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*National Advocates for  
Asian American, Native Hawaiian &  
Pacific Islander Health*

June 23, 2023

Secretary Xavier Becerra  
Department of Health and Human Services  
200 Independence Ave. SW  
Washington, DC 20201

Administrator Chiquita Brooks-LaSure  
Centers for Medicare & Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244

**Re: Comments regarding CMS-9894-P 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 (88 FR 25313)**

To Secretary Becerra and Administrator Brooks-LaSure:

The Asian & Pacific Islander American Health Forum (APIAHF) and its national, state, and local partners strongly support the Centers for Medicare and Medicaid Services' (CMS) Proposed Rule to end the exclusion of Deferred Action for Childhood Arrivals (DACA) recipients from eligibility to purchase plans and obtain subsidies under the Affordable Care Act (ACA) marketplaces and other health insurance affordability programs. We further support CMS' proposal to implement clarifications and technical corrections that will simplify ACA Marketplace enrollment and improve access to health coverage.

With a national network of over 180 community-based organizational partners in over 40 states and territories, APIAHF is the nation's oldest and largest health advocacy organization dedicated to improving the health and well-being of over 25 million Asian Americans (AAs) and Native Hawaiians and Pacific Islanders (NHPIs) across the U.S. and its territories. APIAHF influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of AAs and NHPIs, many of whom would qualify for expanded affordable health insurance under this Proposed Rule.

The importance of DACA to Asian American and Pacific Islander (AAPI) communities cannot be understated. Formerly undocumented Korean American musician Tereza Lee unified our elected leaders to introduce the Development, Relief, and Education for Minors (DREAM) Act in 2001, which later became the model for the DACA program. Since then, DACA has protected over 800,000 Dreamers. More than 1.3 million people live with a DACA recipient, including 300,000 U.S.-born children who have at least one parent with DACA.<sup>i</sup> Today, there are over 14,000 AAPI DACA Recipients.<sup>ii</sup>

## **The Proposed Rule Would Correct and Reverse the Exclusion of DACA Recipients from Accessing Affordable Health Insurance.**

Access to affordable health care and health insurance is a cornerstone of our work and the promise of the Affordable Care Act (ACA). Despite being able to work and reside in the U.S., DACA recipients are denied access to many health care options provided by the ACA. When DACA was established in 2012, the Department of Health and Human Services determined that DACA recipients would not be considered “lawfully present” for purposes of eligibility for ACA coverage and subsidies and, therefore, did not qualify for Medicaid and Children’s Health Insurance Program (CHIP) coverage in many states.<sup>iii</sup> That decision has resulted in DACA recipients being largely unable to secure health care.

Although some DACA recipients may have access to health insurance through employer-based plans, as a whole, they are nearly three times as likely to be uninsured as compared to the general population in the U.S., with over 70 percent of DACA recipients unable to pay medical bills and expenses.<sup>iv</sup> Additionally, over 20 percent of DACA recipients are concerned that using health care services could negatively affect their own or their family’s immigration status.

By including DACA recipients in the definition of “lawfully present,” this Proposed Rule is well aligned with the goals of the ACA—specifically, to lower the number of people who are uninsured in the U.S. and make affordable health insurance more accessible. Further, DACA recipients represent relatively young, healthy adults who would reduce pooled insurance risk; at an average age of 29, per U.S. Citizenship and Immigration Services (USCIS) data, they are younger than the general ACA Exchange population.<sup>v</sup>

The heart of the DACA program was to provide eligible recipients with stability and assurance that would allow them to obtain an education and lawful employment to be integral, productive members of our society. In publishing the proposed regulations, CMS has rightfully recognized that it is not required to treat DACA recipients differently than other recipients of deferred action, and that doing so is contrary to the fundamental goals of DACA and the ACA.

The adoption of the Proposed Rule would rectify the agency’s past position and expand health coverage and provide relief for DACA recipients.

## **Expediting the Proposed Effective Date Before November 1, 2023, Would Ensure DACA Recipients Can Immediately Access the ACA Marketplace to Secure Affordable Health Care.**

APIAHF strongly urges CMS to effectuate the Proposed Rule before November 1, 2023, to maximize participation in the next ACA Health Insurance Marketplace Annual Open Enrollment Period. While the Proposed Rule highlights that the effective date is intended to coincide with the beginning of the Annual ACA Marketplace Enrollment, there is no regulatory need to make DACA recipients wait for access to coverage. Allowing enrollment as soon as the final rule is published would allow DACA recipients to enroll in and effectuate 2023 plan year coverage rather than waiting for 2024.

