



June 23, 2023

Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
Department of Health and Human Services
Via regulations.gov

RE: 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

Dear Administrator Brooks-LaSure,

United States of Care (USofCare) is pleased to submit comments in support of the Centers for Medicare & 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 Affordable Care Act (ACA) marketplaces and for certain other health insurance affordability programs. We further support CMS's proposal to implement clarifications that will simplify ACA marketplace enrollment and improve access to health coverage.

[USofCare](#) is a nonpartisan nonprofit working to ensure everyone has access to quality, affordable health care regardless of health status, social need, or income. We drive change at the state and federal level in partnership with everyday people, business leaders, health care innovators, fellow advocates, and policymakers. Together, we advocate for new solutions to tackle our shared health care challenges — solutions that people of every demographic tell us will bring them peace of mind and make a positive impact on their lives. Through [our work](#) in states, we are able to identify unique perspectives from people on the ground to amplify on both the state and federal levels.

Listening to and learning from people's needs and experiences navigating the health care system is at the core of what we do. It is clear from our listening work that inequities in the health care system persist. It is imperative to adopt reforms that better provide for people marginalized due to their race, sex, ethnicity, age, disability, immigration status, gender identity, sexual orientation, and additional aspects of their identity. **We strongly believe that everyone should have affordable, quality care they can easily access regardless of who they are, which is why USofCare appreciates CMS's commitment to improving the quality of our health care system through this proposed rule.**

As such, USofCare submits the following comments for consideration, focusing on these themes of the proposed rule:

- 1. Coverage of DACA Recipients is a Benefit to This Population and to the Country.** Having health coverage improves access to quality care, supports positive health outcomes, and reduces financial strain. However, DACA recipients currently face significant barriers to accessing affordable, quality health coverage in the United States. If finalized, this rule will result in more covered lives that will ultimately lead to more people remaining healthy and able to fully participate in broader community life.
- 2. CMS's Interpretation of the Definition of "Lawfully Present" Will Lead to Healthier Communities.** As a result of lacking coverage, many immigrants often

forgo or delay care. USofCare has supported state efforts to implement Basic Health Programs (BHP) and if finalized, this rule would result in DACA recipients being considered lawfully present for purposes of eligibility to enroll in a BHP allowing this population to access affordable health coverage and care, thereby leading to healthier communities nationwide and reducing inequities.

- 3. Including Children and Young People In Coverage Aligns With State Reforms.** Many states are already choosing to offer health coverage through state funds to all children who are income-eligible, regardless of their immigration status. USofCare supports CMS's interpretation of "lawfully present" to include children and young people.

Coverage of DACA Recipients is a Benefit to This Population and to the Country

USofCare strongly supports the inclusion of DACA recipients as lawfully present in 45 CFR §152.2's definition of "lawfully present" through the proposed rule. **Expanding health care coverage to DACA recipients will significantly benefit this population and the country more broadly.** Since its creation, DACA has protected more than [800,000 individuals](#), with an estimated [580,000](#) DACA recipients living in the U.S. today. More than [1.3 million](#) people live with a DACA recipient, including the 300,000 U.S.-born children who have at least one parent with DACA status. A [majority](#) of DACA recipients are employed, with three quarters of DACA recipients in the workforce serving as essential workers.

DACA recipients face significant barriers to accessing health care in the United States. In 2022, more than a quarter of [surveyed DACA recipients](#) were uninsured and half had delayed medical care because of their immigration status. A Kaiser Family Foundation [analysis](#) found that nearly half of DACA recipients are uninsured, compared to 10% of U.S.-born persons in the same age groups. During the peak of the COVID-19 pandemic, nearly [twenty percent](#) of DACA recipients reported that they had lost employer-sponsored health coverage. Unlike lawfully permanent residents and U.S. citizens, DACA recipients currently cannot rely on ACA health care exchanges in the absence of coverage. The benefits of access to affordable health care and coverage are well-documented. People with health coverage are [more likely](#) to have a regular source of care and to receive preventive care, timely diagnosis of disease, and assistance with management of chronic conditions. Health coverage improves access to care, supports positive health outcomes, and reduces financial strain. **Our conversations with people across the country show people hope for the freedom to live their lives as they wish, and they need to be able to depend on their coverage when they do so.** [73% of people](#) polled want expanded eligibility for public programs, so that more people qualify for coverage through Medicare, Medicaid, or the Children's Health Insurance Program.

