The Honorable Xavier Becerra  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Becerra:

We write to urge the U.S. Department of Health and Human Services (HHS) to grant access to benefits under the Patient Protection and Affordable Care Act (ACA) and Children’s Health Insurance Program Reauthorization Act of 2009 for Deferred Action for Childhood Arrivals (DACA) recipients. As a result of current regulation and guidance, DACA recipients cannot:

a) Obtain comprehensive health insurance under Medicaid or CHIP in states that have opted to cover lawfully present children and pregnant people.

b) Purchase health insurance in the ACA’s health insurance marketplace, even at full cost using their own funds; and

c) Receive federal premium tax credits to make private health insurance affordable in the marketplace (even though DACA recipients still file and pay federal taxes).

The Department of Homeland Security (DHS) issued a final regulation on August 24, 2022 to codify the DACA policy. In the preamble to the new final rule, DHS states that, with respect to the programs under its jurisdiction, “DACA recipients are provided deferred action and should continue to be deemed ‘lawfully present’ like all other deferred action recipients—as they have been since the start of DACA.” Yet, DHS also notes that, “any future revision of this determination for Medicaid, CHIP, or with respect to the ACA Exchange and private market programs would need to be made by HHS.” As such, it is solely in HHS’s hands now to provide this needed health care access for DACA recipients. Doing so not only would be consistent with DHS’s interpretation, it would also advance President Biden’s policy priorities, such as Executive Orders 13985 on racial equity and 14070 on strengthening access to health care.

Specifically, we request that HHS eliminate 45 C.F.R. § 152.2(8), which excludes DACA recipients from the definition of “lawfully present” and, consequently from benefits under the ACA, even though DACA recipients are treated as lawfully present for other federal programs. HHS should then issue a State Health Officials letter clarifying DACA recipients’ eligibility for Medicaid and CHIP. It is crucial that the administration keep its commitment to expanding

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3 The language in question reads as follows: “An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present . . . .” 45 C.F.R. § 152.2(8) (2012).
coverage for undocumented immigrants, including DACA recipients, and rescinding this harmful regulation will help deliver on that promise.4

Making ACA coverage and financial assistance available to DACA recipients would advance the goals of the ACA and benefit the American people. Under DACA, immigrant youth with long-term residency in the United States who satisfy a strict set of criminal background and educational criteria are eligible for employment authorization and protection from deportation.5 Rescission of 45 C.F.R. § 152.2(8) would grant access to the ACA for the approximately 650,000 current DACA recipients and could ultimately benefit over a million individuals as the DACA program resumes.6 The regulation excludes a significant pool of young, healthy adults—the exact type of participants that Congress sought to encourage to secure and purchase health insurance under the ACA. These barriers to health coverage force many individuals and families to go without the health care they need, including essential preventive services and life-saving treatments. They also exacerbate existing health inequities that all immigrant communities face and especially immigrants of color. Moreover, the current regulation leads to worse health outcomes for DACA recipients and their families by foreclosing access to health care, including unsubsidized purchases on ACA health insurance marketplace.

We strongly encourage HHS to honor our country’s promise of full integration and support of DACA recipients, including access to affordable health care through the ACA by rescinding this regulation. We anticipate your response within 30 days, and we thank you for your attention and prompt response.

Sincerely,

Joaquin Castro
Member of Congress

Cory A. Booker
United States Senator

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Pramila Jayapal
Member of Congress

Sheila Jackson Lee
Member of Congress

Edward J. Markey
United States Senator

Suzanne Bonamici
Member of Congress

MARK TAKANO
Member of Congress

Nydia M. Velázquez
Member of Congress

Alma S. Adams, Ph.D.
Member of Congress

James P. McGovern
Member of Congress

Jan Schakowsky
Member of Congress

Eleanor Holmes Norton
Member of Congress

Tony Cárdenas
Member of Congress

Dwight Evans
Member of Congress
Anthony G. Brown  
Member of Congress

Sara Jacobs  
Member of Congress

Sylvia R. Garcia  
Member of Congress

Doris Matsui  
Member of Congress

Dianne Feinstein  
United States Senator

Christopher S. Murphy  
United States Senator

Martin Heinrich  
United States Senator

Norma J. Torres  
Member of Congress

Brian Schatz  
United States Senator

Marie Newman  
Member of Congress

Pete Aguilar  
Member of Congress

Jake Auchincloss  
Member of Congress
Elizabeth Warren  
United States Senator

Mazie K. Hirono  
United States Senator

Kathy Castor  
Member of Congress

Jason Crow  
Member of Congress

Tammy Duckworth  
United States Senator

Jeffrey A. Merkley  
United States Senator

Bill Foster  
Member of Congress

Gerald E. Connolly  
Member of Congress

Steve Cohen  
Member of Congress

Mark Pocan  
Member of Congress

Mondaire Jones  
Member of Congress

Jimmy Gomez  
Member of Congress
Jimmy Panetta  
Member of Congress

Adam Smith  
Member of Congress

Andy Levin  
Member of Congress

Betty McCollum  
Member of Congress

Tina Smith  
United States Senator

Salud Carbajal  
Member of Congress

Raúl M. Grijalva  
Member of Congress

Frederica S. Wilson  
Member of Congress

Yvette D. Clarke  
Member of Congress

Robin L. Kelly  
Member of Congress

Grace F. Napolitano  
Member of Congress

J. Luis Correa  
Member of Congress
Barbara Lee  
Member of Congress

André Carson  
Member of Congress

Gwen S. Moore  
Member of Congress

Alexandria Ocasio-Cortez  
Member of Congress

Danny K. Davis  
Member of Congress

Ro Khanna  
Member of Congress

Mike Quigley  
Member of Congress

Cori Bush  
Member of Congress

Tim Kaine  
United States Senator

Lucille Roybal-Allard  
Member of Congress

Lloyd Dogget  
Member of Congress

Grace Meng  
Member of Congress
Ruben Gallego
Member of Congress

Ami Bera, M.D.
Member of Congress

Teresa Leger Fernández
Member of Congress

Alex Padilla
United States Senator

Richard Blumenthal
United States Senator

Patty Murray
United States Senator

Chris Van Hollen
United States Senator

Catherine Cortez Masto
United States Senator

Robert P. Casey, Jr.
United States Senator

Jared Huffman
Member of Congress

Jacky Rosen
U.S. Senator

Darren Soto
Member of Congress