When the rule is finalized, CMS should be prepared to conduct robust in-language outreach to the immigrant community by partnering with funded organizations, particularly community-based ones, with connections to immigrant communities. CMS should also ensure that Medicaid agencies, brokers, assisters, navigators or other entities involved with outreach and enrollment for ACA and Medicaid coverage are aware of, and trained on, the new rule as soon as possible.

**The Proposed Rule Would Simplify Enrollment for Citizens of Freely Associated States (FAS) in the U.S. Under the Compacts of Free Association (COFA) by Clarifying Eligibility Determinations.**

APIAHF supports the Proposed Rule in simplifying enrollment for nonimmigrant visa holders by eliminating the ‘not in violation of terms of status’ language. This change will make it easier for states to determine eligibility and will ensure a clear pathway for COFA migrants to enroll in the Marketplace (and the state Medicaid option for children and pregnant people) and receive advance premium tax credits if they meet all other eligibility requirements for those programs.

It took Congress over 25 years to restore Medicaid coverage for COFA migrants. APIAHF supports CMS’ current effort to ensure that COFA migrants have simplified access to all available and affordable health programs and tax credits under the ACA.

**The Definition of Lawfully Present Should Include All Vulnerable Children and Young People With an Approved Special Immigrant Juvenile Petition.**

APIAHF supports CMS’ proposal to clarify that the definition of lawfully present includes children and young people with approved Special Immigrant Juvenile (SIJ) petitions, as well as those with pending SIJ petitions. Eligibility for SIJ classification is available to some individuals under the age of 21 who have sought the protection of a court to obtain relief from abuse, neglect, or abandonment and meet other requirements. Individuals with pending SIJ applications are currently listed as lawfully present, while those with an approved SIJ petition but who cannot yet apply for adjustment of status due to lack of an available visa number are not. However, at the time the definition was drafted, persons with approved SIJ petitions generally were able to adjust to lawful permanent residence almost immediately; now the waiting period for a visa to become available for these individuals can take several years. This clarification will eliminate the unintentional exclusion of those with *approved* SIJ petitions, helping to ensure this very vulnerable population can access and seek timely care.

Thank you again for the opportunity to provide comments on this very important proposed rule. Please contact Jennifer Van der Heide (jvanderheide@apiahf.org), APIAHF Vice President of Policy and Advocacy, for questions or comments.

Sincerely,  
The Asian & Pacific Islander American Health Forum

**National Civil Rights and Health Justice Partners:**  
Asian Americans Advancing Justice | AAJC  
Asian Health Coalition

Asian Pacific Partners for Empowerment, Advocacy and Leadership (APPEAL)  
Association of Asian Pacific Community Health Organizations (AAPCHO)  
Council of Korean Americans  
EPIC  
Japanese American Citizens League  
Laotian American National Alliance  
NAPAFASA  
National Asian American Pacific Islander Mental Health Association  
National Council of Asian Pacific Americans (NCAPA)  
National Council of Asian Pacific Islander Physicians  
National Health Law Program  
National Immigration Law Center  
Philippine Nurses Association of America, Inc  
South Asian Public Health Association  
Southeast Asia Resource Action Center (SEARAC)

**State and Local Partners:**

ACCESS  
Asian Services in Action (ASIA)  
Coalition for Asian American Children and Families  
IDIC Filipino Senior & Family Services  
Marshallese Educational Initiative  
Micronesian Islander Community  
MQVN Community Development Corp.  
NICOS Chinese Health Coalition  
NOELA Community Health Center  
SEAMAAC, Inc.  
Southeast Asian Coalition on Central Massachusetts  
TOFA Inc.  
Vietnamese American Roundtable

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<sup>i</sup> The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition (Center for American Progress, November 24, 2021) <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>

<sup>ii</sup> U.S. Citizenship and Immigration Services. Count of Active DACA Recipients By Month of Current DACA Expiration. September 30, 2022. [https://www.uscis.gov/sites/default/files/document/data/Active\\_DACA\\_Recipients\\_Sept\\_FY22\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/document/data/Active_DACA_Recipients_Sept_FY22_qtr4.pdf).

<sup>iii</sup> Pre-Existing Condition Insurance Plan Program. Federal Register. August 30, 2012. <https://www.federalregister.gov/documents/2012/08/30/2012-21519/pre-existing-condition-insurance-plan-program>.

<sup>iv</sup> DACA Recipients' Access to Health Care: 2023 Report. National Immigration Law Center. May 2023. [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>v</sup> 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/>.