

**STATEMENT OF**

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**ON**

**“WHY EXPANDING MEDICAID TO DACA RECIPIENTS WILL EXACERBATE THE  
BORDER CRISIS”**

**BEFORE THE**

**U.S. HOUSE COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY  
SUBCOMMITTEE ON HEALTH CARE AND FINANCIAL SERVICES**

**JULY 18, 2023**

**Statement of Ellen Montz on  
“Why Expanding Medicaid to DACA Recipients Will Exacerbate the Border Crisis”  
House Committee on Oversight and Accountability,  
Health Care and Financial Services Subcommittee  
July 18, 2023**

Chairs Comer and McClain, Ranking Members Raskin and Porter, and distinguished Members of the Subcommittee, thank you for the opportunity to provide an update on the Centers for Medicare & Medicaid Services’ (CMS’s) work to equalize access to health care by addressing a unique barrier for Deferred Action for Childhood Arrivals (DACA) recipients.

Over the last decade, DACA has provided peace of mind and work authorization to more than 800,000 Dreamers. On April 13, 2023, the President announced his Administration’s intention to expand health coverage for DACA recipients and stated the Department of Health and Human Services (HHS) would propose a rule that would allow 129,000 DACA recipients to access the same eligibility for coverage through Health Insurance Marketplaces, the Basic Health Program (BHP), and some Medicaid and Children’s Health Insurance Programs as other recipients of deferred action.

On April 24, 2023, CMS released a Notice of Proposed Rulemaking (NPRM)<sup>1</sup> titled *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*. The proposed rule, if finalized, would remove the current exclusion that treats DACA recipients differently from other individuals with deferred

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<sup>1</sup> <https://www.federalregister.gov/documents/2023/04/26/2023-08635/clarifying-eligibility-for-a-qualified-health-plan-through-an-exchange-advance-payments-of-the>.

action, who would otherwise be eligible for coverage under select CMS health care programs. DACA recipients' existing lawful presence would no longer be excluded for purposes of eligibility for these insurance affordability programs based on a grant of deferred action, just like other similarly situated noncitizens who are granted deferred action. This change would extend coverage for Medicaid and CHIP to children and pregnant individuals in states that have elected the "CHIPRA 214" option that allows states to cover lawfully residing children and/or pregnant individuals.<sup>2</sup> This NPRM has a proposed effective date of November 1, 2023, and CMS requested comment from the public.

The proposed change to no longer exclude DACA recipients from CMS definitions of "lawfully present" would align with the Department of Homeland Security (DHS) definition of lawful presence, and DHS's explanation of this definition in its August 2022 final rule, *Deferred Action for Childhood Arrivals*.<sup>3</sup> Deferred action recipients, including DACA recipients, have historically been considered "lawfully present" for purposes of certain Social Security benefits under 8 C.F.R. § 1.3, predating the DHS DACA Final Rule. Under the proposed rule, DACA recipients would need to meet all other eligibility requirements to qualify for coverage under CMS health care programs, and as with all other enrollees, eligibility information, including an individual's U.S. citizenship or qualifying immigration status, would be verified electronically.

In order to enroll in a Qualified Health Plan (QHP) through an Exchange, the Affordable Care Act (ACA) generally requires an individual to be either a citizen or national of the United States or be "lawfully present" in the United States. The ACA also requires that individuals be

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<sup>2</sup> Section 1903(v)(4) of the Social Security Act.

<sup>3</sup> 87 FR 53152.

“lawfully present” in order to be eligible for insurance affordability programs, such as premium tax credits, advance payments of the premium tax credit, and cost-sharing reductions. In general, for Medicaid and CHIP, noncitizens must have a status that is considered “qualified”, which includes lawful permanent resident, refugee, and asylee status; and many qualified noncitizens, including lawful permanent residents, must wait for five years before becoming eligible for full coverage. The Children’s Health Insurance Reauthorization Act of 2009 (CHIPRA) provided a separate exception that allows states an option to cover lawfully residing children and pregnant individuals in Medicaid and CHIP, including individuals who otherwise must wait for five years, commonly referred to as the CHIPRA 214 option.<sup>4</sup>

Although HHS initially defined “lawfully present” to exclude DACA recipients in 2012, new information regarding DACA recipients’ access to health insurance coverage has emerged that prompted the agency to reconsider its position. For example, while a 2021 survey of DACA recipients<sup>5</sup> found that DACA may facilitate access to health insurance through employer-based plans, more than one-third (34 percent) of DACA recipient respondents reported that they were not covered by health insurance. These new findings suggest that, without additional coverage options, many DACA recipients could be left without access to affordable health care.

Accordingly, the proposed rule would remove the exclusion of DACA recipients from the definition of “lawfully present,” thereby treating DACA recipients the same as other deferred action recipients under the law.

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<sup>4</sup> Under CMS State Health Official (SHO) Letter #10-006, CMS has interpreted “lawfully residing” to mean that an individual is lawfully present in the United States and a resident of the state in which they are applying for Medicaid or CHIP coverage. See <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO10006.pdf>.

<sup>5</sup> [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).

Individuals without health insurance are less likely to receive preventative or routine health screenings and may delay necessary medical care. In a 2022 survey<sup>6</sup> of DACA recipients, nearly half (48 percent) of respondents said they experienced a delay in medical care due to their immigration status, and more than two-thirds (71 percent) of respondents said they or a family member were unable to pay medical bills or expenses. The COVID–19 public health emergency further highlighted the need for this population to have access to high quality, affordable health coverage. According to a demographic estimate by the Center for Migration Studies, over 200,000 DACA recipients served as essential workers during the COVID–19 public health emergency, including 43,500 DACA recipients who worked in health care and social assistance occupations, 10,300 who worked in hospitals, and 2,000 who worked in nursing care facilities.<sup>7</sup> During the height of the pandemic, essential workers were disproportionately likely to contract COVID–19. These factors emphasize how increasing access to affordable health insurance would improve the health and well-being of many DACA recipients currently without coverage. Of the 129,000 uninsured DACA recipients impacted by the proposals in this rule, we estimate that 112,000 could receive health care coverage through a QHP through an Exchange, 4,000 through a BHP, and 13,000 through Medicaid or CHIP under the CHIPRA 214 option.

As the proposed rule explains, including DACA recipients in the definition of “lawfully present” would align with the text and goals of the ACA and CHIPRA—specifically, to lower the number of people who are uninsured in the United States and make affordable health insurance available to more people. The proposed rule would also make additional technical changes to the definition of

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<sup>6</sup> “DACA Recipients’ Access to Health Care: 2023 Report.” National Immigration Law Center. [https://www.nilc.org/wp-content/uploads/2023/05/NILC\\_DACA-Report\\_2023.pdf](https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf).

<sup>7</sup> <https://cmsny.org/daca-essential-workers-covid/>.

“lawfully present,” which would also benefit consumers by enabling CMS and states to administer their programs more efficiently for noncitizens, and ensure complete, accurate, and consistent eligibility determinations and verification processes for health coverage for these populations. CMS is committed to working with State agencies and providing technical assistance regarding implementation of these proposed changes, if finalized. Thank you for the opportunity to testify on this important issue.