

June 23, 2023

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850

*Submitted via Regulations.gov*

**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**

Dear Administrator Brooks-LaSure:

Families USA appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) and Department of Health and Human Services (HHS) proposed rule, 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 (herein after "Proposed Rule").

Families USA is a leading national, non-partisan voice for health care consumers dedicated to achieving high-quality, affordable, and improved health care coverage for all by promoting value, equity, coverage and giving voice to people's experiences. For over 40 years, our work has centered on advancing health equity and ensuring that no families face barriers to living a healthy life because of who they are, where they live, or how they identify. We believe that immigration status should not be a barrier for families and individuals to attain high-quality, affordable health care.

Over 45 million immigrants live in the United States and of those immigrants, over 20 million are noncitizens, including lawfully present immigrants and undocumented immigrants.<sup>i</sup> These immigrant communities are fundamental to the functioning of our nation, making-up 20 percent of the essential workforce, including an estimated 5.2 million undocumented essential workers.<sup>ii</sup> A large percentage of home health and childcare workers are immigrants, and immigrant farmworkers play a key role in providing a majority of our nation's food.<sup>iii,iv</sup>

Despite this and the fact that immigrants annually contribute over \$300 billion in federal taxes to the U.S. economy, policy and structural barriers prevent immigrants from accessing critical health care coverage and services.<sup>v</sup> For example, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) imposes an ill-conceived 5-year waiting period for non-citizen lawfully present immigrant families and individuals before becoming eligible for certain federal programs including Medicaid and the Children's Health Insurance Program (CHIP). Furthermore, under PRWORA, lawfully residing immigrants must wait five years to qualify for other federal assistance such as SNAP benefits or housing vouchers.

This law significantly harms lawfully present immigrants, including pregnant workers and the American-citizen children to whom they will give birth.<sup>vi</sup> Moreover, under current law, undocumented immigrants are completely barred from federal health care coverage, threatening the health and financial security of

hardworking immigrant families and individuals and undermining the critical contributions these families make to the US economy.<sup>vii</sup> Because of these policies, one in four lawfully present immigrants and nearly half (46%) of all undocumented immigrants are uninsured.<sup>viii</sup> Due to these barriers to care, noncitizen immigrants are less likely to have a usual source of care and more likely to have chronic health conditions.<sup>ix</sup>

We commend the work CMS and HHS has done to carefully review federal statutory requirements and improve health care access for immigrants in compliance with federal law, specifically Deferred Action for Childhood Arrivals (DACA recipients), and support many of the provisions made in the Proposed Rule. We recommend that CMS and HHS continue this focus and take additional steps to ensure that all immigrant communities are better able to access necessary health care coverage and services.

### **Effective date**

We strongly support CMS's goal to finalize and institute the Proposed Rule as soon as possible to ensure that DACA recipients and other eligible immigrant communities can get the health care coverage they need. However, CMS should strive to institute the rule before the November 1, 2023 deadline to ensure eligible immigrant communities that have already waited too long for access to critical health care services, are able to gain necessary health coverage that meets their health needs and provides more financial security for their families.

Since DACA was established in 2012, DACA recipients have been ineligible for federally funded health insurance. While many DACA recipients are now adults and work full-time jobs, 43 percent have incomes below 200 percent of the federal poverty level.<sup>x</sup> Without access to Medicaid, CHIP, or tax subsidies, health care coverage is often inaccessible for low-income DACA recipients. One survey found that 34 percent of DACA recipients had no health insurance coverage, and 61 percent responded that their immigration status was a significant barrier to accessing health coverage.<sup>xi</sup>

DACA recipients have gone without high-quality and affordable health care coverage for over 10 years.<sup>xii</sup> CMS should not wait until the open enrollment period to implement the Proposed Rule if it can be done sooner. **CMS should work swiftly to finalize the Proposed Rule and CMS should make coverage available soon thereafter, and before November 2023.**

### **Improving Classification of Immigrants to Better Reflect their Legal Access to Health Insurance**

We strongly support HHS's proposal to eliminate the long-standing exclusion of DACA recipients from the federal definition of "lawfully present" that was originally defined in 45 CFR §152.2,<sup>xiii</sup> allowing DACA recipients to be treated the same as other deferred action recipients. We also support CMS's proposals to include people with the Special Immigrant Juvenile (SIJ) immediate classification as "lawfully present" and removing the 180-day waiting period for certain juvenile asylum applicants to be considered "lawfully present." These changes will ensure that the over half a million people in America protected under DACA as well as young asylees can receive necessary and affordable health care coverage. **However, we encourage CMS to continue to review statutory and regulatory authorities to legally maximize undocumented immigrants' access critical health care coverage through Medicaid, CHIP, and the health insurance marketplace.**

