

## Memo

**To: Office of Management and Budget**  
**From: The National Immigration Law Center**  
**Date: July 23, 2019, EO 12866 Meeting on DHS's Public Charge Regulation (RIN 1615-AA22)**  
**Re: State and Local Governments and Health Care Providers Need More than Sixty Days to Prepare for This Major Change**

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### State and local governments face an enormous administrative burden to implement the rule and need more than 60 days to prepare.

State and local government officials have shared that the public charge NPRM requires them to undergo myriad changes to public benefits program applications, computer systems, forms, public education materials, train workers, and more. Sixty days--the minimum effectiveness period required of "major rules"--is simply not enough time for them to prepare. And, the less prepared they are for the changes, the greater the harm to those not directly affected by the rule.

*In a January 2019 survey of state Medicaid agencies, twenty states reported they would need to change applications, forms, or other guidance, conduct additional staff training, and/or increase outreach and education to immigrant families if the public charge rule is finalized.*

**Kaiser Family Foundation, Medicaid and CHIP Eligibility, Enrollment and Cost-Sharing Policies as of January 2019: Findings from a 50-State Survey (March 2019).<sup>1</sup>**

*"State Medicaid agencies would also likely face some additional administrative tasks and costs to mitigate the dampening effects of the proposed policy on enrollment, such as changing or expanding outreach and educational activities, training eligibility workers to educate applicants and respond to questions, and revising applications and notices."*

**Medicaid and CHIP Payment and Access Commission  
Comment on the DHS NPRM (RIN 1615-AA22)**

*"Potential administrative burdens created by the proposal include: Increased cost from beneficiaries disenrolling or re-applying for coverage; creating, revising and disseminating information about the proposal, including training workers in service centers for our customer access telephone lines; and modifying and recreating current notifications related to public charge requirement."*

**District of Columbia,  
Department of Health Care Finance**

## The rule requires cities and states to respond to a huge influx of consumer inquiries for documentation.

*"Under the proposal, legal immigrants wishing to extend or revise their current legal status would have to complete Form I-944 – Declaration of Self-Sufficiency. Our county staff would be required to provide in the form of "a letter, notice, certification, or other agency documents" evidence for the legal immigrant which would demonstrate past applications or receipt of benefits, including the exact amount of the benefit and when exactly it was received. This mandate would generate a huge workload for county staff and may require access to information that has been archived from legacy systems our county governments no longer access"*

**National Association of County Human Services Administrators  
Comment on DHS NPRM (RIN 1615-AA22)**

*"County agencies will have to prepare to answer consumer questions about the new rule. County eligibility technicians are already experiencing increased call volume and traffic from consumers concerned about the new policies. Advising a family on whether they would be subject to a public charge determination and how receipt of various benefits might play out can require technical knowledge of immigration statuses. Eligibility workers are not immigration attorneys and should not be expected to have such legal expertise. Yet, county agencies and contractors will be put in an impossible position when answering questions if they simply tell all consumers that they must speak to an immigration attorney to get their questions answered about the impact of public benefits on their immigration status. And such advice would likely deter eligible people from enrolling in programs, including many who would never be subject to a public charge determination. Moreover, people who seek public benefits are also unlikely to be able to afford to seek legal counsel to see if getting services will jeopardize their family's immigration goals."*

**Alameda County Board of Supervisors  
Comment on DHS NPRM (RIN 1615-AA22)**

## The rule requires states and counties to develop new systems and processes.

*"The public charge rule proposal would require Medicaid and CHIP agencies to create new systems for tracking, reporting and notifying both the Department of Homeland Security and beneficiaries regarding their enrollment in programs deemed "public benefits," thereby imposing new unfunded costs related to monitoring, reporting, system redesign and notices. For example, the proposal required DHCF to monitor and report to USDHS regarding any individual who seeks a change in immigration status that prompts a "public charge" determination. In that report, DHCF would be required to provide information on any "public benefits" the individual used within the past three years. Complying with this requirement will require substantial reprogramming of our current eligibility system to be able to generate such reports based on three years of experience."*

**District of Columbia, Department of Health Care Finance**

**Comment on the DHS NPRM (RIN 1615-AA22)**

*“The draft form I-944 would require states and counties to develop new processes in response to the rule. Applicants for a change in immigration status would be required to provide supporting documentation not only about whether they received a public benefit, but the type, amount, agency that granted it, date it was granted and expired and who in the household received it...Being able to provide this information in a comprehensive and timely manner will require system updates, new work processes and likely hiring and specially training of additional personnel for counties to respond to such requests. Counties will need to work with the state to develop standardized processes for receiving requests and providing such information across the state that safeguards personal data. This is not only a significant workload but also would include potentially major automation costs, given the level of detail required by the draft I-944 form – which requests information about the amount of benefits paid even for services that are typically transparent to a recipient, such as funds paid for health care provided through Medicaid, information that is not held in the California system of record for Medicaid eligibility but in a separate medical information system.”*

