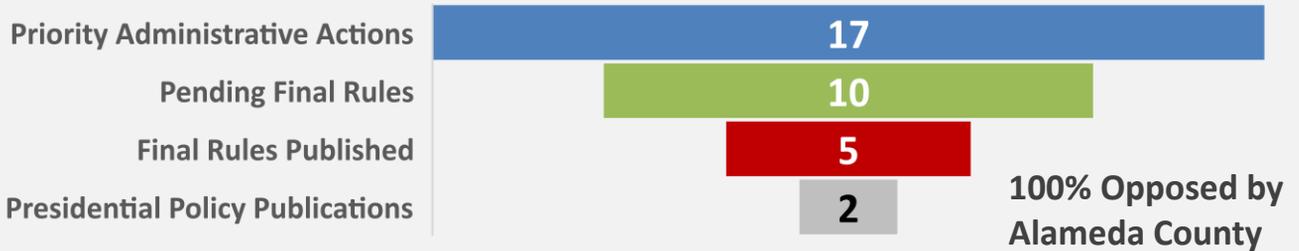


2019 Federal Annual Update

Spotlight on Administrative Actions



What is a Notice of Proposed Rulemaking (NPRM)?

An NPRM is a proposed administrative action that is used by the White House to make policy statements or interpret legislation through the functions of federal departments. In the last three years, the Executive Branch has used these actions as an attempt to enforce policy goals not passed by Congress. Proposed rules known as “Notice of Proposed Rulemaking” (NPRM) are required by law to allow for public comment before the lead agency publishes a final rule and enacts the policy. Generally, the public comment period is open for 30-60 days with no timeline for when a final rule will be published.

NPRM Process

- **Regulatory Agenda**
- **NPRM Published**
- **Public Comment Period**
- **Final Rule Published**
- **Rule Goes in Effect**

Key



Alameda County Submitted Comments in Opposition to Proposal



Other administrative actions include Presidential Policy: Executive Orders, Memoranda, and Proclamations



Public Charge

Final Rule

In January 2017, the first drafts of a proposed expansion of “public charge” were leaked. More than 2 years later, the Department of Homeland Security released a Final Rule intending to implement the policy on October 15, 2019. A nation-wide injunction has currently halted the implementation of the final rule.

- Current regulations only consider cash assistance & long-term care at government expense in “public charge” determinations
- Occurs when an immigrant applies to enter the US or adjust status to lawful permanent residency
- Final Rule includes CalFresh, Medi-Cal (for adults over 21, excluding pregnant and post-partum women), and housing assistance
- Alameda County filed an amicus brief with the CA Attorney General in support of the injunction.

Enforcing the Legal Responsibilities of Sponsors

Presidential Policy



In May 2019, a Presidential Memoranda directed federal agencies to update procedures and regulations to “ensure ineligible immigrants do not receive federal means-tested benefits.”

- It is important to know that this does not change existing rules or guidance
- Unfortunately, benefits for many immigrants are already restricted by law
- New regulations may make eligible immigrants fearful of receiving benefits, or may make potential sponsors nervous about sponsoring family members



Suspension of Entry of Immigrants Who Will Financially Burden the US Healthcare System

Presidential Policy



In October 2019, a Presidential Proclamation attempted to restrict entry by immigrants who could not afford private health insurance. A temporary restraining order halted its implementation.

- Nearly 2 out of 3 recent immigrants lack insurance that would qualify
- Could prohibit the entry of 375,000 immigrants annually, mainly family-based immigrants
- This policy is another form of a “wealth test” for immigrants



Custody of Undocumented Minor Children

Final Rule

In August 2019, the Department of Homeland Security (DHS) released a Final Rule that intends to bypass a court order requiring that children be detained in immigration facilities for no longer than 20 days (the “Flores Agreement”). A nationwide injunction has halted the implementation of the rule.

- 1997 Flores Agreement set time and care standards for children in immigration detention
- American Association of Pediatrics: any amount of time in detention harms a child’s wellbeing
- Final Rule would undo the agreement, permitting children and families to be detained indefinitely
- Creates a new federal licensing scheme that operates outside of state child welfare requirements



USCIS Fee Schedule

NPRM

In November 2019, DHS released an NPRM that raises fees for a wide range of immigration processes - an expansion of a 2018 NPRM that creates barriers to the receipt of a fee waiver for immigration applications. A nationwide injunction has halted the fee waiver proposal.

- Increase fees for immigration applications: citizenship -> 83%, legal permanent residency -> 79%, DACA -> 55%
- For the first time, levies a fee on applicants for asylum – making the U.S. one of only four countries in the world charging this fee
- Other fees would increase as much as 500%



Verification of Eligible Status

NPRM

In May 2019, the Department of Housing and Urban Development (HUD) released an NPRM that limits the ability of households with “mixed statuses” (families where some members are eligible for housing support, and others are not due to immigration status) to receive or maintain housing support.

- Evicts 100,000 individuals from HUD-supported housing, including 4,700 households in California with 12,500 children
- These are very-low income families who will face housing instability and homelessness
- Will lead to increased costs and worsened housing outcomes for communities



Removal of 30-Day Processing Provision for Asylum Employment Authorization

NPRM

In September 2019, USCIS released an NPRM that removes a timely processing requirement for employment authorization for asylum applicants. Days after the comment period ended, USCIS published another NRPM that would further burden asylum applicants.

