



COLORADO

Governor Jared Polis

June 15, 2023

Honorable Xavier Becerra, Secretary
Honorable Chiquita Brooks-LaSure, CMS Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9894-P, Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Colorado Supports Proposed Rule to Expand Health Coverage to DACA Recipients; Agency Docket Number: CMS-9894-P, RIN 0938-AV23, Docket ID: 2023-08635

Dear Secretary Becerra and Administrator Brooks-LaSure:

Colorado's Governor Jared Polis; the Colorado Office of New Americans (ONA) within the Colorado Department of Labor and Employment; the Colorado Department of Health Care Policy & Financing (HCPF), Colorado's single state agency for the administration of the Medicaid and Children's Health Insurance (CHIP) programs; and the Division of Insurance (DOI) within the Colorado Department of Regulatory Agencies, which regulates the insurance industry to protect consumers; write to express Colorado's strong support for, and to comment on operational concerns for implementation of, the U.S. Department of Health and Human Services' (HHS), Centers for Medicare and Medicaid Services' (CMS) proposal to expand health care coverage to DACA (Deferred Action for Childhood Arrivals) recipients.

The 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](#)" reflects our shared goal to keep Coloradans covered by affordable health insurance and to maintain Colorado's low uninsured rate of 6.6%, which helps push rates lower for everyone else and save people money on healthcare. As of March 2020, an estimated 14,520 active DACA recipients lived in Colorado. We strongly support HHS' [proposal to change its interpretation of existing statutory law](#) to treat DACA recipients the same as other lawfully present deferred action recipients for the purpose of accessing health care through Affordable Care Act (ACA) Marketplaces, Medicaid, and the Children's Health Insurance Program. We organize our comments below according to the major areas for which CMS requested comment on the proposed rule.

A. Proposed Effective Date

CMS [seeks comment](#) on the feasibility of the proposed rule's effective date of [November 1, 2023](#) and whether to consider a different target effective date when finalizing this proposed rule. We understand

and appreciate CMS' reasoning that a November 1, 2023 effective date would align with the open enrollment period for Marketplace Exchanges (where the majority of DACA recipients are expected to seek health coverage) when many outreach and enrollment activities from CMS, [state Marketplace Exchanges](#), navigator and assister groups are available to streamline consumer enrollment.

We have two significant concerns, however, and a proposed solution:

1. The November 1, 2023 effective date also coincides with the unwinding workload period for the Medicaid and CHIP continuous enrollment condition creating systems operational hurdles.
2. The effective date also doesn't align with, or allow time for, our state to seek legislative and budget authority to comply with the proposed rule within state statutory parameters for our state's legislative and budget cycle.

Proposed solution: Add a separate compliance date of January 1, 2025 for states to come into full compliance with this rule

Both state funding authority and operational changes would be necessary to fully implement this proposed rule by November 1, 2023. Among our concerns, we note that although the governor's full budget proposal for state FY2024-25 is required by state statute to be submitted on November 1, 2023, the budget won't be finalized until our state legislative session ends in early May 2024. Even a FY2023-24 budget supplemental could not be submitted until January 2024.

Separate Rule Effective and Compliance Dates: CMS itself [recognized that](#) "the proposals in this rule related to Medicaid and CHIP may impose substantial direct costs on State governments. The Medicaid and CHIP policies also have federalism implications by creating a change in eligibility that may not align with a State's position." We respectfully request that CMS solve this dilemma by creating separate effective and compliance dates for this rule. That is, instead of simply making this rule effective November 1, 2023, we ask that CMS provide a state option to come into full compliance for Medicaid and CHIP by January 1, 2025. That would allow state Exchanges, if they are operationally and budgetarily positioned to do so, to begin offering federal financial assistance to DACA recipients through state and federal Marketplace Exchanges as soon as the November 2023 open enrollment period when assisters are available, while also giving state Medicaid and CHIP programs the ability to seek proper state authority, including budget authority, to expand Medicaid and CHIP eligibility to DACA recipients by January 1, 2025. We explain the reasons for our concerns in greater detail below for Medicaid and CHIP, as well as the salutary effects of the proposed change for Exchange purposes.

Medicaid and CHIP coverage: For adults, Colorado would have no existing expenditure authority, nor state or federal funding to provide DACA coverage by November 1, 2023. For a limited set of individuals that may overlap with DACA recipients, there is state budget authority that Colorado previously elected under the [CHIPRA 214 option](#) to cover "lawfully residing" pregnant individuals and children under section 214 of the Children's Health Insurance Program Reauthorization Act of 2009, now codified at section 1903(v)(4) of the Social Security Act (the Act) for Medicaid and at section 2107(e)(1)(O) of the Act for CHIP. Specifically, our state legislature enacted [HB22-1289](#) to authorize expansion of postpartum coverage to 12 months for both Medicaid and CHIP members. Subsequently, CMS approved Colorado Medicaid and CHIP state plan amendments for this optional 12-month postpartum coverage on March 14, 2023 (effective July 1, 2022), however, state budget authority for this

expansion isn't scheduled to begin until January 1, 2025. It's unclear if this existing state budget authority would provide sufficient funds to extend coverage to all DACA recipients who are otherwise eligible, or if approved by the governor under Colorado Revised Statutes 24-75-109 (1) (a.7) and (a.8), might allow the state controller to make an "overexpenditure" for the "State medical assistance program" or "State children's basic health plan" until the legislature authorizes additional state funds to cover all DACA recipients.

