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**PUBLIC CHARGE GROUNDS FOR INADMISSIBILITY:
IMPACT ON NONCITIZEN HEALTH INSURANCE COVERAGE**

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ABSTRACT

The public charge rule is an ongoing barrier to health insurance for lawfully present immigrants and ought to be removed. Healthcare coverage for immigrants is a critical aspect of the country's health care scheme. Recent changes to the United States' immigration policy are contributing to growing fears among immigrant families about participating in Medicaid and CHIP. The most effective solution is to permanently alter the Immigration and Nationality Act. Congress should expressly exclude health insurance from being considered in the public charge grounds for inadmissibility.

INTRODUCTION

The public charge grounds for inadmissibility is a federal law that allows immigration officers to deny entry based on the possibility of becoming a public charge. Under this policy, when a noncitizen applies for a green card, or seeks to enter the United States, they must show that they are not likely to become a public charge.¹ "Public charge" means someone likely to become dependent on government assistance under section 212(1)(4) of the Immigration and Nationality Act.² Although there are statutory considerations, the meaning of "public charge" is left undefined.³ The statute lays out factors to be taken into account in determining whether an alien is inadmissible and directs the consular officer or the Attorney General to consider, at a minimum, an alien's age, health, family status, assets, resources, financial status, and education and skills.⁴ Agencies have the power to shape the scope of the public charge determination.⁵ Since its passage, the public charge rule has been inconsistently interpreted and has served as a significant impediment to health care benefits and health insurance coverage for many lawful immigrants.⁶

Until 2019, the public charge determination had been limited to prior use of cash benefits.⁷ The Trump administration, however, expanded the interpretation of the public charge rule to include non-emergency Medicaid.⁸ This

¹ Joseph Daval, *The Problem with Public Charge*, 130 YALE L.J. 998, 1003 (2021).

² Ann Morse & Carlee Goldberg, *Immigration and Public Charge*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 11, 2021), <https://www.ncsl.org/research/immigration/immigration-and-public-charge-dhs-proposes-new-definition.aspx>.

³ Anna Shifrin Faber, *A Vessel for Discrimination: The Public Charge Standard of Inadmissibility and Deportation*, 108 GEO. L.J. 1363, 1364 (2020).

⁴ 8 U.S.C. § 1182(a)(4)(B) (2013).

⁵ See also Faber, *supra* note 3 at 1366–67 (acknowledging that federal agencies publish regulation and guidance in order to supplement statutory provisions).

⁶ See Medha D. Makhlof, *The Public Charge Rule as Public Health Policy*, 16 IND. HEALTH L. REV. 177, 190 (2019).

⁷ Faber, *supra* note 3 at 1368–69.

⁸ *Id.*

change to public charge policy allows federal officials to consider immigrants' use of certain non-cash programs, including Medicaid, to determine whether to provide certain individuals a green card or entry into the United States.⁹ The 2019 public charge interpretation has resulted in declines in health insurance coverage, stoking fear among immigrant families about participating in Medicaid, Children's Health Insurance Program ("CHIP")¹⁰ and the Affordable Care Act ("ACA") health insurance plans. President Biden has since suspended the policy, but the past adoption has had lasting effects about participation in federal health insurance programs.¹¹ Coverage declines have critical implications for the health and well-being of families, the health care system, and public health for the country as a whole.¹²

The intersection of immigration law and public benefits is incredibly complex. Confusion about which immigrant statuses qualify for which benefits is a frequent source of error at state welfare agencies.¹³ Further, noncitizens themselves are often unaware of whether they are eligible for various benefits, and they are unsure if enrolling in public benefits could have negative consequences for future immigration applications.¹⁴ Biden's current suspension does not preclude a future return to the 2019 policy.¹⁵

Including health insurance coverage within the public charge rule also made immigrants hesitant to access other health care insurance options even beyond Medicaid, such as purchasing insurance through the ACA marketplace. When the 2019 rule was promulgated, the Department of Homeland Security itself acknowledged the possibility that the Trump change could chill immigrant enrollment in public benefits, which is especially problematic because noncitizens are significantly more likely than citizens to lack health insurance.¹⁶ Lawfully present noncitizens are eligible to get health coverage through Affordable Care Act tax credits if they meet income guidelines or apply for Medicaid after a 5-year waiting period.¹⁷ However, Medicaid is not a viable option if accepting coverage may hurt future lawful immigration

⁹ *Health Coverage of Immigrants*, KAISER FAM. FOUND. (July 15, 2021), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Makhlof, *supra* note 6 at 195, 209.

¹³ *Id.* at 194.

¹⁴ *Id.*

¹⁵ See Camilo Montoya-Galvez, *Biden Administration Stops Enforcing Trump-era "Public Charge" Green Card Restrictions Following Court Order*, CBS NEWS (Mar. 10, 2021), <https://www.cbsnews.com/news/immigration-public-charge-rule-enforcement-stopped-by-biden-administration/>.

¹⁶ Makhlof, *supra* note 6 at 200; *Coverage of Immigrants*, *supra* note 9.

¹⁷ *Coverage for Lawfully Present Immigrants*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/> (last visited Sept. 19, 2021).

status. Further, the ACA is more expensive than Medicaid for many enrollees.¹⁸ Some ACA-eligible immigrants fear that even ACA coverage might trigger the public charge rule despite the lack of any mention of ACA participation in the 2019 rule.¹⁹

Healthcare coverage for immigrants is a critical aspect of the country's health care scheme, which underscores the importance of addressing this issue. Health insurance is important for enabling families to access necessary care, protecting families from unaffordable medical care costs, and promoting the healthy growth and development of children.²⁰ People without insurance coverage have worse access to care than people who are insured, and uninsured people are less likely than those with insurance to receive preventive care and services for major health conditions and chronic diseases.²¹ Healthcare is good for the economy because the country does better when we have healthy, working, lawful immigrants.²² Good health is an important contributor to working, paying taxes, and contributing to the economy.²³

The most effective solution is to change the Immigration and Nationality Act. Congress ought to expressly exclude health insurance from being considered in the public charge grounds for inadmissibility. Under this revised statute, the public charge grounds for inadmissibility should not be interpreted to apply to public, private, or government-subsidized health insurance which includes but is not limited to Medicaid, Medicare, and Affordable Care Act tax credits and subsidies. (including but not limited to Medicaid, Medicare, and Affordable Care Act tax credits and subsidies). A statutory change is the only way to prevent future administrations from adopting a Trump-like interpretation.

