



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

Submitted via www.regulations.gov

June 20, 2023

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attn: CMS-9894-P
P.O. Box 8016
Baltimore, MD 21244-8016

SUBJECT: *Comments on Notice of Proposed Rulemaking for Clarifying Eligibility for Qualified Health Plan Through an Exchange, Advance Payments of Premium Tax Credit, Cost Sharing Reductions, a Basic Health Program, and for Some Medicaid and Children’s Health Insurance Programs.*

Dear Secretary Becerra:

I would like to thank you for the opportunity to comment on the proposed regulation published by the Centers of Medicare and Medicaid Services on April 26, 2023 entitled, “Clarifying Eligibility for Qualified Health Plan Through an Exchange, Advanced Payments of Premium Tax Credit, Cost Sharing Reductions, a Basic Health Program, and for Some Medicaid and Children’s Health Insurance Programs.”

As California’s Insurance Commissioner, increasing access to affordable, equitable, and comprehensive health insurance coverage is a priority for me and my Department, the California Department of Insurance. I strongly believe that health care is a right, not a privilege. I know first-hand the challenges that families face when they do not have access to quality health care: where health care is a trip to the school nurse and home remedies are used in lieu of prescription drugs because of costs. I have family members who have had to choose between paying rent or paying for medical care, and friends who have had to choose between buying groceries or filling their prescriptions.

A lack of health insurance has long-term consequences. Studies show that uninsured individuals are less likely to receive preventive care or routine screenings.¹ This lack of regular health care often results in declining overall health for these individuals, and hospitalization for avoidable health conditions.² Even when hospitalized, uninsured

¹ Kaiser Family Foundation, *Key Facts About the Uninsured Population*, (December 19, 2022)

<https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/#:~:text=Most%20of%20the%202027.5%20million%20people%20who%20are,uninsured%20people%20live%20in%20the%20South%20or%20West.>

² *Id.*

individuals tend to receive fewer diagnostic and therapeutic services and have higher mortality rates than individuals with insurance.³

I also believe that our health system works better when *everyone*, regardless of immigration status, has access to health insurance. This is why throughout my career, I have passionately fought to increase access to health care for all. As a California state senator, I authored the Healthy California Act (Senate Bill No. 562, (2017-2018 Reg. Sess.)), which would have created a universal, single-payer health care system in California, Health for All Kids (Senate Bill No. 4, Stats. 2015, ch. 709, § 35) which enabled the transition from partial scope to full scope Medi-Cal for children regardless of immigration status, and Senate Bill 10 (Stats. 2016, ch. 22, § 1), which would have increased access to health care by allowing individuals regardless of immigration status to purchase California Qualified Health Plans (QHPs) from Covered California, California's State Based Exchange. And, as Insurance Commissioner, I sponsored Assembly Bill 570 (Santiago, Stats. 2021, ch. 468, § 2)), which allows adult children, including those in mixed status families, to add their dependent parents onto their health insurance coverage.

I recognize the significant barriers uninsured individuals in our country face when accessing care, which is why this proposed rule is more important now than ever. Around 43% of Deferred Action for Childhood Arrivals (DACA) recipients have incomes below the 200% of the federal poverty level.⁴ Therefore, expanding Medicaid eligibility to DACA recipients throughout the country, as proposed by this rule, would be a huge benefit to this group. In addition, nearly half of all DACA recipients are uninsured.⁵ This is, in part, because as the law currently stands, these individuals are not eligible to enroll in a QHP, or receive federal subsidies because of their immigration status.

The proposed rule to modify eligibility requirements for QHPs and Medicaid to permit DACA recipients to enroll in these programs is a step in the right direction, and I strongly support the overall intent of this proposed rule. However, it is imperative that we act to ensure that all individuals, regardless of their immigration status, have or continue to have unrestricted access to health care. Thus, I believe that more can be done to increase access to health care for **all**.

³ *Id.*

⁴ Kaiser Family Foundation, *Key Facts on Deferred Action for Childhood Arrivals (DACA)* (April 13, 2023) https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/?utm_campaign=KFF-2023-Racial-Equity-Health-Policy&utm_medium=email&_hsmt=2&_hsenc=p2ANqtz-8jm9kQjKHPFglb6Fr3t0_0J7R8tX4izW7T4VTURfgou4MBUVGzqUSoxlkqgC742FzfulalPbtWvKam4y0KTAoTk7BfLA&utm_content=2&utm_source=hs_email.

⁵ Kaiser Family Foundation, *Key Facts on Deferred Action for Childhood Arrivals (DACA)* (April 13, 2023) <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/>.

Comments on the Proposed Regulation

1. Modifying the Statutory Interpretation of “Lawfully Present”

I strongly support HHS’ proposal to modify the statutory interpretation of “lawfully present” to treat DACA recipients like other deferred action recipients. Expanding this definition would allow DACA recipients to enroll in Medicaid or a QHP depending on their income.

