

EXHIBIT 13



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Submitted via www.regulations.gov

United States 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: *Docket ID No. DOS-2019-0039, Notice of Information
Collection Under OMB Emergency Review: Immigrant Health
Insurance Coverage; Form DS-5541*

To Whom it May Concern:

The Legal Aid Society hereby responds to the request for comments on the Notice of Information Collection Under Office of Management and Budget Emergency Review for the Immigrant Health Insurance Coverage ("Information Collection Request") published in the Federal Register on October 30, 2019, 84 Fed Reg. 58,199 (Oct. 30, 2019), concerning The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the U.S. Healthcare System (the "Proclamation"), 84 Fed. Reg. 53,991 (Oct. 4, 2019), due to go into effect on November 3, 2019. The Proclamation represents yet another illegal attempt by this Administration to close the door on family reunification, which has long been the cornerstone of our immigration policy. It forces immigrants into an impossible choice between purchasing unaffordable, possibly low-quality health coverage, or missing out on an opportunity to come to this country to be with their families and contribute to our communities. Accordingly, The Legal Aid Society calls on the Office of Management and Budget (OMB) not to grant emergency clearance for this Information Collection Request and to further reject the Proclamation and disapprove its implementation. The Department of State (DOS) does not meet the requirements for an emergency clearance, and the Proclamation should not go into effect because it would fundamentally change our nation's immigration law and is based on a fundamental misunderstanding of our health insurance system.

I. Background.

The Legal Aid Society was founded in 1876 to defend the individual rights of German immigrants who could not afford a lawyer as they pursued a better life in New York City. Today we stand as the nation's oldest and largest not-for-profit legal services organization. Through three major practice areas—Civil, Criminal, and Juvenile Rights—the Society's 2,000 attorneys, paralegal case handlers, support staff and volunteers coordinated by our *Pro Bono* program handle approximately 300,000 cases a year in city, state, and federal courts through a network of borough,

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neighborhood, and courthouse-based offices in 27 locations in New York City. We provide comprehensive legal services to fulfill our mission that no New Yorker should be denied access to justice because of poverty.

Immigrants, rich and poor, constitute vast swaths of the U.S. population and make vital contributions to our country generally and to New York City especially. The positive contributions of immigrants are felt in every corner of our communities, in myriad ways. Immigrants help fuel the strength and growth of our economy. Immigrants occupy numerous positions within our government. They work in the city's medical facilities. They are teachers and university students and corporate employees. In addition, they are consumers, and their presence keeps our city's industries thriving.

Though Legal Aid has broadened its practice over time, we have remained committed to our original mission: helping low-income immigrant communities. Our Immigration Law Unit utilizes the expertise of more than 60 attorneys, paralegals, and social workers to serve low-income immigrant New Yorkers seeking legal assistance before the U.S. Citizenship and Immigration Services (USCIS) and in immigration and federal courts. We represent people threatened with removal, some of whom are in detention, file habeas petitions seeking the release of people unlawfully detained, represent unaccompanied minors fleeing violence in Central America, assist numerous Deferred Action for Childhood Arrivals and Temporary Protected Status recipients with renewing their status and seek a wide range of immigration relief, including naturalization, adjustment of status, Violence Against Women Act self-petitions, U visas, T visas, asylum, Special Immigration Juvenile Status, removal of conditions and family petitions. We also seek relief in court when there is no other way to protect our clients. *See, e.g., Make the Road NY et al. v. Cuccinelli*, 19-cv-7993 (S.D.N.Y. filed Aug. 27, 2019).

Our Health Law Unit provides advice and representation to low-income New Yorkers, including to immigrant New Yorkers who face barriers accessing health insurance and health care services to which they are entitled by law. We advocate for access to health care for all New Yorkers through individual representation as well as policy and legislative advocacy, and have been instrumental in establishing access to health care for non-citizens in New York. *See, e.g., Aliessa v. Novello*, 754 N.E.2d 1085 (2001).

Immigrants are not only served by our Immigration Law Unit and our Health Law Unit. We serve low-income immigrants in every area of our practice – whether preventing the loss of an apartment in housing court, obtaining disability and other government benefits, addressing wage and hour law violations, providing tax advice or handling divorce and custody matters.

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II. The Legal Aid Society calls on the Office of Management and Budget not to grant the DOS request for emergency clearance for the Information Collection Request and to reject the Proclamation and disapprove its implementation.

A. OMB Should Not Grant Emergency Clearance for the Information Collection Request

This Comment focuses on the impact the Proclamation would have on immigration and health care, but as a threshold matter, we urge OMB to deny emergency clearance for the Information Collection Request for the following reasons.

