

# Supporting People with DACA and Boosting Our Economic Recovery by Extending Access to Affordable Health Care

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On his first day in office, President Biden signed an executive order to “preserve and fortify” the Deferred Action for Childhood Arrivals (DACA) policy,<sup>1</sup> which provides temporary protection from deportation to eligible immigrants who entered the United States as children. The president’s actions renewed our nation’s commitment to fair treatment for the more than 600,000 children and young people granted DACA while acknowledging both their past and future contributions.

But the pandemic has shown that fair treatment also means access to health care, which many people with DACA lack. That is why the Biden administration should take actions that enable people with DACA to access insurance through the Affordable Care Act (ACA) marketplaces, as well as through Medicaid and the Children’s Health Insurance Program (CHIP). These actions would reinforce the administration’s ongoing efforts to protect and expand the ACA and meet needs created by the pandemic.

Expanding eligibility also has strong support in Congress. In January, more than 90 members of Congress sent a letter to President Biden and Secretary Becerra requesting that the U.S. Department of Health and Human Services (HHS) expand access to health coverage for people with DACA.<sup>2</sup> More than 300 national, state, and local organizations sent a separate letter of support.<sup>3</sup>

Although DACA’s legality is being challenged, a resolution in court could take many years. The Biden administration should act now to provide people with DACA access to affordable health coverage, especially given the urgent health care needs created by the pandemic.

Expanding access to health care for people with DACA is an essential component of an equitable economic recovery. People who are not working continue to cite fear of contracting or spreading COVID-19 as a major reason they have not yet returned to the workforce.<sup>4</sup> While the number of people with this concern is declining as

vaccination rates increase,<sup>5</sup> vaccination rates for people without insurance continue to remain lower than for those with insurance.<sup>6</sup> Expanding access to insurance must be prioritized so that more people become vaccinated and feel safe returning to work.

## A Disproportionate Impact: Why People with DACA Need Health Care Now

We are all safer when everyone has access to health care—including coverage for COVID-19 testing, treatment, and vaccinations. As UnidosUS has documented, the COVID-19 pandemic continues to disproportionately impact Latinos\* and other people of color.<sup>7</sup> When compared to white, non-Hispanic persons, Latinos are:

- 1.9 times more likely to contract COVID-19
- 2.8 times more likely to be hospitalized due to COVID-19
- 2.3 times more likely to die from the disease<sup>8</sup>

The disproportionate impact is driven by a combination of factors. First, Latinos are more likely to work in “essential” jobs that expose them to the virus.<sup>9</sup> A vast majority of people with DACA—more than 90%—identify as Latino,<sup>10</sup> and nearly one-third are classified as essential workers.<sup>11</sup>

At the same time, Latinos are less likely to have benefits to help them when they become sick, such as comprehensive health insurance<sup>12</sup> and paid leave.<sup>13</sup> Prior to the pandemic, estimates showed nearly half of people with DACA were uninsured.<sup>14</sup> Lacking access to public insurance programs, those without employer-based insurance have been forced to forgo health care, endangering their families and communities during a deadly pandemic.

The Biden administration has the power to immediately update several federal regulations to allow people with DACA to enroll in the ACA’s health insurance marketplaces, and in Medicaid and CHIP, as described in the recommendations below. Granting people with DACA access to affordable health coverage would extend new protections to hundreds of thousands of currently uninsured Latinos and their families.

The American Rescue Plan Act of 2021 (ARPA) significantly lowers the cost of coverage through ACA marketplaces by drastically increasing premium subsidies for 2021 and 2022. As a result, the administration estimates that “four out of five enrollees will be able to find a plan for \$10 or less/month.”<sup>15</sup> People with DACA, who are ineligible today, would benefit from these cost savings as well.

\* The terms “Hispanic” and “Latino” are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. This document may also refer to this population as “Latinx” to represent the diversity of gender identities and expressions that are present in the community.

Finally, expanding eligibility would align with other steps taken by the Biden administration to empower people with DACA to support their families and contribute to our shared economic recovery. For example:

- In January, the Department of Housing and Urban Development issued a waiver clarifying that people with DACA are eligible for Federal Housing Administration mortgage loans.
- In May, the Department of Education amended regulations to allow students who are undocumented, and those with DACA, to be eligible for emergency financial aid grants from the Higher Education Emergency Relief Fund (HEERF).