Despite their legal deferred action status, the fact that DACA recipients have been systemically excluded from legal definitions of "lawfully present" has barred them from accessing important federal assistance

programs.<sup>xiv</sup> Over half a million people in America are DACA recipients, many who are students, work full time, or have families of their own.<sup>xv</sup> DACA recipients make significant contributions to the country.<sup>xvi</sup> Ninety-three percent of DACA recipients are employed and their households have a spending power of \$24.1 billion, contributing \$5.7 billion in federal taxes.<sup>xvii,xviii</sup> Despite this, a 2022 survey found that over a quarter of DACA recipients are uninsured.<sup>xix</sup> DACA recipients deserve affordable access to health care coverage and their inclusion in the legal definition of “lawfully present” has been long overdue.<sup>xx</sup>

We support changes HHS is proposing regarding Special Immigrant Juvenile (SIJ) classification and the juvenile asylum applications because they will have a direct impact on vulnerable children. The clarification made to grant children with approved SIJ applications lawful permanent resident status under the Proposed Rule will ensure that people with approved SIJ petitions will be able to access timely and necessary care. Eliminating the 180-day waiting period means that asylum seekers – many of whom have urgent physical and mental needs – can also immediately get access to necessary health care.<sup>xxi</sup>

**We encourage CMS to eliminate the requirement that adults and older youth applying for asylum obtain employment authorization before being considered lawfully present.** Like juvenile asylum seekers, adult asylum seekers experience conditions that negatively affect their physical and mental health and wellbeing.<sup>xxii</sup> Granting adult and older youth asylum applicants lawful presence would allow those individuals with unique and chronic health needs waiting to be granted asylum to become eligible for necessary federal health care coverage.

Lastly, we support the proposal to replace the outdated and pejorative term “alien” with the more specific term ‘noncitizen.’ The proposal to replace the use of the outdated term “alien” with the more accurate ‘noncitizen’ is appropriate and the citation to the definition of “qualified noncitizen” at 42 CFR. §435.4 is a common-sense step toward the accomplishment of that goal.

### **Maximizing Eligibility for Immigrants in Medicaid and the Children's Health Insurance Programs**

We support the provision in the Proposed rule that extends the definition of “lawfully residing” to include DACA recipients under the Children's Health Insurance Program Reauthorization Act (CHIPRA). This change will allow DACA recipients under 21-years of age or who are pregnant to qualify for Medicaid and CHIP benefits in states where these benefits have been extended to certain noncitizens.

States have seen significant coverage gains after extending health care coverage to noncitizen immigrant populations. Twenty-four states and Washington, D.C. currently allow eligible, lawfully residing children and pregnant people to enroll in Medicaid and CHIP without the five-year waiting period imposed under PRWORA (i.e., using “state-only” funding). An additional 10 states extend this coverage to only lawfully residing children and one state extends coverage to only lawfully residing pregnant people.<sup>xxiii</sup> The reclassification of DACA recipients as “lawfully present” will ensure that eligible DACA children and pregnant people in states that have extended Medicaid and CHIP will be able to access vital care without the unnecessary five-year waiting period.

Despite these coverage gains, many more low-income, lawfully residing immigrant children and pregnant people are forced to wait to access critical Medicaid and CHIP services because they live in states that have not expanded benefits during the five-year waiting period.

Lawfully residing immigrants face unnecessary barriers to health care due to the five-year bar. **We support CMS continuing to identify legal pathways that ensure that low-income immigrants receive the care they need as soon as possible, including through Medicaid and CHIP.**

## **Conclusion**

We thank HHS and CMS for the opportunity to comment on this important issue. We are inspired to see health care coverage extended to part of the immigrant community, however we hope to see both HHS and CMS work towards ensuring health care coverage for all immigrants in the U.S., including undocumented immigrants. If you have further questions, please contact Staci Lofton at [slofton@familiesusa.org](mailto:slofton@familiesusa.org).