Section I of this article provides background information necessary to understanding the public charge rule, the statutory text, the lack of health insurance among lawfully present noncitizens, and how the public charge rule impacts health insurance coverage. Section II addresses the rationale behind proposing an alteration of the public charge statute to exclude health

¹⁸ Hannah Katch et al., *Frequently Asked Questions About Medicaid*, CTR. ON BUDGET AND POL'Y PRIORITIES (Nov. 22, 2019), <https://www.cbpp.org/research/health/frequently-asked-questions-about-medicaid>.

¹⁹ See *Health Coverage of Immigrants*, *supra* note 9.

²⁰ See Jennifer Tolbert et al., *Key Facts about the Uninsured Population*, KAISER FAM. FOUND. (Nov. 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

²¹ *Id.*

²² See Josh Bivens, *Fundamental Health Reform Like 'Medicaid for All' Would Help the Labor Market*, ECON. POL'Y INST. (Mar. 5, 2020), <https://www.epi.org/publication/medicare-for-all-would-help-the-labor-market/>.

²³ See Scott L. Greer, *Health and Taxes: Why People Around the World Are Healthier Than Americans*, U. MICH. SCHOOL OF PUB. HEALTH (Apr. 10, 2019), <https://sph.umich.edu/pursuit/2019posts/health-and-taxes040919.html>.

insurance. It also explains how the proposal would work, and why it is the most effective solution to the problem. Section III revisits the problems caused by the public charge rule and presents the most effective and expedient solution: carving out health insurance from the public charge rule.

I. FOUNDATIONAL INFORMATION

A. *The Public Charge Grounds for Inadmissibility*

i. *Public Charge Rule in the Immigration and Nationality Act (“INA”)*

Enacted in 1952, the Immigration and Nationality Act lays out the public charge grounds for inadmissibility.²⁴ Individuals can be denied admission or green cards based on a finding that they are likely at any time to become a public charge.²⁵ The Immigration and Nationality Act states that “[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or 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.”²⁶ Agency officers are supposed to consider the “totality of the circumstances” to decide whether a person is likely to become a public charge in the future.²⁷ They consider, at a minimum, the applicant’s age, health, family status, assets, resources, financial status, and education and skills.²⁸ Noncitizens are subject to a public charge determination three separate times: when they apply for a visa to travel to the United States, when they arrive at a port of entry, and when they apply for lawful permanent resident status.²⁹

ii. *Inconsistent Interpretations*

“Public charge” is a vague and undefined term but has retained a common thread; a theme has developed over a century of application that “public charge” implies an individual is primarily or wholly dependent on the government, often due to an inability to work and support oneself.³⁰ The historic interpretation leads to a clarifying question – “if an alien has received any public benefits, does that alien then become inadmissible as likely to become

²⁴ See *Immigration and Nationality Act*, U.S. CITIZEN AND IMMIGR. SERVS., <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>.

²⁵ Jeanne Batalova et al., *Millions Will Feel Chilling Effects of U.S. Public-Charge Rule That Is Also Likely to Reshape Legal Immigration*, MIGRATION POL’Y INST. (Aug. 2019), <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>.

²⁶ 8 U.S.C.S. § 1182 (a)(4)(A).

²⁷ Joseph Daval, *The Problem with Public Charge*, 130 YALE L.J. 998, 1003 (2021).

²⁸ *Id.* at 1017–8.

²⁹ Makhlof, *supra* note 6 at 177.

³⁰ Faber, *supra* note 3 at 1364.

a public charge?”³¹ Congress has not answered that question, allowing federal agencies under different administrations to posit their own answer.

Before 1999, there was no specific policy providing a clear and consistent interpretation of the public charge rule, and there has never been statutory clarification about whether Medicaid will or will not be considered when determining if someone is a public charge. This open question inevitably resulted in inconsistent interpretations over time, leading to confusion, uncertainty, and high rates of noncitizens who are eligible and qualified for health insurance but do not have coverage.

However, in 1996, President Bill Clinton signed The Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) into law.³² Section 400 of PRWORA covers welfare and immigration and states that self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.³³ PRWORA had the effect of restricting the eligibility of noncitizens to receive aid under federal assistance programs.³⁴ Legal permanent residents (“LPRs”) who were residents of the United States as of August 22, 1996, were barred from receiving food stamps (now known as SNAP benefits) and Supplemental Security Income (“SSI”) benefits.³⁵ LPRs entering after August 22, 1996, were not eligible for food stamps or SSI, but they could apply for Medicaid and Temporary Assistance for Needy Families (“TANF”) benefits five years after entering the country legally.³⁶

These restrictions aimed to both reduce federal spending on public benefit programs and simultaneously deter noncitizens from coming to the United States to access public benefits.³⁷ This post-PRWORA regulatory emphasis on “public charge” created immediate confusion among noncitizens about whether any form of public assistance for healthcare might make them a public charge and therefore inadmissible.³⁸ Non-citizens who were qualified and eligible for Medicaid, or alternative state-funded health programs, disenrolled from the programs.³⁹ Government experts began to fear that the public

³¹ *Id.* at 1367.

³² Mercedes Varasteh Dordeski & Kelly N. Steffens, *Immigrants and Healthcare: A Voice for Coverage*, 23 HEALTH L. 35, 38 (2010).

³³ *Id.*

³⁴ *Id.*

³⁵ Amanda Levinson, *Immigrants and Welfare Use*, MIGRATION POL’Y INST. (Aug. 1, 2002), <https://www.migrationpolicy.org/article/immigrants-and-welfare-use>.

³⁶ *Id.*

³⁷ Makhlof, *supra* note 6 at 187.

³⁸ Polly L. Price, *Immigration Policy and Public Health*, 16 IND. HEALTH L. REV. 235, 243 (2019).

³⁹ *Id.*

charge interpretation would have a negative impact on public health.⁴⁰ “It was an alarming situation, all due to the uncertainty of whether acceptance of government-funded health insurance, reduced-fee or free healthcare could prevent legal immigrants from obtaining citizenship, or even lead to deportation.”⁴¹ Without clarity, obtaining public assistance became a frightening prospect.

