



April 10, 2025

Centers for Medicare & Medicaid Services
US Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Submitted electronically via regulations.gov

Re: Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability
Docket Number: CMS-9884-P

Dear Secretary Robert F. Kennedy, Jr.,

On behalf of the League of Women Voters of the United States (the League), we appreciate the opportunity to submit comments to the Department of Health and Human Services (HHS) on the proposed rule changes to *Affordable Care Act* (ACA) coverage eligibility. The League opposes the proposed change of the definition of “lawfully present” to exclude people with Deferred Action for Childhood Arrivals (DACA) status for the purposes of determining eligibility to enroll in a Qualified Health Plan (QHP) through an exchange, for premium tax credits (PTCs), advance payments of the premium tax credit (APTC), and cost-sharing reductions (CSRs), and for enrollment in a Basic Health Program (BHP) in states that elect to operate a BHP.

The proposed rule does not provide an estimate for the public cost of emergency medical care that DACA recipients would need as a result of this regulatory change, grossly underestimates the number of people who will be uninsured as a result of the change, and does not acknowledge DACA recipients’ existing annual financial contribution to federal programs.

The League is a 105-year-old nonpartisan nonprofit committed to ensuring that everyone is represented in our democracy. We are a grassroots group comprised of over one million members and supporters in all 50 states and the District of Columbia. The League focuses on advocacy, education, litigation, and organizing to achieve our mission to empower voters and defend democracy. We base our work on our policy positions developed out of multi-year studies and derived through consensus by League membership to ensure that our advocacy reflects best practices and a nationwide perspective.

The League believes that every US resident should have access to a basic level of quality health care at an affordable cost. Since the passage of the ACA in 2010, the League has opposed attempts to repeal the landmark legislation in Congress and the courts.

Deferred Action for Childhood Arrivals (DACA) Program

In 2012, the United States Department of Homeland Security (DHS) established the Deferred Action for Childhood Arrivals (DACA) program, protecting eligible, undocumented young people who came to the United States as children from being deported and allowing them to apply for work authorization for a renewable two-year period.¹ In 2021, the US District Court for the Southern District of Texas found that the 2012 DACA memo was unlawful and prohibited DHS from processing first-time DACA applications but allowed current DACA recipients to renew their requests.²

In August 2022, DHS published the DACA Final Rule, which affirmed that current DACA recipients' deferred action, employment authorization, and advance parole — allowing them to travel outside the US — continued to be valid, and **maintained that DACA recipients were considered “lawfully present.”**³ In 2023, the US District Court for the Southern District of Texas found the DACA Final Rule unlawful and expanded its 2021 injunction to cover the Rule. The court maintained a partial stay of the order for DACA recipients who received their DACA status before July 16, 2021.⁴ **Current DACA recipients can maintain their receipt of DACA and renew their grants and accompanying authorizations.**

The Affordable Care Act (ACA) and DACA

While DACA recipients are considered “lawfully present” in the US and pay taxes, they have historically been ineligible for federally funded health coverage — the same restriction that applies to undocumented immigrants.⁵

The *Affordable Care Act* (ACA) was signed into law in 2010 with a goal of expanding health insurance coverage across the nation.⁶ It created health insurance exchanges or Marketplaces through which individuals could get health coverage and financial assistance to afford plan premiums and cost-sharing. The new law established a “lawfully present” eligibility standard but did not define it. In 2012, HHS issued a final rule excluding DACA recipients from eligibility for the ACA Marketplaces, Medicaid, or the Children's Health Insurance Plan (CHIP).⁷

¹ <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>

² <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions>

³ <https://www.uscis.gov/archive/dhs-begins-limited-implementation-of-daca-under-final-rule>

⁴ <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions>

⁵ <https://www.uscis.gov/archive/dhs-begins-limited-implementation-of-daca-under-final-rule>

⁶ <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf>

⁷ <https://www.federalregister.gov/documents/2012/08/30/2012-21519/pre-existing-condition-insurance-plan-program>

In May 2024, the Centers for Medicare & Medicaid Services (CMS) rectified part of this in a final rule to include DACA recipients in the definition of “lawfully present” in 45 CFR 155.20 for purposes of determining eligibility to enroll in a QHP through the Marketplaces, for PTCs, APTC, and CSRs, and for enrollment in a BHP.⁸ The regulation went into effect on November 1, 2024. Today, under the ACA, people with lawfully present immigration statuses, including people granted deferred action, are eligible for enrollment in QHPs in the majority of US states.⁹

