

EXHIBIT 19



October 31, 2019

To: Office of Management and Budget, State Desk Officer in the Office of Information and Regulatory Affairs
The Department of State's Bureau of Consular Affairs, Office of Visa Services

Re: Public Notice: 10934. Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage (Docket Number: DOS-2019-0039)

To whom it may concern:

The National Immigration Law Center (NILC) is responding to the notice of information collection referenced above, to express our serious concerns about the "Immigrant Health Insurance Questionnaire" (DS-5541) and its underlying policy. NILC opposes the proposed form for collecting information on immigrant health insurance, the Presidential Proclamation that prompted its issuance, and the emergency PRA review used to seek clearance.

Founded in 1979, NILC is the leading advocacy organization in the U.S. exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We focus on issues that promote the well-being and economic security of immigrants and their families: health care and safety net programs; education and training; workers' rights; and federal and state policies affecting immigrants. To advance our mission, we use three integrated strategies: litigation, state and federal policy advocacy, and strategic communications.

For nearly four decades, NILC has been at the forefront of many of the country's greatest challenges in addressing immigration issues. NILC is a leading organization in the immigrant justice movement, playing a central role in shaping policy—including at the state and local level—and in initiating creative litigation strategies that expand opportunities for immigrant families with low incomes.

Both the process and the underlying requirement contemplated by the DS-5541 are unworkable. If implemented, they will require consular staff to conduct reviews that are outside the scope of their expertise. They will impose new burdens on U.S. residents who seek to remain with or reunite with their family members, and on individuals who are otherwise eligible to immigrate to this country.

Form DS-5541

The DS-5541 is intended to implement Presidential Proclamation 9945 (the Proclamation), which requires that persons immigrating to the U.S. be covered by 'approved' health insurance within 30 days of their arrival in this country, unless they have the resources to pay for 'reasonably foreseeable' medical costs. Certain categories of persons are exempt from this requirement, including returning lawful permanent residents, persons with Special Immigrant Visas, refugees, and children under 18 unless entering with an immigrating parent. Parents of adult U.S. citizens (persons seeking IR-5 visas)

must be able to show that their health care would not impose a substantial burden on the U.S. health care system. The information required on the DS-5541 is intended to be presented in an oral interview format.

The DS-5541 is wholly insufficient to implement this problematic policy. It provides no information about how the consular officer is to determine whether the person being interviewed is subject to its scope. For example, it fails to explain the standards or process for determining that an IR-5 visa applicant's health care costs won't 'impose a substantial burden' on the U.S. health care system. The form fails to communicate what types of health insurance satisfy the Proclamation's requirements and leaves unclear whether the oral interview will be the first time an intending immigrant learns about this new obligation. In addition, it provides no information about the evidence an applicant needs to present.

Moreover, the proposed implementation of the information collection as an oral interview presents the risk of inconsistent questioning and inequitable outcomes, with no formal collection of information to be preserved for later review. No standards are provided to determine the applicant's ability or intention to purchase medical insurance within 30 days of admission.

The Proclamation

In addition to our concerns about the information collection process, we strongly object to the underlying policy created by the Proclamation.

The stated reason for the Proclamation is a pretense for adopting another policy that would restrict immigration. The Proclamation pretends to suspend the entry of persons whom the President finds detrimental to the interests of the U.S., by denying immigrant visas to individuals whose entry would "financially burden the U.S. healthcare system." In support of this claim, the Proclamation asserts, without reference to research, that care provided to the uninsured results in uncompensated care costs that are passed on to "the American people" as higher taxes, higher premiums and higher fees for medical services. The Proclamation further asserts, without providing a source, that the health care system's problems with uncompensated care are exacerbated by the admission of persons who have not demonstrated the ability to pay for their health care costs.

