Congress of the United States

Washington, DC 20515

June 23, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services

RE: CMS Docket Number CMS-9894-P, RIN: 0938-AV23, Comments in Response to Notice of Proposed Rulemaking: 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

Dear Administrator Brooks-LaSure:

We submit this comment regarding the Department of Health and Human Services'(HHS) Notice of Proposed Rulemaking 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," (88 FR 25313) published in the Federal Register on April 26, 2023. We applaud this important step to increase access to health coverage for hundreds of thousands of people across the country and urge the administration to swiftly finalize this policy to ensure that Deferred Action for Childhood Arrivals (DACA) recipients can enroll in coverage by November 1, 2023.

Despite living in the United States for most of their lives and meeting strict and extensive requirements to obtain deferred action, DACA recipients, who meet other program eligibility criteria, remain ineligible for federally funded health coverage. As a result, DACA recipients are uninsured at three to five times the rate of the general population. [1] Many have expressed anxiety about their lack of access to care, reporting concerns about medical debt and the need for mental health care.

As eighty percent of the DACA recipients who do have health care coverage receive it through their employer, DACA recipients are vulnerable to losing their health insurance, as health care access is largely based on their ability to access job opportunities.[2] Consequently, DACA

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[1] Mohyeddin, Isobel and Ben D'Avanzo "DACA Recipients' Access to Health Care: 2023 Report," National Immigration Law Center, May 2023, https://www.nilc.org/news/special-reports/daca-recipients-access-to-health-care-2023-report/
"Key Facts on Deferred Action for Childhood Arrivals (DACA)," KFF, April 13, 2023, https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/
[2] Ibid

recipients often do not have the flexibility to pursue different career opportunities, including starting new businesses or participating in continuing education. Under this proposed regulation, newly eligible people could see increased stability in household finances and improved health outcomes.[3]

In the 2010 Patient Protection and Affordable Care Act, Congress specified that eligibility for premium tax credits would be available to "lawfully present" immigrants (26 U.S.C. 36B(e)(2)). In the 2009 Children's Health Insurance Program Reauthorization Act, Congress allowed states to receive federal matching funds if they covered "lawfully residing" children or those who become pregnant under Medicaid and CHIP. In defining eligibility for these populations, HHS appropriately included recipients of deferred action, consistent with longstanding federal policies for Social Security benefits and driver's licenses under the REAL ID Act. However, when the DACA program was created, HHS excluded its recipients from health coverage. It is long past time to reverse this exclusive, and harmful policy.

This policy under the proposed regulation would benefit the entire country, by increasing the risk pool for health insurance programs which would likely lower premiums.[4] In addition, a large portion of DACA recipients are medical and health professional students who will play a critical role in the U.S. health care system in the future, and they deserve the same access to health care.[5] Their access to health care during their education is vital to growing the health care workforce. Furthermore, a broad range of stakeholders, hospitals, doctors, consumer groups, unions, and faith voices, support this proposed rule.[6] It also makes technical corrections to simplify and clarify eligibility for vulnerable children and other immigrants with humanitarian statuses.

While Congress must pass comprehensive immigration reform with a roadmap to citizenship for those without status, this proposed policy is a significant step in supporting individuals who came to the United States as children. We strongly encourage you to finalize and implement this

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[3] "Marketplace Coverage and Economic Benefits: Key Issues and Evidence," Assistant Secretary for Planning and Evaluation, July 2022, https://aspe.hhs.gov/sites/default/files/documents/36e5e989516728adcc63e398b3e3d23d/aspe-marketplace-coverage-economic-benefits.pdf
Soni, Aparna, Laura R. Wherry and Kosali I. Simon, "How Have ACA Insurance Expansions Affected Health Outcomes? Findings From the Literature," Health Affairs, March 2020, https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01436

[4] "Key Facts on Deferred Action for Childhood Arrivals (DACA)," KFF, April 13, 2023, https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/