- Applicants for asylum must wait 180 days until they can work
- Will eliminate 30-day processing, permitting an indefinite waiting period for work authorization
- Individuals and families would face extended periods of time with no income
- Programs intended to serve asylees would be working with a population that is more severely burdened and higher-need



SNAP: Requirements for ABAWDs

Final Rule

In December 2019, the Department of Agriculture, Food and Nutrition Services (USDA FNS) released a Final Rule that restricts States' ability to apply for a waiver that provides CalFresh/SNAP benefits to Able-Bodied Adults Without Dependents (ABAWDs) during times of high unemployment.

- Restricts a method that states can use to enhance CalFresh/SNAP support when unemployment is high, or jobs are hard to find
- Will require a higher level of unemployment to trigger the state option, and limit their design, duration, and use
- More people would have to lose their jobs before low-income individuals could have enhanced access to benefits



Revision of Categorical Eligibility in SNAP

NPRM

In July 2019, USDA FNS released an NPRM that restricts States' ability to apply to provide CalFresh/SNAP benefits to families and individuals with modest assets and those living just above the poverty line.

- 3 million households would lose SNAP benefits nationwide; 500,000 children would lose access to free school lunches
- Undermines efforts to increase assets for low-income households so that they can build financial stability
- Impacts older adults and people with disabilities: 13% could lose benefits



SNAP: Standardization of Standard Utility Allowances

NPRM

In October 2019, USDA FNS released an NPRM that restricts States' ability to enhance CalFresh/SNAP benefits to households with high housing and utility costs relative to their income.

- Would remove States' ability to set their own utility standards
- Provided to those who pay more than 50% of their income on housing costs
- Older adults & people with disabilities would experience the greatest reduction in support
- 500,000 households in California would have reduced CalFresh/SNAP benefits



Health and Human Services Grant Regulation

NPRM

In November 2019, the Department of Health and Human Services (HHS) released an NPRM that removes language barring discrimination based on sexual orientation or gender identity in HHS programs – including foster care, adoptions, HIV prevention, and substance abuse services.

- Impacts more than \$500B in grants annually
- HHS cites concerns from grant recipients who would choose not to serve LGBTQ+ individuals
- Programs include Meals on Wheels, Head Start, Child Welfare/Foster Care, Homeless Services, etc.
- Entities can now receive waivers; however, if the proposal is implemented, LGBTQ+ individuals and families would have no recourse



Nondiscrimination in Health Programs

NPRM

In June 2019, HHS released an NPRM that scales back protections in health care services for LGBTQ+ communities, women, people with limited English proficiency, and people with disabilities.

- Limits the entities that are required to prohibit discrimination based on sexual orientation, gender identity, language proficiency, national origin, disability, and race/ethnicity
- Will lead to more people denied care – harms broader public health efforts
- Health care barriers are already heightened for many of these communities



Revised Requirements Under Housing Programs

Regulatory Agenda

In May 2019, HUD posted a notice in the Regulatory Agenda that an NRPM is forthcoming, limiting the rights of nonbinary, gender expansive, and transgender individuals in shelters and housing programs. The NPRM has not yet been published.

- Removes protections based on gender identity
- Transgender individuals experience homelessness 2.5 times more than the general population, 40% of homeless LGBTQ+ youth are transgender
- 70% of transgender individuals who accessed a shelter reported being kicked out, experiencing assault, or facing some other mistreatment due to their gender identity



Frequency of Continuing Disability Reviews

NPRM

In November 2019, the Social Security Administration released an NPRM that would require more frequent reviews for individuals receiving Social Security disability benefits.

- Creates an additional medical diary category: Medical Improvement Likely, with a disability review every 2 years.
- This may lead to challenges in renewal for individuals facing unnecessarily frequent reviews if actual improvement is not likely or expected.



Consumer Inflation Measures Produced by Federal Statistical Agencies

Public Comment

In May 2019, a Request for Comment was released with a proposal that would impact the calculation of the Federal Poverty Level. As this was not an NPRM, the Office of Management and Budget may decide to release an NPRM, or simply change the inflation measures with another notice to the public.

- A slower inflation rate means that the poverty rate adjusts more slowly
- This will result in more families that depend on supportive services outside of restricted eligibility limits over time
- An estimated 300,000 children and 250,000 adults would lose Medicaid or CHIP coverage if the policy is implemented



Provider Payment Reassignment

Final Rule

In May 2019, the Centers for Medicare Medicaid Services (CMS) released a Final Rule that restricts the ability to provide health care benefits and training to providers of In-Home Supportive Services (IHSS). The California Attorney General filed a lawsuit to challenge the rule.

- California provides benefits and training to IHSS providers, who are technically employed by IHSS recipients
- A 2014 CMS Rule codified these arrangements, which lead to a stronger, well trained and cared for workforce
- The new rule rescinds the ability to provide training and benefits to IHSS providers: directly impacting 6,000 providers in Alameda County