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Southern District of Texas
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS,

Plaintiff,

v.

ALEJANDRO MAYORKAS, in his official capacity as Secretary of the United States Department of Homeland Security, *et al.*,

Defendants.

Case No. 6:23-cv-00001

PROPOSED BRIEF OF THE AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, AMERICAN LUNG ASSOCIATION, CANCER*CARE*, EPILEPSY FOUNDATION, HEMOPHILIA FEDERATION OF AMERICA, LEUKEMIA & LYMPHOMA SOCIETY, MUSCULAR DYSTROPHY ASSOCIATION, NATIONAL MULTIPLE SCLEROSIS SOCIETY, NATIONAL PATIENT ADVOCATE FOUNDATION, AND SUSAN G. KOMEN AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

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IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici American Cancer Society, American Cancer Society Cancer Action Network, American Lung Association, Cancer*Care*, Epilepsy Foundation, Hemophilia Federation of America, Leukemia & Lymphoma Society, Muscular Dystrophy Association, National Multiple Sclerosis Society, National Patient Advocate Foundation, and Susan G. Komen represent millions of patients facing serious diseases and health conditions. They explain below how the rule challenged here, Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,472 (Sept. 9, 2022) ("2022 Rule"), ensures that all who Congress deemed eligible can access Medicaid's cost-saving coverage without fear of immigration consequences.

INTRODUCTION

For over a century, the "public charge" ground of inadmissibility has applied only to non-citizens who are likely to become primarily dependent on government assistance. Immigration agencies have thus historically assessed non-citizens' reliance on cash benefits or long-term institutionalization at government expense, but not their use of non-cash benefits, like Medicaid, which provide supplemental aid and promote self-sufficiency. *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689, 28,689 (May 26, 1999). "[C]onfusion about the relationship between the receipt of public benefits and the concept of 'public charge' has deterred eligible [non-citizens] and their families, including U.S. citizen children, from seeking important health and nutrition benefits," which decreases use of socially beneficial services like preventive screening and immunizations, drives up the cost of care, and injures "potential recipients, . . . public health[,] and the general welfare." *Id.* at 28,692.

Relying on that long-standing and well-substantiated conclusion, the 2022 Rule clarifies that use of supplemental programs by those Congress deemed eligible will not result in inadmissibility. 87 Fed. Reg. at 55,473. That approach is prudent. As *Amici* know, access to

Medicaid means low-income families will use socially beneficial services, like immunizations and preventive screenings, that are ultimately cheaper and more effective than acute care.

The Court should uphold the 2022 Rule and grant Defendants' cross-motion for summary judgment.

ARGUMENT

I. Access to Medicaid ensures that individuals can prevent, detect, and treat serious illnesses.

A. Medicaid increases access to and use of health services, particularly among medically underserved populations, thereby improving health outcomes.

Enrollment in Medicaid makes individuals more likely to use preventive health services, which controls costs and improves public health. Studies have observed that, in states where Medicaid is more accessible, individuals with low incomes access healthcare at higher rates and enjoy improved outcomes.[1] These gains are especially pronounced for those seeking treatment for cancer, chronic disease, or a disability, as well as for non-citizens and those in mixed-status households.[2] Indeed, because Medicaid increases the likelihood that patients with low incomes seek preventive care, including screenings and immunizations, illnesses are prevented or diagnosed at an earlier stage, when treatment is cheaper and more effective.[3]

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[1] *See* Madeline Guth & Meghana Ammula, *Building on the Evidence Base: Studies on the Effects of Medicaid Expansion, February 2020 to March 2021*, Kaiser Fam. Found. 2 (May 2021), https://files.kff.org/attachment/Report-Building-on-the-Evidence-Base-Studies-on-the-Effects-of-Medicaid-Expansion.pdf; Off. of the Assistant Sec'y for Plan. & Evaluation, *Impacts of the Affordable Care Act's Medicaid Expansion on Insurance Coverage and Access to Care*, U.S. Dep't Health & Hum. Servs. 2 (2017), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//172051/medicaidexpansion.pdf.

[2] *See* Guth & Ammula, *supra* note 1, at 5-6.

[3] *See, e.g.*, *id.* at 5-6, 10; Benjamin D. Sommers et al., *Three-Year Impacts of the Affordable Care Act: Improved Medical Care and Health Among Low-Income Adults*, 36 Health Affs. 1119, 1124 (2017).