The Proclamation's stated rationale ignores the fact that a small fraction of the U.S. uninsured population is comprised of immigrants, as well as the reasons that immigrants are uninsured at higher rates than U.S. Citizens. Of the 27.4 million nonelderly persons without insurance in the U.S., only about 15% are lawfully present immigrants.¹ The vast majority are U.S. citizens. Immigrants are more likely to be uninsured because of policy choices, including restrictive eligibility rules in public programs, and policies, such as public charge, that discourage eligible immigrants from participating in programs for which they are eligible.²

The Proclamation's claims about the effects of uninsured immigrants are likewise suspect. When people without insurance seek health care, they are generally billed for services and are often asked to pay before receiving treatment for non-emergency conditions. Moreover, public and private programs often offset the costs of uncompensated care, and there is limited evidence that uncompensated care causes hospitals to charge higher prices to others. In fact, immigrants benefit the health care system. They are generally younger and healthier and use less health care than the U.S. population as a whole,

¹ President Trump's Proclamation Suspending Entry for Immigrants without Health Coverage (Kaiser Family Foundation, October 10, 2019) <https://www.kff.org/disparities-policy/fact-sheet/president-trumps-proclamation-suspending-entry-for-immigrants-without-health-coverage/>

² Id.

pay more in health insurance premiums than they receive in benefits, and are net contributors to the Medicare trust fund.³

No explanation or justification is offered for the Proclamation's 30-day timeline, the designation of the insurance products that are 'approved' or the exclusion of Medicaid for adults and private insurance plans purchased with the subsidies created by the Affordable Care Act (ACA).

The Proclamation is unworkable by design. The U.S. health insurance market is so uniquely complex that the Centers for Medicare and Medicaid Services (CMS) spends millions of dollars each year for outreach, education, and enrollment assistance to help consumers enroll in coverage.⁴ It is unreasonable to assume that people residing outside of the U.S. will understand the available options and choose a health insurance product.

Some applicants may be able to select a plan through the assistance of U.S.-resident relatives. However, consumers will rarely be able to enroll in health insurance coverage until they begin residing in the state in which they will obtain coverage. This means they are unlikely to have detailed information about the coverage at the time of their consular interview.

While the stated purpose of the Proclamation is to reduce uncompensated health care costs, it is more likely to reduce the number of people enrolled in comprehensive health insurance.

Congress intended that lawfully present immigrants, including recent entrants, with incomes under 400% of the Federal Poverty Line obtain comprehensive coverage through Medicaid or if ineligible, through ACA marketplace plans with premium tax credits. The Proclamation effectively puts those sources of coverage out of the reach of new immigrants, driving those without employer, family or TriCare coverage toward short-term or other substandard plans that may not cover needed medical services. If individuals opt for such a plan and get sick or injured, they will have trouble affording out-of-pocket expenses, and medical providers will carry the burden of uncompensated care.

Implementation of the Proclamation, which is slated to occur just days after the beginning of the ACA's open enrollment period, will add to the fear and confusion affecting immigrant and mixed-status families and discourage them from enrolling. U.S. residents may fear that enrolling in coverage with ACA premium tax credits or Medicaid will interfere with their families' immigration goals. As a result, the proclamation will raise uninsured rates among lawfully present immigrants and their U.S. citizen family members. This, in turn, will increase the need for uncompensated care, exacerbating the very problem the proclamation purports to address.⁵

³ Lila Flavin, Leah Zallman, Danny McCormick, and J. Wesley Boyd, *Medical Expenditures on and by Immigrant Populations in the United States: A Systematic Review*, (Boston, MA: Tufts University School of Medicine, 2018), <https://doi.org/10.1177%2F0020731418791963>; Leah Zallman, Steffie Woolhandler, Sharon Touw, David U. Himmelstein, and Karen E. Finnegan, *Immigrants Pay More In Private Insurance Premiums Than They Receive In Benefits* (Health Affairs, October, 2018) <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2018.0309>, Leah Zallman, Steffie Woolhandler, David Himmelstein, David Bor, and Danny McCormick, *Immigrants Contributed An Estimated \$115.2 Billion More To The Medicare Trust Fund Than They Took Out In 2002-09*, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2012.1223>

