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**Comments on Interim Final Rule for the Pre-Existing Condition Insurance Program  
File Code OCIIO-9995-IFC**

To Whom It May Concern:

The Asian & Pacific Islander American Health Forum (APIAHF) looks forward to the implementation of the federally-run Pre-Existing Condition Insurance Plan (PCIP) program. Disproportionately high rates of cancer, diabetes, and Hepatitis B persist within Asian Americans, Native Hawaiian, and Pacific Islander (AA and NHPI) populations. Compounding these disparities, 17% of Asian Americans and 21% of Native Hawaiians and Pacific Islanders are uninsured. We expect AAs and NHPIs to benefit significantly from access to the PCIP program, but are concerned that the interim final rule creates barriers for the many immigrants in our communities.

APIAHF supports the following comments of the National Immigration Law Center on the Interim Final Rule for the Pre-Existing Condition Insurance Program (PCIP), published at 75 Fed. Reg. 45014-33 (July 30, 2010).

**PROPOSED DEFINITIONS AT 45 CFR § 152.2**

**(1) Lawfully present:**

We were pleased to see that OCIIO began with the definition of lawfully present that was developed for the purpose of implementing Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA"), the state option to provide Medicaid and CHIP to lawfully residing children and pregnant women. However, a few additional categories should be included in this context:

- **Victims of human trafficking who have been granted "continued presence":** individuals whose continued presence in the United States the Secretary of Homeland Security is ensuring in order to effectuate the prosecution of traffickers in persons. This category of non-citizens is already eligible for Medicaid and CHIP under 22 USC §7105(b), and therefore did not appear in CMS' list of newly covered immigrants for the purpose of implementing CHIPRA Section 214. This category should be included explicitly in the PCIP regulations.
- **Individuals whose status makes them eligible to apply for work authorization under 8 C.F.R. §274a.12.** For low-income individuals who have disabilities or are otherwise unable to work, the cost (\$340) and logistics involved in applying for work authorization can be significant. Their

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lawful status does not depend on whether they obtain a work permit – and neither should this definition. Individuals with a status that makes them eligible to obtain a work permit should be considered “lawfully present.”

- **Individuals granted a stay of removal/deportation by administrative or court order, statute, or regulations.** This status is generally granted to individuals with cases pending before an immigration judge, the Board of Immigration Appeals, or a court, allowing them to remain in the U.S. lawfully while often lengthy proceedings continue. Several states provide health coverage to individuals with this lawful status, and to promote fairness and efficiency in administering these programs, it is appropriate to include them among the lawfully present categories for purposes of implementing the PCIP program.

Because immigration statuses and documents are constantly evolving – any list of “lawfully present” immigration categories should make clear that it is not exhaustive.

To avoid unnecessary burdens, OCIIO may wish to provide flexibility to states that already provide coverage to a broader group of lawfully residing immigrants to continue using existing administrative mechanisms for determining eligibility, provided that the rules are no more restrictive than federal law.

(2) **Resident** – Although the Affordable Care Act (“ACA”) does not provide a state residency requirement for the PCIP program, we agree that such a requirement is reasonable. However, the interim rule uses the term “legally domiciled” which does not appear anywhere in the ACA. For ease of administration, to facilitate screening and referrals to other programs, and to ensure that eligible individuals are not excluded, the PCIP program’s definition of state resident should be consistent with the Medicaid program’s definition. If a state residency requirement is imposed, the PCIP program should adopt the definition at 42 C.F.R. § 435.403.

## **PROPOSED ENROLLMENT PROCESS AT 45 C.F.R. 152.15(a)**

### **Verification procedures**

As OCIIO notes, the determination of citizenship and immigration status for the PCIP program should be made in accordance with ACA Section 1411’s procedures for determining eligibility for the Exchanges. Section 1411, in turn, adopts the procedures for determining Medicaid eligibility under section 1902(ee) of the Social Security Act, as added by CHIPRA. We urge OCIIO to ensure that any verification procedures used in the PCIP program, whether document-based or electronic, comply with Section 1411’s, and by extension the Medicaid program’s due process and confidentiality protections:

1) **Due Process:** the PCIP rules should ensure that its verification procedures, like Medicaid’s, comply with the provisions in section 1137(d) of the Social Security Act. This includes coverage during a “reasonable opportunity period,” which allows applicants who have declared an eligible status to secure the appropriate documents pending the completion of the verification process, which ensures that applicants are not penalized by delays or errors in the verification system. The regulations should incorporate these provisions explicitly.

2) **Acceptable Documents:** To the extent that a state uses a document-based approach to verifying eligibility for the PCIP program, the regulations, at 45 C.F.R. §152.15(a)(3)(ii), should ensure that the state accepts, at a minimum, all documents recognized by federal agencies to establish citizenship or an eligible immigration status. *See, e.g.* Department of Justice, “Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” 62 FR 61344-613416 (Nov. 17, 1997). The regulations should ensure that applicants have an opportunity to appeal any denials based on the document requirement, and where necessary, to provide evidence that they are seeking replacement documents.

3) **Confidentiality:** The interim rule requires the PCIP program to disclose whether an applicant’s information will be shared with other agencies for the purpose of establishing eligibility. The proposed notice, at 45 C.F.R. §152.15(a)(3)(iii), fails to assure applicants that the information will be used *only* for this purpose. The PCIP regulations should explicitly incorporate Section 1411’s provisions that limit the inquiries, use and disclosure of information provided by applicants. Section 1411(g), for example, provides that applicants shall be required to provide only the information strictly necessary to determine eligibility for the program; that information received may be used only for the purposes of and to the extent necessary to verify eligibility or to ensure the efficient operation of the program; and that the information may not be disclosed except as provided in that section.

The PCIP program which, by statute, adopts Section 1411’s procedures must incorporate its protections as well.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact Priscilla Huang, Associate Policy Director, at [phuang@apiahf.org](mailto:phuang@apiahf.org).

Respectfully,

A handwritten signature in black ink, appearing to read "Priscilla Huang". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Priscilla Huang