In turn, studies link greater Medicaid access to decreased mortality rates for a range of conditions relevant to *Amici*'s work. Specifically, states that expanded Medicaid eligibility after enactment of the Affordable Care Act ("ACA") saw "improved overall mortality rates[,] as well as mortality rates" for conditions like cancer, cardiovascular disease, and liver disease.[4] Expanded Medicaid access has also led to higher screening rates for colorectal and breast cancer,[5] earlier cancer diagnoses,[6] better survival rates for patients with newly diagnosed cancer ages 18-64,[7] and improved post-operative survival rates for lung cancer patients.[8]

Expanded Medicaid availability has also been tied to reduced rates of maternal mortality and morbidity[9] and cardiovascular mortality for middle-aged adults.[10] In addition, ready access to Medicaid has meant that patients with diabetes are seeking earlier treatment and experiencing

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[4] *See* Guth & Ammula, *supra* note 1, at 4; Sarah Miller et al., *Medicaid and Mortality: New Evidence from Linked Survey and Administrative Data* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 26081, 2019), https://www.nber.org/system/files/working_papers/w26081/w26081.pdf.

[5] *See* Nicolas Ajkay et al., *Early Impact of Medicaid Expansion and Quality of Breast Cancer Care in Kentucky*, 226 J. Am. Coll. Surgeons 498, 498 (2018); Stacey A. Fedewa et al., *Changes in Breast and Colorectal Cancer Screening After Medicaid Expansion Under the Affordable Care Act*, 57 Am. J. Preventive Med. 3, 3 (2019); Yoshiko Toyoda et al., *Affordable Care Act State-Specific Medicaid Expansion: Impact on Health Insurance Coverage and Breast Cancer Screening Rates*, 230 J. Am. Coll. Surgeons 775, 775 (2020).

[6] *See, e.g.*, Xuesong Han et al., *Comparison of Insurance Status and Diagnosis Stage Among Patients with Newly Diagnosed Cancer Before vs After Implementation of the Patient Protection and Affordable Care Act*, 4 JAMA Oncology 1713, 1713 (2018).

[7] Jingxuan Zhao et al., *Association of State Medicaid Income Eligibility Limits and Long-Term Survival After Cancer Diagnosis in the United States*, 18 JCO Oncology Prac. 988, 988 (2022); Xu Ji et al., *Survival in Young Adults with Cancer Is Associated with Medicaid Expansion Through the Affordable Care Act*, 41 J. Clinical Oncology 1909, 1909 (Apr. 2023).

[8] Leticia Nogueira et al., *Association of Medicaid Expansion Under the Affordable Care Act and Early Mortality Following Lung Cancer Surgery*, 39 J. Clinical Oncology 76, 76 (2021).

[9] Ivette Gomez et al., *Medicaid Coverage for Women*, Kaiser Fam. Found. (Feb. 17, 2023), https://www.kff.org/womens-health-policy/issue-brief/medicaid-coverage-for-women/.

[10] Sameed Khatana et al., *Association of Medicaid Expansion with Cardiovascular Mortality*, 4 JAMA Cardiology 671, 671 (2019).

better outcomes,[11] and those with mental health issues are less likely to delay or forgo seeking care because of cost.[12] Medicaid access also benefits children, even if their parent is the beneficiary, putting them on a path to lifelong health.[13]

Viewed collectively, these benefits show how removing access barriers improves public health. That relationship is readily apparent for immunizations, where reducing "financial barriers to vaccination could be central in reducing vaccine-preventable disease burden[s]," including patient death and related societal costs.[14] *See* 87 Fed. Reg. at 55,511 (acknowledging concerns that considering use of non-cash benefits, like Medicaid, could deter immunizations).

B. Eliminating Medicaid access barriers reduces socioeconomic disparities and promotes financial stability, including for non-citizens.

The explanation for these beneficial outcomes is simple: Medicaid access makes seeking treatment for serious illnesses more affordable, which means patients get the care they need without risking financial ruin. Indeed, gaps in coverage between households with incomes below

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[11] *See* Jusung Lee, *The Impact of Medicaid Expansion on Diabetes Management*, 43 Diabetes Care 1094, 1097-98 (2020).

[12] Priscilla Novak et al., *Changes in Health Insurance Coverage and Barriers to Health Care Access Among Individuals with Serious Psychological Distress Following the Affordable Care Act*, 45 Admin. & Pol'y Mental Health & Mental Health Servs. Rsch. 924, 924 (2018).

[13] AR 223 (Edwin Park et al., *Jeopardizing a Sound Investment: Why Short-Term Cuts to Medicaid Coverage During Pregnancy and Childhood Could Result in Long-Term Harm,* Commonwealth Fund (Dec. 2020), https://www.commonwealthfund.org/sites/default/files/2020-12/Park_Medicaid_short_term_cuts_long-term-effects_ib_v2.pdf); *see also* Karina Wagnerman et al., *Medicaid Is a Smart Investment in Children*, Geo. Univ. Health Pol'y Inst. (Mar. 2017), https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf.

