting public health coverage.

Despite the rule’s removal, its negative effects persist. Covered California enrollment partners have continued to see a steady trend of increased concern among immigrant communities over the potential of becoming a public charge when applying for health coverage through Covered California, leading to decisions to forego coverage at all.

We appreciate your consideration of these comments and look forward to working with this administration to promote equitable health care access and quality for all individuals.

Sincerely,



Peter V. Lee  
Executive Director