Sincerely,



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Executive Director  
Families USA

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<sup>i</sup> “Key findings about US immigrants,” Pew Research Center, August 2020. <https://www.pewresearch.org/short-reads/2020/08/20/key-findings-about-u-s-immigrants/>

<sup>ii</sup> “Immigrant Essential Workers are Crucial to America’s COVID-19 Recovery,” fwd.us, December 2020. <https://www.fwd.us/wp-content/uploads/2020/12/FWD-essential-worker-report-FINAL-WEB.pdf>

<sup>iii</sup> <https://www.jec.senate.gov/public/index.cfm/democrats/issue-briefs?ID=38F98E34-153E-453F-99F0-9D964ED66CBC>

<sup>iv</sup> “The Contributions of Immigrants are Essential to U.S. Economic Growth and Competitiveness,” Joint Economic Committee Democrats, December 2022. <https://www.fwd.us/news/immigrant-farmworkers-and-americas-food-production-5-things-to-know/>

<sup>v</sup> “Immigrants in the United States of America,” American Immigration Council, 2019.

<https://map.americanimmigrationcouncil.org/locations/national/#undocumented-immigrants>

<sup>vi</sup> Kaushal, N. and Kaestner, R. (2005). Welfare Reform and Health Insurance of Immigrants. *Health Services Research*.

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/#:~:text=The%20Personal%20Responsibility%20and%20Work%20Opportunity%20Reconciliation%20Act%20\(PRWORA\)%20changed,or%20limiting%20immigrant%20participation%20in](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/#:~:text=The%20Personal%20Responsibility%20and%20Work%20Opportunity%20Reconciliation%20Act%20(PRWORA)%20changed,or%20limiting%20immigrant%20participation%20in)

<sup>vii</sup> “Health Coverage and Care of Undocumented Immigrants,” Kaiser Family Foundation, July 2019.

<https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/>

<sup>viii</sup> “Health Coverage and Care of Immigrants,” Kaiser Family Foundation, December 2022.

[https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/#:~:text=Noncitizens%20are%20significantly%20more%20likely,in%20ten%20\(8%25\)%20citizens.](https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/#:~:text=Noncitizens%20are%20significantly%20more%20likely,in%20ten%20(8%25)%20citizens.)

<sup>ix</sup> “Health Coverage and Care of Immigrants,” Kaiser Family Foundation, December 2022.

<https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/>

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- <sup>x</sup> “Key Facts on Deferred Action for Childhood Arrivals (DACA),” Kaiser Family Foundation, April 2023. <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/>
- <sup>xi</sup> “Tracking DACA Recipients’ Access to Health Care,” National Immigration Law Center, June 2022. [https://www.nilc.org/wp-content/uploads/2022/06/NILC\\_DACA-Report\\_060122.pdf](https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf)
- <sup>xii</sup> “Health Coverage Options for DACA Recipients,” Colorado Covering Kids and Families, November 2022. <https://ckf.cchn.org/wp-content/uploads/Health-Coverage-Options-for-DACA-Recipients.pdf>
- <sup>xiii</sup> 45 C.F.R. § 152.2 <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-152/subpart-A/section-152.2>
- <sup>xiv</sup> “Overview of Immigrant Eligibility for Federal Programs,” National Immigration Law Center, March 2023. <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>
- <sup>xv</sup> “DACA 11 Years Later,” fwd.us, June 2023. <https://www.fwd.us/news/daca-anniversary/>
- <sup>xvi</sup> “The Biden-Harris Administration Celebrates the Contributions of Dreamers on Ten-Year Anniversary of DACA,” The White House, June 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/the-biden-harris-administration-celebrates-the-contributions-of-dreamers-on-ten-year-anniversary-of-daca/#:~:text=DACA%20households%20have%20significant%20spending,and%20local%20taxes%20each%20year.>
- <sup>xvii</sup> “DACA Facts: The Case for Protecting Dreamers,” fwd.us, April 2020. <https://www.fwd.us/news/daca-facts/>
- <sup>xviii</sup> “Top 10 Facts: DACA and DREAMers,” Bipartisan Policy Center, March 2021. <https://bipartisanpolicy.org/blog/top-10-facts-daca-and-dreamers/>
- <sup>xix</sup> “DACA Recipients’ Access to Health Care: 2023 Report,” National Immigration Law Center, May 2023. <https://www.nilc.org/news/special-reports/daca-recipients-access-to-health-care-2023-report/>
- <sup>xx</sup> 45 C.F.R. § 152.2 [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-152/subpart-A/section-152.2#p-152.2\(7\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-152/subpart-A/section-152.2#p-152.2(7))
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- <sup>xxii</sup> “Refugee Health Overview,” Department of Health and Human Resources, Office of Refugee Resettlement, May 2023. <https://www.acf.hhs.gov/orr/programs/refugees/refugee-health#:~:text=Access%20to%20overseas%20healthcare%20services,traumatic%20stress%20disorder%20or%20depression>
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