[14] Angela K. Shen & Walter Orenstein, *Continued Challenges With Medicaid Coverage of Adult Vaccines and Vaccination Services*, 3 JAMA Network Open, Apr. 2020, at 2, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2764807; *see also* Sara Rosenbaum & Rebecca Morris, *Using Medicaid Managed Care to Boost Immunization Rates*, Commonwealth Fund (Mar. 3, 2021), https://www.commonwealthfund.org/blog/2021/using-medicaid-managed-care-boost-immunization-rates (concluding that expanding Medicaid coverage "will be critical" to boosting adult immunization rates).

$25,000 and those above $75,000 fell twice as quickly in Medicaid-expansion states as in non-expansion states.[15] Unsurprisingly, in the first two years of expansion, "medical bills sent to collection [fell] by $3.4 billion," and many patients avoided incurring new debts or becoming delinquent on existing debt.[16] This financial breathing room means that patients with low incomes can build credit,[17] stay employed and in school,[18] avoid eviction,[19] and sidestep payday lenders.[20] Medicaid access therefore furthers, rather than undermines, financial self-sufficiency. *See* 87 Fed. Reg. at 55,536 (acknowledging concern that deterring Medicaid enrollment "put[s] families at greater risk of medical debt, unpaid bills, and bankruptcy").

Access to Medicaid is also a powerful tool for addressing race-based disparities in healthcare access because people of color "are disproportionately lower income" and more likely to be priced out of quality healthcare.[21] Indeed, "black adults living in states that expanded

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[15] Kevin Griffith et al., *The Affordable Care Act Reduced Socioeconomic Disparities in Health Care Access*, 36 Health Affs. 1503, 1507-08 (2017).

[16] *See* Kenneth Brevoort et al., *Medicaid and Financial Health* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 24002, 2017), https://www.nber.org/system/files/working_papers/w24002/w24002.pdf.

[17] *Id.* at 41; *see also* Kyle J. Caswell & Timothy A. Waidmann, *The Affordable Care Act Medicaid Expansions and Personal Finance*, 76 Med. Care Rsch. & Rev. 538, 562 (2019).

[18] *See* Krystin Racine, *More Evidence that Medicaid Expansion Linked to Employment and Education Gains*, Geo. Univ. Health Pol'y Inst., Ctr. for Child. & Families (Mar. 3, 2021), https://ccf.georgetown.edu/2021/03/03/more-evidence-that-medicaid-expansion-linked-to-employment-and-education-gains/.

[19] *See* Heidi L. Allen et al., *Can Medicaid Expansion Prevent Housing Evictions?*, 38 Health Affs. 1451, 1454-56 (2019).

[20] *See* Heidi Allen et al., *Early Medicaid Expansion Associated with Reduced Payday Borrowing in California*, 36 Health Affs. 1769, 1772-75 (2017).

[21] *See* Jesse C. Baumgartner et al., *How the Affordable Care Act Has Narrowed Racial and Ethnic Disparities in Access to Health Care*, Commonwealth Fund (Jan. 16, 2020), https://www.commonwealthfund.org/publications/2020/jan/how-ACA-narrowed-racial-ethnic-disparities-access.

Medicaid report[ed] coverage rates and access to care measures as good as or better than what white adults in nonexpansion states report[ed]."[22] Removing cost-driven access barriers produces more equitable health outcomes, too. For instance, one study found Medicaid expansion-driven reductions in maternal mortality "concentrated among non-Hispanic Black mothers, suggesting that expansion could be contributing to decreasing racial disparities in maternal mortality."[23]

Removing Medicaid access barriers is especially important for non-citizens, whose enrollment eligibility is set by statute (not the 2022 Rule). *See* 8 U.S.C. §§ 1601-1646 (establishing non-citizen eligibility for benefits, including Medicaid). Non-citizens are "significantly more likely to report being uninsured than citizens,"[24] partly because many "work[] in jobs that are less likely to provide health benefits."[25] And "[t]hose who are eligible for coverage also face a range of enrollment barriers including fear, confusion about eligibility rules, and language and literacy challenges."[26] Eliminating access barriers for non-citizens Congress deemed eligible, as the 2022 Rule does, is thus critical to ensuring that the benefits of affordable healthcare reach immigrant communities, where many are lawfully employed but nevertheless lack coverage.

Moreover, states with large populations of non-citizens, like Texas, benefit from broader Medicaid enrollment, which reduces dependency on emergency services and other forms of uncompensated care. *See* 87 Fed. Reg. at 55,529 (connecting Medicaid disenrollment and

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[22] *Id.*

[23] Erica L. Eliason, *Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality*, 30 Women's Health Issues 147, 147 (2020).

[24] *Health Coverage and Care of Immigrants*, Kaiser Fam. Found. (Dec. 20, 2022), https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/.