### People with DACA Have Limited Health Care Coverage Options

People with DACA—who pay taxes and legally live and work in the United States—have very limited options for securing comprehensive health coverage if they do not receive health insurance through an employer. The choices available to them are nearly the same as for undocumented immigrants—generally partial, expensive, tenuous, and difficult to obtain.

Health Care Coverage Options for People with DACA	Notable Limitations and Barriers
Employer-sponsored insurance from their own employer or that of a spouse or parent	<ul style="list-style-type: none"> <li>• Latinos, noncitizens, and children are the least likely to be covered by employer-sponsored health insurance. As a result, roughly one in four noncitizen children lacks health insurance.<sup>16</sup></li> <li>• Jobs in many industries, such as service and construction, do not routinely offer health coverage.</li> <li>• Adding dependents (a spouse or children) to an employer plan is often expensive. On average, annual family coverage costs more than \$5,500 compared to \$1,200 for single coverage.</li> <li>• The average worker contribution for family coverage has increased 40% since 2010. People working for companies with a larger share of low-wage workers pay a larger percentage of the family premium.<sup>17</sup></li> </ul>
Full-price private insurance sold <i>outside</i> of an ACA marketplace (where such options exist)	Individual health insurance purchased directly at full cost is unaffordable for most low- and moderate-income earners, regardless of immigration status.

Health Care Coverage Options for People with DACA	Notable Limitations and Barriers
Coverage of emergency health care through Emergency Medicaid	This option is limited to the treatment of a medical emergency, and only until the condition is stabilized (including labor and delivery services).
State-funded Medicaid coverage in six states (CA, IL, MA, NY, OR, and WA) and Washington, DC <sup>18</sup>	<ul style="list-style-type: none"> <li>• Coverage in IL and OR is limited to children under 19.</li> <li>• Coverage in WA is limited to children under 19, seniors, and persons with disabilities.</li> <li>• CA, MA, and NY provide coverage to all Medicaid-eligible people with DACA.</li> </ul>
State funds or CHIP in some states to cover pregnancy-related services for low-income pregnant people regardless of immigration status <sup>19</sup>	This option is limited to pregnancy-related services. Seventeen states have adopted the option to provide fetal health services through CHIP, and two states (NY and NJ) provide these services with state/local funds. Some states provide limited postpartum care. <sup>20</sup>
Health care services through a Community Health Center (CHC)	CHCs often provide only preventive health services, and offer limited access to specialists.
Locally funded programs providing coverage or assistance without regard to immigration status	These programs offer limited health services usually focused on preventive care. Eligibility and programs vary.

### The Multiplying Benefits of Removing Barriers to Insurance and Health Care for People with DACA

While an estimated 89% of people with DACA were employed in 2019, only about half had health insurance<sup>21</sup>—substantially lower than the total rate of insurance among all U.S. adults (89%).<sup>22</sup> The percentage without insurance has likely increased during the pandemic as many have lost their jobs and employer-based insurance.<sup>23</sup> Without insurance, many people with DACA are unable to access affordable and timely health care and often delay care for fear of the financial cost and the impact of medical debt on their immigration status prospects.<sup>24</sup>

Increasing access to affordable coverage programs for people with DACA would decrease the uninsured rate of people with DACA as well as their families and children. Nineteen percent of people with DACA were parents as of 2019,<sup>25</sup> a number that will continue to grow as the DACA population ages.

Research has shown that expanding public health insurance options for uninsured parents is associated with increased enrollment among children<sup>26</sup> and increased use of preventive services.<sup>27</sup> Children with insurance are more likely to receive timely

medical care when they get sick, are less likely to miss out on preventive services, and experience better overall health outcomes.<sup>28</sup>

While most people with DACA are not currently parents, nearly all are in their childbearing years and 53% are women.<sup>29</sup> Latinas are the most likely to be uninsured before and after pregnancy. The largest driver of this inequity is limited eligibility for public insurance programs due to immigration status.<sup>30</sup>

Expanding affordable coverage options for women with DACA would improve their ability to have a safe pregnancy, better plan the timing of their pregnancies, and receive adequate perinatal care. At the same time, it would improve the overall health of their infants.



