Health Education, Advocacy, Linkage
Because Human Trafficking is a Public Health Issue

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

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

HEAL Trafficking, Inc. submits these comments to express our strong opposition to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM or proposed rule), **Inadmissibility on Public Charge Grounds,** published in the Federal Register on October 10, 2018. **HEAL Trafficking urges DHS to withdraw the proposed rule.**

The proposed rule expands the reach of a little-known immigration term, "public charge," and radically changes the longstanding definition of public charge that is currently in use by immigration officials. Under the current definition of "public charge," only cash assistance programs and government funded long-term care in an institution (received or relied upon) by an applicant can be used to deny a person entry into the U.S. or deny legal permanent residency. The newly proposed **Inadmissibility on Public Charge Grounds** rule is a radical departure from existing policy.

The proposed rule runs counter to another important, high priority federal initiative: specifically, the federal initiative to prevent and end human trafficking. In the pages that follow, HEAL Trafficking explains seven reasons why we oppose the proposed rule:

1. The proposed rule will increase the vulnerabilities of all immigrants to human trafficking and will increase human trafficking in the U.S. This will occur by denying immigrants access to systems of care and protection and through a chilling effect on those who are legally allowed to access these systems of care and protection.
2. The proposed rule undermines efforts by victims of human trafficking to secure essential services that enable them to escape from or overcome abuse, violence, and trauma.
3. The proposed rule has long-term implications for the health and safety of human trafficking victims and their children.

4. The use of Medicaid/CHIP and other public programs as an obstacle to establishing legal residency or citizenship is harmful to human trafficking survivors as many will be employed in jobs that do not have health insurance benefits.
5. The use of health insurance, nutrition, and housing programs to limit immigration is a radical departure from longstanding immigration policy and is unjust and inhumane.
6. The proposed rule endangers the health of our communities and overall public health.
7. Emergency and hospital costs will increase as a result of the proposed rule.

About HEAL Trafficking, Inc.

HEAL Trafficking, Inc. is a united group of 2500 multidisciplinary professionals dedicated to ending human trafficking and supporting its survivors, from a public health perspective. Our mission is to mobilize a shift in the anti-trafficking paradigm toward approaches rooted in public health principles and trauma-informed care by expanding the evidence base; enhancing collaboration among multidisciplinary stakeholders; educating the broader anti-trafficking, public health, and healthcare communities; and advocating for policies and funding streams that enhance the public health response to trafficking and support for survivors. To this end, we engage in work that combats all forms of human trafficking; we support trafficked people of all genders, ages, races/ethnicities, religions, origins, cultures, and sexual orientations; we believe all trafficked persons deserve access to a full range of healthcare including medical, mental/behavioral health, reproductive health, dental, and substance use disorder treatment services; we approach human trafficking from a public health perspective that incorporates a socio-ecological framework and prevention strategies; and we promote a survivor-centered, trauma-informed, evidence-based, practice-based approach to anti-trafficking efforts. We have approximately 2500 network participants from all 50 states and the District of Columbia.

COMMENTS ON PROPOSED RULE

1. **The proposed rule will increase the vulnerabilities of all immigrants to human trafficking and will increase human trafficking in the U.S. This will occur by denying immigrants access to systems of care and protection and through a chilling effect on those who are legally allowed to access these systems of care and protection.**

The proposed rule exempts certain trafficked persons with legal status—those with "T" or "U" visas—from the public charge test. Nevertheless, the complexity of the rule and the increased fears of deportation amongst immigrant communities have discouraged trafficked persons from receiving services or applying for T-visa or U-visa status.[1] In addition to the very real chilling effect, many victims already **do not seek immigration status through these categories. Human trafficking victims will be directly harmed as a**

result of the proposed rule. The March 2018 Urban Institute study of 80 human trafficking survivors and 100 human trafficking stakeholders, including legal and social service providers and criminal justice stakeholders, from across the U.S., recommended "*the promotion of immigration policies that include the establishment of continued services after receiving an immigration visa, to support continued recovery and a path to the survivor's desired immigration status"*.[2] The proposed rule would implement changes in the standards for public charge determinations that would curtail the use of services, regardless of type of immigration visa, and are contrary to recommended criminal justice policies.