Eligibility and operations: From an eligibility and operations standpoint, we anticipate that computer system changes will be required to support enrollment of DACA recipients in Medicaid and CHIP. HCPF's internal deadline for an October system build submission (for a November 1, 2023 effective date) was February 2023. Further, it would not be prudent to submit a system build request until the rules are finalized and we can accurately determine what system changes are needed.

Colorado's state-based Marketplace: Colorado's commitment to ensuring that all Coloradans have access to quality, affordable health care is reflected in recent actions by the state to expand coverage to undocumented Coloradans. In 2020, Colorado passed legislation (SB20-215) creating the Health Insurance Affordability Enterprise (HIAE) that allows low income, undocumented Coloradans to purchase state subsidized health insurance. The funding for the state subsidies primarily comes from a fee on health insurers and hospitals. Colorado's state based marketplace, Connect for Health Colorado, set up its OmniSalud program to facilitate the purchase of coverage on Colorado Connect — a separate, secure enrollment platform specifically for undocumented enrollees. For the 2023 plan year, the first year of OmniSalud coverage, the HIAE had almost \$60 million available and, as a result, approximately 9,600 Colorado residents with incomes up to 150% of the federal poverty level (FPL) were able to enroll in health insurance regardless of immigration status and receive state subsidies to help with premium costs. An additional, approximately 940, individuals enrolled but did not receive state subsidies. It is quite likely that some of these 10,540 enrollees are DACA recipients, although we do not have specific estimates at this time.

In this first year, the demand for state subsidized insurance exceeded the available funding. We expect that to be the case in future years as well, as our funding will always be limited. The proposed federal rule change would allow DACA recipients to purchase coverage through Connect for Health Colorado and access federal subsidies in lieu of using Colorado's OmniSalud program. The OmniSalud program could then be used to cover more undocumented Coloradans who are not DACA recipients.

C. Exchange Establishment Standards and Other Related Standards Under the ACA ([45 CFR 155.20](#))

We support HHS' [proposed change to its interpretation of the statutory phrase "lawfully present"](#) to treat DACA recipients the same as other deferred action recipients, for example, Afghan and Ukrainian humanitarian parolees who arrived to the U.S. during specific time periods in a qualified status and were otherwise eligible for Medicaid or CHIP. Colorado previously implemented these updates and supports HHS' proposal "[To align the eligibility standards across insurance affordability programs for noncitizens](#) considered "lawfully present," by establishing rules in the Medicaid and CHIP programs to recognize

that [DACA recipients](#) are “lawfully residing” in the United States, just like other deferred action recipients, for purposes of the CHIPRA 214 option, as discussed in section II.D.1. of this proposed rule. We also support CMS’ proposed [technical and clarification changes](#) to the “lawfully present” definition, for example, a nomenclature change to use the term “noncitizen” instead of “alien” when appropriate, to utilize language that is more respectful of Coloradans who are DACA recipients.

In the [Detailed Economic Analysis](#) section of the proposed rule, at [Table 3](#), HHS [estimates](#) that the largest group of newly eligible DACA recipients would enroll in health coverage through the Exchange. Colorado’s state Exchange conducts robust outreach during its open enrollment period and provides assistance to qualified consumers who would like to enroll in a qualified health plan (QHP) throughout the year. As a result, we agree with HHS that, if supported by both federal financial participation and state funding, [costs may be “minimal” to conduct additional outreach and education efforts](#) to ensure that consumers, agents, brokers, and assisters are aware of the changes in this proposed rule that would allow eligible DACA recipients to enroll in a QHP through an Exchange, as well as open up federal premium tax credits (PTCs) and cost sharing reductions (CSRs) to those who seek to enroll. We support adding the updated definitions of “lawfully present” for the purposes of the Exchanges and “lawfully residing” for the purposes of Medicaid and CHIP, and under the CHIPRA 214 option. In its [Detailed Economic Analysis](#) for this rule, HHS also recognized that by expanding ACA premium tax credits to newly eligible DACA recipients this proposed rule will incentivize them to seek Exchange health care coverage.

Pandemic Health Care Work by DACA Recipients

As further support for expanding health coverage to DACA recipients, we appreciate HHS’ recognizing [new information](#) that during the COVID-19 pandemic, as quantified in a CMS demographic estimate reported by the Center for Migration Studies¹ more than 200,000 DACA recipients served as essential workers and that this figure encompasses 43,500 DACA recipients who worked in health care and social assistance occupations, including 10,300 in hospitals and 2,000 in nursing care facilities, where all were at greater risk for COVID-19 than the general community². As state agencies continuing to strive to ensure a robust health care workforce to provide access to care and to mitigate pandemic impacts for all Coloradans and the members that we serve, we agree that pandemic conditions highlighted the need for these DACA recipients to have access to high quality, affordable health coverage, which they are less likely to seek if uninsured.