[5] Ramos, Julia, et al, "The Impact of Deferred Action for Childhood Arrivals (DACA) Medical Students—A Scarce Resource to US Health Care," American Journal of Public Health, March 2019, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6366484/
Prchal Svajlenka, Nicole, "A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response," Center for American Progress, April 6, 2020, https://www.americanprogress.org/article/demographic-profile-daca-recipients-frontlines-coronavirus-response/

[6] Letter to Secretary Becerra, October, 25, 2022, https://pifcoalition.org/wp-content/uploads/2023/06/Letter-to-HHS-on-DACA-Health-Coverage-10.25.22.pdf

important policy so that individuals and communities can experience its benefit as soon as possible.

Sincerely,

Cory A. Booker
United States Senator

Joaquin Castro
Member of Congress

Mazie K. Hirono
United States Senator

Pramila Jayapal
Member of Congress

Richard J. Durbin
United States Senator

Edward J. Markey
United States Senator

Robert Menendez
United States Senator

Eleanor Holmes Norton
Member of Congress

Juan Vargas
Member of Congress

J. Luis Correa
Member of Congress

Robert Garcia
Member of Congress

Frederica S. Wilson
Member of Congress

Adriano Espaillat
Member of Congress

Nanette Diaz Barragán
Member of Congress

Barbara Lee
Member of Congress

Salud Carbajal
Member of Congress

Rashida Tlaib
Member of Congress

Jamaal Bowman, Ed.D.
Member of Congress

Grace F. Napolitano
Member of Congress

Bonnie Watson Coleman
Member of Congress

Kathy Castor
Member of Congress

Linda T. Sánchez
Member of Congress

Gerald E. Connolly
Member of Congress

Terri A. Sewell
Member of Congress

Raúl M. Grijalva
Member of Congress

Suzanne Bonamici
Member of Congress

Christopher S. Murphy
United States Senator

Catherine Cortez Masto
United States Senator

Jeffrey A. Merkley
United States Senator

Alex Padilla
Chair, Subcommittee on
Immigration, Citizenship, and
Border Safety

Benjamin L. Cardin
United States Senator

Tim Kaine
United States Senator

Mark Kelly
United States Senator

Ben Ray Luján
United States Senator

Elizabeth Warren
United States Senator

Patty Murray
United States Senator

Bernard Sanders
United States Senator

Jacky Rosen
U.S. Senator

Chris Van Hollen
United States Senator

Katie Porter
Member of Congress

Jamie Raskin
Member of Congress

Earl Blumenauer
Member of Congress

Mark Pocan
Member of Congress

Greg Casar
Member of Congress

Nydia M. Velázquez
Member of Congress

Jésús G. "Chuy" García
Member of Congress

John Garamendi
Member of Congress

Jan Schakowsky
Member of Congress

Jasmine Crockett
Member of Congress

Donald M. Payne, Jr.
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Darren Soto
Member of Congress

Jimmy Gomez
Member of Congress

Dwight Evans
Member of Congress

James P. McGovern
Member of Congress

Morgan McGarvey
Member of Congress

Judy Chu
Member of Congress

Jerrold Nadler
Member of Congress

Sylvia R. Garcia
Member of Congress

Seth Moulton
Member of Congress

Jason Crow
Member of Congress

David J. Trone
Member of Congress

Ruben Gallego
Member of Congress

Tony Cárdenas
Member of Congress

Mike Quigley
Member of Congress

Delia C. Ramirez
Member of Congress

Greg Stanton
Member of Congress

Melanie Stansbury
Member of Congress

Lori Trahan
Member of Congress

Veronica Escobar
Member of Congress

Cori Bush
Member of Congress

Grace Meng
Member of Congress

Nikema Williams
Member of Congress

Andrea Salinas
Member of Congress

Yvette D. Clarke
Member of Congress

Robert J. Menendez
Member of Congress

Pete Aguilar
Member of Congress

Ritchie Torres
Member of Congress

Mikie Sherrill
Member of Congress

Teresa Leger Fernández
Member of Congress