
July 18, 2023

**Statement of Shelby Gonzales, Vice President for Immigration Policy
Center on Budget and Policy Priorities
For the House Committee on Oversight and Accountability
Subcommittee on Health Care and Financial Services on
Health Insurance Availability for People with Deferred Action for
Childhood Arrivals (DACA)**

The Center on Budget and Policy Priorities (CBPP), is an independent, nonprofit policy institute that conducts research and analysis on a range of federal and state policy issues affecting low- and moderate-income individuals and families. CBPP is pleased strongly supports the Biden Administration's proposed rule that would end the ban on health insurance affordability programs for people with Deferred Action for Childhood Arrivals (DACA). As a statement for the record, please find below our detailed comments we submitted in support of the rule and why the rule is an important step towards better health care for our nation and all of our communities. The rule would eliminate bars and barriers to health coverage for many people who are living in our nation lawfully and who have been unable to access coverage due to eligibility restrictions and/or overly burdensome processes. Research shows that health insurance coverage increases access to care, improves health, and saves lives. Coverage also reduces medical debt, lowers the risk of catastrophic health care costs, and improves financial well-being. Children with health insurance experience long-term health improvements and achieve greater academic and career success This rule will result in more people, including many children, with authorized immigration statuses being able to achieve better health and financial outcomes and it will provide more children opportunities to thrive.

We strongly support the changes to the definition of “lawfully present” in this proposed rule. The rule would eliminate bars and barriers to health coverage for many people who are living in our nation lawfully and who have been unable to access coverage due to eligibility restrictions and/or overly burdensome processes. Research shows that health insurance coverage increases access to care, improves health, and saves lives. Coverage also reduces medical debt, lowers the risk of catastrophic health care costs, and improves financial well-being.¹ Children with health insurance experience long-term health improvements and achieve greater academic and career success². This rule will result in more people, including many children, with authorized immigration statuses being able to achieve better health and financial outcomes and it will provide more children opportunities to thrive.

We strongly support ending the bar on eligibility for people with Deferred Action for Childhood Arrivals

We strongly support HHS’ proposal to end the bar on eligibility for people with Deferred Action for Childhood Arrivals (DACA). HHS erred when it excluded people with DACA from the definition of lawfully present, and we strongly support the reversal of this exclusion in the proposed rule.

Deferred action is a long-standing administrative mechanism dating back to at least the 1960s. Under current policy defining the lawfully present standard, HHS correctly recognizes that people with deferred action are indeed lawfully present in the U.S. There is no reason to exclude people with this one category of deferred action from the definition of lawfully present. This exclusion not only has unjustly kept people from affordable health coverage, but it also complicates the eligibility and enrollment process and related outreach. Outreach and enrollment processes have to take this unusual exclusion into account, for example, all materials (including application questions) that describe who meets the immigration-related eligibility standard must include language indicating that while people with deferred action are eligible, those with deferred action for childhood arrivals are not, this is confusing for individuals with all types of deferred action and for the variety of people who conduct outreach and education about ACA enrollment including medical providers and community-based groups that don’t have a lot of expertise in immigration policy. HHS is correct to reconsider its policy position we support the agency’s proposed rule, which would treat people with DACA the same as all other people with deferred action.

People with DACA have been excluded from the lawfully present and residing definitions since August of 2012 (shortly after DACA was announced in June of 2012). There are currently about 580,000 people with DACA.³ More than 1.3 million people live with a person with DACA, including 300,000 U.S.-born children who have at least one parent with DACA. Since being granted DACA,

¹ Madeline Guth, Rachel Garfield, and Robin Rudowitz, “The Effects of Medicaid Expansion Under the ACA: Studies from January 2014 to January 2020,” March 17, 2020, <https://www.kff.org/report-section/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-report/>

² Alisa Chester, Joan Alker and Karina Wagnerman, “Impact of Medicaid on Children: Latest Research Findings,” Georgetown Center for Children and Families, March 13, 2017, <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>

³ Deferred Action for Childhood Arrivals (DACA) Data Tools, Migration Policy Institute Data Hub, <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>

most commonly post-traumatic stress disorder (PTSD) (64%), major depressive disorder (40%), and anxiety disorder (19%).⁶

We also recommend that the final rule eliminate the requirement that older youth and adult applicants for asylum, withholding of removal, and relief under the Convention Against Torture (CAT) obtain employment authorization before being considered lawfully present. Like child asylum seekers, adults and older youth seeking humanitarian protection are exposed to trauma, as well as communicable diseases, in their home countries and during their journey to the U.S. We support the proposed changes to prevent prolonged delays in access to health coverage.

We strongly support technical changes in the proposed rule that modernize the definition of lawfully present and address unnecessary complexity that creates barriers to enrollment. All of the changes proposed in the rule should be finalized including:

- **Eliminate unnecessary conditional language on eligibility of people with nonimmigrant statuses:** The current definition of lawfully present includes conditional language when describing noncitizens in a nonimmigrant status by indicating that, for the person to be considered as lawfully present, they must not have “violated the terms of the status under which they were admitted or the status to which they have changed since their admission.” We agree with HHS that determining violations of terms of an immigration status is the responsibility of DHS and it is unreasonable to put that responsibility on CMS and state agencies and marketplaces that are responsible for determining eligibility based on the lawfully present standard. We agree that marketplaces should continue to use DHS’ Systematic Alien Verification for Entitlements (SAVE) to determine if the individual is still in an immigration status that makes them eligible for coverage. We agree this change will increase simplicity and consistency in the implementation of this eligibility requirement.
- **Consider all individuals with Employment Authorizations to meet the lawfully present standard:** Current regulations define as lawfully present people granted employment authorization under only certain subsections of 8 CFR §274a.12(c). The proposed regulations would include as lawfully present *all* persons granted employment authorization under 8 CFR §274a.12(c), without regard to subsection. This change recognizes that all individuals who are granted authority to work in the U.S. are indeed lawfully present and thus should meet the lawfully present standard of eligibility for health coverage programs. This change will additionally simplify eligibility determinations and speed enrollment.
- **Consider all individuals with a pending application for adjustment of status to meet the lawfully present standard.** The current rule only considers people with pending applications for adjustment of status to meet the lawfully present requirement if they have an approved visa petition. The “approved visa petition” requirement is overly broad and excludes many people because some people don’t have to go through the process step of having to obtain an “approved petition” as part of their application for adjustment of status.

⁶ Kevin Ackerman; Hajar Habbach, MA; Kathryn Hampton, MSt; Lynne Rosenberg; Sarah Stoughton, JD; and Joseph Shin, MD., “There Is No One Here to Protect You: Trauma Among Children Fleeing Violence in Central America,” Physicians for Human Rights, June 10, 2019. <https://phr.org/our-work/resources/there-is-no-one-here-to-protect-you/>