

EXHIBIT 18



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October 31, 2019

Via email: oir_submission@omb.eop.gov and
PRA_BurdenComments@state.gov

Department of State Desk Officer, Office of Information and
Regulatory Affairs, Office of Management and Budget, and
Bureau of Consular Affairs, Office of Visa Services
Department of State

Docket Number: DOS-2019-0039

**RE: Emergency Submission Comment on Immigrant
Health Insurance Coverage (DS05541)**

To whom it may concern,

The National Health Law Program (NHeLP) submits the following comments in response to the Notice of Request for OMB Emergency Review on Immigrant Health Insurance Coverage. NHeLP, founded in 1969, protects and advances the health rights of low-income and underserved individuals and families by advocating, educating, and litigating at the federal and state levels.

We vigorously oppose the proposal to collect information as set forth in the notice, the truncated process to solicit public comments, and the underlying October 4, 2019 Presidential Proclamation ("PP 9945") mandating visa applicants abroad to purchase health insurance coverage. There is no evidence of an emergency situation to warrant a 48-hour comment period, and there is certainly no evidence that mandating insurance coverage of individuals applying for immigrant visas will address the nation's growing number of uninsured individuals.

The Proclamation is not about improving access to health care or making sure hospitals and health care providers are paid. Instead, it serves as yet another constraint on legal immigration, imposing a wealth test that will disproportionately harm people of color, particularly those

with low incomes.

The Proclamation seeks to revive the arbitrary, unlawful multi-factor public charge test, by converting it to a single-factor test for immigrants abroad that evaluates one's ability to obtain health insurance or pay for foreseeable medical care. Just as the public charge rule, it seeks to overturn a century of immigration law. However, this time it is done through presidential fiat.

We believe the Proclamation puts the health of communities, families, and individuals at risk because it will force people to buy costly health insurance that likely provides less comprehensive coverage instead of more affordable plans that cover a robust set of services for which they are eligible. The purported goal of the Proclamation is to decrease the cost of uncompensated care in the U.S., yet the Proclamation excludes many of the options that have been shown to reduce uncompensated care costs, such as Medicaid coverage for adults and subsidized qualified health plans offered through the marketplace.¹ Instead, the Proclamation recognizes short-term plans, which do not comply with the Affordable Care Act's consumer protections, to qualify as "acceptable" coverage. Frequently referred to as "junk plans," short-term plans lack comprehensive coverage and can be prohibitively expensive for individuals with pre-existing conditions and people with disabilities. Furthermore, short-term plans routinely exclude coverage of important categories of services, such as maternity care, prescription drugs, and mental health services, leaving individuals without the ability to pay, and resulting in uncompensated care for providers and ultimately higher costs for the federal government.² In fact, because of the financial harms associated with expanding access

¹ See, e.g., Craig Palosky, Kaiser Family Found., *A Comprehensive Review of Research Finds That the ACA Medicaid Expansion Has Reduced the Uninsured Rate and Uncompensated Care Costs in Expansion States, While Increasing Affordability and Access to Care and Producing State Budget Savings* (Aug. 15, 2019), <https://www.kff.org/medicaid/press-release/a-comprehensive-review-of-research-finds-that-the-aca-medicaid-expansion-has-reduced-the-uninsured-rate-and-uncompensated-care-costs-in-expansion-states-while-increasing-affordability-and-access-to-c/>; Larisa Antonisse et al., Kaiser Family Found., *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review* (Aug. 15, 2019), <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-august-2019/>; Jessica Schubel & Matt Broaddus, Ctr. on Budget & Policy Priorities, *Uncompensated Care Costs Fell in Nearly Every State as ACA's Major Coverage Provisions Took Effect* (May 23, 2018), <https://www.cbpp.org/research/health/uncompensated-care-costs-fell-in-nearly-every-state-as-acas-major-coverage>.

² See, e.g., Linda J. Blumberg et al. Urban Inst., *Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending* (Mar. 2018), https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf; Karen Politz et al., Kaiser Family Found., *Understanding Short-Term Limited Duration Health Insurance* (Apr. 23, 2018), <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>; Laura Ungar, NPR, *A Woman's Grief Led To A Mental Health Crisis And A \$21,634 Hospital Bill* (Oct. 31, 2019), <https://www.npr.org/sections/health->



to short-term plans, some states have banned all or most short-term plans and twenty-two states limit the initial duration of a short-term plan to less than 12 months.³ The Proclamation is simply creating an unnecessary barrier to comprehensive health coverage and will increase uncompensated care costs for providers, when patients cannot afford needed health care services that are not covered by these junk plans.