Furthermore, the denial of access to essential services and resources exacerbates the risk for human trafficking. These resources include but are not limited to safe housing, a livable wage, education, safe childcare, protection under the law,[3] and access to healthcare services. By counting housing assistance as one of the criteria for determining public charge, the risk of homelessness amongst vulnerable youth will increase. Homeless youth, lacking stable and safe social support mechanisms,[4] are exploited by traffickers for forced labor and/or commercial sex.[5] Further, a recently published study about migrants in Midwest America noted that structural issues such as limited healthcare, transportation, housing, secure employment, and lack of community supports were all identified as barriers to helping migrant populations gain stability and reduce vulnerability to social ills and increased immigrants' vulnerabilities to being trafficked and exploited. [6]

By expanding the criteria for inadmissibility on public charge grounds to include Medicaid, the Supplemental Nutrition Assistance Program, housing assistance, and Medicare Part D, it is clear that many immigrants will have increased risk and vulnerabilities to being trafficked and exploited. Their fears of being denied Lawful Permanent Residence and U.S. Citizenship, and of deportation, will force a tortured choice between their present health and safety, and their hope for a future in the U.S.[7]

2. The proposed rule undermines efforts by victims of human trafficking to secure essential services that enable them to escape from or overcome abuse, violence, and trauma.

A public health framework to combat human trafficking includes the premise that there is "no wrong door" for human trafficking victims to access services and resources to escape from violent and exploitative situations. By implementing these public charge rules changes, the federal government will close several doors for traumatized individuals to access service and support.

The seminal textbook, *Human Trafficking is a Public Health Issue*, notes in Chapter 24: "Moving Forward: Next Steps in Preventing and Disrupting Human Trafficking," that a public health framework expands the range of sectors that need to be actively engaged in anti-trafficking efforts, encouraging a "no wrong doors" approach to identifying

diverse points of contact in the community for survivors of trafficking to access services. This allows for individuals at high-risk for trafficking to receive preventive care. Public health recognizes the importance of collective efforts to address shared social problems and create networks of interventions through coordinated actions.[8],[9]

For example, a public health framework seeks to empower healthcare providers and social workers embedded in communities to provide a safe space for individuals to come forward about their experiences. The environment created within the healthcare system—bolstered by the Hippocratic Oath—can elicit different measures of trust than those found within a criminal justice or legal setting.[10] The National Conference of State Legislatures fully recognizes the importance of meeting the basic needs of trafficking victims and survivors, which include providing healthcare, (including immediate medical attention, sexual assault evaluations, substance abuse counseling, and other healthcare), emergency housing, and food and clothing.[11] These services are included in the proposed rule as criteria for determining that an individual has been or is likely to be a public charge, thereby strongly suggesting that implementation of the proposed rule would be counter-productive to ending human trafficking or mitigating its harmful effects on survivors.

It is clear from the research literature that victims of human trafficking are accessing services in the community to escape from violent and exploitative conditions. Studies of trafficked people reveal a wide range of encounters with healthcare professionals and clinics while being trafficked – between 28% and 87.8% of survivors have seen any type of healthcare professional or clinic.[12],[13],[14] The healthcare system provides opportunities for interaction and engagement with patients throughout the entire lifespan – from pregnancy, to childhood, through adulthood; from acute emergency care, to long-term, chronic care; from public health community outreach, to hospitalizations. All of these points of care are opportunities to prevent, intervene in, start the process of ending exploitation, and begin the healing process for trafficked patients.[15] The proposed rule will undermine efforts by victims of human trafficking to secure essential healthcare services that enable them to escape from or overcome abuse, violence, and trauma.

Furthermore, trafficking victims and other immigrants who live in a precarious state (regardless of whether they possess T-visa or U-visa status and would thus be exempted from application of the proposed rule) need access to a safe place to live, sustainable and supportive employment, and quality healthcare and education.[16] Accessing and receiving services like these should not preclude victims from being able to secure "green cards" or American citizenship in the future. The proposed rule further drives human trafficked and exploited persons further underground, limiting their ability to get out of harmful and dangerous situations. In fact, the proposed rule will aid traffickers who will use the rule to threaten victims into submission, further promoting the trafficking of persons in the U.S. The federal Administration for Children and Families acknowledges that victims may be blackmailed by traffickers, using the victims'

immigration status or their participation in an "illegal" industry and threatening to report them to law enforcement or immigration officials.[17]

Even though the proposed rule purportedly exempts holders of T-visas and U-visas, they would be affected by a related new immigration policy. The recent U.S. Citizenship and Immigration (USCIS) Policy Memorandum (PM-602-0050.1) dated June 28, 2018[18] announced that non-citizens who apply for a "benefit"–such as an extension or change of status, a green card, or citizenship—would be placed in deportation proceedings if that benefit is denied[19], means that human trafficking victims who are denied T-visa or U-visa status would be referred to immigration authorities for possible deportation. This additional directive poses a severe risk to victims from reporting their victimization and makes it much more difficult for law enforcement to investigate traffickers.[20] The combined effect of the new policy memorandum and the proposed public charge rule will be to discourage trafficking victims and survivors from either accessing essential services or seeking to improve their immigration status, while penalizing them if they do so.