⁴ Katie Keith, *CMS To Maintain Navigator Funding At \$10 Million For 2020, 2021* (Health Affairs, May 29, 2019) <https://www.healthaffairs.org/doi/10.1377/hblog20190529.659554/full/>, *New Call for Applications: \$ 6 Million Available to Help Increase Enrollment of American Indian and Alaska Native Children in Medicaid and CHIP*, *InsureKidsNow.Gov*, <https://www.insurekidsnow.gov/campaign/funding-opportunity/index.html>

⁵ *Brief of Amici Curiae, City and County of San Francisco and County of Santa Clara v. U.S. Citizenship and Immigration Services, et al.*, No. 4:19-CV-04717, <https://www.aha.org/system/files/media/file/2019/09/amici-curiae-brief-of-aha-hospital-groups-on-dhs-public-charge-rule-9-11-1019.pdf>

Emergency Review Process

OMB has not provided a satisfactory explanation for its publication of the information collection notice with a 48-hour comment period. Emergency approvals are to be used in very limited circumstances where the standard Paperwork Reduction Act (PRA) period would result in public harm or cause the agency to miss a court date or statutory deadline. There is no law that requires implementation of the Proclamation by November 3, and there is no basis for believing that any problems resulting from the presence of uninsured immigrants will be exacerbated during a standard PRA clearance process.

Taking adequate time to develop, seek comments on, and evaluate an estimate of the burdens of the information collection will not cause any significant harm, much less a harm so great as to necessitate the emergency approval of this information collection instrument. As the Department's notice points out, the Proclamation only provides that the Secretary of State "may" establish standards to implement this policy; it imposes no deadline on the establishment of those standards. The Department should do so in a thoughtful and transparent manner, soliciting public comment in the usual manner for a period sufficient to draw useful information from the public.

Evaluate whether the proposed information collection is necessary for the proper functions of the Department:

The information collection implements a policy that creates a new health insurance mandate for certain individuals seeking to immigrate to the United States. This is not necessary for the proper functioning of the Department.

The Department has no expertise in implementing a health insurance mandate and the mandate serves no purpose that furthers the objectives of the Department. Design and implementation of mandates to obtain health insurance is extremely complicated, as evidenced by the extensive deliberations and rule-making the Department of the Treasury, the Department of Health and Human Services, and other agencies undertook over several years to implement the Affordable Care Act. The Department lacks the expertise that those agencies relied upon and certainly cannot design a workable mandate without a meaningful opportunity for public comment.

Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.

The estimate of ten minutes per response is highly implausible. First, the fact that the questions will be asked in an oral interview will inevitably lead to questions from applicants, prolonging the interview process. Second, if applicants know about the Proclamation's requirements in advance, the ten-minute estimate fails to account for the time they will need to spend learning about the complex U.S. insurance market, researching the availability of health insurance products that can be purchased from outside the country (if any) and selecting a product.

The ten-minute estimate is particularly problematic in the case of applicants who plan to rely on their own resources. These individuals and consular officers would need to understand their health status, the treatment protocols accepted in the U.S. for their health conditions and the costs of those treatments. Because different providers have very different rates, applicants may need to "shop" for providers long-distance to obtain rate information that will allow them to qualify. In a country in which

'surprise medical bills' resonates as a political issue, it's hard to imagine how anyone outside the U.S. could estimate the cost of receiving treatment here accurately.⁶

How the Department can enhance the quality, utility, and clarity of the information to be collected.

The Department can enhance the quality, utility, and clarity of the information to be collected by limiting the request to information readily known by the prospective immigrant. In most cases, prospective immigrants know only whether they intend to seek health insurance coverage upon arrival in the U.S. or, if not, whether they have a given level of financial resources. The Department should limit its information collection request to those facts alone.

Conclusion

NILC strongly opposes the proposed information collection and the proclamation on which it is based. We respectfully request that the information collection be withdrawn.

Please contact me if additional information is required. I can be reached by email at lessard@nilc.org.

Respectfully,

Gabrielle Lessard
Senior Policy Attorney

⁶ Emmarie Huetteman, Legislation To End Surprise Medical Bills Has High Public Support — In Both Parties (Kaiser Health News, Sept. 11, 2019) <https://khn.org/news/legislation-to-end-surprise-medical-bills-has-high-public-support-in-both-parties/>