Moreover, this policy is slated to take effect just days after the ACA's marketplace open enrollment period starts in most of the country. As a result, it is likely to create additional fear and confusion among families that include immigrants and may prevent some from enrolling out of fear that enrolling in subsidized Marketplace plans will negatively impact their families' immigration goals. As a result, the proclamation will raise uninsured rates among lawfully present immigrants and potentially their U.S. citizen family members. That, in turn, will increase uncompensated care costs, exacerbating the very problem the proclamation purports to address.

In the public notice, the Department of State (Department) seeks approval to verbally ask immigrant visa applicants covered by PP 9945 whether they will have health insurance coverage within 30 days of entry to the U.S., or the financial resources to pay for reasonably foreseeable medical expenses. Individuals who cannot fulfill this requirement will be denied entry into the U.S. While the Department does not seek documentation or completion of a written form to collect this information, the requirement will nonetheless create an unnecessary burden on visa applicants who must navigate an already burdensome and costly filing and application process. Visa applicants will be required to have an understanding of the U.S. health insurance system, research and select a specific health insurance plan, enroll in coverage, and know the specific date coverage will begin—all from outside of the U.S. Moreover, the Department's proposed methodology for consular officers to ask for applicants to identify "such other information related to the insurance plan as the consular officer deems necessary" means that the type of information asked and collected will likely vary from consular officer to consular office, and be inconsistently applied across the consular offices. This inconsistency will increase confusion over the requirements and will likely create inequities in approval and processing among visa applicants.

This inconsistency will be further exacerbated by the fact that the Department of State and consular officers lack expertise in evaluating different types of health insurance

[shots/2019/10/31/771397503/a-womans-grief-led-to-a-mental-health-crisis-and-a-21-634-hospital-bill](https://www.fightcancer.org/sites/default/files/ACS%20CAN%20Short%20Term%20Paper%20FINAL.pdf); American Cancer Society Cancer Action Network, *Inadequate Coverage: An ACS CAN Examination of Short-Term Health Plans* (May 13, 2019), <https://www.fightcancer.org/sites/default/files/ACS%20CAN%20Short%20Term%20Paper%20FINAL.pdf>.

³ See Dania Palanker et al., Commonwealth Fund., *States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans* (May 2, 2019), <https://www.commonwealthfund.org/publications/issue-briefs/2019/may/states-step-up-protect-markets-consumers-short-term-plans>.



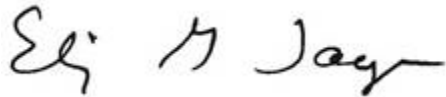
coverage. Consular officers will not know what information is reasonable to request from a health insurance plan or how to evaluate the information that is given. In fact, because of the lack of regulation on short-term plans, and the way those plans are marketed, it is often difficult for consumers to distinguish between short term and ACA-compliant plans.⁴ Consular officers, who are not health insurance experts, may likewise mistake short-term plans for Marketplace plans, resulting in erroneous and arbitrary denials of visas.

In conclusion, NHeLP opposes the Proclamation in its entirety, and the information collection request on health insurance status as proposed in this notice.

We have included numerous citations to supporting research, including direct links to the research. We direct the Department to each of the studies we have cited and made available through active links, and we request that the full text of each of the studies cited, along with the full text of our comment, be considered part of the formal administrative record for purposes of the Administrative Procedure Act.

Please contact Priscilla Huang (huang@healthlaw.org) or Sarah Grusin (grusin@healthlaw.org) if you need any additional information.

Sincerely,



Elizabeth Taylor,
Executive Director

⁴ See, e.g., Sabrina Corlette et al., Urban Inst., The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses (Jan. 2019), https://www.urban.org/sites/default/files/publication/99708/monistdi_final_0.pdf; Nat'l Ass'n of Insurance Comm'rs, Report on Testing Consumer Understanding of a Short-Term Health Plan (April 2019), https://healthyfuturega.org/wp-content/uploads/2019/04/Consumer-Testing-Report_NAIC-Consumer-Reps.pdf.

