

Submitted via www.regulations.gov

June 23, 2023

Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services
Attention: CMS–9894–P
Mail Stop C4–26–05
7500 Security Boulevard
Baltimore, MD 21244–1850

Re: CMS 9894-P: Clarifying Eligibility for a Qualified Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, a Basic Health Program, and for Some Medicaid and Children’s Health Insurance Programs

The undersigned 424 national, state and local organizations are writing to share our support for, as well as recommendations to improve on, the notice of proposed rulemaking (NPRM) published in the Federal Register on April 26, 2023.

Clarifies Health Coverage for DACA Recipients

People with Deferred Action for Childhood Arrivals are lawfully present and should be treated as such for health insurance purposes. The Affordable Care Act (ACA) created the “lawfully present” standard for eligibility for the Pre-Existing Condition Insurance Plan (PCIP) and the marketplace. Because the ACA did not define lawfully present, HHS issued an interim final rule that adopted the definition of lawfully residing from a 2010 HHS letter that defined this standard for the CHIPRA state option providing coverage for “lawfully residing” children and pregnant women. It included *all those granted deferred action* as well as other temporary immigration categories, such as Temporary Protected Status and Deferred Enforced Departure.

In March 2012, HHS issued a rule adopting the PCIP definition of lawfully present for eligibility determinations in the ACA marketplaces. Three months later, when DHS announced DACA as its newest deferred action category, people with DACA would have been classified as “lawfully present” and “lawfully residing” under the existing HHS definition and therefore eligible for CHIPRA’s state option. However, in August 2012, the Centers for Medicare & Medicaid (CMS) issued a letter to states stating that health benefits *should not be extended* as a result of DHS deferring action under DACA.¹ HHS then issued an interim final rule that modified the PCIP

¹ State Health Official Letter (SHO #12-002) from Cindy Mann, Director, Center for Medicaid and CHIP Services, U.S. Department of Health and Human Services, “Individuals with Deferred Action for Childhood Arrivals,” August 28, 2012, available at: <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf>.

² Pre-Existing Condition Insurance Plan Program, 77 Fed. Reg. 52614, August 30, 2012, available at: <https://www.govinfo.gov/content/pkg/FR-2012-08-30/pdf/2012-21519.pdf>.

program definition of lawfully present to *explicitly exclude people with DACA*.² HHS and Treasury’s marketplace regulations then cross-referenced the PCIP definition, leaving people with DACA excluded from the marketplace and all other health insurance affordability programs.³

People with DACA should have been classified as “lawfully present” and “lawfully residing” under the existing HHS definitions for deferred action in the PCIP program, Medicaid, CHIP, the Basic Health Program (BHP) and the marketplace. HHS has maintained eligibility for insurance affordability programs for all others granted “deferred action” over the years. It’s time for people with “Deferred Action” for Childhood Arrivals status to be included. HHS estimates that about 129,000 people with DACA are likely to benefit from this change.⁴

In the height of the COVID pandemic and today, people with DACA care for us. More than three quarters of DACA recipients in the workforce were employed in jobs deemed “essential” by the Department of Homeland Security.⁵ Of these, 34,000 were healthcare workers providing patient care, and another 11,000 were working in health care settings keeping the facilities functioning.⁶

Increasing access to health coverage for DACA recipients will increase the rate of health coverage for children. About 29 percent of people with DACA are parents, the majority to U.S. citizen kids.⁷ Children are more likely to have insurance coverage when their parents are also insured and a parent’s receipt of health care services often dictates that of their children.⁸

Including people with DACA may improve the overall marketplace risk pool because they are generally healthy young adults. Almost 7 in 10 (64 percent) people with DACA report their health as excellent or very good and an additional 28 percent report their health as good. These findings reflect that people with DACA tend to be healthy and are largely consistent with the self-reported health status of citizens in the same age group.⁹

² *ibid.*

³ The marketplace eligibility regulations define “lawfully present” at 45 C.F.R. § 155.20 by cross-referencing the PCIP definition at 45 C.F.R. § 155.2, which means the marketplace also excludes people with DACA.

⁴ Clarifying Eligibility for a Qualified Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reduction, a Basic Health Program, and for Some Medicaid and Children’s Health Insurance Programs, 88 Fed. Reg. at 25313 at 25327, April 26, 2023.

