



[6/23/23]

Chiquita Brooks-LaSure
Centers for Medicaid & Medicare Services
U.S. Department of Health & Human Services
7500 Security Boulevard
Baltimore, Maryland, 21244

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

Administrator Brooks-LaSure:

Every Texan supports the Centers for Medicare and Medicaid Services' (CMS) proposal to end the exclusion of Deferred Action for Childhood Arrivals (DACA) recipients from eligibility to purchase plans and obtain subsidies on the Affordable Care Act (ACA) marketplaces, and for certain other health insurance affordability programs. We further support CMS' proposal to implement clarifications and technical corrections that will simplify ACA marketplace enrollment and improve access to health coverage. Furthermore, Every Texan has signed onto other comments in support of this rule including Young Invincibles, Protecting Immigrant Families, and the National Immigration Law Center.

At Every Texan, we envision a Texas where people of all backgrounds—regardless of race, ethnicity, socioeconomic status, gender identity, sexual orientation, national origin, and disability status—can contribute to and share in the prosperity of our state. The Benedictine Sisters of Boerne, Texas, founded Every Texan in 1985 to advance public policy solutions for expanding access to health care. We became an independent, tax-exempt organization in 1999. Texas faces long-standing challenges to optimal health, including food insecurity. We are based in Austin, Texas, and work statewide.

Texas is the state with both the largest number and percentage of uninsured residents in the United States.¹ Texans face many barriers to accessing affordable health coverage, including lack of affordable health care options. Texas has some of the most restrictive Medicaid eligibility criteria in the country for adults, and is one of only 10 states that have not yet expanded Medicaid. These barriers are only exacerbated for immigrants and their families².

¹ U.S. Census Bureau, *2017-2021 ACS 5-year estimates* (S271 | Selected Characteristics of Health Insurance Coverage in the United States)

² <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>



Texas is one of 7 states that exclude “qualified immigrant” adults with dates of entry after 8/22/1996 for Medicaid eligibility purposes. This leaves very few “lawfully present” or “qualified” immigration statuses eligible for Texas Medicaid, and the small number eligible (e.g., active duty military, those with 40 quarters US work history) of immigrant adults not fully excluded are still locked out of a coverage option because of the Texas Medicaid “coverage gap.” However, the passage of the Affordable Care Act created a pathway for “lawfully present adults” who are not Medicaid eligible to receive both subsidies and cost sharing reductions- even below 100% of the federal poverty level. Many Texan immigrants under the “lawfully present” category have access to affordable and adequate health coverage through HealthCare.Gov, while Texas US Citizens in the same income levels (under 100% FPL), do not.

People with Deferred Action for Childhood Arrivals are lawfully present and should be treated as such for health insurance purposes.

For over a decade, DACA has protected more than 800,000 individuals living in the U.S.³. Today about 580,000 recipients benefit from it- of whom over 95,000 live in Texas⁴. Yet due to a 2012 U.S. Department of HHS (HHS) decision, DACA recipients have been excluded from the health coverage that could have supported their ability to survive and thrive⁵.

We support CMS in choosing to rectify that decision given that other deferred action recipients have never been excluded and that doing so will better allow DACA recipients to contribute to the country they call home. HHS estimates that about 129,000 people with DACA are likely to benefit from this change.⁶

We also support the proposed rule’s clarifications that will reduce barriers to health care for additional groups of immigrants. The proposals would simplify enrollment for many applicants, including vulnerable children such as recipients of Special Immigrant Juvenile Status and children under the age of 14 with pending applications for asylum, withholding of removal and relief under the Convention Against Torture (CAT).

The proposed rule includes an effective date of November 1st to align with the annual ACA open enrollment period. We encourage CMS to schedule this rule to take effect as soon as possible, and no later than November 1st. With DACA under threat and the increased wait times at USCIS, immigration relief recipients and applicants cannot wait for health care.

We also encourage CMS to invest heavily in outreach, in partnership with navigators, enrollment assisters, and community-based organizations, to maximize the benefits of this rule by ensuring immigrants and their families know about health coverage options available to them.

Sincerely,

A handwritten signature in black ink that reads 'Karla Martinez'.

Karla Martinez
Policy Analyst

³ https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2021_qtr4.pdf

⁴ <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>

⁵ <https://www.federalregister.gov/documents/2012/08/30/2012-21519/pre-existing-condition-insurance-plan-program>

⁶ 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.