The 1996 restriction on immigrants’ ability to apply for federal public benefits required the Immigration and Nationality Service to clarify how the use of public benefits would impact inadmissibility and deportation under the public charge rule.⁴² This fear and uncertainty promoted the need for a consistent and clarifying interpretation and led to the promulgation of the 1999 Field Guidance.⁴³

iii. 1999 Field Guidance

The Immigration and Naturalization Service (“INS”), the agency that preceded the United States Citizenship and Immigration Services (“USCIS”), issued the 1999 Field Guidance during the Clinton Administration.⁴⁴ The guidance announced that a person might be considered “likely to become a public charge” based on their receipt of public benefits only for income maintenance, which are programs that serve individuals who earn little-to-no income, usually because of age or disability.⁴⁵ These income maintenance benefits were considered “cash benefits” and would be counted against a noncitizen, while “non-cash” or supplemental benefits would not be counted against a noncitizen.⁴⁶ Medicaid is a non-cash benefit and therefore was not counted against the noncitizens for a public charge determination.⁴⁷ Prior to this field guidance, there had been no uniform federal policy identifying which public benefits would or would not be considered in the public charge determination.⁴⁸ The field guidance also defined a public charge as an alien who has or is likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.⁴⁹

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Makhlouf, *supra* note 6 at 188.

⁴³ *Id.*

⁴⁴ Faber, *supra* note 3 at 1367.

⁴⁵ *Id.* at 1367–68.

⁴⁶ Daval, *supra* note 27 at 1006.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Makhlouf, *supra* note 6 at 188.

Immigration officers began to consider the use of public benefits as a factor in the public charge determination, but only if an applicant had received Supplemental Security Income, cash assistance from TANF, or state or local cash assistance programs for income maintenance.⁵⁰ INS instituted this policy after consulting with the Social Security Administration, the Department of Health and Human Services, and the Department of Agriculture, concluding that "non-cash benefits generally provide supplementary support in the form of vouchers or direct services to support nutrition, health, and living condition needs."⁵¹ The determination of what counted as a public benefit, and therefore counted against applicants, didn't explicitly exclude Medicaid by name, but de facto excluded it because Medicaid is a non-cash program.

iv. Trump Administration's Interpretation

On October 10, 2018, the Department of Homeland Security released a Notice of Proposed Rulemaking that altered the public charge rule as it had been understood since the 1999 field guidance.⁵² The proposed rule expanded the application of public charge inadmissibility in several ways: it now considered an applicant's enrollment in previously-excluded public benefit programs (notably non-emergency Medicaid) and identified certain characteristics as "heavily weighed" negative factors in the test.⁵³ An analysis of the impact of the Trump administration's rule found that "ninety-four percent of noncitizens who entered the United States without lawful permanent resident status had at least one characteristic that would be weighed negatively under the proposed rule."⁵⁴ The Trump administration rule altered the longstanding definitions of both public charge and public benefit – the new definition of public charge would move the definition from meaning primarily dependent on the government to now meaning any alien who receives one or more public benefits and expanded the types of public benefits that would be considered in determining if someone is a public charge.⁵⁵

Under the Trump rule, past or current receipt of public assistance of any type by a visa applicant or a family member in a visa applicant's household could be considered when determining whether an applicant was likely to become a public charge.⁵⁶ The new rule's language made it possible for an immigration officer to deny entry to an applicant if an applicant had family

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 177.

⁵³ *Id.*

⁵⁴ *Id.* at 178.

⁵⁵ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51, 114 (Oct. 10, 2018).

⁵⁶ Jocelyn Cortez, *Public Charge: New Rules to Enforce an Old Immigration Hurdle*, 27 NEV. LAW. 12, 12–13 (2019).

members who relied on public benefits such as Medicaid, even if the family members in question were U.S. citizens.⁵⁷ Immigrant visa applications that were denied due to the public charge rule at consular posts quadrupled by the end of the 2018 fiscal year, demonstrating the impact of the public charge rule.⁵⁸

The Trump rule also profoundly impacted enrollment in government-affiliated health insurance programs. An inherent problem with the Trump administration's interpretation of the public charge rule is that it leaves immigrants with a sense of uncertainty and fear that directly and negatively impacts their decisions about whether to obtain government health insurance coverage. At the time of the Trump administration's rule, commentators acknowledged this chilling effect, explaining that treating the past use of public health programs as a heavily weighted negative factor, and defining someone who uses health benefits as a public charge, meant that the regulations were expected to deter many immigrants, and citizens in mixed-status families, from accessing crucial health benefits to which they are legally entitled.⁵⁹ The adverse impact on public health stemmed from the climate of fear surrounding the consequences of accessing health insurance.

The Trump administration's interpretation of the public charge rule created fears among immigrant families about participating in Medicaid and CHIP.⁶⁰ The American Public Health Association noted this very issue in its public comment submitted in response to the proposed rule, writing that the fear generated by this rule would put families in impossible situations where they would be forced to choose between keeping their families together or enrolling in programs to keep their families healthy.⁶¹ When the rule went into effect, families suddenly faced the quandary of whether accessing Medicaid would lead to negative immigration consequences.

President Trump's public charge rule was scheduled to go into effect on October 15, 2019, but twenty-one states filed cases against the Trump administration, alleging violations of the Administrative Procedure Act ("APA").⁶² These efforts were initially successful at delaying implementation while the

⁵⁷ *Id.* at 13.

⁵⁸ *Id.*

⁵⁹ See *Health Coverage of Immigrants*, *supra* note 9 (stating that mixed-status families are defined as families where at least one member is an unlawfully present noncitizen and at least one member is lawfully present or a U.S. citizen). Mixed-status families are families where at least one member is an unlawfully present noncitizen and at least one member is lawfully present or a U.S. citizen.

⁶⁰ Wendy E. Parmet, *The Worst of Health: Law and Policy at the Intersection of Health & Immigration*, 16 *IND. HEALTH L. REV.* 211, 229 (2019).