**County Welfare Directors Association of California (CWDA)  
Comment on DHS NPRM (RIN 1615-AA22)**

*“If the draft form I-944, included as part of the rule, were finalized as is, it would require states to build new systems to respond to the rule. The last time Alameda County underwent a similar process was for implementation of the Affordable Care Act. Since 2010, the cost of creating these systems, training staff, and conducting education and outreach was hundreds of millions of dollars to Alameda County. That was just for the health care system. SNAP, Medicare Part D, and housing subsidies are administered by different governmental entities at different levels of government utilize different data systems to conduct tracking and reporting. And, we have still to consider the privacy laws that would need to be navigated to create and implement such a system.”*

**Alameda County Board of Supervisors  
Comment on DHS NPRM (RIN 1615-AA22)**

*“[An] example of new costs relates to the new notice and system requirements this proposal would require relating to transitions of coverage, between Medicaid and either CHIP or locally funded programs, neither of which were considered “public benefits” under the proposal. Given the likely impact that enrollment into nonemergency Medicaid might have on an individual’s immigration status or future claims, DHCF would need to be able to generate and create system triggers to provide a notice at every transition between these programs. This would also be costly and burdensome to administer.”*

**District of Columbia, Department of Health Care Finance  
Comment on the DHS NPRM (RIN 1615-AA22)**

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### **State and county eligibility systems need to be reprogrammed to delink eligibility determinations across programs.**

*"Many states have deliberately created seamless application and client experiences for local, state, and federal benefit programs, as well as for Medicaid and CHIP benefits. These would need to be delinked and clients provided with clear information about whether the program they are participating in is subject to the public charge determination."*

**Alameda County Board of Supervisors  
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*Through 'presumptive eligibility', the vast majority of our counties streamline the application processes whenever possible to reduce administrative costs and the need for individuals and families to submit duplicate or similar information. This process allows counties to determine eligibility for other federal programs if the applicant qualifies for just one of them (e.g., Medicaid, TANF, SNAP). Because of this streamlined application process, legal immigrants' enrollment may be undermined in programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program. Congress has expressly permitted in law that WIC presume any individual on Medicaid, SNAP, or TANF to be income-eligible for it, thus reducing the paperwork burden during WIC certification. In fact, in 2016, 74.9 percent of WIC participants were eligible due to eligibility for another program. While WIC is not on the public charge list, our counties may have to enhance administrative efforts to increase and conduct separate enrollment procedures for that program alone."*

**National Association of County Human Services Administrators  
Comment on the DHS NPRM (RIN 1615-AA22)**

### **The rule requires states to identify and modify multiple existing communications, educational materials and forms.**

*"For almost twenty years, agencies have worked under the consistent and clear rules about when a consumer's use of benefits could result in a negative finding in their public charge determination. Agencies have incorporated these messages on a variety of consumer communications including application, application instructions, website, posters used in lobbies, in notices and in scripts and trainings for staff. All of these consumer communications will have to be identified and taken down."*

**Alameda County Board of Supervisors**

**The rule creates increased “churn” among the eligible caseload which creates additional work for state and county eligibility workers.**

*"As legal immigrants learn about the new rule, more families will terminate their participation in programs. However, if an immigrant's need for health, nutrition or other services becomes acute, they may re-apply. This on-again-off-again approach to enrolling in benefits not only jeopardizes an individual's health and well-being, it also unnecessarily duplicates the work and increases administrative costs for county governments"*

**National Association of County Human Services Administrators  
Comment on the DHS NPRM (RIN 1615-AA22)**

*"As consumers learn about the new rule, some families will terminate their participation in programs as already experienced in response to draft public charge-related proposed rule changes being leaked to the media. But, because these programs meet vital needs for families, some of these families would likely return to the caseload, resulting in duplicative work for agencies that will experience a new kind of churn in their caseloads. Some families may return if they come to understand that they are not subject to a public charge determination, for example, if they have refugee status. Others may reapply when circumstances become even more dire, for example a child may be withdrawn from Medicaid coverage, but without treatment—such as asthma medication—the child's condition may worsen, and the family will re-enroll the child even though they are fearful the act may jeopardize a family member's chance to become a lawful permanent resident. This on again off again approach to benefit enrollment—often referred to as churn—not only yields negative results for families, it also results in duplicative work for state and local agencies, including Alameda County Social Services Agency. Churn is expensive for state, in one study of SNAP-related churn, the costs averaged \$80 for each instance of churn that requires a new application."*