## Recommendations: How to Ensure Access to Health Coverage

Extending affordable coverage to people with DACA is a public health, economic, and moral imperative. DACA is the only deferred enforcement status to be excluded from eligibility for access to ACA marketplaces and subsidies. When DACA was created in 2012, the nation was not in the grips of a global health pandemic, which has underscored the importance of extending health insurance protections to as many residents as possible.

### **As soon as possible, the Biden administration should:**

1. Clarify ACA eligibility for people granted DACA by striking 45 CFR §152.2(8), which can be done through rulemaking.<sup>31</sup>
2. Clarify that people with DACA are “lawfully present” for the purposes of Medicaid and CHIP.
3. Take the necessary steps to ensure that the federally facilitated marketplace, state-based marketplaces, and state Medicaid and CHIP eligibility systems are quickly updated to allow people who are granted DACA to apply for and enroll in coverage.
4. Create and implement a robust outreach campaign to educate those with DACA about their new coverage options as well as when and how to apply.





## Conclusion: We Can Realize Major Gains for Latino Health with this Simple Change

The current public health crisis has had a disproportionate impact on Latinos and other communities of color, including a significant share of the DACA population. Access to affordable health coverage is a key component to the administration's effort to beat the pandemic and build back better.

People granted DACA are hardworking young Americans. They are employed in essential jobs that keep the country running and can drive our economic recovery. Providing access to health insurance would advance health and racial equity by ensuring that they and their families can stay healthy and build on their immense contributions to the United States.

## About UnidosUS

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an [Affiliate Network](#) of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers that affect Latinos at the national and local levels.

For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger. For more information on UnidosUS, visit [www.unidosus.org](http://www.unidosus.org), or follow us on [Facebook](#), [Instagram](#), and [Twitter](#).

## Appendix

### A Disappointing History: A Lack of Access to Health Care for People with DACA

Eligible immigrants can currently apply for and renew DACA to remain in the United States lawfully. Since the establishment of the policy in 2012, approximately 828,000 individuals have been granted DACA.<sup>32</sup> As of March 2021, 616,030 people had an active DACA,<sup>33</sup> and an estimated additional 1.3 million were eligible but did not yet have active status.<sup>34</sup>

Importantly, and contrary to statements by some political leaders, those with serious criminal histories remain ineligible for the program. And it has allowed people to enter the mainstream and pursue their studies and goals, as *The New York Times* noted in May 2021: “The ability to work legally has also allowed [people with DACA] to pay for school, pursue higher education and, in some states, obtain driver’s licenses.”<sup>35</sup>

The program has, unfortunately, been impacted by changes that limit eligibility for health coverage. The DACA program was announced by President Obama in June 2012, with a memorandum on enforcement discretion published by the Department of Homeland Security (DHS). The memorandum identified individuals who were eligible for “deferred action” because they were brought into the United States as children.<sup>36</sup> As Chief Justice John Roberts wrote for the Supreme Court: “DHS concluded that individuals who meet these criteria warrant favorable treatment under the immigration laws because they ‘lacked the intent to violate the law,’ are ‘productive’ contributors to our society, and ‘know only this country as home’.”<sup>37</sup>

Two years after its creation, the Obama administration expanded the DACA policy and made other changes to its enforcement discretion that would have expanded deferred action status to many more people.<sup>38</sup> This action was immediately challenged in the courts and enjoined nationwide; the Trump administration retracted it upon taking office.<sup>39</sup>

Several months later, in September 2017, the Trump administration summarily retracted the original DACA policy and proposed measures to wind down the program.<sup>40</sup> Following several legal challenges, the Supreme Court held the Trump administration decision invalid on multiple grounds, first determining that it was amenable to judicial review because, among other reasons, DACA status conferred eligibility for benefits under Social Security and Medicare.<sup>41</sup>

