

**The Department of Human Services (DHS) Comments on proposed rule 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 (issued April 26, 2023).**

<b>The Centers for Medicare and Medicaid Services (CMS) proposed rule citation</b>	<b>CMS current language</b>	<b>CMS proposed language</b>	<b>Comment</b>
<p>Definition of “lawfully present” currently articulated at 45 CFR § 152.2 and described in the State Health Official (SHO) letters for Medicaid and the Children’s Health Insurance Program (CHIP), as well as the “lawfully present” definition at 42 CFR § 435.4.</p>	<p>Does not currently exist.</p>	<p>Several modifications were proposed to the definition of “lawfully present” currently articulated at 45 CFR § 152.2 and described in the SHO letters for Medicaid and CHIP. First, we propose to remove an exception that excludes Deferred Action for Childhood Arrivals (DACA) recipients from the definitions of “lawfully present” used to determine eligibility to enroll in a Qualified Health Plan (QHP) through an Exchange, a Basic Health Plan (BHP), or Medicaid and CHIP under the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), 214 option. If this proposal is finalized, DACA recipients would be considered lawfully present for purposes of eligibility for these insurance</p>	<p>Pennsylvania DHS supports this proposed change as the current definition of “lawfully present” would otherwise include a DACA recipient but for the exception to specifically exclude them.</p> <p>The proposed change would streamline eligibility practices for caseworkers as they would not have to account for exceptions for individuals that are otherwise identifiable as lawfully present for Medicaid and CHIP under CHIPRA 214.</p>

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		affordability programs based on a grant of deferred action, just like other similarly situated noncitizens who are granted deferred action. It is also proposed to incorporate additional technical changes into the proposed “lawfully present” definition at 45 CFR § 152.2, as well as to the proposed “lawfully present” definition at 42 CFR § 435.4.	
In addition to including DACA recipients in the definition of “lawfully present” for the purposes of eligibility for health insurance coverage through an Exchange, a BHP, and for eligibility under the CHIPRA 214 option in Medicaid and CHIP, CMS is proposing several other clarifications and technical adjustments to the definition proposed at 45 CFR § 155.20, as compared to the definition			Pennsylvania DHS supports changes discussed in this section to expand and simplify non-citizens who are lawfully present and streamline the verification process through the Systematic Alien Verification for Entitlements system.

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currently at 45 CFR § 152.2.			
<p>Defining Qualified Noncitizen as previously discussed, the proposed definition of “lawfully present” includes an individual who is a “qualified noncitizen”. Under our current Medicaid regulations, a “qualified non-citizen” is defined at 42 CFR § 435.4 and includes an individual described in 8 U.S.C. §§ 1641(b) and (c). The definition is currently used for determining Medicaid eligibility under our regulation at 42 CFR § 435.406, and the definition would also be important for determining eligibility of individuals who are seeking CHIPRA section 214 benefits. We are considering whether the current definition of qualified noncitizen at 42</p>			<p>Pennsylvania DHS supports making the qualified non-citizen definitions at 42 CFR § 435.4 clearer and more transparent. This is often a confusing topic for the public and eligibility workers and any changes to make this policy clearer are supported.</p>

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<p>CFR § 435.4 should be modified to provide greater clarity and increase transparency for the public. Specifically, we are considering whether the definition should be modified to expressly provide all of the categories of noncitizens covered by 8 U.S.C. §§ 1641(b) and (c), as well as additional categories of noncitizens that Medicaid agencies are required to cover as a result of subsequently enacted legislation that was not codified in 8 U.S.C. §§ 1641(b) or (c).</p>			
<p>As required by the Affordable Care Act, there is one application through which individuals may apply for health coverage in a QHP through an Exchange and for other insurance affordability</p>			<p>Pennsylvania DHS acknowledges that this assumption is correct.</p>

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<p>programs like Medicaid, CHIP, and a BHP. Some individuals may apply directly with their State Medicaid or CHIP agency; however, we assume the burden of completing an Exchange application is essentially the same as applying with a State Medicaid or CHIP agency, and therefore are not distinguishing these populations. We seek comment on this assumption.</p>			