⁵ Center for American Progress, “New CAP Data Confirm DACA is a Positive Force For Recipients and Their Families,” Nov 24, 2021, available at: <https://www.americanprogress.org/press/release-new-cap-data-confirm-daca-is-a-positive-force-for-recipients-and-their-families/>

⁶ *ibid.*

⁷ *ibid.*

⁸ Georgetown University Center for Children and Families, “Research Update: How Medicaid Coverage for Parents Benefits Children, January 12, 2018, available at: <https://ccf.georgetown.edu/2018/01/12/research-update-how-medicaid-coverage-for-parents-benefits-children/>

⁹ Kaiser Family Foundation, “Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals Program,” February 1, 2018, available at: <https://www.kff.org/disparities-policy/fact-sheet/key-facts-on-individuals-eligible-for-the-deferred-action-for-childhood-arrivals-daca-program>.

We urge HHS to allow these changes to go into effect as soon as the final rule is published.

We strongly suggest that HHS allow states to implement changes for CHIPRA s. 214 coverage, in state marketplaces, and in the BHP, anytime from the day the final rule is published until November 1, 2023. We also encourage you to allow a special enrollment period for the federal marketplace beginning on the date the final rule is issued, and then open for open enrollment Nov 1, 2023.

Clarifies Health Coverage for Other Noncitizens

People granted Special Immigrant Juvenile status (SIJ) --and not just those applying—should also be lawfully present for eligibility purposes. Years ago, people used to receive SIJ and lawful permanent status nearly simultaneously, which allowed people granted SIJ to remain eligible for health insurance affordability programs as lawful permanent residents (green card holders). However, due to backlogs in processing green card applications, many people who are granted SIJ now wait years for their green cards. This has caused confusion for advocates and legal and social service providers working to ensure that people granted SIJ continue to access health care. By definition, youth applying for SIJ cannot reunify with their parents due to abuse, neglect or abandonment by caregivers and need access to coverage for mental health supports and other services.

Simplifies enrollment for nonimmigrant visa holders by eliminating ‘not in violation of terms of status’ language. This change will ensure a clear pathway to eligibility for additional groups of immigrants, and make it easier for states to determine eligibility. The changes would allow people with the following statuses to enroll in the marketplace (and the state Medicaid option for children and pregnant women).

- All people granted employment authorization documents (EADs) under 8 CFR 274a.12(c)(by eliminating a reference to specific sections of the regulation granting EADs)
- Applicants for adjustment to LPR status (by eliminating requirement for approved visa petition)
- Children under age 14 who are applying for asylum, withholding of removal, or relief under the Convention Against Torture (CAT) (eliminates a 180 day waiting period)
- Migrants under the Compact of Free Association who are lawfully present as “nonimmigrants”
- Noncitizens who are treated like refugees, such as Afghans and Ukrainians with Humanitarian parole

Provides Funding and Flexibility for States to Make Progress on Health Coverage for the Uninsured

It supports states that use state-only funds to pay for Medicaid for people with DACA to be partially reimbursed. A number of states, such as New York, and California, cover people with DACA in Medicaid with state only funds. This change will provide federal matching funds for

states that cover pregnant people or children with DACA. Funds that states save could be used to provide state-only funded coverage to others who are uninsured.

Provides flexibility for states to cover additional immigrants with state-only funds. We also encourage HHS to finalize the language about states pursuing Section 1332 waivers to allow people who are not “lawfully present” to enroll in Marketplace or the BHP and use state funds-only to subsidize their coverage. This would allow the 18 state marketplaces and two BHPs that choose to do so to continue to reduce the number of uninsured people in their state.

Respectfully submitted,

AAPI Equity Alliance
ACA Consumer Advocacy
Access Reproductive Justice
ACLAMO
Adelante Mujeres
African Services Committee
AgeGuide Northeastern IL
Ahri Center
Al Otro Lado
Alabama Arise
Alabama Coalition for Immigrant Justice
Alameda County Community Food Bank
Aliados Health
Alianza Americas
Alimentando al Pueblo
Alliance for a Better Community
Alliance for a Healthy Kansas
Alliance of Baptists
AltaMed Health Services
American Academy of Family Physicians
American Academy of Pediatrics
American Friends Service Committee
American Medical Student Association
American Public Health Association
American-Arab Anti-Discrimination Committee
APLA Health
Arizona Food Bank Network
Arkansas Advocates for Children and Family
Ascend Justice