⁶¹ Louise Norris, *How Immigrants Can Obtain Health Coverage*, HEALTHINSURANCE.ORG (Jul. 1, 2021), <https://www.healthinsurance.org/obamacare/how-immigrants-are-getting-health-coverage/>.

⁶² Makhlof, *supra* note 6 at 200.

cases were pending, with federal judges in California, Maryland, New York, and Illinois issued injunctions against the rule's enforcement.⁶³ However, on February 21, 2020, the Supreme Court lifted the injunction in Illinois (the last injunction in place), which allowed for the rule's enforcement nationwide.⁶⁴ As the Supreme Court only ruled on the injunctions and not the merits of the case, the lawsuits remained active, though.⁶⁵ There were also public health-related lawsuits brought by attorneys general.⁶⁶ On July 29, 2020, the United States District Court of New York enjoined implementation of the new public charge rule because of the national health emergency caused by COVID-19.⁶⁷ The Northern District of Illinois struck down the Trump administration's public charge rule on November 2, 2020, for violating the APA, and the next day the Seventh Circuit Court of Appeals stayed that decision pending its appeal.⁶⁸

v. Return to Narrower Interpretation Under Biden

On March 9, 2021, the Department of Homeland Security, now under the Biden administration, announced that they would no longer defend the Trump administration's public charge rule in court.⁶⁹ That same day, Biden's Justice Department announced its alignment with states who were challenging the public charge rule.⁷⁰ The Supreme Court then dismissed the pending appeal from Illinois for mootness.⁷¹ Currently, the Department of Homeland Security and the United States Citizenship and Immigration Services have returned to using the 1999 Field Guidance.⁷²

Although President Biden is not enforcing the Trump administration's public charge rule, it remains a permissible interpretation of the public charge grounds for inadmissibility for future administrations.⁷³ As a result, the

⁶³ Morse & Goldberg, *supra* note 2; *Public Charge Litigation*, CTR. FOR PUB. REPRESENTATION (Mar. 9, 2021), <https://medicaid.publicrep.org/feature/public-charge-litigation/>.

⁶⁴ Morse & Goldberg, *supra* note 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See, e.g., Press Release, Xavier Becerra, Attorney General, *Attorney General Becerra Secures Appellate Court Victory in Lawsuit Challenging Trump Administration Public Charge Rule*, CAL. DEP'T OF JUST. (Dec. 2, 2020), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-secures-appellate-court-victory-lawsuit-challenging>.

⁶⁸ Morse & Goldberg, *supra* note 2.

⁶⁹ *Id.*

⁷⁰ *DHS Secretary Statement on the 2019 Public Charge Rule*, DEP'T OF HOMELAND SEC. (Mar. 9, 2021), <https://www.dhs.gov/news/2021/03/09/dhs-secretary-statement-2019-public-charge-rule>.

⁷¹ Pete Williams, *Biden Administration Ditches Trump Plan to Limit Immigration for those Financially Dependent on Government*, NBC NEWS (Mar. 9, 2021), <https://www.nbcnews.com/politics/supreme-court/biden-administration-ditches-trump-plan-limit-immigration-financially-dependent-n1260239>.

⁷² Morse & Goldberg, *supra* note 2.

⁷³ *Public Charge*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

chilling effect from the Trump administration's rule is bound to be long-lasting, due to a legitimate fear that a future administration could return to the Trump era rule and find that past usage of Medicaid should be included in the public charge determination.

B. Health Insurance Options for Noncitizens

Lawfully present noncitizens have a number of healthcare options, though some are impractical for many immigrants and their families. They can participate in Medicaid if they are income-eligible, can purchase private health insurance through the ACA marketplace, or can access health insurance through employer-based coverage. Each health-insurance option has important limitations, and none entirely addresses the problem. Medicaid has the added impediment of triggering fear because of the public charge grounds for inadmissibility, private ACA insurance has critical barriers, and employer-based insurance doesn't reach many noncitizens.

i. Medicaid

In order to get Medicaid and CHIP coverage, many qualified noncitizens (such as many lawful permanent residents or green card holders) must wait five years before they can apply.⁷⁴ CHIP provides low-cost health insurance for children in families that earn too much money to qualify for Medicaid but have trouble purchasing private insurance.⁷⁵ Every state offers CHIP coverage, and applicants can apply any time of the year, with coverage beginning immediately.⁷⁶ There is a waiting period for eligibility, but once eligible for CHIP, applicants can then apply at any time.⁷⁷ There are exceptions to this waiting period for refugees and asylees, but the general rule is that qualified noncitizens must wait five years before applying for Medicaid or CHIP.⁷⁸ However, even those who have waited the five years or are part of an exception group often remain uninsured.⁷⁹

When the Trump administration rule was adopted, policy experts warned that the new public charge rule would cause 2.1 to 4.9 million enrollees to

⁷⁴ Sophia Tareen & Jessica Gresko, *Biden Administration Won't Defend Trump Immigration Rule*, ASSOCIATED PRESS (Mar. 9, 2021), <https://apnews.com/article/supreme-court-trump-immigration-casedb42f1db13f8f4f82befdbf880656a6e>.

⁷⁵ *Coverage for Lawfully Present Immigrants*, *supra* note 17.

⁷⁶ *Children's Health Insurance Program (CHIP)*, HEALTHCARE.GOV, <https://www.healthcare.gov/glossary/childrens-health-insurance-program-chip/> (last visited Mar. 15, 2022).

⁷⁷ *Id.*

⁷⁸ *5 Questions About the Health Insurance Marketplace, Answered!* (Mar. 3, 2021), BENEFITS.GOV, <https://www.benefits.gov/news/article/419>.

