

October 31, 2019

Department of State, Office of Information and Regulatory Affairs, Office of Management and Budget  
Department of State's Bureau of Consular Affairs, Office of Visa Services

*RE: DOS-2019-0039 – Emergency Submission Comment on Immigrant Health Insurance Coverage*

To Whom It May Concern:

The undersigned organizations write in response to the Emergency Submission Comment on Immigrant Health Insurance Coverage. We write to express strong opposition to the administration's proclamation. We welcome and value the contributions of those who have immigrated to the United States and settled in Colorado. They are our friends and neighbors, they are the parents and grandparents of Colorado kids, and they help drive our economies and enrich the culture and future of our state.

The proclamation at issue runs counter to our values of a fair and welcoming Colorado. It will, without authorization from Congress, drastically limit the number of people who are able to obtain a green card and unify with their family members in the United States, including in Colorado. It will also undermine rather than promote access to comprehensive health coverage and will create more complexity in the already complex and backlogged U.S. immigration system. In addition, we object to the implementation of this policy through an emergency process, which limits public oversight of this drastic measure.

#### **Impact on legal immigration**

The Migration Policy Institute (MPI) estimates that the proclamation could prevent one-third of all green card applicants from obtaining permanent residence and uniting with their U.S.-based family members.<sup>1</sup> In order to arrive at their estimate, MPI looked at recent green-card recipients and found that 65 percent of that population would not meet the coverage requirements outlined in the proclamation.

Importantly, nearly half of the 65 percent who would not meet the proclamation's requirements do have comprehensive health insurance coverage.<sup>2</sup> In line with eligibility laws set by Congress, 34 percent of recent-green card recipients have coverage through Medicaid or a subsidized health insurance program according to MPI. In the Patient Protection and Affordable Care Act (ACA), Congress explicitly recognized both Medicaid and subsidized coverage as health insurance for the purposes of satisfying the individual mandate. The proclamation runs counter to the clear intention of Congress in making recent immigrants eligible for coverage and in recognizing Medicaid and subsidized coverage as comprehensive insurance.

#### **Impact on the number of people with comprehensive health coverage**

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<sup>1</sup> <https://www.migrationpolicy.org/news/health-insurance-test-green-card-applicants-could-sharply-cut-future-us-legal-immigration>

<sup>2</sup> Id.

The administration claims that the proclamation is necessary to reduce uncompensated care for uninsured patients in our health care system. However, the proclamation will likely have the opposite effect to the extent that it incentivizes more people to purchase short-term “insurance” products that do not meet the ACA’s coverage requirements. The reason is that people with these short-term plans are effectively uninsured for the purposes of many common conditions and health care needs. In addition to being able to exclude coverage for pre-existing conditions, short-term plans can categorically exclude certain benefits, such as routine maternity and newborn care, prescription drugs, mental health care, substance use services, and preventive services like birth control and tobacco cessation. High-cost services that are provided to people with short-term plans are likely to go uncompensated when they are not covered by the plan.

### **Adding complexity to the U.S. immigration system**

The proclamation was issued without warning and without necessary detail regarding implementation. Most notably, the proclamation does not outline how future green-card applicants will be asked to prove that they can find insurance coverage within 30 days of arrival. Satisfying this requirement will be especially challenging because the proclamation works at cross-purposes with existing law. Under the ACA, green-card holders are eligible to purchase subsidized health insurance. But those who anticipate accessing health insurance with the help of a subsidy will not qualify under the new health insurance test. It is unclear how green-card applicants will be required to prove that they will purchase health insurance without the help of subsidies they would be eligible for and entitled to, according to Congress.

Some green-card applications may be able to show that they can get a short-term plan. However, Colorado<sup>3</sup> and several other states have restricted or banned these plans because they fail to provide adequate protections for consumers. In addition, short-term plans may discriminate against certain people and are thus not uniformly accessible. For example, gender-rating (the practice of charging women higher premiums than men) is commonplace among insurers selling short-term plans. In addition, health questionnaires are often used by short-term plans to identify and deny coverage to people with preexisting conditions. It is unclear whether green-card applicants will be required to show that they can afford and can qualify for a short-term plan and how they will be expected to do so.

### **No public oversight**

The proclamation comes on top of a new public charge rule that, if implemented, is expected to greatly restrict future legal immigration.<sup>4</sup> The process of changing the public charge rule has required –

- Publication of a proposed rule in the Federal Register
- A 60-day public comment period, during which over a quarter million comments were submitted, largely in opposition to the change
- Department of Homeland Security (DHS) review of the comments submitted
- DHS publication of a final rule in the Federal Register, including publication of comments and agency responses; and

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<sup>3</sup> 3 C.C.R. 702-4, sec. 4-2-59

<sup>4</sup> <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>

- A 60-day delay in implementation after publication of the final rule, during which several courts issued primary injunctions barring implementation of the rule.

The insurance proclamation is stricter than the public charge test proposed by DHS because it looks at just one factor: the ability to quickly find health insurance coverage. As MPI points out, it is highly possible that someone could pass the public charge test by showing relatively high educational attainment, strong English skills, and other factors, only to be denied access to a green card because of the new proclamation. Yet, despite the huge impact the proclamation is likely to have, there has been no meaningful opportunity for public oversight of this substantial change in administrative policy. A presidential proclamation that goes into effect four weeks after it is issued is an inappropriate vehicle for a policy change of this magnitude.

**Conclusion**

Without warning, clarity about implementation, or consultation with key stakeholders this proclamation is a recipe for more confusion and delay in the U.S. immigration system. We urge the administration not to proceed with implementing the proclamation and we stand together in support of an inclusive society that truly honors the dignity of all people and the contributions immigrants have made to the economic strength and cultural vitality of our country.

Boulder County  
Board of County Commissioners

Colorado Immigrant Rights Coalition

Caring for Colorado Foundation

Colorado Organization for Latina  
Opportunity and Reproductive Rights

Center for Health Progress

Colorado Safety Net Collaborative

Clinica Colorado

Hispanic Affairs Project

Colorado Center on Law & Policy

Hunger Free Colorado

Colorado Children's Campaign

LiveWell Colorado

Colorado Community Health Network

Mile High United Way

Colorado Consumer Health Initiative

NARAL Pro-Choice Colorado

Colorado Cross Disability Coalition

Planned Parenthood of the Rocky Mountains

Colorado Health Foundation

Progress Now Colorado

Colorado Hospital Association

Rose Community Foundation

STRIDE Community Health Center

Tri-County Health Network