Asian & Pacific Islander American Health Forum
Asian American Legal Defense and Education Fund
Asian Pacific American Labor Alliance, AFL-CIO
Asian Pacific American Network of Oregon
Asian Resources, Inc.
Asian Task Force Against Domestic Violence
Asociación Nacional Pro Personas Mayores
Association of Asian Pacific Community Health Organizations
Association of Farmworker Opportunity Programs
Association of Maternal & Child Health Programs
Association of Regional Center Agencies
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Bazelon Center for Mental Health Law
Bend the Arc: Jewish Action
Beyond Hunger
Bi-State Primary Care Association
Blessing Community Health Center
Border Network for Human Rights
Boston Immigrant Justice Accompaniment Network
BPSOS Center for Community Advancement
Brazilian Women's Group
Building One Community
Building Skills Partnership
California Association of Food Banks
California Coalition for Rural Housing
California Housing Partnership
California Partnership to End Domestic Violence
California Rural Legal Assistance Foundation
Canal Alliance
Care in Action
CASA
Center for Civil Justice
Center for Health Progress
Center for Law and Social Policy
Center for Popular Democracy
Center for Reproductive Rights
Center for Survivor Agency and Justice
Central California Food Bank
Central Valley Immigrant Integration Collaborative
Centro Sávila

Charlotte Center for Legal Advocacy
Children's Defense Fund
Children's Defense Fund-Texas
Children's Health Fund
Children's HealthWatch
Chinatown Service Center
Circle Urban Ministries
City of Seattle Office of Immigrant and Refugee Affairs
Coalition for Immigrant Mental Health
Coalition of Irish Immigration Centers
Colorado Center on Law and Policy
Colorado Children's Campaign
Colorado Coalition for the Homeless
Colorado Consumer Health Initiative
Colorado Cross-Disability Coalition
Colorado Fiscal Institute
Colorado Organization for Latina Opportunity and Reproductive Rights
Colorado Statewide Parent Coalition
Committee for Hispanic Children & Families
Common Good Iowa
Community Action Partnership, Orange County
Community Change Action
Community Clinic Association of Los Angeles County
Community Health Network of Washington/Community Health Plan of Washington
Community Response Coalition of Kentucky Inc
Comunidades Unidas
Connecticut Shoreline Indivisible
Cristo Rey Church Charity and Justice Commission
Daya
Dignidad
Diocesan Migrant and Refugee Services Inc
Disability Policy Consortium
Disability Rights & Resources
Disability Rights California
Disability Rights Education and Defense Fund
Disability Rights New Jersey
Disability Rights Tennessee
Disability Rights Vermont
Dominican Sisters ~ Grand Rapids
Dorothy Day Catholic Worker House

East Bay Sanctuary Covenant
El Centro de la Raza
El Centro Inc.
El Grupo Vida
El Pasoans Fighting Hunger
Emerald Isle Immigration Center
Empire Justice Center
Empowering Communities Globally
Empowering Pacific Islander Communities
Enlace Comunitario
Entre Hermanos
Equal Justice Center
Equality California
Ethnic Support Council of Cowlitz County
Every Texan
Fair Housing Center of Central Indiana
Families USA
Farmers Market Coalition
Farmworker and Landscaper Advocacy Project
Feeding Alabama
Feeding America
Feeding America Eastern Wisconsin
Feeding Kentucky
Feeding New York State
Feeding Texas
First Focus Campaign for Children
Florence Immigrant & Refugee Rights Project
Florida Health Justice Project
Florida Legal Services, Inc
Florida People's Advocacy Center
Florida Policy Institute
Food Bank Coalition of San Luis Obispo County
Food Bank of the Rockies
Food for People
Food Share of Ventura County
Foodbank of Santa Barbara County
Foodlink
FoodShare South Carolina
For Oak Cliff
Foundation for Health Equity

