



June 23, 2023

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: 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 (CMS-9894-P)

Dear Secretary Becerra:

Thank you for the opportunity to submit comments on the above-titled proposed rule. Our organizations strongly support this proposal, which clarifies that young people granted deferred action under the Deferred Action for Childhood Arrivals (DACA) policy are eligible to enroll in critical federal health coverage affordability programs, including the Affordable Care Act (ACA) marketplaces.

The undersigned organizations represent millions of patients and consumers facing serious, acute and chronic health conditions across the country, including individuals who rely on the patient protections provided under the ACA. Our organizations have a unique perspective on what patients need to prevent disease, cure illness and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

In March of 2017, our organizations agreed upon three overarching principles¹ to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package.

Current policy has inappropriately prevented tens of thousands of young people from enrolling in coverage for which they were otherwise eligible, simply because they are DACA recipients. We applaud the Department of Health and Human Services ("HHS" or the "Department") for proposing to end this

¹ American Heart Association website, "Healthcare reform principles." Available at: http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_495416.pdf.

unnecessary exclusion. Doing so would ensure DACA recipients are treated the same as other individuals who have been granted deferred action and is consistent with federal law. By improving access to affordable, quality care, it would also advance the goals of the ACA and the healthcare reform principles we share. We urge that the rule be finalized as proposed.

Clarifying DACA Recipients' Eligibility for Coverage Affordability Programs

Eligibility for the ACA marketplaces, marketplace premium and cost-sharing subsidies, the Basic Health Program (BHP), and certain coverage for children and pregnant people under Medicaid and the Children's Health Insurance Program (the "CHIPRA 214 option") is limited to United States citizens and nationals and to individuals "lawfully present" in the U.S.² Individuals who have been granted deferred action by federal immigration authorities have long been considered to be lawfully present for purposes of these coverage affordability programs — with one exception. Until this proposed rule, people whose grant of deferred action is due to DACA have been treated differently and been barred from accessing these critical programs.

We are grateful the Department has reconsidered this position. The proposed rule recognizes that federal law does not require HHS to treat DACA recipients differently than other deferred action recipients. Far from it, the existing policy of singling out and excluding DACA recipients from coverage frustrates the purpose of the ACA.

Enabling DACA recipients to enroll in these coverage programs if they are otherwise eligible would bring greater consistency to federal policy in this area and would advance the goals of the ACA. The proposed rule cites evidence showing that DACA recipients are disproportionately likely to be uninsured. Nearly half of recipients have experienced delays in care due to their immigration status, and the vast majority have incurred medical bills or expenses that they were unable to pay. Troublingly, more recent survey work reveals that the problems identified in the proposed rule persist.³ As the Department rightly notes, the ACA was intended to address these very problems by making comprehensive coverage more affordable and more accessible. These new data make clear that extending eligibility for coverage affordability programs to DACA recipients is wholly in keeping with the ACA's design and would make progress on its goal of reducing barriers to coverage and care.

Indeed, there is good reason to believe that aligning federal treatment of DACA recipients with that of other deferred action grantees could benefit the broader population of individuals who obtain coverage through an ACA program. DACA recipients are young and relatively healthy.⁴ As they enter their states' individual market and BHP risk pools, those pools will become younger and healthier than they would have been in the absence of this rule. Stronger risk pools can be expected to exert downward pressure on plan premiums and enhance market stability, improving coverage options for all.

Proposed Effective Date

² Eligibility for the CHIPRA 214 option is restricted, *inter alia*, to individuals "lawfully residing" in the U.S., a status that depends in part on whether a person is "lawfully present."

³ National Immigration Law Center, DACA Recipients' Access to Health Care: 2023 Report. https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf. Published May 2023.

⁴ KFF, Key Facts on Deferred Action for Childhood Arrivals (DACA). <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/>. Published April 2023.

The Department proposes that the new rule take effect beginning November 1, 2023. We strongly support this effective date. As we observed above, the proposed rule would correct an unnecessarily restrictive policy that for more than a decade has prevented tens of thousands of young adults from enrolling in needed coverage. These circumstances call for expeditious implementation so DACA recipients may begin to access the coverage they have long been denied. We believe a November 1, 2023 effective date is particularly appropriate because it would allow DACA recipients the opportunity to secure full-year coverage by enrolling during the annual open enrollment period. This start date would also capitalize on increased consumer outreach, assistance, and education activities that accompany open enrollment and that are likely to facilitate take-up by these newly eligible individuals.

Other Proposed Changes to the Definition of “Lawfully Present”

HHS also proposes several clarifications and technical adjustments to the definition of “lawfully present” and related terms. These proposals would make eligibility processes and standards more consistent and relatively simpler to understand and administer. We support these changes as proposed.

Thank you for the opportunity to provide these comments. If you have any questions, please contact Bethany Lilly at the Leukemia & Lymphoma Society at bethany.lilly@lls.org.

Sincerely,

American Cancer Society Cancer Action Network
American Heart Association
American Lung Association
Asthma and Allergy Foundation of America
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Muscular Dystrophy Association
National Hemophilia Foundation
National Multiple Sclerosis Society
National Patient Advocate Foundation
The AIDS Institute
The Leukemia & Lymphoma Society