FELDESMAN

MEMORANDUM

TO: National Council for Mental Wellbeing

FROM: Adam J. Falcone and Susannah Vance Gopalan

DATE: July 14, 2025

RE: HHS Notice Interpreting "Federal Public Benefit"

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1. Background

Today, the U.S. Department of Health and Human Services published a Notice in the Federal Register, reinterpreting the term "Federal public benefit" (FBP) as defined in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) 1996 welfare reform legislation. (See HHS, Notice, PRWORA: Interpretation of "Federal Public Benefit," 90 Fed. Reg. 31232 (July 14, 2025) ("HHS Notice")). Under PRWORA, individuals who are not U.S. citizens or "qualified aliens" are not eligible for FBPs (8 U.S.C. § 1611(a)).

HHS' new interpretation captures within the term "FBP" a larger array of HHS programs than were included in HHS' previous interpretation, issued in 1998. The result of HHS' broader definition of FBP means that at least twelve HHS programs that were not previously considered FBPs are now considered to fall within this term. These include behavioral health-related programs such as the Certified Community Behavioral Health Clinic grant program; the Substance Use Prevention, Treatment, and Recovery Services Block Grant; the Community Mental Health Services Block Grant; and other Mental Health and Substance Use Disorder Treatment, Prevention, and Recovery Support Services Programs administered by the Substance Abuse and Mental Health Services Administration not otherwise listed in the Notice.

While the HHS Notice provides for a 30-day comment period, HHS stated that its reinterpretation of the term "Federal public benefit" takes effect immediately because "[a]ny delay would be contrary to the public interest and fail to address the ongoing emergency at the Southern Border of the United States."

2. Legal Analysis

You have informed us that some behavioral health providers have asked the National Council for Mental Wellbeing ("NCMW") whether because of the HHS Notice they must, effective July 14, 2025, screen clients for immigration status before supporting their care through grant funds or program income associated with HHS programs. This question might arise, for example, for CCBHCs screening individuals for eligibility for discounted services under the sliding fee scale required for low-income individuals. Such discounts are required under the CCBHC program criteria, and the discounts are often supported by the SAMHSA CCBHC expansion grants, or program income associated with same.

We do not believe providers should take any such action at this time for the following reason:

Nonprofit charitable organizations within NCMW's membership are not subject to a requirement to "verify" whether individuals seeking services under FBPs are "qualified aliens."

Under PRWORA, a non-qualified alien is not eligible for FBP. (8 U.S.C. § 1611(a).) PRWORA defines the categories of noncitizens who are "qualified aliens" (*Id*. § 1641). The law required that the Attorney General, in consultation with the HHS Secretary, promulgate regulations concerning a verification system to determine whether individuals seeking FBPs are citizens or qualified aliens. (*Id.* § 1642(a).)

PRWORA exempts nonprofit charitable organizations from the requirement to verify citizenship-related eligibility for FBPs. (*Id*. § 1642(d): "Subject to subsection (a), a nonprofit charitable organization, in providing any [FBP] or any State or local public benefit . . . is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.")

HHS acknowledged in its July 14, 2025 Notice that verification requirements are "related to a practical effectuation of the prohibition" on eligibility for FBPs by "non-qualified aliens." (90 Fed. Reg. at 31237.) In other words, the prohibition on non-qualified aliens' eligibility for the newly-defined FBPs does not have much "teeth" if the entities administering these programs are not required to verify "qualified alien" status. At the same time, HHS also indicated that those requirements are "are conceptually distinct from a proper definition of 'Federal public benefit.'" (*Id*.)

As a consequence, any NCMW member that is a nonprofit charitable organization currently has no current obligation to verify whether individuals seeking services or benefits are "qualified

aliens". In the HHS Notice, the HHS Secretary acknowledges that the agency is not formally instituting new requirements with respect to verification of qualified alien status. At the same time, the HHS Notice states that nothing in PRWORA prohibits entities that are not required to conduct verification from doing so, and indicates: "Pending further regulation and/or guidance on the situations in which verification is required, all entities that are part of HHS's administration of public benefits should pay heed to the clear expressions of national policy" (i.e., exclusion of "non-qualified aliens" from benefits) described in the Notice. (90 Fed. Reg. 31237.)

Three important caveats to this reassurance are worth noting.

- First, the exception applies only to "charitable nonprofit organizations." NCMW members that are either governmental entities or for-profit corporations should consult with counsel as to potential verification requirements.
- Second, many NCMW members, as providers of health care or other services, have access to eligibility information relating to Medicaid or State safety-net programs, which may, in turn, include immigration status information. An individual's Medicaid eligibility group alone may indicate that the individual is not a qualified alien (for example, individuals who receive Medicaid only through the emergency Medicaid benefit (Social Security Act § 1903(v)). It is important to monitor legal developments related to current obligations of nonprofit charitable organizations with respect to furnishing services or benefits under the newly-expanded definition of FBPs to such individuals.[1]
- Third, as indicated above, HHS indicated in the Notice its intent to issue guidance or regulations relating to verification requirements. NCMW members should be on the alert for new developments in this area.

[1] As of the date of this memorandum, the U.S. Department of Justice has not withdrawn its 1997 Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997). That Guidance suggests that compliance is voluntary for nonprofit charitable organizations that choose to verify immigration status. "A nonprofit charitable organization that chooses not to verify cannot be penalized (e.g., through cancellation of its grant or denial of reimbursement for benefit expenditures) for providing federal public benefits to an individual who is not a U.S. citizen, U.S. noncitizen national or qualified alien, except when it does so either in violation of independent program verification requirements or in the face of a verification determination made by a non-exempt entity. *However, if your organization chooses to verify, even though it is a nonprofit charitable organization that is not required to do so under the Act, you should comply with the procedures set forth in this Guidance and provide benefits only to those whom you verify to be U.S. citizens, U.S. non-citizen nationals or qualified aliens*." 62 Fed. Reg. 61344, 61346 (emphasis added).

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In short, while HHS has broadened its definition of "Federal public benefit" for purposes of PRWORA, and the reinterpreted term encompasses numerous mental health and/or substance use disorder HHS programs, it remains the case that most nonprofit entities furnishing services as grantees under those programs do not have any obligation to verify individuals' citizenship status before furnishing the benefit.