December 19, 2025

Andrew Good, Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capitol Gateway Drive
Camp Springs, MD 20746

Consortium for Constituents with Disabilities Re:
DHS Docket No. USCIS-2025-0304, U.S. Citizenship and Immigration Services

The undersigned members of the Rights, Health, and Long-Term Services and Supports Task Forces of the Consortium for Constituents with Disabilities (CCD) write to express our strong opposition to the proposed public charge ground of inadmissibility regulation. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We believe that the proposed rule would greatly harm both immigrant and non-immigrant individuals with disabilities. More than five percent of immigrant adults have a disability, and half of those individuals have multiple disabilities. Older immigrants aged 50-64 report higher rates of disability (about 10%).[1] This means there are around two million immigrants with disabilities who would be facing a decision of choosing between their immigration status and receiving the support they require.

We urge the Department not to adopt the proposed rule due to the arbitrary and capricious nature of the proposed regulation, its violation of the Administrative Procedures Act and Section 504 of the Rehabilitation Act (Section 504), and its inconsistency with the Personal Responsibility and Work Reauthorization Act (PRWORA). In light of these concerns, as well as the chaos and confusion that is certain to result if the proposed rule is finalized, this rulemaking should be abandoned and the 2022 DHS public charge regulation retained in its entirety.

[1] Evache et. al. *"Being an Immigrant with Disabilities Characteristics of a population facing multiple structural challenges"* The Urban Institute. https://www.urban.org/research/publication/being-immigrant-disabilities. (2022).

1. The Proposed Rule is arbitrary and capricious in violation of the Administrative Procedures Act.

The Administrative Procedure Act (APA) forbids agencies from issuing rules that are arbitrary and capricious or contrary to law.[2] The proposed rule, if finalized, would be arbitrary and capricious due to the lack of sufficient justification for the change in agency position, the likelihood of inconsistent agency interpretations, and the failure to consider reliance interests stemming from prior DHS rules and guidance. The rule would also be inconsistent with the statute it purports to implement.

Makes sweeping changes without justification

The APA requires a federal agency conducting a notice and comment rulemaking to "examine the relevant data and articulate a satisfactory explanation for its action" including a "rational connection between the facts found and the choice made."[3] Moreover, there is a presumption "against changes in current policy that are not justified by the rulemaking record."[4] DHS offers no relevant data or other evidence to explain why the interpretation used by the federal government for the last twenty years is inappropriate or to justify why the particular articulation of the resources and health factors that it proposes is necessary. Much more analysis is required in order to justify this massive change in the agency's interpretation of federal law and its especially harmful impact on people with disabilities.

The proposed rule would impose sweeping changes in how public charge determinations are made, repealing not only the current rule but also longstanding limitations on the types of benefits that may be considered. The proposed rule would seem to allow consideration of any type of service or benefit, including benefits and services that are critical to people with disabilities and that increase independence, like Medicaid.[5] However, the Department has offered no clear justification for these changes. Allowing immigration officials to have discretion, absent any regulatory guidance, when making a public charge determination would invite the prospect of decisions that incorrectly presume use of certain benefits indicates primary reliance on

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[2] 5 U.S.C. § 706(2)(A).

[3] *Motor Veh. Mfrs. Ass'n v. State Farm Ins.,* 463 U.S. 29, 43 (1983) (citing Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962)).

[4] *Motor Veh. Mfgs. Ass'n* at 42.

[5] While there is no data indicating the number of immigrants with disabilities enrolled in Medicaid, people with disabilities represent more than a third of the total Medicaid population. Samantha Artiga, Drishti Pillai, Jennifer Tolbert & Akash Pillai, *5 Key Facts about Immigrants and Medicaid, Kaiser Family Foundation* (Feb. 19, 2025), https://www.kff.org/racial-equity-and-health-policy/5-key-facts-about-immigrants-and-medicaid/.

the government, rather than acknowledging that programs for people with disabilities actually promote self-sufficiency and self-determination.

Public benefits that are utilized by individuals with disabilities, like Home and Community Based Services (HCBS) provided through Medicaid, function fundamentally differently than other benefits. Many services that people with disabilities need to live and participate in the community are only available through Medicaid and not covered by private insurance. Medicaid is the primary payer for HCBS,[6] which provides many different kinds of services and supports to people with disabilities, including transportation, long term personal care assistant services, long term medical care, support for adaptive functioning and instrumental activities of daily living, and other services critical for life in the broader community. If Medicaid were included, immigrants with disabilities who have used Medicaid for the funding of LTSS, or immigrants who may need HCBS in the future, would be effectively discriminated against for pursuing community living. Individuals with disabilities rely on these services and programs to stay in their communities and out of expensive, institutional settings. These programs are designed to help individuals achieve independence and become productive, participating members of the community.

This dramatic change in position without a clear justification is arbitrary and capricious, in violation of the APA.