CMS's Interpretation of the Definition of "Lawfully Present" Will Lead to Healthier Communities

USofCare supports the proposal to interpret the definition of "lawfully present" in the Basic Health Programs (BHP) regulations at 42 CFR 600.5 to align with the definition of "lawfully present" proposed in this rule at 45 CFR 155.20. This proposal, if finalized, would result in DACA recipients being considered lawfully present for purposes of eligibility to enroll in a BHP in a state that elects to implement such a program, if otherwise eligible. USofCare has supported the expansion of MinnesotaCare, Minnesota's Basic Health Program, to immigrants without legal status who otherwise meet the eligibility criteria. Immigrants without legal status participating in the program will pay sliding scale premiums, just like all other MinnesotaCare enrollees. The Minnesota Immigrant Inclusion Act is expected to provide a health insurance option to [40,000 people](#) in Minnesota who currently meet the income eligibility requirements of MinnesotaCare, but are yet to access the program due to their immigration status. Increasing access to health care for thousands of residents of Minnesota can

reduce the uncompensated care cost burden on the health care system and make the community stronger and healthier.

In Colorado, USofCare worked to help pass the innovative Colorado Option, which provides a health insurance option that is available to everyone, regardless of immigration status. For people [not eligible to purchase this coverage on the exchange](#) due to immigration status, they are able to purchase their coverage through the OmniSalud program, managed by Connect for Health Colorado. The OmniSalud program reached [10,000 undocumented enrollees](#) in its first year, surpassing the estimated [3,000 enrollees](#) initially projected to join the program. The success of the OmniSalud program demonstrates the need for federal programs that expand access to affordable care to all people residing in the United States.

USofCare also supports CMS’s proposed interpretation to the definition of the term “lawfully present” to include all people granted employment authorization under 8 CFR §274a.12(c). Lawfully present immigrants are significantly more likely to be uninsured. Among the nonelderly, 25% of lawfully present immigrants [were uninsured](#) compared to 9% of citizens in 2019. Additionally, while many states implemented an option known as the Immigrant Children’s Health Improvement Act (ICHIA) to use state funds to provide Medicaid coverage to immigrant children and pregnant women who have been lawfully residing in the U.S. for less than five years, many low-income lawfully present immigrants remain ineligible for full Medicaid benefits due to the [five-year bar](#) under federal law. As a result of lacking coverage, many immigrants often forgo preventive care and services for major health conditions and rely on a patchwork of charitable organizations, safety net clinics, and hospital emergency rooms. The proposed rule recognizes that all individuals who are granted authority to work are “lawfully present” in the U.S. and simplifies eligibility and enrollment processes.

Including Children and Young People In Coverage Aligns With State Reforms

USofCare applauds CMS’s decision to expand on recent coverage gains by removing barriers to coverage as outlined in the [November 7 proposed rule](#) entitled “Streamlining the Medicaid, Children’s Health Insurance Program, and Basic Health Program Application.” This will benefit historically marginalized communities and all people enrolled in Medicaid and CHIP. Gaps in coverage can be particularly harmful to child health and development, add unnecessary complexity and administrative burden to state Medicaid agencies, and may increase the risk that children or other people lose coverage entirely. **USofCare supports efforts to ensure that the definition of “lawfully present” includes children and young people with pending and approved Special Immigrant Juvenile (SIJ) petitions.** A substantial majority of states have elected under Section 214 of CHIPRA to provide Medicaid and CHIP to income-eligible children and pregnant individuals who are lawfully present.

There has been a recent uptick in states choosing to offer health coverage through state funds to all children who are income-eligible, regardless of their immigration status. In 2022, Maine, New Jersey, Rhode Island, and Vermont [joined](#) California, Illinois, New York and Washington to provide coverage to children without documentation. Minnesota will soon join the ranks after passing a bill in the 2023 session that will [expand the state’s Basic Health Program to cover all people](#), including children, regardless of status. This effort benefits the states at large by reducing health disparities, boosting utilization of preventive services among children, enhancing children’s health, and alleviating the financial strain on families.

Conclusion

USofCare applauds CMS’s proposed rule to formalize health coverage options to recipients of the Deferred Action for Childhood Arrivals program. This effort will ensure that more people have access to affordable and high-quality health insurance coverage. Additionally, **USofCare supports CMS’s proposal to replace the outdated,**

dehumanizing term “alien” with “noncitizen.” To advance health equity in the United States, it is imperative to not only adopt policy changes, but also linguistic changes that do not marginalize and discriminate against people for their immigration status. The proposal to replace the use of the outdated term “alien” with the more accurate “noncitizen” is a common-sense step toward the accomplishment of that goal.

USofCare encourages the swift adoption of this rule and believes that, if finalized, it can build towards our mission of ensuring everyone has access to quality, affordable health care. If you have any questions, please reach out to me at LHunter@usofcare.org.

Sincerely,

A handwritten signature in black ink that reads "Lisa Hunter". The signature is written in a cursive, flowing style.

Lisa Hunter (she/her)

Senior Director for Policy & External Affairs

United States of Care