D. Eligibility in States, the District of Columbia, the Northern Mariana Islands, and American Samoa and Children’s Health Insurance Programs (CHIPs) ([42 CFR 435.4](#) and [457.320\(c\)](#))

Colorado is among the [28 states and territories](#) that have elected to cover pregnant individuals and children under the [CHIPRA 214 option](#). Our legislature and CMS have approved Colorado’s adoption of the state option to cover pregnant individuals during the full 12-month postpartum period (including adolescents who become pregnant). We support HHS’ proposed rule provisions to expand Medicaid and

¹ Center for Migration Studies. *DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID-19 Pandemic, as Supreme Court Decision Looms*, <https://cmsny.org/daca-essential-workers-covid/>.

² Nguyen, L.H., et.al. “Risk of COVID-19 among front-line health-care workers and the general community: A prospective cohort study.” *The Lancet Public Health*, 5 (9). [https://doi.org/10.1016/S2468-2667\(20\)30164-X](https://doi.org/10.1016/S2468-2667(20)30164-X).

CHIP coverage to these individuals who are DACA recipients and meet all other eligibility requirements. We agree with HHS “that [proposing a definition of ‘lawfully present’ in regulation](#), rather than maintaining a definition in guidance, will provide a greater degree of stability for the individual beneficiaries and State agencies that rely on this definition.” Recent legislation in 2021 and 2022, Colorado [Senate Bill 21-194](#) and [House Bill 22-1289](#), that authorized improvements to and expansion of prenatal and postpartum coverage for Medicaid and CHIP members, including for pregnant persons “lawfully residing” in our state, no later than January 1, 2025, includes legislative findings and declarations that also would support regulations expanding coverage to DACA recipients. Specifically, in HB22-1289, Colorado legislators found that “Insurance coverage improves health status and mental health, while decreasing infant, child, and adult mortality rates. Medicaid and the children's health insurance program (CHIP) are key supports for pregnant people and new parents, as well as their children in the critical early years of life.” Legislators further declared that “Medicaid and other insurance coverage of pregnant people is also associated with a greater likelihood of children finishing high school and college and having higher incomes as adults.”

E. Administration, Eligibility, Essential Health Benefits, Performance Standards, Service Delivery Requirements, Premium and Cost Sharing, Allotments, and Reconciliation ([42 CFR Part 600](#))

We agree with CMS’ observation in this part of the proposed rule that “[An aligned definition of ‘lawfully present’ would reduce administrative burdens for the State](#) as well as the potential for incorrect eligibility determinations.”

In conclusion, saving people money on health care and ensuring access to affordable, high quality health care for all Coloradans remains a top priority for our state. This proposed federal rule to open health coverage options to Colorado DACA recipients through Affordable Care Act (ACA) Marketplaces, Medicaid, and the Children’s Health Insurance Program aligns with that Colorado priority. As a state, Colorado has made great strides in expanding access to quality, affordable health care, through its bipartisan expansion of Medicaid; and through efforts to increase access to health services including maternal, reproductive, and behavioral health care; and has also reduced our state's uninsured rate to an unprecedented 6.6%.

Our efforts continue to be guided by the values that define the Colorado way of life, including the value that all Colorado residents should have the opportunity to access health care. We thank and support HHS and CMS for this effort to expand pathways for Colorado’s DACA recipients to seek health coverage in our state.

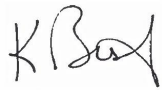
While we strongly support expanding health coverage to DACA recipients, we also note that Colorado’s efforts to enroll [DACA recipients newly eligible for health coverage](#) would be aided by federal consideration of the operational, administrative and budget challenges that our state would face to implement this proposed rule by November 1, 2023. Adding a separate compliance date of January 1, 2025 for states to come into full compliance with this rule would permit Colorado’s state-based Marketplace to begin offering health coverage to DACA recipients with federal financial assistance as soon as November 2023, while also allowing sufficient time for our state’s Medicaid and CHIP programs to seek proper state authority, including budget authority, to expand Medicaid and CHIP

eligibility to DACA recipients. We also ask that you provide federal funds to help support compliance [costs of initial](#) systems changes, eligibility verification, enrollment assisters, as well as federal funding for ongoing costs associated with Medicaid and CHIP coverage for newly eligible beneficiaries that will be incurred by states as they implement this important coverage expansion. We respectfully ask HHS to address these issues and ensure federal financial participation as it moves to finalize this rule to benefit Dreamers in Colorado and all states.

Sincerely,



Jared Polis
Governor
State of Colorado



Kim Bimestefer
Executive Director
Colorado Department of
Health Care Policy &
Financing



Michael Conway
Commissioner
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