Invites inconsistent public charge determinations

The proposed rule, if adopted, would also be arbitrary and capricious because it is all but certain to invite inconsistency and confusion. The current rule and Department of Homeland Security (DHS) guidance offer clear guidance reflecting a careful balance designed to minimize the number of people who disenroll from or avoid critically needed medical services and housing assistance out of fear that these services might result in a public charge determination. In contrast, the proposed rule would offer no guidance and would greatly increase the risks of disenrollment or avoidance by permitting an “anything goes” approach where virtually any type of assistance may be counted against individuals in public charge determinations.

The proposed rule, if adopted, would sow chaos and confusion. While DHS claims that it would support "accuracy, consistency, and reliability," to the contrary, eliminating the rule in its entirety and leaving public charge determinations entirely up to the discretion of immigration officers would be a recipe for inconsistent determinations

[6] Priya Chidambaram & Alice Burns, “10 Things About Long-Term Services and Supports (LTSS),” KFF, Jul. 8, 2024. https://www.kff.org/medicaid/10-things-about-long-term-services-and-supports-ltss/

and arbitrary results. Without a regular baseline for determination, there will be no consistency within the agency regarding who is deemed a public charge. As a result, individuals with identical situations who speak to different officers are likely to receive different determinations. DHS's bare assertion that immigration officials will reach the same conclusions given similarcircumstances without guidance on what counts in a public charge determination is not supported by any evidence.

The confusion and inconsistency would have a particularly dramatic impact on people with disabilities, including U.S. citizens. Many disabled people utilize public benefit programs to achieve stability and thrive in their communities. Inconsistent interpretation across DHS officials will lead individuals to not utilize necessary public assistance, and without the ability to obtain necessary services and supports through private insurance, disabled people will suffer. Programs such as Medicaid and HCBS save lives, and discouraging use of these services by creating a culture of fear will hurt disabled immigrants and their communities. In 2023 (even after the repeal of the 2019 public charge rule), nearly one in ten immigrants said they avoided applying for health care, food, or housing assistance out of fear that this would draw attention to either their or a family member's immigration status.[7] The NPRM estimates that nearly one million people will disenroll or forgo benefits for which they rightfully qualify, including citizens entitled to Medicaid and other benefit programs.[8] However, recent research indicates that the number of disenrollments could reach up to four million individuals.[9] Inclusion of Medicaid and other essential services would cause dramatic harm to disabled people and their families through mass disenrollment resulting in individuals not receiving care to which they are entitled.

Fails to consider reliance on previous agency actions

The proposed rule fails to consider the reliance interests created by the 2022 rule[10] and the 1999 field guidance.[11] For decades, immigrants with disabilities have relied on the previous guidance and rule in using needed services based on the understanding that doing so would not put them or their families in danger of being determined a public charge. If DHS finalizes the current proposed rule, many people may be penalized for having relied on what the government said before. DHS does not

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[7] Samantha Artiga, Drishti Pallai, Sammy Cervantes, Akash Pillai & Matthew Ray, *Potential "Chilling Effects" of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, Kaiser Family Foundation (Dec. 2, 2025), https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/.

[8] 90 Fed. Reg. at 52,170.

[9] *See supra* note 7.

[10] 87 Fed. Reg, 55472 (Sept. 9, 2022).

[11] 64 Fed. Reg. at 28,689

address these reliance interests in any meaningful way. Indeed, courts previously found that DHS did not adequately account for these reliance interests when it expanded the types of benefits that could count in the 2019 rule.[12]

2. The Proposed Rule Violates the APA in that it is Contrary to Law

The proposed rule is contrary to the statute it purports to implement. Congress provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) that all "aliens," including nonimmigrants and undocumented immigrants, would be eligible for certain public benefits due to the importance of those benefits—for example, emergency Medicaid, crisis counseling, certain types of housing assistance, mental health and substance use disorder treatment, and other services.[13] Certain immigrants would also be eligible for additional important benefits, such as SNAP, Head Start, and school lunch.

Further, when Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) shortly after PRWORA, it added the five public charge determination factors, but did not add "public benefits receipt" as a factor. Nor did it change the PRWORA provisions affording certain public benefits to immigrants, reaffirming Congress's intent to limit which benefits are considered in public charge determinations.[14] By eliminating all regulatory restrictions on which benefits may be considered, the proposed rule is contrary to those statutory provisions.

Courts determined that DHS's 2019 rule violated the APA because it adopted a definition of public charge based on the premise that individuals who use nearly any sort of public benefit are public charges.[15] This NPRM relies on the same fundamental tenet and similarly violates the APA.

Congress restricted consideration of certain public benefits because of its concern about the impact of individuals not receiving those services when needed. The proposed rule would cause precisely the type of damage that Congress was concerned about and that led the INS to exclude consideration of most of these benefits previously: it would lead many people to decline needed health and other services, creating "negative public health and nutrition consequences" and making it more difficult for

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[12] Compare 90 Fed. Reg. at 52,173 with *City & Cnty. of S.F. v. U.S.*, 981 F.3d at 761 (2019 rule will "ensur[e] that [admitted immigrants] be self-sufficient and not reliant on public resources.").
[13] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 (1996)
[14] Contrary to DHS's interpretation, the enactment of the two statutes close in time suggests that Congress assumed that receipt of these benefits would not be counted against a person in determining whether the individual is likely to become a public charge.
[15] *New York v. US DHS*, 969 F.3d at 74-80; City & Cnty. of S.F., 981 F.3d at 756-58.

people to secure employment. Indeed, there is evidence that even before reports of the contents of the proposed rule surfaced, "families were already experiencing growing fears of participation in health, nutrition, and other programs that led them to disenroll or avoid enrolling themselves and their children."[16] DHS's proposal to afford those services to certain immigrants only on pain of jeopardizing the ability to secure permanent resident status is wholly inconsistent with Congressional restrictions on the benefits to be considered. Accordingly the proposed rule is contrary to law.