First, the public has been given less than 48 hours to respond to the Information Collection Request. This is insufficient time for the public, including many key stakeholders, to provide meaningful feedback, and this is reason alone to deny the request for emergency clearance. *Second*, the DOS fails to meet the criteria for emergency clearance under the Paperwork Reduction Act.¹ The November 3, 2019 deadline for implementation of the Proclamation is arbitrary and not justified where the Proclamation is fundamentally flawed and illegal, for some of the reasons described below. Nor is there any cognizable emergency that the Proclamation is necessary to address. In contrast, the Proclamation will *create* emergencies for many immigrant families, as described below. *Finally*, the Information Collection Request fails to offer any meaningful guidance regarding how an applicant for an immigrant visa would establish that he or she will not impose a burden on the U.S. healthcare system as required under the Proclamation.

B. The Health Proclamation Should Never Be Implemented

The health Proclamation is fundamentally flawed, and should be withdrawn immediately for the following reasons as discussed below: (1) the Proclamation would fundamentally change U.S. immigration law by causing approximately 375,000 immigrants, or close to two-thirds of non-citizens being denied entry and admission to the U.S.;² (2) the Proclamation would undermine U.S. policy to promote access to quality health care; and (3) the Proclamation will result in barring Legal Aid's low-income immigrant clients, especially immigrants of color, from the U.S. in a discriminatory way, and undermine New York State's successful efforts to promote access to affordable health care.

1. The Proclamation Would Fundamentally Change U.S. Immigration Law by Causing Approximately 375,000 Non-Citizens to be Denied Entry and Admission

¹ See "A guide to the Paperwork Reduction Act," Office of Information and Regulatory Affairs (OIRA), OMB at <https://pra.digital.gov>.

² Nicole Narea and Alex Ward, *Trump quietly cut legal immigration by up to 65%*, Vox, Oct. 30, 2019, <https://www.vox.com/2019/10/9/20903541/trump-proclamation-legal-immigration-health-insurance>.

to the U.S.

The Proclamation would deny entry into the U.S. to people seeking family-based immigrant visas and some others if they cannot establish that they will be covered by specific insurance products within 30 days after entry or if they cannot show they are healthy and/or wealthy enough to pay out-of-pocket for “reasonably foreseeable medical expenses.”

The Proclamation would apply to people seeking immigrant visas abroad, including: spouses of U.S. citizens and lawful permanent residents (LPRs); children of LPRs who are 18-21 years old; children under 18 if travelling with a parent who is also immigrating; adult sons and daughters of U.S. citizens and LPRs; people with diversity visas or employment-based immigrant visas; and some religious workers. The Proclamation would also apply to parents of U.S. citizens who cannot show that their health care will not impose a substantial burden on the U.S. health care system. If enacted, the Proclamation is estimated to reduce legal immigration to the U.S. by nearly two-thirds (375,000 people), and affect nearly all diversity and family-based immigrants.³

These 375,000 people are noncitizens who otherwise would have been legally permitted under the Immigration and Nationality Act (INA), a law duly passed by Congress, to immigrate to the United States. In issuing this Proclamation, the President and the Administration contravene Congress and seek to undermine the U.S. immigration system.

2. The Proclamation Would Undermine U.S. Policy to Promote Access to Quality Health Care.

The stated purpose of the health Proclamation is to ensure that providers are paid and that people pay less in taxes and premiums to cover medical expenses for those “who lack health insurance or the ability to pay for their healthcare,”⁴ yet the Proclamation would undermine rather than further its stated purpose. There are three major areas of concern discussed below: (1) by deeming subsidized, comprehensive Affordable Care Act (ACA) plans unacceptable, the Proclamation would make access to comprehensive health insurance impossible for all but a narrow group of intending immigrants; (2) the Proclamation’s approval of non-ACA-compliant short-term health plans (a/k/a “junk plans”), would increase uncompensated care costs and would limit access to care, making individuals and communities sicker; and (3) the Proclamation will further add to the “chilling effect” caused by other Trump Administration policies such as the Public Charge rule,

³ See Narea and Ward, *supra* note 2.

⁴ Donald J. Trump, Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (issued Oct. 4, 2019), <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/> (last visited Oct. 31, 2019).

creating fear in immigrant communities that prevents immigrants from accessing health insurance coverage and health services to which they are legally entitled.

a. By deeming subsidized, comprehensive ACA plans unacceptable, the Proclamation would make access to comprehensive health insurance impossible for all but a narrow group of intending immigrants.

By deeming subsidized, comprehensive ACA plans unacceptable, the Proclamation would make access to comprehensive health insurance impossible for all but a narrow group of intending immigrants. For those immigrants who do not qualify for Medicare or TRICARE, or for those whose employers do not provide insurance or who cannot enroll in a family member's plan, they will have to choose between a prohibitively costly, unsubsidized comprehensive health insurance plan or a short-term, "junk" plan.