**Alameda County Board of Supervisors  
Comment on the DHS NPRM (RIN 1615-AA22)**

**The rule requires time-consuming training of public benefits agency staff.**

*"The rule will create new challenges for state and local agencies administering these programs and will result in an increased workload. As mentioned previously, Alameda County has already started working on educating our community and our county employees and producing resources to clarify how the usage of public benefits may impact the outcome of someone's immigration case. Alameda Alliance for Health, one of two managed care plans in the County, trained 250 of its call center employees last month on how to respond to client questions and concerns regarding this potential policy change to consequences of utilization of public benefits like Medicaid. We are also in preliminary discussions on how to train lawyers that provide legal aid services to Medicaid and SNAP beneficiaries on the impact of the proposed rule on recipients' immigration cases should the proposed rule become effective."*

**Alameda County Board of Supervisors  
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*“Should the Proposed Rule be finalized and implemented, NYC will be required to expend considerable financial and staff resources to educate and train NYC employees about how the rule change affects agency activity, as well as respond to client requests. For example, NYC H+H would be required to undertake extensive and costly staff education and training for an estimated 10,000 frontline staff, including medical providers, social workers, registration staff, and hundreds of financial counselors across dozens of sites who screen and help patients apply for health insurance every day.”*

**City of New York and the Municipal Hospital System  
Comment on the DHS NPRM (RIN 1615-AA22)**

**The rule creates an increased need for legal representation and funds to provide it and train attorneys.**

*"Alameda County also funds legal representation for immigrants undergoing immigration removal and detention proceedings. These immigration attorneys working out of Alameda County's Public Defender's Office have never really had to consider the usage of public benefits when advising a client on their immigration case. If the proposed rule becomes effective, the County will also have to train these immigration attorney's on how to assess the usage of public benefits on the likely outcome of a client's case. Of note, the NPRM does not explain how or how much it will cost DHS to train immigration consular officers to properly incorporate the new income floor and complex public benefit formulas in the NPRM in the public charge determination process. DHS should explain how it intends to apply the proposed rule fairly and avoid unintended or erroneous immigration consequences. Issues state and local agencies will face include"*

**Alameda County Board of Supervisors  
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**Health care providers also need more than sixty days to prepare for the changes anticipated in the rule.**

*“Once hospitals gain an understanding of the rule, they would have to determine how to update their internal processes and policies, including intake policies, enrollment and eligibility activities, or charity care policies. Providers would have to train their front-line staff, including educating them about the rule and how it could affect patient eligibility and access to health care. [...] Hospitals are large, complex organizations with thousands of administrative and clinical staff who are placed across multiple units and physical locations of the hospital. For large hospital systems, their reach expands outside the four walls of the main building into the community, through networks of hospital-based clinics and mobile*

*units that efficiently bring health care to patients where they need it. Staff placed throughout these ambulatory networks interact with patients and receive questions from patients on the appropriateness of applying for benefits and receiving health care services.”*

**America’s Essential Hospitals  
Comment on the DHS NPRM (RIN 1615-AA22)**

*“The proposed rule would also significantly increase administrative costs, as our hospitals would need to devote considerable time and resources to educating frontline and clinical staff about the various ways patients would be impacted by the rule’s provisions”*

**Dignity Health  
Comment on the DHS NPRM (RIN 1615-AA22)**

*“The cost of conveying this distinction to people — that these programs are state-only programs and not affected by federal law — would require extremely costly community outreach, public service broadcasts, new printed materials, website updates, public relations, and much more. It also could require hiring more staff to respond to the sheer volume of inquiries about these programs that can be expected should the proposed regulation be adopted. Hospital providers would need to learn about these distinctions, train their staff, and potentially hire new staff to work with potential applicants who will enter into the application process with erroneous preconceptions as well as very real concerns.”*

**Private Essential Access Community Hospitals  
Comment on the DHS NPRM (RIN 1615-AA22)**

*"We would need to devote considerable time and resources to educating frontline and clinical staff about the various ways patients would be affected by the rule's provisions and more frequently initiate procedures to try to obtain payment for unreimbursed care."*

**Sharp HealthCare  
Comment on the DHS NPRM (RIN 1615-AA22)**

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<sup>i</sup> <https://www.kff.org/report-section/medicaid-and-chip-eligibility-enrollment-and-cost-sharing-policies-as-of-january-2019-findings-from-a-50-state-survey-looking-ahead/>