



## CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY

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Office of the Secretary

June 22, 2023

THIS LETTER SENT ELECTRONICALLY VIA: [www.regulations.gov](http://www.regulations.gov)

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9894-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

CMS PROPOSED RULE: CLARIFYING ELIGIBILITY FOR A QUALIFIED HEALTH PLAN THROUGH AN EXCHANGE, ADVANCED PAYMENT 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]

To Whom it May Concern:

The California Health and Human Services Agency (CalHHS) welcomes the opportunity to respond to the federal Centers for Medicare & Medicaid Services' (CMS') proposed rule published April 26, 2023, entitled "Clarifying Eligibility for a Qualifying Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, a Basic Health Program, and for Medicaid and Children's Health Insurance Programs."

California envisions a *Healthy California for All* where every individual belongs to a strong and thriving community. This vision involves creating access to high-quality, affordable care, regardless of origin or income. We support the proposed rule because it aligns with our ongoing policy and program strategies to provide inclusion and equity for populations who have struggled to access healthcare.

The proposed rule, most significantly, adds "Deferred Action for Childhood Arrivals" immigrants to the definition of "lawfully present" for purposes of Medicaid and health insurance exchange coverage for those who qualify. The proposed rule also includes several provisions that update the definition of "lawfully present" as it is applied to other immigration statuses currently included in the definition and other technical changes such as updating the regulation language to remove a reference to "aliens" in many sections. We support these changes.

The majority of DACA recipients are under the age of 36 and more than half are female.<sup>1</sup> The top three countries of birth of DACA recipients include Mexico (81%), El Salvador (4%),

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<sup>1</sup> Kaiser Family Foundation. *Key Facts on Deferred Action for Childhood Arrivals*. Apr. 2023. [www.kff.org](http://www.kff.org)

and Guatemala (3%).<sup>2</sup> According to the Kaiser Family Foundation's research, individuals eligible for DACA are more likely to be uninsured (47%) compared to U.S.-born individuals of the same age (10%) because DACA recipients historically have had limited options for accessing healthcare insurance.

According to the UC Berkeley Labor Center, the proposed rule would allow approximately 40,000 uninsured DACA recipients in California to access subsidized health coverage through the state healthcare exchange.<sup>3</sup> Given the demographics of DACA participants, the proposed rule would improve racial equity because the access to subsidies would significantly lower the number of uninsured people of color.

We believe that providing access to subsidized health coverage will improve health outcomes for DACA recipients and their U.S. born children as well. DACA itself has been linked to improved birth outcomes for children born to DACA recipients and providing access to healthcare coverage would further support intergenerational health benefits.<sup>4</sup> Studies have shown that children of mothers who are DACA-eligible have experienced a 50% drop in diagnoses of adjustment and anxiety disorders compared to the children of mothers who are not eligible for DACA.<sup>5</sup> This research underscores how health equity has a "communal aspect" that links the well-being of parents to the well-being of their children.<sup>6</sup> Here, the well-being of DACA-eligible parents who gain access to healthcare coverage will improve the health outcomes of their children and families living in mixed-immigration status households.

It is also important to recognize how DACA recipients contribute to the healthcare system through their service in the workforce and provide support to the system through fiscal and economic contributions. Nationally, an estimated 34,000 healthcare workers who provide patient care and another 11,000 who also work in healthcare settings are DACA recipients.<sup>7</sup> According to the Center for American Progress, DACA recipients in California contribute \$2.1 billion in federal taxes, \$1 billion in state and local taxes, and hold \$8.2 billion in spending power.<sup>8</sup> DACA recipients across the nation contribute \$6.2 billion in federal taxes and \$3.3 billion in state and local taxes each year.

### **Adding Deferred Action for Childhood Arrival (DACA) immigrants to the definition of "lawfully present."**

CalHHS supports the addition of DACA immigrants to the definition of "lawfully present" as an important step in removing barriers to accessing healthcare due to immigration status by

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<sup>2</sup> Ibid.

<sup>3</sup> Dietz, Miranda, et al. "Extending Covered California subsidies to DACA recipients would fill coverage gap for 40,000 Californians." *UC Berkeley Labor Center Blog*. June 2023. [www.laborcenter.berkeley.edu](http://www.laborcenter.berkeley.edu)

<sup>4</sup> Hamilton, Erin R., et al. "DACA Associated with Improved Birth Outcomes Among Mexican-Immigrant Mothers." *Policy Brief, Center for Poverty and Inequality Research*, vol. 10, no. 3, Nov. 2021. [www.poverty.ucdavis.edu](http://www.poverty.ucdavis.edu)

<sup>5</sup> Hainmueller, Jens, et al. "Protecting unauthorized immigrant mothers improves their children's mental health." *Science*, 357, Sept. 2017, pp. 1041-1044.

<sup>6</sup> Kuczewski, Mark G. "Addressing Systemic Health Inequities Involving Undocumented Youth in the United States." *AMA Journal of Ethics*, vol. 23, no. 2, Feb. 2021, pp. 146-155.

<sup>7</sup> Center for American Progress. *New CAP Data Shows DACA is a Positive Force for Recipients and their Families*. Nov. 2021. [www.americanprogress.org](http://www.americanprogress.org)

<sup>8</sup> Svajlenka, Nicole Prchal and Trinh Q. Truong. "The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition." *Center for American Progress*. Nov. 2021. [www.americanprogress.org](http://www.americanprogress.org)

providing needed health insurance coverage to a vulnerable population through Medi-Cal, California's Medicaid program, and state healthcare exchange, Covered California. By treating DACA immigrants the same as others in deferred action status, the proposed rule ensures equitable access to health insurance coverage. Equitable access to health benefits leads to improved health outcomes for immigrants, making our communities stronger and our state healthier overall.

**Updating the definition of “lawfully present” for other immigrants.**

The proposed rule makes several changes to the definition of “lawfully present” relating to other immigration statuses beyond the DACA population. We support these changes because they add coverage for additional immigrants. These changes simplify the language of the regulation, remove unnecessary barriers, and add some additional immigrants to the definition of “lawfully present.” We support removing barriers to access such as the burdensome requirement for children under the age of 14 seeking asylum or protection against torture, who have been required to have their applications for immigration relief pending for 180 days before being deemed lawfully present.

**Removing “alien” from federal regulations on Medicaid and Health Insurance Exchange regulations.**

Removing the word “alien” from the regulations updated by this proposed rule is an important step toward eliminating outdated, harmful language from federal requirements. California has taken steps to eliminate the use of the term alien in state statutes and regulations. However, because the terminology used in federal regulations is sometimes included in policy guidance to counties who process Medicaid applications, or in written materials provided to applicants and beneficiaries, it is important to remove language that is dehumanizing, and may have a chilling effect for applicants and beneficiaries. We support these changes.

Thank you for considering these comments.

Mark Ghaly, MD, MPH  
Secretary