

October 12, 2019

Submitted via www.regulations.gov

Megan Herndon
Deputy Director for Legal Affairs
Visa Services, Bureau of Consular Affairs
Department of State
600 19th St NW
Washington, DC 20006

RE: Interim Final Rule: Visas: Ineligibility Based on Public Charge Grounds RIN: 1400-AE87

Dear Ms. Herndon:

Thank you for the opportunity to comment on the Department of State's (DOS)'s interim final rule, "Visas: Ineligibility Based on Public Charge Grounds." The AIDS Foundation of Chicago (AFC) strongly opposes this rule as it departs from over a hundred years of law and policy, is not supported by available research, and will make immigrants and citizens in their families afraid to seek critical programs and services. **We urge the Department to withdraw the rule in its entirety and ensure that the long standing principles clarified in the 1999 field guidance and State Department guidance issued at that time remain in effect.**

Last year, AFC submitted the attached comments on a proposed public charge rule from the Department of Homeland Security (DHS). (See attached letter dated December 6, 2018 re. DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds). We understand that the DOS Interim Final Rulemaking is intended to align the Department's standards with those of DHS. Because the DOS rule is intended to mirror the DHS rule, our objections to the DHS rule are relevant and applicable. **We request that the Department read and consider the attached comments as part of the administrative record.**

DOS should not rely on the enjoined DHS regulation to justify its actions, when multiple courts have found that its interpretation is likely unlawful. Five federal courts have found that the DHS rule violates the Administrative Procedures Act and is contrary to law. The district courts in New York, Washington, and Maryland have issued nationwide preliminary injunctions against the DHS rule, while courts in California and Illinois issued geographically-limited injunctions against the rule. So long as the DHS rule is enjoined, the Department's principal justification for issuing the interim final rule fails. Moving forward with implementation would conflict with the Department's stated goal of alignment with DHS.

Withdrawing the interim final rule alone is insufficient. Any change in policy which differs from the May 1999 public charge Field guidance¹ will result in one policy being applied to applications processed by consular offices abroad and a different policy to applications processed in the U.S. The State Department's abrupt changes to longstanding standards for evaluating public charge in the January 2018 revisions to the Foreign Affairs Manual (FAM) radically redefined the criteria for admissibility to the United States. Whether or not the DHS rule remains enjoined, any departure of the FAM from the principles articulated in the 1999 guidance will cause chaos and confusion in an already complex legal immigration system and will cause further harm to immigrants and citizens in their families.

We urge the Department of State to withdraw this Interim Final Rule and the January 2018 FAM instructions. Reinstating longstanding public charge policy as articulated in the 1999 guidance will reduce confusion and support the well-being and long-term success of immigrants and their families.

Please do not hesitate to contact me at (312) 334-0921 or jpeller@aidschicago.org to provide further information.

A handwritten signature in black ink, appearing to read "John Peller". The signature is fluid and cursive, with the first name "John" and last name "Peller" clearly distinguishable.

John Peller
President/CEO
AIDS Foundation of Chicago

¹ Department of Justice, "64 Fed. Reg. 28689," U.S. Government Publishing Office, May 1999, <https://www.gpo.gov/fdsys/granule/FR-1999-05-26/99-13202>

December 6, 2018

Submitted via www.regulations.gov

Samantha Deshommès, 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

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

Dear Sir/Madam:

I am writing on behalf of AIDS Foundation of Chicago (AFC) in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. DHS must protect the health of all people living in the United States and has not explained why the proposed changes are needed. The proposed rule would cause major harm to immigrants and their families, service providers and communities. We urge that the rule be withdrawn in its entirety and that long-standing principles clarified in the 1999 field guidance remain in effect.