As of the end of 2024, more than 530,000 people had active DACA status.¹⁰ An estimated 27% of DACA recipients did not have any form of health insurance coverage, compared to less than 10% of the total population, and 71% of DACA recipients reported being unable to pay medical bills or expenses.¹¹ **According to HHS’ Healthy People 2030, individuals who are uninsured are less likely to receive preventive services for chronic conditions, which may negatively affect health, and commonly incur medical debt.**¹² This can result in further denial of health care and have substantial and long-term financial consequences including using all or most of one’s savings, delaying going to college, buying or renting a home, or purchasing a vehicle, and having one’s credit score negatively affected.¹³

Proposed Rule

The proposed rule would exclude DACA recipients from the definition of “lawfully present” in 45 CFR 155.20, which is used to determine eligibility to enroll in a QHP through an exchange, for PTCs, APTC, and CSRs, and to enroll in a BHP.¹⁴

The proposed rule does not provide an estimate for the public cost of emergency medical care that uninsured DACA recipients would need as a result of this rule. This is despite anticipating that the majority of people who lose exchange or BHP coverage would become uninsured, resulting in costs to the federal government and states to provide Medicaid coverage for emergency medical care.

The proposed rule also likely grossly underestimates the number of individuals who will be uninsured as a result of the regulatory change. It estimates that excluding DACA recipients from the definition of “lawfully present” would reduce annual QHP enrollment through the exchanges by 10,000 and annual BHP enrollment by 1,000, based on the fact that DACA

⁸ <https://www.federalregister.gov/documents/2024/05/08/2024-09661/clarifying-the-eligibility-of-deferred-action-for-childhood-arrivals-daca-recipients-and-certain-immigrants>; <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-155/subpart-A/section-155.20>

⁹ <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/#:~:text=The%20term%20E2%80%9C%20lawfully%20present%20E2%80%9D%20includes,Torture%2C%20victims%20of%20trafficking>

¹⁰ https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33602&ddt_mon=&ddt_yr=2024&query=&items_per_page=100

¹¹ <https://healthlaw.org/hhs-final-rule-expands-marketplace-and-basic-health-program-coverage-for-daca-recipients-by-correcting-unjust-exclusion/>; <https://www.nilc.org/resources/daca-recipients-access-to-health-care-2023-report/>

¹² <https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/access-health-services>

¹³ <https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>

¹⁴ <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-155/subpart-A/section-155.20>



recipient health plan enrollment has been much lower than the estimated 100,000.¹⁵ However, DACA recipient eligibility for ACA plans was finalized in May 2024, just six months before the open enrollment in November 2024. This enrollment is likely to increase over time with greater awareness, so it is likely that the number of people who will be uninsured over time as a result of finalizing this rule is much larger.

While the proposed rule estimates the cost savings of excluding DACA recipients from a QHP or BHP, it does not acknowledge the amount that DACA recipients contribute annually to federal programs for which they are ineligible. DACA recipients authorized to work in the US contribute nearly \$2.1 billion annually to Social Security and Medicare via payroll tax, despite being ineligible for these programs.¹⁶ The proposed rule projects that the aforementioned decline in QHP enrollment would reduce annual APTC expenditures by \$34 million and the decline in BHP enrollment would reduce BHP expenditures by \$3.2 million. Even if we maintain the 10-fold greater estimate from the 2024 rule that 100,000 DACA recipients would ultimately obtain health insurance under the ACA, the cost of the APTC expenditures through the exchange ($100,000 \text{ enrollees} \times \$283 \times 12 \text{ months} = \$339,600,000$) plus the cost of BHP expenditures (maintaining the estimate of \$3,226,200) would amount to less than \$345 million, which is a fraction of the DACA recipients' annual financial contributions to federal programs that they cannot utilize.

League Position

The League of Women Voters of the United States urges the Department of Health and Human Services not to finalize its proposed rule change of the definition of "lawfully present" to exclude people with DACA status for the purposes of determining eligibility to enroll in ACA health insurance coverage. DACA recipients, as lawfully present US residents and active members of our communities, workforces, and society should have access to quality and affordable health care in order to fully participate in our public life and democracy.

The League appreciates the opportunity to comment on HHS' proposed rule to exclude people with DACA status from eligibility to enroll in a QHP or a BHP under the ACA. For questions, please feel free to reach out to our staff via Rebecca Goldman, justice reform legislative and policy manager, at rgoldman@lww.org.

Sincerely,

Jessica Jones Capparell
Director, Government Affairs
League of Women Voters of the United States

¹⁵ <https://www.federalregister.gov/documents/2024/05/08/2024-09661/clarifying-the-eligibility-of-deferred-action-for-childhood-arrivals-daca-recipients-and-certain>

¹⁶ <https://www.americanprogress.org/article/daca-recipients-bolster-social-security-and-medicare/>