Franciscan Action Network
Freestore Foodbank
Futures Without Violence
Georgia Budget and Policy Institute
Gleaners Food Bank of Indiana
GoFarm
Golden State Opportunity
Greater Birmingham Ministries
Greater Chicago Food Depository
Greater Hartford Legal Aid, Inc.
Greater Philadelphia Coalition Against Hunger
Haitian Neighborhood Center, Sant La Inc.
Hartford Deportation Defense
Hawai'i Appliance Center for Law and Economic Justice
Hawai'i Coalition for Immigrant Rights
Hawai'i Friends of Civil Rights
Hawai'i Health & Harm Reduction Center
Hawai'i Workers Center
Health & Medicine Policy Research Group
Health and Welfare Council of Long Island
Health Care For All - Massachusetts
Health Law Advocates
Health Outreach Partners
Healthy House Within a MATCH Coalition
Hep Free Hawai'i
HIAS Pennsylvania
iHICA! Hispanic Interest Coalition of Alabama
Hispanic Federation
Hispanic Unity of Florida
Home Away from Home Childcare
Homeless and Housing Coalition of Kentucky
1Hood Power
Housing Action Illinois
Houston Immigration Legal Services Collaborative
Human Rights Campaign
Hunger Free Oklahoma
Hunger Intervention Program
Hunger Solutions New York
Husky 4 Immigrants
Idaho Hunger Relief Task Force

Illinois Coalition Against Domestic Violence
Illinois Coalition for Immigrant and Refugee Rights
Illinois Collaboration on Youth
Illinois Hunger Advocate
Immigrant Home English Learning Program
Immigrant Law Center of Minnesota
Immigrant Rights Committee, MainStreet Moms
Immigrant Service Providers Group/Health
Imperial Valley Food Bank
Indiana Community Action Poverty Institute
Indiana Justice Project
Indiana Public Health Association
Indivisible Brooklyn
Indivisible Ventura
Indo-American Center
Indy Hunger Network
Inland Empire Immigrant Youth Collective
Inland Equity Community Land Trust
Inner Voice
Inter-Faith Committee on Latin America
Interfaith Welcome Coalition - San Antonio
International Community Health Services
International Refugee Assistance Project
Island Harvest Food Bank
Jakara Movement
Japanese American Citizens League
Jewish Family Service of Los Angeles
Jewish Family Service of San Diego
Just Harvest
Justice Center of Southeast Massachusetts
Justice for Our Neighbors Michigan
Justice in Aging
Juvenile Protective Association
Kansas Action for Children
Kids Forward
Kids in Need of Defense
Knock and Drop Iowa
La Semilla Food Center
La Union del Pueblo Entero-LUPE
Lakeside Community Committee

Language Services Hawaii
Latino Advocacy Coalition
Latino Community Association
Latino Community Fund Inc.
LatinoJustice PRLDEF
Latinos Promoting Good Health
Latinx Immigrants of Iowa
Lawrence Hall
League of Women Voters of the United States
Legal Action Center
Legal Action Chicago
Legal Aid Society
Legal Council for Health Justice
Lighthouse Immigrant Advocates
Literacy Volunteers of America, Essex & Passaic Counties
LiveWell Greenville
Living Hope
LMU College SNAP Project
Long Island Language Advocates Coalition
Los Angeles Homeless Services Authority
Los Angeles Regional Food Bank
Louisiana Coalition for Reproductive Freedom
Lutheran Immigration and Refugee Service
Maine Equal Justice
Make the Road Nevada
Make the Road New York
Mass General Brigham
Massachusetts Immigrant and Refugee Advocacy Coalition
Massachusetts Law Reform Institute
Massachusetts Medical Society
Meals on Wheels San Diego County
Metropolitan Family Services
Miami Valley Immigration Coalition
Michigan Immigrant Rights Center
Michigan League for Public Policy
Minnesota Budget Project
Mixteco/ Indígena Community Organizing Project
MomsRising/ MamásConPoder
Montana Women Vote
Morris County Organization for Hispanic Affairs

Mother Hubbard's Cupboard
Mountain State Justice
Multi-Service Center, Washington
Multicultural Institute, California
Muscular Dystrophy Association
NARAL Pro-Choice America
NASTAD
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Families Against Substance Abuse
National Association of Councils on Developmental Disabilities
National Association of Pediatric Nurse Practitioners
National Center for Law and Economic Justice
National Center for Transgender Equality
National Coalition for Latinxs with Disabilities
National Council of Jewish Women
National Council on Independent Living
National Domestic Workers Alliance
National Education Association
National Family Planning & Reproductive Health Association
National Health Law Program
National Homelessness Law Center
National Immigration Law Center
National League for Nursing
National Low Income Housing Coalition
National Network for Arab American Communities
National Network for Immigrant and Refugee Rights
National Network to End Domestic Violence
National Organization for Women
National Skills Coalition
Neighborhood House
New Jersey Association for Lifelong Learning
New Jersey Citizen Action
New Jersey Policy Perspective
New Mexico Asian Family Center
New Mexico Immigrant Law Center
New York Legal Assistance Group
Non-Profit Housing Association of Northern California
North Carolina Justice Center
North Dakota Protection & Advocacy Project
North East Medical Services