3. The proposed rule has long-term implications for the health and safety of human trafficking victims and their children.

Whether intentional or not, the proposed rule **drives *eligible* immigrant families away from health coverage and healthcare providers**, including trafficked persons and their children. The proposed new policy creates a "chilling effect," where families avoid critical services out of fear and confusion, even when they and their children are eligible. In addition to discouraging victims from accessing critical services, the proposed rule worsens the harmful impacts of the abuse endured by trafficking victims, by keeping them trapped or undermining their ability to reunite with supportive family members if they escape the trafficking situation. Particularly when minimum wage work places families well below the poverty level, safety-net benefits help survivors afford the basics, such as food, housing, and healthcare, and rebuild their lives after violence. This includes survivors who do not utilize or are not eligible for T-visa or U-visa legal status, which could exempt them from the effects of being determined a "public charge" under the proposed rule. Access to economic supports and services are critical for the long-term recovery from the trauma that victims have experienced. Without sufficient resources, victims are either compelled back into an exploitative trafficking situation, or face destitution and homelessness. Survivors can thrive after being trafficked; however, to achieve successful community integration, trafficking survivors require unconditional access to immigration relief and human services, such as shelter, food, and medical care, as well as intensive support services carefully tailored to meet their needs.[21]

Some survivors of trafficking live in mixed-status households—where the immigration status of members of the household varies. Some trafficking survivors have children who are American citizens. Nationally, 26% of all children in the U.S. (almost 20 million children 0-18) have a parent who is an immigrant;[22] some of these parents are

trafficking survivors and many of the children are citizens. If the trafficked parent is unable to obtain services, those children are further placed in harm's way when they are denied access to preventive healthcare services, such as well-child checks, immunizations, and developmental screens. If the proposed rule is implemented, parents of children who seek healthcare like well-child visits and immunizations will be fearful of being flagged by DHS if a family member seeks legal permanent residency. The enormity of these consequences threatens to drive entire families away from healthcare even if some family members are citizens and fully eligible for services. This puts entire communities at risk when children are not vaccinated against preventable infectious diseases, such as influenza and measles.

4. **The use of Medicaid/CHIP and other public programs as an obstacle to establishing legal residency or citizenship is harmful to human trafficking survivors as many will be employed in jobs that do not have health insurance benefits.**

Use of Medicaid, CHIP, nutrition, and other programs should be irrelevant when considering a person's potential as an aspiring American. In fact, the growth of Medicaid, CHIP and other public programs in the past few years point more to the real underlying problem—that millions of families who work and live in poverty and need health insurance.

According to the Bureau of Labor Statistics, 27.4 million workers in the U.S. labor force (17.1%) are foreign born.[23] These immigrant workers were more likely than native-born workers to be employed in service-oriented and non-management jobs:

- service occupations (e.g., nutrition and beverage preparation, health assistants, maids and janitors, personal and home care),
- production (e.g., factory workers, meat processing),
- material moving (e.g., packing and moving, transportation/taxis, cleaning vehicles),
- natural resources (e.g., farmworkers and laborers),
- construction, maintenance.

Many of the jobs that are available to people when they first arrive in the U.S. are low-wage service industry jobs that lack health benefits. Immigrant workers earn less than U.S. born counterparts ($730/week versus $885/week for U.S. born workers).[24]

Human trafficking survivors may be employed by industries and small businesses that do not offer workers job-based health coverage. They may work in restaurants, domestic work, construction jobs, nail salons and small businesses. Having Medicaid/CHIP coverage provides security for survivors and family members to work, go to school, and contribute back to society. By offering both preventive services and treatment for injuries and illness, Medicaid enables individuals to stay in the work force and support themselves.

Supporting survivors and their families to stay healthy, work and go to school benefits everyone. Retrospectively counting use of healthcare and programs against people seeking permanent residency should be irrelevant to assessing their ability to contribute back to society and should not be held against aspiring Americans. Doing so is particularly cruel to those who have escaped violent, traumatic, abusive, and exploitative conditions.

5. The use of health insurance, nutrition, and housing programs to limit immigration is a radical departure from longstanding immigration policy and is unjust and inhumane.

Historically, certain eligible immigrants who are lawfully present have been permitted to enroll in Medicaid/CHIP and other public programs. This new proposed rule is a radical departure from longstanding U.S. immigration policy.

For example, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) authorized states to cover income-eligible pregnant women and children who are lawfully present in the U.S.[25] The proposed "public charge" rule departs from Congressional intent to preserve human life and reduces preventable events like infant mortality and low birth weight. The premise of CHIPRA is that families should stay healthy and out of the hospital, regardless of immigration status.