For more than 30 years, AFC has worked to transform the systems that contribute to HIV prevention, awareness and access to lifesaving care and services. AFC leads the largest coordinated HIV case management system in the country, ensuring over 5,000 clients receive medical and supportive services every year. Through the networks AFC has built and continues to fund and lead, thousands of people living with or vulnerable to HIV are supported along a continuum of care that includes prevention services, primary medical care, emergency support and basic needs, as well as engaging individuals and organizations in vital advocacy efforts. As a leader for effective HIV policies and a national expert on the impact of health care reform on people living with HIV, we are alarmed that the proposed rule will cause parents and children to forgo critical assistance.

In 2017, there were 39,842 people living with HIV in the state of Illinois², 23,835 of whom were residents of Chicago³. Like many areas around the country, Chicago has seen new HIV diagnoses decline significantly since the early 2000s.⁴ Illinois has made tremendous progress in the fight against HIV and with new and emerging medical advances, the ability to end the epidemic is within reach. Despite great strides, many communities continue to face ongoing challenges. DHS' proposed regulation would not only greatly impede further progress but likely reverse many of these gains. The rule would force people

² Illinois Department of Public Health, HIV/AIDS Surveillance Unit. Data as of May 2018.

³ Chicago Department of Public Health. Data as of October 2018.

⁴ Ibid

living with and vulnerable to HIV to choose between life-saving services or an adjustment of immigration status.

Under the proposed rule, applicants living with HIV and others with chronic health conditions would be required to purchase private, “non-subsidized medical insurance.” HIV/AIDS treatment, known as anti-retroviral therapy (ART), is prohibitively expensive in the United States.⁵ Many people with private insurance or certain employer-based insurance have no choice but to apply for government subsidies for the substantial portion of cost that their insurance plan does not cover.⁶ The proposed rule may actually incentivize U.S. citizens/permanent residents to terminate their subsidized health care in order to remain eligible to petition for their family members living abroad. This would jeopardize their own health and could result in new HIV transmissions in the community.

People living with HIV (PLWH) who are in medical care and successfully treated have improved quality of life, and their risk of transmitting HIV drops to near zero^{7,8,9}. Any barriers to care would severely hamper local, state and national goals to end the HIV epidemic. The proposed regulation has already made immigrants afraid to seek programs that support their basic needs. Reports are already emerging of individuals who are delaying or refusing treatment to ensure their eligibility to reunite their families.¹⁰ The proposal could prevent immigrants from accessing essential health care, healthy, nutritious food and secure housing.

The proposed regulations would discriminate against lawful immigrants living with HIV and is a signal of bias. By considering health status, the rule would unfairly deny PLWH the opportunity to adjust their immigration status. The proposed rule also falsely portrays those living with HIV as unable to be employed or independent. On the contrary: PLWH can, with early and continuous treatment, live very productive and long lives. An individual living with a chronic condition like HIV should not be automatically determined to be unemployable or lack self-sufficiency when the cost of life-saving medications – set by pharmaceutical companies – is simply unaffordable.

Access to support services and necessities for daily living improve the health outcomes of PLWH. According to the National HIV/AIDS Strategy: Updated to 2020¹¹, structural supports are critical to helping keep people in care. Many PLWH rely on benefits like SNAP to tolerate medicine, stay healthy and live productive lives. PLWH are less likely to be virally suppressed if they do not have access to food.

⁵ <https://betablog.org/hiv-drugs-price/>

⁶ US National Institute of Health <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/459/cost-considerations-and-antiretroviral-therapy>

⁷ Rodger AJ, Cambiano V, Bruun T, et al. Sexual activity without condoms and risk of HIV transmission in serodifferent couples when the HIV-positive partner is using suppressive antiretroviral therapy. *JAMA* 2016;316(2):171-81.

⁸ Bavinton BR, Pinto AN, Phanuphak N, et al. Viral suppression and HIV transmission in serodiscordant male couples: an international, prospective, observational, cohort study. *Lancet* 2018 Jul 16.