Comprehensive health insurance – that is, health insurance that actually protects consumers' as well as providers' interests – is, if unsubsidized, prohibitively expensive in New York State. For instance, in 2019, the average monthly premium for a Silver plan for a 40-year-old nonsmoker seeking insurance only for herself hovers between \$581-627.⁵ If she seeks coverage for herself, her husband and her two minor children, the monthly cost of an unsubsidized Silver plan increases to somewhere between \$1656-1789.⁶ Immigrants seeking to come to this country in search of a better life may work low-wage and often undesirable jobs that do not offer health insurance. Paying out-of-pocket for unsubsidized, comprehensive health insurance is entirely out of the question.

Through the ACA, Congress elected to make health insurance and corresponding subsidies available to lawfully residing immigrants. Not only does this Proclamation undermine Congress, but it undermines its own stated goals: when people cannot afford comprehensive health insurance, uncompensated care goes up and individuals and their communities become less healthy. The Proclamation also disregards the fact that subsidized insurance is available to those earning up to 400% of the Federal Poverty Limit, or more than \$103,000 for a family of four. The fact that the minimally subsidized insurance available to families with six figures of income is unacceptable under the Proclamation clearly shows that it is intended to limit admission to this country to only the wealthiest immigrants.

b. The Proclamation Would Result in the Use of Junk Plans in Contravention of the ACA.

By approving non-ACA-compliant short-term health plans (a/k/a "junk plans"), the

⁵ See New York State of Health, Compare Plans and Estimate Cost, <https://nystateofhealth.ny.gov/individual/searchAnonymousPlan/search> (last visited Oct. 31, 2019).

⁶ See *id.* <https://www.kff.org/interactive/subsidy-calculator/>

Proclamation would increase uncompensated care costs and would limit access to care, making individuals and communities sicker.

Immigrants seeking to come to New York, home to approximately 2.02 million noncitizens,⁷ do not have the option of purchasing a short-term/junk plan. New York prohibits the sale of junk plans in the state⁸ precisely to protect New Yorkers' physical and financial health. Junk plans are insufficient in the face of a serious medical condition or emergency: for instance, they do not have to cover preventive services, maternity care, and prescription drugs, and impose dollar limits on coverage. In other words, these short-term/junk plans do not cover essential health benefits. Moreover, because these junk plans do not comply with insurance renewability requirements under New York law, by barring the sale of junk plans, New York has limited uncompensated care costs for hospitals and providers and protected its residents. At least one rationale claimed for the Proclamation is the need to prevent use of emergency rooms for non-emergency conditions and to prevent uncompensated care. Allowing short-term/junk plans but not subsidized, comprehensive, ACA-compliant coverage only increases the likelihood of emergency room use for non-emergency conditions and the prospect of uncompensated care, putting further strain on the health providers and taxpayers the Proclamation purports to protect.

c. The Proclamation will exacerbate the “chilling effect” preventing immigrants from accessing health insurance and health care services, harming community health and the economy.

Trump Administration policies targeting immigrants, including the currently enjoined Public Charge rule, have already created a significant chilling effect that has prevented immigrants from accessing health insurance coverage to which they are entitled, and even caused some to forgo essential health treatments because of fear of negative immigration consequences. The Proclamation will add to the environment of fear around accessing health coverage and other public benefits. Immigrants who forgo needed health treatments may suffer from preventable illnesses, adding to the long-term costs on the health care system.

3. The Proclamation Will Result in Barring Legal Aid’s Low-income Immigrant Clients, Especially Immigrants of Color, from the U.S. in a Discriminatory Way and Undermine New York State’s Successful Efforts to Promote Access to Affordable Health Care.

⁷ Migration Policy Institute (MPI), State Immigration Data Profiles: New York (2016), available at: <https://www.migrationpolicy.org/data/state-profiles/state/demographics/NY> (deriving tabulations of data from the U.S. Census Bureau’s American Community Survey (ACS) and Decennial Census).

⁸ Letter from Lisette Johnson, Bureau Chief, Health Bureau, New York State Department of Financial Services to All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, and Health Maintenance Organizations, Re: Prohibition on Short-Term Limited Duration Plans (June 21, 2018), available at: https://www.dfs.ny.gov/insurance/circletr/2018/cl2018_07.htm.

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The Administration not only does a poor job disguising its goal to impose a wealth test on people – who are primarily people of color – seeking to come to this country, but it puts the nation’s health at risk and in so doing wastes the nation’s dollars in ineffective and hurtful ways.

The Presidential Proclamation would serve to effectively bar almost all of our family-based intending immigrant clients, who are all low-income (by definition, being clients of The Legal Aid Society). Purchasing at least 364 days of approved health insurance would be impossibly expensive for most of them, if not all. Very few clients would satisfy the alternate prong of having the financial resources to pay for their reasonably foreseeable medical costs. The Proclamation is one more attempt by this Administration to radically transform immigration by closing the door on family reunification, which has long been the cornerstone of our immigration policy.

For all the foregoing reasons, The Legal Aid Society calls on the Office of Management and Budget to refrain from granting emergency clearance for the Information Collection Request and to further reject the Proclamation and disapprove its implementation.

Sincerely,

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