⁷⁹ *Coverage for Lawfully Present Immigrants*, *supra* note 17.

leave Medicaid and CHIP.⁸⁰ The California Health Care Foundation estimated that between 700,000 and 1.7 million children in need of medical attention would disenroll from Medicaid or CHIP.⁸¹ Even many immigrants and citizens who are *not* subject to the public charge determination were expected to disenroll from Medicaid and CHIP, “as past experience with laws limiting coverage for immigrants suggest that the chill effect can extend far beyond those who are directly affected.”⁸² This could potentially be attributable to those in mixed-status households who did not want to jeopardize household members’ public charge determination.

ii. Affordable Care Act

Noncitizens who are lawfully present in the United States are eligible to participate in the Affordable Care Act exchanges (the health insurance marketplace) and receive the premium tax credit and cost-sharing subsidies available to people who purchase insurance through an exchange.⁸³ For purposes of the ACA, “lawfully present” has been defined via regulations and includes LPRs, asylees, refugees, and certain other classifications under the Immigration and Nationality Act.⁸⁴ In order to purchase insurance through an exchange, a noncitizen is expected to be lawfully present for the entire period of health coverage, meaning that when noncitizens apply, they will be expected to prove immigration status.⁸⁵ The Affordable Care Act helps purchasers pay for health insurance by providing two types of tax credits based on household income.⁸⁶ The ACA provides premium tax credits that help reduce the cost of health insurance premiums and cost-sharing reductions that limit the cost of copayments, coinsurance, and deductibles.⁸⁷ Lawfully present immigrants can purchase coverage through the ACA Marketplaces and can receive subsidies for this coverage.⁸⁸ These subsidies are available to people with incomes from 100% to 400% of the federal poverty line who are not eligible for other coverage.⁸⁹ In addition, lawfully present immigrants with incomes below 100% of the federal poverty line may receive subsidies if they

⁸⁰ Robin Rudowitz et al., *A Closer Look at the Remaining Uninsured Population Eligible for Medicaid and CHIP* (Feb. 22, 2016), KAISER FAM. FOUND., <https://www.kff.org/uninsured/issue-brief/a-closer-look-at-the-remaining-uninsured-population-eligible-for-medicare-and-chip/>.

⁸¹ Parmet, *supra* note 60 at 229.

⁸² *Id.*

⁸³ Wendy E. Parmet, *The Worst of Health: Law and Policy at the Intersection of Health & Immigration*, 16 IND. HEALTH L. REV. 211, 229 (2019).

⁸⁴ ALISON SISKIN & ERIKA K. LUNDER, CONG. RSCH. SERV., R43561, TREATMENT OF NONCITIZENS UNDER THE ACA (2016).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Fatma E. Marouf, *Alienage Classifications and the Denial of Health Care to Dreamers*, 93 WASH. UNIV. L. REV. 1271, 1278 (2016).

⁸⁸ *Id.* at 1278–79.

⁸⁹ *Health Coverage of Immigrants, supra* note 9.

are ineligible for Medicaid due to immigration status.⁹⁰

To be eligible for premium tax credits and cost-sharing subsidies, which are critical in helping defray the cost of the insurance, the applicant must file a tax return.⁹¹ The system checks the Social Security Administration (“SSA”) records and if SSA can confirm that the person is a citizen, then the check stops at that point.⁹² However, if the applicant is a noncitizen in the SSA records, the system checks against Department of Homeland Security records to ensure that the noncitizen is lawfully present.⁹³ The law sets out specific rules for calculating the credits and subsidies for mixed-status families: any family members who are not lawfully present don’t factor into the calculation of the credits and subsidies.⁹⁴

There are numerous barriers to enrollment under the Affordable Care Act, including incorrectly assigned ineligibility. Many lawfully present individuals who are not eligible for Medicaid based on their immigration status are incorrectly found ineligible for premium tax credits even though they are eligible.⁹⁵ The Department of Health and Human Services knows of this issue and continues to try to find a solution to this problem.⁹⁶ Another barrier stems from the application process itself. If an applicant doesn’t speak or read English well, the forms and notices could be too difficult to read or too burdensome to get translated.⁹⁷

Medicaid provides more comprehensive benefits than private ACA insurance and does so at a significantly lower out-of-pocket cost to the enrollees,⁹⁸ meaning ACA marketplace insurance can often be an unaffordable option, too. Even under the ACA, many people who are eligible for tax credits cite the high cost of insurance as the main reason they don’t have health insurance coverage.⁹⁹ In 2019, nearly three-quarters of adults without insurance said that they were uninsured because the price of obtaining health insurance was not feasible.¹⁰⁰ Further, studies comparing Medicaid with marketplace

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² SISKIN & LUNDER, *supra* note 84.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ GEO. UNIV. HEALTH POL’Y INST. ET AL., ASSISTING FAMILIES THAT INCLUDE IMMIGRANTS 3 (n.d.).

⁹⁷ *Id.*

⁹⁸ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, WHAT IMMIGRANTS AND REFUGEES NEED TO KNOW ABOUT THE AFFORDABLE CARE ACT (ACA) 5 (n.d.).

⁹⁹ HANNAH KATCH ET AL., CTR. ON BUDGET AND POL’Y PRIORITIES, FREQUENTLY ASKED QUESTIONS ABOUT MEDICAID 1 (2019), <https://www.cbpp.org/research/health/frequently-asked-questions-about-medicaid>.

¹⁰⁰ Tolbert, *supra* note 20.

insurance have shown that Medicaid coverage is substantially less costly to both Medicaid beneficiaries and society at large.¹⁰¹

Even under the Trump administration's expansive public charge rule, the ACA should not be implicated. However, lawfully present noncitizens eligible for ACA credits could worry that accessing those benefits might trigger the public charge rule. Further, family members of those lawful immigrants also worry that if they obtain insurance through the ACA, they might trigger the rule for their family members. This barrier to ACA participation for those eligible is the fear over "whether enrolling in government-assisted health coverage will cause immigration authorities to deny a family member's green card on 'public charge' grounds."¹⁰² The fact that Medicaid is an entirely separate health insurance scheme and is not related to purchasing insurance through the Affordable Care Act marketplace isn't always clear and understood. The ACA was never relevant to the public charge rule; while it is a public benefit, it is in the form of a tax credit to assist in purchasing private health insurance option. Tax credits available to all have never been considered under the public charge rule, even under the Trump policy.¹⁰³ However, the idea of receiving a public benefit of any kind can dissuade noncitizens from obtaining ACA health insurance, especially since the application asks about immigration status.