2. Benefits to Medi-Cal/California

I support HHS’ proposal to expand Medicaid and QHP eligibility to DACA recipients because it benefits both California’s Medi-Cal program and the State of California by reducing overall state expenditures. Currently in California, which accounts for close to 30% of all DACA recipients, some of these individuals are eligible for state-funded Medi-Cal coverage.⁶ California is one of only a handful of states in the nation to provide this type of coverage to at least some DACA recipients.⁷ To provide this coverage, California expends approximately \$13 million out of the state’s General Fund, with this amount expected to increase annually.⁸ Expanding Medicaid eligibility to DACA recipients may allow California to receive federal reimbursement for providing health care to DACA recipients. This receipt of federal reimbursement has the potential to significantly lower or offset any of the state’s General Fund expenditures expended for health coverage for DACA recipients.

3. Benefits to the Insurance Market/Single Risk Pool

I strongly support HHS’ proposal to expand eligibility for QHPs, as well as income-based subsidies. As a result of the ongoing Medicaid unwinding, many of these DACA recipients may lose their eligibility for this state-funded Medi-Cal coverage. Thus, this modification allows these individuals to obtain health care coverage *via* Covered California. Expanding access to QHPs and subsidies to DACA recipients is beneficial to the insurance market. Of the estimated 40,000 uninsured DACA recipients in California with incomes above the Medi-Cal threshold, it is estimated that around 30,000 would enroll for subsidized coverage through Covered California should this rule be enacted.⁹ Adding healthy individuals into the single risk pool has the potential to improve the risk mix and lower premiums.¹⁰ This is true with regards to DACA recipients who are younger and healthier

⁶ Kaiser Family Foundation, *Key Facts on Deferred Action for Childhood Arrivals (DACA)* (April 13, 2023) <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/>; Cal. Dept. of Health Care Servs., *Deferred Action for Childhood Arrivals (DACA) Recession Frequently Asked Questions* (March 23, 2021) <https://www.dhcs.ca.gov/formsandpubs/publications/Pages/Deferred-Action-for-Childhood-Arrivals-FAQ.aspx>.

⁷ *Id.*

⁸ Cal. Dept. of Health Care Services, *2022 May Medi-Cal Estimate* (May 11, 2022) at pg. 314 https://www.dhcs.ca.gov/dataandstats/reports/mceestimates/Documents/2022_May_Estimate/M22-Medi-Cal-Local-Assistance-Estimate.pdf

⁹ UC. Labor Center, *Extending Covered California Subsidies to DACA Recipients Would Fill Coverage Gap for 40,000 Californians* (June 6, 2023) <https://laborcenter.berkeley.edu/extending-covered-california-subsidies-to-daca-recipients-would-fill-coverage-gap-for-40000-californians/>.

¹⁰ Covered California, *California’s Proposal to Waive Affordable Care Act Requirements to Expand Access to Undocumented Individuals* (August 5, 2016) at pg. 10 https://hbex.coveredca.com/stakeholders/Covered%20California%201332%20Waiver/Covered%20California%201332%20Application_FinalDraft%20%208-5-16.pdf.

individuals overall; studies show that a majority of DACA recipients are under the age of 36, with 64% of individuals surveyed describing their health as “excellent” or “very good.”¹¹

4. Proposed November 1, 2023 Effective Date

I strongly support HHS’ recommended effective date of November 1, 2023 for this proposed rule. As previously mentioned, many DACA recipients in California may lose their eligibility for state-funded Medi-Cal during the Medicaid unwinding, due to income changes. As a result, finalizing the proposed rule as soon as possible ensures that these individuals do not experience gaps in health care coverage.

5. Expansion of NPRM to All Individuals Regardless of Immigration Status

While I strongly support and appreciate HHS’ efforts to increase health care access for DACA recipients, I am concerned that this rule does not fully address the significant barriers to access faced by countless individuals in our society. By only focusing on DACA recipients, this proposed rule fails to address the plight of undocumented immigrants traditionally barred from obtaining access to subsidized or free health coverage solely due to their immigration status. Many of these individuals perform essential jobs and services in our communities. Yet, because due to their immigration status, as well as the cost of health care, they remain uninsured, and cannot easily access basic medical care. Thus, I respectfully request that HHS consider expanding this rule to include **all** individuals regardless of their immigration status. This would allow these individuals to gain access to affordable and comprehensive health care coverage. In turn, this would result in a lower uninsured rate and a healthier society overall.

Conclusion

Thank you for your continued leadership and your on-going commitment to increasing access to health care. I share your commitment to reducing and eliminating barriers to health care coverage, and I look forward to working with you on increasing access to health care for all regardless of immigration status. If you have any follow-up questions or wish for additional information, please contact my staff Stesha Hodges, Chief of my Health Equity and Access Office, at Stesha.Hodges@insurance.ca.gov.

Thank you,



RICARDO LARA
Insurance Commissioner

¹¹ Kaiser Family Foundation, *Key Facts on Deferred Action for Childhood Arrivals (DACA)* (April 13, 2023) <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/>.