Furthermore, the proposed rule puts healthcare providers in the profound ethical dilemma of counseling patients on treatment options while knowing patients could face family separation or even deportation if they decide to use Medicaid or CHIP to obtain such services or get medicines. Already healthcare providers are beginning to field questions from patients and are having to explain the immigration risks of using healthcare services. This is in direct conflict with the Hippocratic oath that healthcare providers take to "do no harm" and the AMA Code of Medical Ethics: "Physicians regularly confront the effects of lack of access to adequate care and have a corresponding responsibility to contribute their expertise to societal decisions about what healthcare services should be included in a minimum package of care for all. Physicians should advocate for fair, informed decision making about basic healthcare."[26]

6. The proposed rule endangers the health of our communities and overall public health.

Implementing the proposed rule would have disastrous effects from a public health perspective, undermining access to basic health, nutrition, and other critical programs for immigrant survivors of human trafficking and their family members. To reiterate, some survivors of trafficking live in mixed-status households—where the immigration status of members of the household varies. Some trafficking survivors have children who are U.S. citizens. If the trafficked parent is unable to obtain services, those children are further placed in harm's way when they are denied access to preventive healthcare

services. It would make child poverty worse by discouraging enrollment in programs that address health, hunger and economic security, with profound consequences on families' well-being and long-term success. Research shows that policies that reduce coverage have negative health effects, particularly for low-income families and people with chronic health conditions.[27]

The Medicaid program, as with all forms of health insurance, helps provide families with financial peace of mind and protection from unexpected financial disasters. With health coverage, people are more willing to access preventive and primary care that they otherwise could not afford and are spared some of the anxiety and concern about unexpected medical bills.

Children who have coverage are more likely to get medical care for "common childhood conditions, such as sore throat, or for emergencies, such as a ruptured appendix."[28] Children with health coverage have a higher survival rates during emergencies than children who are uninsured[29]. Research studies show that Medicaid coverage is effective in reducing infant and teen mortality.[30]

People with coverage also report improved mental health, and reduced clinical depression compared to people who are uninsured.[31] Driving people away from using mental health services is a mistake, particularly for patients who are already dealing with exposure to violence, stresses of poverty and who are living in neighborhoods that are severely under-resourced. For such children, there are lifelong consequences of mental health issues that are not addressed.

Results of the fear created by the proposed rule would extend far beyond any individual who may be subject to the "public charge" test, harming entire communities as well as health centers and hospitals that serve those communities. Not only would the proposed rule deter immigrants and their families from enrolling in Medicaid, even when they are legally entitled to do so, it would also have the effect of weakening the healthcare delivery system in many communities with far reaching consequences.[32]

7. Emergency and hospital costs will increase as a result of the proposed rule.

The proposed rule will discourage human trafficking victims and survivors, as well as other immigrants, from accessing public programs, including preventive and primary care. If these immigrants do not enroll Medicaid and avoid seeking services from primary care providers, emergency department visits and hospitalizations will rise. Waiting until a medical condition is advanced and serious endangers people's lives, places emotional stress and financial risk on families, and drives up costs for everyone.

According to a recent analysis, "this public charge rule would have a dramatic impact not only on coverage, but also on access to healthcare and the overall stability of the healthcare system in thousands of communities across the nation."[33] This would occur

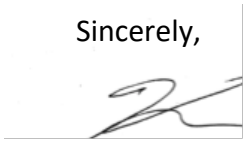
because safety net providers would incur a greater cost burden for the provision of uncompensated emergency and hospital care to uninsured individuals.[34]

HEAL Trafficking Urges DHS to Withdraw the Proposed "Public Charge" Rule

Human trafficking victims rely on services as points of access where they can find the support they need to escape violent and abusive situations. By denying access to housing, healthcare, nutritional assistance, and Medicaid, avenues for combatting human trafficking and helping survivors are foreclosed. Furthermore, the risks and vulnerabilities for immigrants to be trafficked are increased, and human trafficking overall will increase. Impeding immigrants' use of Medicaid, CHIP, nutrition, and other programs increases risks to victims and survivors of human trafficking, drives up overall healthcare and mental health costs, burdens hospital and emergency rooms, and endangers the health of communities and public health. Instead of a fear-based approach to immigration reform, a solution is needed that reflects fundamental American values of fairness, equal treatment, and freedom from discrimination.

HEAL Trafficking urges the administration to withdraw this proposed rule and focus on policies to achieve immigration reform that do not drive survivors of human trafficking away from needed services.

Sincerely,



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