The fear that the ACA may trigger the public charge rule is partially attributable to insufficient information-sharing with eligible individuals due to a lack of funding and outreach. The Trump administration cut over \$26 million in funding from the Affordable Care Act outreach program, which helps people sign up for health insurance and explains what the ACA is and what it covers.¹⁰⁴ The Affordable Care Act is meant to provide a pathway to coverage for lawfully present immigrants when their immigration status does not allow them to qualify for Medicaid.¹⁰⁵ However, the fear of the ACA triggering the public charge grounds for inadmissibility has a negative effect on this alternative health insurance pathway. For many noncitizens with income in excess of the Medicaid eligibility threshold, the ACA marketplace or

¹⁰¹ *Id.*

¹⁰² See Heidi Allen et al., *Comparison of Utilization, Costs, and Quality of Medicaid vs Subsidized Private Health Insurance for Low-Income Adults*, J. AM. MED. ASS'N (Jan. 5, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2774583> (noting in-depth discussion of the comparison of utilization, costs, and quality of Medicaid vs. Marketplace insurance).

¹⁰³ GEO. UNIV. HEALTH POL'Y INST. ET AL., *supra* note 96 at 1.

¹⁰⁴ Ken Alltucker, *Trump Administration Slashes Funding for Obamacare Outreach Program*, USA TODAY (July 10, 2018), <https://www.usatoday.com/story/news/nation/2018/07/10/obamacare-cuts-mean-groups-have-less-sign-up-customers/773728002/>.

¹⁰⁵ *Tax Credits are Not Considered in Public Charge Determinations*, PROTECTING IMMIGRANT FAMILIES (Apr. 2020), <https://protectingimmigrantfamilies.org/wp-content/uploads/2020/04/public-charge-VITA-Guide-updated-2020-04-23.pdf>.

employer-based coverage remain their only options. Statutorily carving out health insurance from the public charge grounds for inadmissibility will not fix all the current issues with the ACA marketplace, but doing so would alleviate some of the fears felt by mixed-status families by removing the fear of triggering public charge inadmissibility.

Although the Affordable Care Act is a viable option for many noncitizens, the barriers to enrollment mean that it isn't a perfect solution to the uninsured noncitizen problem. Eligible lawful noncitizens are not taking advantage of the credits in part due to fear of later retribution or enforcement action. The fear and uncertainty created by the public charge rule means that noncitizens are not only afraid to enroll in Medicaid but are also fearful to get coverage through the ACA, especially in mixed-status households.

iii. Employer-Based Coverage:

Employer-based coverage doesn't help many noncitizen employees. Native-born adults have higher rates of employer-sponsored insurance compared to foreign-born adults.¹⁰⁶ Coverage through an employer-sponsored health plan is dependent on several conditions. First, the adult must work (or have a spouse who works), and the nature of a person's employment has important implications for private health insurance coverage.¹⁰⁷ Second, nonelderly noncitizens are more likely than nonelderly citizens to be low-income because they are often employed in low-wage jobs and industries, and these low-wage jobs are less likely to offer employer-sponsored coverage.¹⁰⁸ Third, many low-wage workers are pushed to part-time status by employers evading the ACA's mandate requiring medium and large employers to provide health insurance to full-time employees.¹⁰⁹ Noncitizens are more likely than citizens to be self-employed, less likely to work at firms with more than 100 employees, and less likely to be unionized.¹¹⁰

Fifth, unionized workers are more likely to have health insurance coverage than non-unionized workers, and noncitizens have lower union membership than citizens.¹¹¹ These five factors all negatively impact the availability of employer-based health insurance to noncitizens.¹¹² Therefore, crafting a solution around employment-based health insurance coverage will not

¹⁰⁶ GEO. UNIV. HEALTH POL'Y INST., *supra* note 96 at 3.

¹⁰⁷ Thomas C. Buchmueller et al., *Immigrants and Employer-Sponsored Health Insurance*, 42 HEALTH SERVS. RSCH. 286, 287 (2007).

¹⁰⁸ *Id.* at 289.

¹⁰⁹ *Health Coverage of Immigrants*, *supra* note 9.

¹¹⁰ Ben Casselman, *Yes, Some Companies Are Cutting Hours In Response to 'Obamacare'*, FIVETHIRTYEIGHT (Jan. 13, 2015), <https://fivethirtyeight.com/features/yes-some-companies-are-cutting-hours-in-response-to-obamacare/>.

¹¹¹ Buchmueller, *supra* note 107 at 295.

¹¹² *Id.*

adequately address the uninsured immigrant problem.

C. Scope of the Uninsured Lawful Immigrant Problem

Noncitizens are significantly more likely than citizens to lack health insurance.¹¹³ Many individuals who are eligible for Medicaid are not opting in. Further, many individuals who are not eligible for Medicaid, but are eligible for ACA tax credits or subsidies are also not opting into the ACA marketplace. Of all the uninsured lawfully present noncitizens in 2018, almost three-quarters were eligible for ACA coverage (either via Medicaid or ACA tax credit subsidies). 27% of those people were eligible for Medicaid and CHIP but didn't opt-in.¹¹⁴ This trend is also seen under the ACA; 47% of noncitizens eligible for ACA coverage were eligible for ACA tax credit subsidies but didn't take the support.¹¹⁵

Congress included a provision in the ACA that allows recent immigrants to receive subsidies in the exchange even if their income is below the 100% federal poverty line cutoff that applies to citizens because Medicaid generally isn't available to recent immigrants until they have been lawfully present in the U.S. for five years.¹¹⁶ Low-income, lawfully present immigrants – who would be eligible for Medicaid based on income, but are barred from Medicaid because of their immigration status – are able to enroll in plans through the exchange during the five years when they cannot use Medicaid.¹¹⁷ Congress actively tried to ensure that there would be no coverage gap for recent immigrants, but it didn't anticipate that noncitizens wouldn't take advantage of the health coverage options due to the Trump administration's public charge rule.¹¹⁸

A community's overall resilience in the face of a contagious disease outbreak is only as strong as those with the least protection – the uninsured.¹¹⁹ When the United States constructs barriers for immigrants to access to health insurance, it causes them to delay treatment, which shifts costs to U.S. safety net providers.¹²⁰ Increasing noncitizen health insurance is critical, and the Trump administration regulation had and continues to have detrimental impacts on noncitizen health insurance coverage. Increasing health insurance coverage leads to a healthier population overall. Healthier immigrants are able to get preventative care, which is less expensive than emergency care,

¹¹³ *Id.*; Casselman, *supra* note 110; *Health Coverage of Immigrants*, *supra* note 9.

