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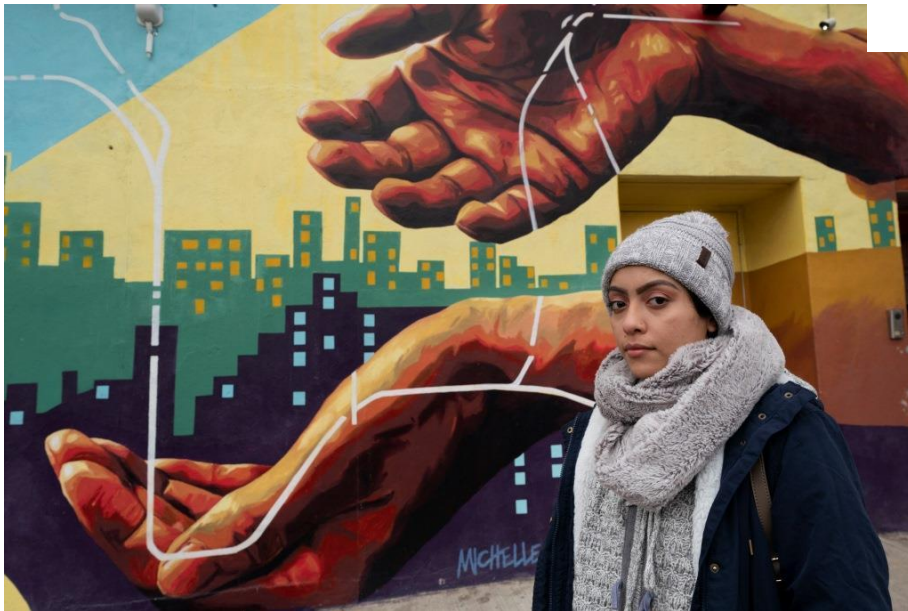


## Biden Can Give DACA Recipients Health Care

Without congressional action, Biden can reverse the Obama-era exclusion of DACA recipients from the ACA. The pandemic makes this urgent.

BY MARCIA BROWN JANUARY 29, 2021





MARK LENNIHAN/AP PHOTO

Yareli Adan is applying to the DACA program for immigrants brought to the U.S. as young people, after a New York judge ordered the government in December to fully reinstate it.

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Back in 2009, President Obama spoke to a joint session of Congress about his plan to reform the health care system. “The reforms I am proposing would not apply to those who are here illegally,” Obama stated, prompting South Carolina Congressman Joe Wilson to yell, “You lie!” from the House floor. He was condemned by members of both parties, but the outburst was reflective of the political moment—one where Americans didn’t want undocumented immigrants to have health care.

When the Affordable Care Act passed in 2010, Congress explicitly legislated that the new system would cover everyone with “deferred action” status. Most prominently, they would be able to buy into insurance exchanges and receive subsidies. But after failing to pass the DREAM Act, when Obama announced the Deferred Action for Childhood Arrivals (DACA) program in 2012,



he specifically carved DACA recipients out of access to health care, despite the fact that other immigrants with deferred status were able to buy insurance on the exchanges.

“This was Obama’s way of keeping that statement [of excluding immigrants] true even though Congress said these types of people could qualify for health care,” said Jose Magaña-Salgado, a DACA recipient and head of the Washington-based immigration policy organization Masa Group.

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When Obama carved out DACA recipients in 2012, he was fighting for his own political life. In the previous midterm election, Democrats lost more than 60 seats in the House, the largest shift in decades. “There were major town halls where people were yelling about the ACA and saying immigrants can’t have health care,” explained Tom Jawetz, vice president for immigration policy at the Center for American Progress.

But Jawetz believes that we’re in a different political moment today, where this kind of regulatory change is likely. That’s especially true in the midst of a pandemic.

On Wednesday, Rep. Joaquin Castro (D-TX) and 90 other members of Congress sent a letter to the Biden administration urging action on health care for DACA recipients. They argue that President Biden can reverse the Obama-era regulation, which bars DACA recipients from access to Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP), and from purchasing health insurance on the ACA marketplace.

“We’re optimistic because Biden stood on the debate stage and raised his hand and said undocumented immigrants should be covered,” Magaña-Salgado said,



referring to a primary debate in June 2019. Magaña-Salgado pointed as well to a political shift around immigrants and benefits during the Trump administration. Trump's "public charge" rule, which bars from entering the country or solidifying their status immigrants who have used or may in the future use public benefits, was roundly condemned. During the 2020 campaign, Trump downplayed talking about immigrants.

"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," the Castro letter states.

More than 200,000 DACA recipients are employed as essential workers during the pandemic, the letter notes. Reversing the regulation would grant health care access to another 650,000 people, and up to 1.7 million as more undocumented immigrants are accepted into the DACA program, according to Magaña-Salgado. He also explained that most DACA recipients are young, healthy people, a category Congress should want to get into the exchange to balance out the risk pool and help bring down premiums.

Like other regulations, the change must go through a public-comment period and additional aspects of administrative procedure. It could take several months for the change to take effect. Nevertheless, proponents say that Biden should immediately direct incoming HHS Secretary Xavier Becerra to prioritize the issue.

On Tuesday, 320 national, state, and local organizations also sent a letter to the Biden administration calling for this change in the first hundred days. "In furtherance of this administration's commitment to reduce regulatory



burden and expand access to health care, we ask that you undo this misguided regulation,” the advocates write.

“Everyone should have access to health care,” said Sanaa Abrar, advocacy director of United We Dream.

“Especially in the middle of an unprecedented health crisis, President Biden must ensure that DACA recipients are no longer excluded from buying into health care through the Affordable Care Act.”

Under the Trump administration, many immigration regulatory changes were litigated, and that has continued; a federal judge in Texas on Tuesday blocked Biden’s temporary moratorium on deportations. The administration’s attempt to kill DACA was stopped by the Supreme Court, not because the justices thought Trump couldn’t end it, but because officials failed to follow the legally required administrative steps to end the program. Other regulatory changes met with the same fate. But advocates aren’t worried the same will happen with this change, though a more conservative federal bench could spell other problems down the road.

“We feel pretty confident about this,” said Magaña-Salgado. The reversal of the Obama-era exclusion would actually “be a realigning of what congressional intent was.”



## MARCIA BROWN

Marcia Brown is a former Prospect writing fellow who is now a correspondent for The Capitol Forum, a subscription-based corporate


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