3. The Proposed Rule would violate Section 504 of the Rehabilitation Act.

Section 504 of the Rehabilitation Act prohibits disability-based discrimination in any program or activity of a federal executive branch agency, including DHS.[17] To the extent that the Immigration and Nationality Act (INA) applies to federal agency programs and activities, it must be read in a manner consistent with Section 504's prohibition on disability-based discrimination.

The proposed rule would violate Section 504 because it effectively invites the targeting of people based on their disabilities in public charge determinations.[18] The NPRM invites discriminatory determinations by requiring immigration officers to consider an individual's disability and suggesting that a "public charge" finding may be based solely on the person's receipt of services, benefits, or accommodations for their disability.[19] The NPRM's repeated reference to the presence of a mental or physical disability as tending to show that a person is likely to be a public charge[20] directs immigration officers to use a person's need or potential need for services essential to large numbers of people with disabilities as the basis for finding the person a public charge. Such determinations would effectively use the presence of a significant disability as a proxy for a public charge.

This reading of the public charge statute is inconsistent with the intent of the INA, which was previously amended to ensure that individuals were not determined inadmissible based simply on their disability status.[21] It is also inconsistent with Section

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[16] Henry J. Kaiser Family Foundation, Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage, https://www.kff.org/disparities-policy/fact-sheet/proposedchanges-to-public-charge-policies-for-immigrants-implications-for-health-coverage.

[17] 29 U.S.C. § 794(a).

[18] *Cook Cnty. v. Wolf*, 962 F.3d at 229.

[19] 90 Fed. Reg. at 52109.

[20] *id.* at 52182, 52183, 52184, 52186, and 52187

[21] Shortly after passage of the Americans with Disabilities Act, the Immigration and Nationality Act was amended to eliminate provisions that made individuals inadmissible on the basis of having certain disabilities. Immigration Act of 1990, PL 101-649, 104 Stat 4978, sections 601-603 (Nov. 29, 1990) (deleting and replacing language excluding "[a]liens who are mentally retarded," "[a]liens who are insane,"

504's bar on disability-based discrimination in DHS's programs and activities. DHS's argument that public charge determinations would not be made solely on the basis of disability because they would also be made based on service needs is simply wrong. Discrimination based on disability-related service needs cannot be meaningfully distinguished from discrimination based on disability.[22]

4. **DHS does not have unlimited authority to decide how public charge determinations are made.**

Courts have already rejected DHS's position that it has unlimited authority over public charge determinations and can set any type of restrictions it wants.[23] The public charge provision does not allow DHS to have unchecked power when defining the term, and the attempt to do so is inconsistent with Congressional intent. Neither the statute nor DHS's authority allows for flexibility in redefinition. Congress enacted the statute to serve as a framework for determinations, while simultaneously ensuring that immigrants and their families were able to receive the care that they may need, with specific protections for disabled immigrants.

Conclusion

We strongly oppose this NPRM for the reasons identified above. CCD urges DHS not to adopt the proposed rule and to maintain the 2022 public charge regulation in its entirety. We appreciate the opportunity to comment and emphasize the importance of considering the impacts of this rulemaking on people with disabilities.

Sincerely,

Access Ready, Inc.

The Advocacy Institute

American Association on Health and Disability

American Association of People with Disabilities

"[a]liens who have had one or more attacks of insanity," "[a]liens afflicted with psychopathic personality, or sexual deviation, or a mental defect," and "[a]liens who are … chronic alcoholics").

[22] See *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287-88 (1987) (discrimination based on contagious effects of tuberculosis is the same as discrimination based on tuberculosis).

[23] *Cook Cnty.,* at 229.

American Music Therapy Association

The Arc of the United States

Autism Society of America

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

Brain Injury Association of America

Caring Across Generations

Center for Medicare Advocacy

Center for Public Representation

Children and Adults with Attention-Deficit/Hyperactivity Disorder

CommunicationFIRST

Deaf Equality

Disability Belongs

Disability Rights Education and Defense Fund

Division for Early Childhood of the Council for Exceptional Children (DEC)

Epilepsy Foundation of America

Family Voices National

Justice in Aging

The Kelsey

Lakeshore Foundation

Muscular Dystrophy Association

National Center for Learning Disabilities

National Council on Independent Living

National Disability Rights Network (NDRN)

National Down Syndrome Congress

National Health Law Program

National Respite Coalition

The Partnership for Inclusive Disaster Strategies

SPAN Parent Advocacy Network

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World Institute on Disability