Northeast Valley Health Corporation
Northwest Harvest
Nourish California
Nourishing Hope
Of Color Inc
Ohio Association of Foodbanks
Oklahoma Policy Institute
On the Road with Partner Cafe
One Hope United
Oral Health Kansas, Inc.
Oregon Food Bank
Oregon Law Center
Pacific Islander Health Board of Washington
Pack Away Hunger
Partners for a Hunger-Free Oregon
Pax Christi Metro DC-Baltimore
Pennsylvania Health Law Project
People Power United
PIVOT-The Progressive Vietnamese American Organization
Planned Parenthood Federation of America
Prairie Family Center
Pronto of Long Island
Protect Our Care
Protect Our Healthcare Coalition RI
Public Health - Seattle & King County
Public Justice Center
REACH Healthcare Foundation
Redwood Empire Food Bank
Refugee & Immigrant Voices in Action
RESULTS Virginia
Rocky Mountain Immigrant Advocacy Network
RotaCare Bay Area/San Rafael
San Diego Food Bank
San Francisco-Marin Food Bank
Save the Children
scaleLIT
Second Harvest Food Bank of Orange County
Second Harvest Heartland
Second Harvest of Silicon Valley
Second Helpings

Senior Coastsiders
Service Employees International Union
SGA Youth & Family Services
Shriver Center on Poverty Law
SIECUS: Sex Ed for Social Change
Sisters of Mercy of the Americas Justice Team
South Asian Network
South Asian Public Health Association
South Carolina Appleseed Legal Justice Center
South Dakota Voices for Peace
South Dakotans for Healthy Families
Southeast Asia Resource Action Center
Southern Christian Coalition
SPAN Parent Advocacy Network
St Mark community Education Program
Student Clinic for Immigrant Justice
Taller de José
Tennessee Immigrant & Refugee Rights Coalition
Tennessee Justice Center
Texas Grandparents Raising Grandchildren
Texas Pediatric Society
Thai Community Development Center
The Coelho Center for Disability Law, Policy and Innovation
The Colorado Blueprint to End Hunger
The Commonwealth Institute for Fiscal Analysis
The Gubbio Project
The Idaho Foodbank
The Leadership Conference on Civil and Human Rights
The Legal Aid Society
The Legal Clinic (Immigration Law & Justice Network - Hawai'i)
The Leukemia & Lymphoma Society
The National Coalition for Latinxs with Disabilities
The Women's Building
The Workers Circle
True Colors United
UnidosUS
Union for Reform Judaism
Unitarian Universalist Mass Action
Unitarian Universalists for Social Justice
United African Organization

United Food and Commercial Workers Local 1445
United Parent Leaders Action Network
United Voices for Newcomer Rights
United We Dream
Universal Health Care Foundation of Connecticut
UpValley Family Centers of Napa County
URI Feinstein Center for a Hunger Free America
VELA
Venice Family Clinic
Vermont Legal Aid
Virginia Garcia Memorial Health Center
Virginia Housing Alliance
Virginia Organizing
Virginia Poverty Law Center
Vision y Compromiso
Voices for Utah Children
Voices for Vermont's Children
Washington Association for Community Health
Washington Low Income Housing Alliance
Wayne Action for Racial Equality
Welcoming America
West Virginia University Immigration Law Clinic
Western Center on Law & Poverty
WHEAT, the World Hunger Education, Advocacy & Training Org
William E. Morris Institute for Justice
Wind of the Spirit Immigrant Resource Center
Wings Program INC
Wisconsin Council of Churches
Wisconsin Faith Voices for Justice
Witness at the Border
Woori Juntos
Youth & Opportunity United
YWCA Northeastern Massachusetts
ZERO TO THREE