A subsequent legal challenge to the program was brought in 2018 by several state attorneys general, led by Texas.<sup>42</sup> In July 2021, a federal district court in Texas held the DACA program to be unlawful as promulgated by the Department of Homeland Security. However, the court did not terminate existing DACA grants, and the ruling also allows those individuals to renew their status. The Biden administration has announced that it will appeal the district court’s determination.<sup>43</sup>

In general, deferred action recipients are considered “lawfully present” and therefore eligible to receive Social Security, Medicare, and other benefits.<sup>44</sup> Similarly, under the ACA,<sup>45</sup> a “lawfully present” noncitizen is eligible to purchase coverage from an ACA marketplace and receive subsidies that reduce the cost of coverage.<sup>46</sup>



Yet the ACA did not define “lawfully present.” In 2010, HHS issued an interim final rule defining which categories of immigrants would be considered “lawfully present” for these purposes.<sup>47</sup> The list of those eligible included people with various forms of deferred action status, such as self-petitioners under the Violence Against Women Act waiting for a family preference visa. These categories were part of a final rule issued in March 2012.<sup>48</sup> For these reasons, when DHS announced three months later that DACA would be a new deferred action category, people with DACA would have been classified as “lawfully present” for purposes of eligibility.

So stakeholders were surprised when, in August 2012, the Obama administration issued a new interim final rule that specifically excluded people with DACA from the definition of “lawfully present,” a determination that shut people with DACA out of several aspects of the ACA health insurance marketplace.<sup>49</sup>

These included the ability to purchase coverage in the ACA marketplace and access premium tax credits under Department of the Treasury rules.<sup>50</sup> Thus, individuals granted DACA are barred from premium tax credits that reduce the monthly cost of marketplace health plans; they cannot even purchase a full-price health plan through an ACA marketplace.

People with DACA are also excluded from eligibility for Basic Health Programs (BHPs) currently offered in New York and Minnesota to individuals with incomes below 200% of the federal poverty level (FPL) who would otherwise qualify for ACA marketplace subsidies.

Soon after the Centers for Medicaid and Medicare Services (CMS) finalized the regulations excluding people with DACA from ACA marketplace coverage and BHPs, they also issued a State Health Official (SHO) letter which clarified that people with DACA were also not considered “lawfully residing” as it related to eligibility for coverage in Medicaid or CHIP.<sup>51</sup>

While certain states have chosen to expand Medicaid and CHIP eligibility to all “lawfully residing” children and pregnant women, due to the SHO letter people with DACA remain ineligible for coverage even in these states.<sup>52</sup>



## Endnotes

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  - came to the United States under the age of sixteen;
  - has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;

- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
  - has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
  - is not above the age of thirty.”
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- 47 See 45 C.F.R. § 152.2.75, *Federal Register* 45014 at page 45030, July 30, 2010, <https://www.govinfo.gov/content/pkg/FR-2010-07-30/pdf/2010-18691.pdf>.
- 48 See 77, *Federal Register* 18310 at page 18314, March 27, 2012, <https://www.federalregister.gov/documents/2012/03/27/2012-6125/patient-protection-and-affordable-care-act-establishment-of-exchanges-and-qualified-health-plans>.
- 49 See 77 *Federal Register* 52614, August 30, 2012, <https://www.govinfo.gov/content/pkg/FR-2012-08-30/pdf/2012-21519.pdf>.
- 50 See 77 *Federal Register* 30377, at page 30378 May 23, 2012, <https://www.govinfo.gov/content/pkg/FR-2012-05-23/pdf/2012-12421.pdf>.
- 51 State Health Official Letter (SHO # 10-006), from Cindy Mann, Director, Center for Medicaid, CHIP and Survey & Certification, U.S. Department of Health and Human Services, “Medicaid and CHIP Coverage of ‘Lawfully Residing’ Children and Pregnant Women,” July 1, 2010, <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf>.
- 52 As noted in the Table, there are instances when the health care of a person with DACA status may be paid for by Medicaid or CHIP, such as emergency care and pregnancy-related services in certain states. Also, certain states use state funds to provide health coverage for certain individuals regardless of their immigration status through their Medicaid program.