⁹ Rodger AJ. Risk of HIV transmission through condomless sex in MSM couples with suppressive ART: The PARTNER2 Study extended results in gay men. Presented at the 22nd International AIDS Conference; July 23-27, 2018; Amsterdam, the Netherlands

¹⁰ The Body <http://www.thebody.com/content/81028/public-charge-rule-devastating-hiv-immigrants.html?ic=tbhtrump>

¹¹ Office of National AIDS Policy, National HIV/AIDS Strategy for the United States: Updated to 2020, July 2015 [Internet]. Available from <https://aids.gov/federal-resources/national-hiv-aids-strategy/nhas-update.pdf> Accessed 11/2/18.

Nutritious food is necessary so PLWH can maintain healthy weight, better absorb medication and reduce side effects.¹² Having adequate access to food has been shown to decrease medical costs and increased adherence to ARVs¹³.

Health care coverage allows individuals living with HIV to receive the care and treatment they need to stay healthy and to suppress the virus, reducing treatment costs over time. With Medicaid expansion in Illinois, nearly everyone living with or vulnerable to HIV has access to affordable and comprehensive health insurance. This access to health insurance has enabled Illinois to focus on proven medical strategies that provide the greatest potential for reducing HIV transmission.

The proposed regulation sends a message that individuals living with HIV and other chronic conditions are unwanted and perpetuates negative attitudes toward those living the condition. Research clearly indicates that HIV stigma has a negative impact on the health and well-being of PLWH¹⁴. Additionally, stigma negatively impacts HIV testing behaviors¹⁵. Estimates suggest that 15% of HIV-positive individuals living in the U.S. are unaware of their HIV status¹⁶, and this regulation would greatly hinder progress in this area.

This regulation would have economic consequences as well. Sicker clients, who may go untreated or undiagnosed, would cost taxpayers and the health care system more. Additionally, stable housing is critical for the health and well-being of PLWH. The chilling effect of the regulation would deter PLWH from seeking housing assistance, compromising their health.

People with HIV, either symptomatic or asymptomatic, are protected by the Americans with Disabilities Act (ADA).¹⁷ Federal law prohibits disability discrimination by its executive agencies, requiring that they provide reasonable accommodation to disabled individuals so they cannot be denied meaningful access to agencies' services and benefits—including immigration benefits—based on their disabilities.¹⁸ The proposed rule would use an HIV diagnosis to exclude both applicants and applicants seeking to unite with disabled family members.

For these reasons, the Department should immediately withdraw its current proposal and dedicate its efforts to advancing policies that strengthen — rather than undermine — the ability of immigrants to support themselves and their families. If we want our communities to thrive, everyone in those

¹² Katona P, Katona-Apte J. The interaction between nutrition and infection. *Clin Infect Dis*. 2008 May 15;46(10):1582–8.

¹³ Palar, K., Napoles, T., Hufstedler, L. L., Seligman, H., Hecht, F. M., Madsen, K., Ryle, M., Pitchford, S., Frongillo, E. A., Weiser, S. D. (2017). Comprehensive and Medically Appropriate Food Support Is Associated with Improved HIV and Diabetes Health. *Journal of urban health: bulletin of the New York Academy of Medicine*, 94(1), 87-99.

¹⁴ Logie C, Gadalla TM. Meta-analysis of health and demographic correlates of stigma towards people living with HIV. *AIDS Care*. 2009;21(6):742–53.)

¹⁵ Golub, S. A., & Gamarel, K. E. (2013). The impact of anticipated HIV stigma on delays in HIV testing behaviors: findings from a community-based sample of men who have sex with men and transgender women in New York City. *AIDS patient care and STDs*, 27(11), 621-7.

¹⁶ Centers for Disease Control and Prevention. Estimated HIV incidence and prevalence in the United States, 2010–2015. HIV Surveillance Supplemental Report 2018;23(No. 1). <http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>. Published March 2018. Accessed 11/1/18

¹⁷ *Bragdon v. Abbott*, 524 U.S. 624 (1998)

¹⁸ 29 U.S.C. §794(a), Rehabilitation Act of 1973, section 504

communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me at (312) 334-0921 or jpeller@aidschicago.org to provide further information.

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John Peller
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