¹¹⁴ *Health Coverage of Immigrants*, *supra* note 9.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Norris, *supra* note 60.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Price, *supra* note 38 at 236.

and expensive emergency care for the uninsured is worse for the country as a whole.¹²¹ Healthier immigrants also protect public health, pay taxes, and support the economy. Increasing the number of eligible and qualified noncitizens who receive health insurance will have a positive impact on the U.S. economy, public health, and the nation overall.

II. POLICY PROPOSAL

Congress must exclude health insurance from being considered in the public charge grounds for inadmissibility. Such a revision would prevent the public charge grounds for inadmissibility from being interpreted to apply to public, private, or government-subsidized health insurance. This includes but is not limited to Medicaid, Medicare, and Affordable Care Act tax credits and subsidies.

Statutory revision is essential to ensuring that immigrants opt in to crucial Medicaid and ACA insurance benefits without fear of future immigration consequences. President Biden's abandonment of the Trump administration rule is helpful, but it is not a permanent fix.¹²² Reverting to the 1999 Guidance or proposing a Rule that excludes Medicaid consideration are short-term solutions, but differing interpretations swing back and forth with political changes and perpetuate the uncertainty and fear noncitizens feel around obtaining health care coverage. So long as regulatory agencies have the ability to alter their interpretation of the statute, these rules may be overturned by future administrations. Thus, Congress must permanently amend the Act.

Altering the Immigration and Nationality Act to prohibit the consideration of health insurance in the inadmissibility determination is critical to halting the chilling effect that the Trump administration rule had and continues to have on health insurance enrollment. Without Congressional action, the confusion, fear, and chilling effect on health insurance fueled by the Trump administration's interpretation will not abate.¹²³ Policy experts estimate that as many as 3.2 million fewer noncitizens may not receive Medicaid because of the Trump administration's rule, and the resulting loss of Medicaid coverage could lead to as many as 4,000 excess deaths every year.¹²⁴ Access to comprehensive, quality health care services and health insurance is imperative to

¹²¹ Parmet, *supra* note 60 at 57.

¹²² Drew Calvert, *Who Bears the Cost of the Uninsured? Nonprofit Hospitals.*, KELLOGGINSIGHT (June 22, 2015), <https://insight.kellogg.northwestern.edu/article/who-bears-the-cost-of-the-uninsured-nonprofit-hospitals>.

¹²³ *Public Charge*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last visited Sept. 18, 2021).

¹²⁴ Shanzeh Daudi, Comment, *Choosing Between Healthcare and a Green Card: The Cost of Public Charge*, 70 EMORY L.J. 201, 201 (2020).

promoting and maintaining health, preventing and managing disease, reducing disability and premature death, and achieving health equity.¹²⁵

A. Removing Health Insurance from the Public Charge Rule

The Trump administration's public charge rule had a chilling effect, but it certainly wasn't an isolated historical incident, as demonstrated by the consequences of PRWORA. Without the confidence to access programs such as Medicaid, noncitizens could react similarly to the welfare reform in 1996, when the confusion and fear led to significant, widespread negative public health consequences.¹²⁶ The Immigration and Nationality Act needs to be amended to explicitly remove publicly sponsored health insurance, which would improve public health by improving insurance access without fear of future reprisal.

If enrolling in Medicaid remains can result in being deemed a public charge, noncitizens will remain incentivized to refrain from enrolling in certain benefits, including health care coverage.¹²⁷ A potential look-back period means that current Medicaid enrollment is not the only thing that matters; there is potentially concern about whether noncitizens have enrolled in Medicaid any time in the past.¹²⁸ Whether or not to get health care coverage will remain a trying decision for families. The best way to address this is to carve out health insurance, both publicly sponsored and private, from the public charge grounds for inadmissibility entirely.

Even when the court injunctions were in place, halting the Trump administration's interpretation of the public charge rule, noncitizen families were not able to breathe easily.¹²⁹ Permanently altering the public charge grounds for inadmissibility will address the fear and uncertainty about future rules and slow down the disenrollment in health insurance programs, as lawful immigrants will be able to obtain Medicaid and other insurance options without fear. While such a revision will only impact a discrete group of people directly (those who are lawfully present and legally eligible for Medicaid), its significance and impact will be felt broadly, and it will adequately address specific concerns raised by healthcare organizations and noncitizen families following the proposal of the 2019 public charge rule.¹³⁰

The effects are not limited to just those lawfully present and legal eligible

¹²⁵ *Id.* at 224.

¹²⁶ *Access to Health Services*, OFF. OF DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/Access-to-Health-Services> (last visited Apr. 7, 2021).

¹²⁷ Daudi, *supra* note 124 at 223 nn.142–43.

¹²⁸ Makhoul, *supra* note 6 at 200 n.153.

¹²⁹ *Health Coverage of Immigrants*, *supra* note 9.

¹³⁰ Daudi, *supra* note 124 at 226.

for Medicaid. Household members of lawful immigrants will be able to obtain Medicaid without fear of jeopardizing their family's status. Lawful immigrants and their family members can access ACA coverage without fear that ACA premium credits or subsidies might someday be considered grounds for public charge exclusions. Thus, many people may obtain coverage beyond just the Medicaid-eligible lawful noncitizens. Clarifying that any health insurance benefits legally entitled to immigrants will not be counted against them in public charge analysis will permanently halt the threat implemented by the Trump administration's interpretation.¹³¹ The families of noncitizen parents will also benefit from an increased confidence in obtaining health insurance because increases in parental coverage are associated with increases in pediatric primary care.¹³² With a simple and clear revision to the public charge grounds for inadmissibility, Congress can effectively stabilize and mitigate the confusion and fear caused by the Trump administration's public charge policy. A slight but effective change to the Immigration and Nationality Act would ensure that differing administrations no longer had the power to cultivate fear-inducing public charge rules that have a detrimental impact on noncitizen health insurance coverage. If public charge grounds for inadmissibility are statutorily altered so that they do not apply to public, private, or government-subsidized health insurance, including Medicaid, Medicare, and Affordable Care Act tax credits and subsidies, future administrations will not hold the same power to cause fear and uncertainty for noncitizen immigrants.

