

**Congress of the United States**  
**Washington, DC 20515**

January 26, 2021

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

The Honorable Norris Cochran  
Acting Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear President Biden and Acting Secretary Cochran:

We write to respectfully request that the U.S. Department of Health and Human Services (HHS), in response to the ongoing COVID-19 crisis, grant access to benefits under the Patient Protection and Affordable Care Act (ACA) for Deferred Action for Childhood Arrivals (DACA) recipients. Access to COVID-19 testing and treatment for DACA recipients and their U.S. citizen children is absolutely critical during this pandemic, particularly for the 202,500 DACA recipients employed as essential workers on the frontlines to keep our country healthy and running.<sup>1</sup>

Specifically, we request that HHS repeal 45 C.F.R. § 152.2(8), which excludes DACA recipients from the definition of “lawfully present” and, consequently from benefits under the ACA, even though DACA recipients are treated as lawfully present for other federal programs.<sup>2</sup> Fixing this incongruity within the first 100 days of the administration is critical as any additional delay in health care access during the COVID-19 pandemic puts the health of DACA recipients, their families, and the wider community at risk.<sup>3</sup> HHS should then follow up by issuing a State Health Officials letter clarifying their eligibility for Medicaid and CHIP. It is crucial that you both keep your commitment to expanding coverage for undocumented immigrants, including DACA recipients, and rescinding this harmful regulation will help deliver on that promise.<sup>4</sup>

As a result of the current regulation and guidance, DACA recipients cannot:

- a) Obtain comprehensive health insurance under Medicaid or CHIP in their state;
- b) Purchase health insurance in the ACA’s health insurance marketplace, even at full cost using their own funds; and

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<sup>1</sup> Nicole Prchal Svajlenka, “A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response,” Center for American Progress, April 6, 2020, <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-frontlines-coronavirus-response/>.

<sup>2</sup> The language in question reads as follows: “An individual with deferred action under the Department of Homeland Security’s deferred action for childhood arrivals process, as described in the Secretary of Homeland Security’s June 15, 2012, memorandum, shall not be considered to be lawfully present . . . .” 45 C.F.R. § 152.2(8) (2012).

<sup>3</sup> The APA states that an agency may forgo the requirement that an NPRM be published at least 30 days before its effective date if there is good cause to say that the procedure would be “impracticable, unnecessary, or contrary to the public interest. . . .” 5 U.S.C. § 553.

<sup>4</sup> Selena Simmons-Duffin, What Biden’s Election Means For U.S. Health Care And Public Health, NPR, Nov. 9, 2020, <https://www.npr.org/sections/health-shots/2020/11/09/932071991/what-bidens-election-means-for-u-s-health-care-and-public-health>.

- c) Receive federal premium tax credits to make private health insurance affordable in the marketplace (even though DACA recipients still file and pay federal taxes).

Making ACA coverage and financial assistance available to all persons granted deferred action, including DACA recipients would advance the goals of the ACA and benefit the American people. Under DACA, immigrant youth with long-term residency in the United States who satisfy a strict set of criminal background and educational criteria are eligible for employment authorization and protection from deportation.<sup>5</sup> Rescission of 45 C.F.R. § 152.2(8) would grant access to the ACA for the approximately 650,000 current DACA recipients and could ultimately benefit over a million individuals as the DACA program resumes.<sup>6</sup> The regulation excludes a significant pool of young, healthy adults—the *exact* type of participants that Congress sought to encourage to secure and purchase health insurance under the ACA. Moreover, the regulation potentially leads to worse health outcomes for DACA recipients and their families by foreclosing access to health care, including unsubsidized purchases on ACA health insurance marketplace.

We strongly encourage HHS to honor our country’s promise of full integration and support of DACA recipients, including access to affordable health care through the ACA by rescinding this regulation. We anticipate your response within 30 days, and we thank you for your attention and prompt response. If you have any questions regarding this request, please contact Kaitlyn Montan at [Kaitlyn.montan@mail.house.gov](mailto:Kaitlyn.montan@mail.house.gov).

Sincerely,



Joaquin Castro  
Member of Congress

**Additional Cosigners:**

Raul Ruiz, M.D.  
Barbara Lee  
James P. McGovern  
Jan Schakowsky  
Sean Casten  
Danny K. Davis  
Jimmy Gomez  
Mark Pocan

Juan Vargas  
Tony Cárdenas  
Gwen Moore  
Bobby L. Rush  
Alan Lowenthal  
Nydia M. Velázquez  
Jamie Raskin  
Sheila Jackson Lee

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<sup>5</sup> Janet Napolitano, Dep’t of Homeland Security, Memorandum Letter on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

<sup>6</sup> *Immigration and Citizenship Data*, U.S. Cit. & Immigr. Servs., <http://bit.ly/38SKZbh> (last visited Nov.23, 2020); *Deferred Action for Childhood Arrivals (DACA) Data Tools*, Migr. Policy Inst., <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (last visited Nov. 23, 2020).

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