



NY State of Health Comments on 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

NY State of Health, the State's Official Health Plan Marketplace is writing to comment on the notice of proposed rulemaking released by the Department of Health and Human Services (HHS), through the Centers for Medicare & Medicaid Services (CMS). As a fully integrated state-based health insurance marketplace that also offers a Basic Health Program (BHP), NY State of Health is in support of the released proposal to revise the definition of lawfully present and effectively expand health care for Deferred Action for Childhood Arrivals (DACA) recipients.

Health Coverage for DACA Recipients

NY State of Health supports the proposed rule which amends 45 CFR 152.2 to update the definition of "lawfully present" for the purposes of determining eligibility to enroll in a Qualified Health Plan (QHP) or BHP or to qualify for Advance Premium Tax Credits (APTC) and Cost Sharing Reductions (CSR).

Historically, DACA recipients have been excluded from eligibility to purchase plans and obtain subsidies on the Affordable Care Act (ACA) marketplaces. This update to the definition of "lawfully present" would allow for DACA recipients to purchase plans and obtain subsidies through the federal and state-based marketplaces. As of December 31, 2022, there were roughly 580,000 active DACA enrollees in the United States, 4 percent (23,780) of whom reside in New York.¹

In New York, we have prioritized coverage for this population by enrolling income-eligible enrollees in either fully state-funded Medicaid or Child Health Plus (New York's Children's Health Insurance Program). However, not being able to enroll individuals in QHPs or in the Essential Plan, New York's BHP, has left a gap in those needing and eligible for health insurance coverage.

For this reason, NYSOH is in full support of CMS redefining "lawfully present." This change will improve access to health care, reduce the number of uninsured, and drive down spending on emergency medical expenditures.

¹ *Count of Active DACA Recipients By Month of Current DACA Expiration As of December 31, 2022*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, (Dec. 31, 2022), https://www.uscis.gov/sites/default/files/document/data/Active_DACA_Recipients_Dec_FY23_qtr1.pdf.



Timeline & Implementation Work Burden

New York is prepared to offer QHP and BHP coverage to DACA recipients in time for the proposed effective date of November 1st, 2023, assuming the Federal Data Services Hub's Verify Lawful Presence service will be updated in time for open enrollment activities with the correct information for this population.

The aforementioned changes will not result in an increased application burden for impacted individuals.

Data

There are currently over 13,000 DACA recipients residing in New York enrolled in state-funded Medicaid. The majority of DACA recipients enrolled through our state-based marketplace are between ages 18 to 34. Roughly two-thirds of enrolled DACA recipients have an income below 100% of the Federal Poverty Level (FPL) and nearly one-third of DACA recipients have an income between 100-138% FPL. We estimate that more than half of the nearly 4,000 uninsured individuals with DACA status in NY would gain coverage under this rule.

Conclusion

NY State of Health believes in increasing access to health insurance for all populations and is grateful to HHS and CMS for their attention to this matter.