



Center for Public  
Representation

October 31, 2019

Edward J. Ramotowski  
Deputy Assistant Secretary  
Department of State, Bureau of Consular Affairs  
Office of Visa Services  
600 19th Street, NW  
Washington, DC 20036

Department of State Desk Officer  
Office of Management and Budget  
Office of Information and Regulatory Affairs  
725 17th St NW  
Washington, DC 20503

Re: Notice of Information Collection Under OMB Emergency Review: Immigrant Health  
Insurance Coverage  
DS Form No.: DS-5541  
OMB Control No.: None

Dear Assistant Secretary Ramotowski,

The Center for Public Representation (CPR) writes to express our strong opposition the State Department's request for emergency review and collection of information regarding its implementation of the presidential proclamation issued October 4, 2019 mandating that visa applicants abroad buy certain approved health insurance or have the financial means to cover foreseeable medical expenses. CPR is a national legal advocacy organization that promotes the full integration and community participation of people with disabilities. We are deeply concerned by the discriminatory nature of the underlying proclamation the State Department seeks to implement and believe it will prove to be enormously harmful to immigrants with disabilities.

The proclamation -- which not only requires proof of coverage or the financial means to cover expenses, but limits that coverage to plans that typically do not meet the needs of people with disabilities -- will bar many people with disabilities from lawful entry into the United States. Furthermore, emergency review to allow the State Department to implement the proclamation upon its effective date of November 3, 2019 is inappropriate. Emergency review is limited and

“in every case, the agency must show that . . . [t]he collection of information is essential to the mission of the agency.”<sup>1</sup> The implementation of a presidential proclamation that requires the State Department to track and monitor immigrants’ health care coverage, an area in which the State Department has not previously been involved, is clearly not central to the mission of the agency. Beyond that, as described below, the underlying proclamation also conflicts with existing law, and it is not the job of the State Department to implement illegal policy.

The proclamation illegally restricts immigrants’ ability to purchase comprehensive health insurance available through the Affordable Care Act (ACA) marketplaces by denying them access to subsidized insurance offered through the marketplaces, which lawful permanent residents (including those with incomes at or below 100% of the federal poverty line who are not otherwise eligible for Medicaid) are entitled to,<sup>2</sup> ignoring the law’s language, its intent, and Congressional will. The proclamation instead permits the purchase of more costly, less comprehensive coverage, including ACA-compliant catastrophic coverage and short term limited duration insurance (STLDIs) and association health plans (AHPs) that are not required to comply with the essential health benefits (EHBs) that are mandatory for all ACA plans. AHPs and STLDIs thus do not have to provide the ACA’s key protections for people with disabilities and in fact are allowed to refuse coverage on the basis of pre-existing conditions, meaning immigrants with disabilities would not be able to purchase those plans even if they wanted to do so. Denying access to more comprehensive coverage and instead promoting less comprehensive coverage is likely to increase uncompensated care, not decrease it, the very issue the proclamation claims to address.

The approved coverage under the proclamation also specifically bars Medicaid coverage for adults. Medicaid is generally the only provider of home and community based services for people with disabilities since they are not typically covered by private insurance. These services are critical to the independence and community integration of many people with disabilities, who rely on them to work, live in their own homes, and participate in their communities. Restricting people who do qualify from accessing Medicaid runs counter to Medicaid’s express purpose of increasing access to health care and conflicts with exceptions to the five year ban on Medicaid coverage for lawful permanent residents explicitly provided for under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Children's Health Insurance Program Reauthorization Act (CHIPRA).<sup>3</sup>

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<sup>1</sup> *Paperwork Reduction Act Guide 11* (Office of Personnel Mgmt. 2011), <https://www.opm.gov/about-us/open-government/digital-government-strategy/fitara/paperwork-reduction-act-guide.pdf> (citing 5 C.F.R. § 1320.13(a)(1)).

<sup>2</sup> 26 U.S.C. § 36B(c)(1).

<sup>3</sup> Complaint at 37-39, *Doe v. Trump*, No. 3:19-cv-01743-SB (D. Or. Oct. 30, 2019).

Immigrants with disabilities must have a fair opportunity to enter and reside legally in the United States, without unnecessary or discriminatory restrictions. The proclamation the State Department seeks to implement is another unwelcome throwback to the historical exclusion of people with disabilities. It will deny productive, valuable individuals entry to the United States based on stereotypes and fears about disability. In the interest of maintaining the integrity of our immigration system and respect for Congressional authority, we respectfully ask that the proclamation and policies related to its implementation be rescinded before it goes into effect.

Sincerely,

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