B. Potential Counterarguments

Those favoring a more conservative immigration approach might be wary of removing the public charge grounds for inadmissibility. However, healthcare coverage is critical to the United States overall and, in particular, our economic and immigration systems.

As previously discussed, the public charge rule is a barrier to noncitizen health care coverage. Having healthy and insured noncitizens is good in and of itself. But healthier immigrants support the economy, pay taxes, don't endanger public health, and get preventative care, which is less costly than emergency care for advanced issues. Further, a healthier workforce is a more productive workforce.¹³³ Uninsured and unhealthy workers still enter the workforce, and the effects of their lower productivity on the nation's economic health are vast. The cost to employers is several times greater than the

¹³¹ *Id.* at 239.

¹³² *Id.* at 242.

¹³³ *Id.* at 243.

business losses that occur when employees take actual sick days.¹³⁴ Avoidable illnesses also remove the economic productivity of parents and other caregivers from the workforce.¹³⁵ Expensive emergency care for the uninsured is worse for the country as a whole.¹³⁶

Ultimately, people who do have insurance end up also paying for the healthcare costs of those without insurance.¹³⁷ As the cost of unreimbursed medical treatment rises, healthcare providers often increase charges to people who have private insurance in order to compensate for the providers' economic losses.¹³⁸ Both safety-net hospitals and community health centers end up bearing significant uncompensated costs when their patients do not access health coverage.¹³⁹ In some cases, these extra costs and burdens may lead to fewer services or even cause hospital closings, which harms everyone in the community.¹⁴⁰ Increasing the number of eligible and qualified noncitizens who receive health insurance will have a positive impact on the U.S. economy and the nation overall.

To the extent that increasing lawfully present noncitizen health coverage raises costs, those additional expenditures also have benefits. Economists have noted that rising healthcare spending has important benefits which often outweigh the increased costs.¹⁴¹ Economists have found that when adjusted for improvements in quality, the cost of medical care is, in fact, decreasing.¹⁴² The Department of Health and Human Services has noted that, at the local level, health care spending growth is seen as beneficial and creates health care jobs, increases wages for health care workers, expands local tax revenues, and increases demand for related goods and services.¹⁴³

Regarding any immigration concerns, it is necessary to note that this article only advocates for lawfully present noncitizens, who are legally eligible for Medicaid (provided they have waited the five-year period) or for ACA tax credits and subsidies. Statutorily removing health insurance coverage from being part of the public charge grounds for inadmissibility consideration would not give noncitizens anything more than what they are already

¹³⁴ Michael Blanding, *Public Health and the U.S. Economy*, HARVARD SCH. OF PUB. HEALTH (Fall 2012), <https://www.hsph.harvard.edu/news/magazine/public-health-economy-election/>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Calvert, *supra* note 122.

¹³⁸ *The Consequences of Being Uninsured*, NAT'L IMMIGR. L. CTR. (Aug. 2014), <https://www.nilc.org/wp-content/uploads/2015/11/consequences-of-being-uninsured-2014-08.pdf>.

¹³⁹ *Id.*

¹⁴⁰ Parmet, *supra* note 60 at 223.

¹⁴¹ *Id.*

¹⁴² *Effects of Health Care Spending on the U.S. Economy*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Feb. 21, 2005), <http://aspe.hhs.gov/health/costgrowth>.

¹⁴³ *Id.*

qualified for. It would merely remove a barrier to them lawfully accessing healthcare coverage if a future administration decides to start counting health benefits as public benefits again.

A new rule isn't enough: we have seen throughout history that different interpretations are presented under different administrations. Even an "immigrant-friendly" interpretation doesn't fully alleviate the valid fear that applying for Medicaid will later become a detriment (even when it is not going to be used against someone at the time). Regulations change with new administrations, and, with a potential look-back period, what is legal and allowed now could have negative implications under future administrations. Accessing health insurance must be intentionally and statutorily excluded from the public charge grounds for inadmissibility.

CONCLUSION

The public charge grounds for inadmissibility in the Immigration and Nationality Act determines what constitutes being a "public charge." The statute, however, doesn't define what it means to be a public charge, allowing agencies to have varying interpretations of which public benefits would make a noncitizen inadmissible.

The Trump administration's public charge rule included Medicaid within the scope of public benefits considered when determining whether a noncitizen is likely to become a public charge. This led to growing fears among immigrant families about participating in Medicaid and CHIP¹⁴⁴ and caused confusion, uncertainty, and fear. Although the Biden administration has reverted to pre-Trump guidance, the impact of the Trump rule is expected to have a continued chilling effect on Medicaid enrollment, as well as on enrollment in the ACA marketplace, two of the common paths to noncitizen health insurance. Noncitizens are significantly more likely than citizens to lack health insurance.¹⁴⁵ Being uninsured is dangerous and can lead to poorer quality of health care, lower rates of preventive care, and greater probability of death.¹⁴⁶

As a result, Congress should carve out all forms of health insurance from the public charge grounds for inadmissibility from the Immigration and Nationality Act. Doing so would alleviate the fear and uncertainty noncitizens have felt and have a positive impact on noncitizen health insurance coverage. Creating a new interpretation is not enough, though. Currently, the Trump

¹⁴⁴ *Id.*

¹⁴⁵ *Health Coverage of Immigrants*, KAISER FAM. FOUND. (July, 15, 2021), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.

¹⁴⁶ *Id.*

administration's rule remains a valid interpretation for future administrations.

If a noncitizen gets Medicaid under an administration that excludes Medicaid from the public charge rule, there is no guarantee that the following administration would follow the same interpretation. Further, there is no guarantee that a later administration would refrain from considering any past Medicaid coverage as grounds for inadmissibility. This uncertainty and lack of clarity exacerbates the uninsured noncitizen problem and necessitates carving health insurance out of the public charge grounds for inadmissibility.

Lawfully present noncitizens are not getting adequate health coverage even though they are eligible and qualified. As such, it is imperative that the public charge grounds for inadmissibility be altered to exempt public, private, or government-subsidized health insurance explicitly. Such exemptions should include Medicaid, Medicare, and Affordable Care Act tax credits and subsidies. Doing so would allow for better healthcare coverage of eligible noncitizens and remove a confusing and ever-changing barrier to noncitizen health insurance.