[25] *Id.*

[26] *Id.*

"uncompensated medical care"). As even the 2022 Rule's predecessor acknowledged, benefit disenrollment results in "increased costs to states and localities." Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,313 (Aug. 14, 2019) (the "2019 Rule"); *see Cook Cnty. v. Wolf*, 962 F.3d 208, 233 (7th Cir. 2020) (noting the "significant increase" in municipal costs caused by the 2019 Rule and the "higher county-wide risk of vaccine-preventable and other communicable diseases").

Thus, far from increasing reliance on public support, ensuring that non-citizens who Congress deemed eligible can access Medicaid helps immigrant families stand on their own and conserves public resources.

II. <u>The 2022 Rule ensures that eligible non-citizens can access Medicaid without fearing unwarranted immigration consequences.</u>

Given the demonstrated benefits of Medicaid coverage, removing access barriers for eligible non-citizens is critical. But considering the use of Medicaid and other non-cash benefits in the public charge analysis "chill[s]" those Congress deemed eligible from enrolling. *See* 87 Fed. Reg. at 55,474; *see also* 84 Fed. Reg. at 41,313 ("recogniz[ing] a plausible connection between" considering such benefits and disenrollment).

The evidence bears out this chilling effect. Studies examining the impact of the 2019 Rule, which considered the use of Medicaid and other non-cash benefits as evidence that an applicant was likely to become a "public charge," found that nearly 28 percent of adults in low-income immigrant families reported that they or a family member declined non-cash benefits.[27] The

[27] AR 215 (Hamutal Bernstein et al., *Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis yet Avoided Safety Net Programs in 2020*, Urban Inst. (May 26, 2021), https://www.urban.org/research/publication/adults-low-income-immigrant-families-were-deeply-affected-covid-19-crisis-yet-avoided-safety-net-programs-2020); AR 270 (Randy Capps et al., *Anticipated 'Chilling Effects' of the Public-Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*, Migration Pol'y Inst. (Dec. 2020),

chilling effect was even worse for households with children: more than 20 percent of adults in immigrant families with children, and more than 31 percent of "adults in low-income immigrant families with children," reported that they or a family member had avoided non-cash benefits.[28] Indeed, while the 2019 Rule was under consideration, the number of uninsured children rose by 320,000, "the largest annual jump seen in more than a decade."[29] No state experienced a greater increase in the number of uninsured children than Texas, which claimed 33 percent of the newly uninsured children.[30]

The 2022 Rule responds to these well-documented concerns by clarifying that the "public charge" inquiry does not interfere with Congress' choice to make some non-citizens eligible for Medicaid enrollment. *See* 87 Fed. Reg. at 55,505. Communities with low-income non-citizens will see coverage rates rise, health outcomes improve, and care become more affordable, as a result. In contrast, vacating or enjoining the 2022 Rule would sow confusion and fear in immigrant communities, chilling Medicaid enrollment for those Congress deemed eligible.[31] In turn,

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https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real); AR 214 (Benjamin D. Sommers et al., *Assessment of Perceptions of the Public Charge Rule Among Low-Income Adults in Texas*, 3 JAMA Network Open (2020), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768245).

[28] AR 235, at 2 (Jennifer M. Haley et al., *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Inst. (June 2020), https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019_1.pdf).

[29] Joan Alker & Alexandra Corcoran, *Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade*, Geo. Univ. Health Pol'y Inst. 1 (Oct. 2020), https://ccf.georgetown.edu/wp-content/uploads/2020/10/ACS-Uninsured-Kids-2020_10-06-edit-3.pdf.

[30] *See id.* at 15 app. tbl. 3.

[31] *See* Kelly Whitener, *New Report Underscores Need to Reassure Immigrant Families*, Geo. Univ. Health Pol'y Inst. (Dec. 16, 2022), https://ccf.georgetown.edu/2022/12/16/new-report-underscores-need-to-reassure-immigrant-families-2/.

communities will lack immunization against communicable disease, treatable conditions will go undetected, and illnesses will be allowed to progress, resulting in worse health outcomes at greater cost on both an individual and systemic level. *Amici* ask that the Court consider these ramifications before taking action that might disrupt Medicaid access for populations that are already medically underserved.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' cross-motion for summary judgment.

Dated: October 27, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-face requirements set forth in the Court's local rules and chamber procedures and that it contains 2,500 words, exclusive of the matters designated for omission, according to the word count function of Microsoft Word 365.

/s/ Ben Seel
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Counsel for Amici Curiae

Date: October 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2023, a true and accurate copy of the foregoing document was filed electronically via CM/ECF and served on all counsel of record.

/s/ Ben Seel
Ben Seel

Counsel for Amici Curiae

Date: October 27, 2023