June 23, 2023

Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20201

Re: 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
88 Fed. Reg. 25313 (April 26, 2023)

Dear Secretary Becerra and Administrator Brooks-LaSure:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the proposed rule clarifying the eligibility for qualified health plans through an exchange, advance premium tax credit payments and cost-sharing reductions and a Basic Health Program, and some Medicaid and Children's Health Insurance Programs. ACS CAN makes cancer a top priority for policymakers at every level of government. ACS CAN empowers volunteers across the country to make their voices heard to influence evidence-based public policy change that improves the lives of people with cancer and their families. We believe everyone should have a fair and just opportunity to prevent, detect, treat, and survive cancer. Since 2001, as the American Cancer Society's nonprofit, nonpartisan advocacy affiliate, ACS CAN has successfully advocated for billions of dollars in cancer research funding, expanded access to quality affordable health care, and advanced proven tobacco control measures. ACS CAN is more determined than ever to end cancer as we know it, for everyone.

Access to care for those who are uninsured not only ensures that serious diseases like cancer can be detected and treated earlier but also often means better patient outcomes and less costs to the individual and the larger health care system. The Affordable Care Act (ACA) expanded health insurance coverage to millions of Americans. However, despite these coverage gains, thirteen years after the law was enacted approximately 31 million people in the United States remain uninsured with data showing that noncitizens are more likely to be uninsured. In 2021, 25% of lawfully present individuals and 46% of undocumented immigrants were uninsured, compared to only 8 percent of U.S. citizens.[1]

Deferred Action for Childhood Arrivals (DACA) recipients are nearly three times as likely to be uninsured than the general U.S. population.[2] This proposed rule would reduce barriers to healthcare by removing the current provision that treats DACA recipients differently from other individuals with deferred action who are otherwise eligible for coverage for certain federal programs. ACS CAN supports this rule that would expand federal insurance coverage eligibility and help reverse the healthcare disparities that hundreds of thousands of DACA recipients have experienced for over a decade. We urge HHS to finalize the rule as proposed prior to the commencement of the 2024 open enrollment period.

[1] Kaiser Family Foundation. Health coverage of immigrants. Dec. 19, 2022. Available at https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.
[2] National Immigration Law Center. DACA Recipients' Access to Health Care: 2023 Report. May 2023. Available at https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.

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II. PROVISIONS OF THE PROPOSED REGULATIONS

A. Proposed Effective Date

CMS has set the target effective date for this rule as November 1, 2023, in order to ensure the provisions of the rule are effective for the 2024 Open Enrollment Period for the Exchanges, which will begin on November 1, 2023.

ACS CAN strongly supports CMS' intent to set a final implementation date for this rule by November 1, 2023. As noted, aligning the effective date of this rule with the upcoming Open Enrollment Period would reduce barriers to enrollment for individuals and would ease the burden of navigators and assistors in that all eligible individuals – including DACA recipients – would be subject to the same enrollment deadlines.

C. Exchange Establishment Standards and Other Related Standards Under the ACA (45 CFR 155.20)

1. DACA Recipients

CMS proposes to change its interpretation of the statutory phrase "lawfully present" to include Deferred Action for Childhood Arrivals (DACA) recipients, thus treating DACA recipients as other deferred action recipients provided for in paragraph (4)(iv) of the definition of "lawfully present" in 45 CFR 152.2.

ACS CAN supports that this proposed rule would allow for DACA recipients to be considered lawfully present for purposes of eligibility in these insurance affordability programs, removing barriers to accessing care and insurance coverage. ACS CAN also believes that all people should have access to affordable coverage, including undocumented individuals. By including DACA recipients in the definition of "lawfully present," ACS CAN agrees with CMS that this proposed rule is aligned with the goals of the ACA to lower the number of uninsured individuals and to make affordable health insurance available to more people.

D. Eligibility in States, the District of Columbia, the Northern Mariana Islands, and American Samoa and Children's Health Insurance Programs (CHIPs) (42 CFR 435.4 and 457.320(c))

1. Lawfully Residing and Lawfully Present Definitions

CMS proposes to define the terms "lawfully present" and "lawfully residing" for the Medicaid and CHIP programs consistent with the expanded definition applicable for the Exchanges. Specifically, CMS proposes to remove the exclusion of DACA from the definition of "lawfully present" and would clarify that DACA recipients are included in the broader category of those granted deferred action as "lawfully residing" in the US for purposes of Medicaid and CHIP eligibility.

ACS CAN strongly supports this proposed change, which will give DACA recipients with qualifying incomes and other factors new access to comprehensive, affordable health insurance through Medicaid and CHIP. Given that individuals who would benefit from this change by definition have limited incomes and are likely vulnerable in other ways, it is very unlikely that these individuals have been able to afford health insurance under the current policy that excludes them. Gaining access to Medicaid/CHIP if this rule is finalized will mean a new and vital opportunity to enroll in health insurance that is currently not available to this population.

It is well established that people without health insurance are more likely to be diagnosed with cancer at a late stage, when the disease is harder to treat, more costly and more difficult to survive.[3] Furthermore, the evidence is clear that expanding Medicaid eligibility improves many important cancer outcomes. Expanding access to Medicaid increases insurance coverage rates among cancer patients and survivors, increases in early-stage

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[3] Zhao, J., Han, X., Nogueira, L., Fedewa, S.A., Jemal, A., Halpern, M.T. and Yabroff, K.R. (2022), Health insurance status and cancer stage at diagnosis and survival in the United States. CA A Cancer J Clin. https://doi.org/10.3322/caac.21732.

cancer diagnoses, access to timely cancer treatment, and receipt of cancer screenings and preventive services.[4] For example, a recent study showed that Medicaid expansion was associated with an increase in survival from cancer at 2 years post diagnosis, and the increase was most prominent among non-Hispanic Blacks in rural areas, highlighting how expanding Medicaid can reduce health disparities.[5] ACS CAN supports this expansion of Medicaid eligibility to DACA recipients in hopes that we will see similar improvements in cancer-related outcomes.

E. Administration, Eligibility, Essential Health Benefits, Performance Standards, Service Delivery Requirements, Premium and Cost Sharing, Allotments, and Reconciliation (42 CFR Part 600)

HHS proposes to make several technical changes to the regulations regarding the Basic Health Plan to define those "lawfully present" to include DACA recipients. To date only New York and Minnesota have opted to create a Basic Health Plan.

ACS CAN appreciates CMS' clarification that the changes to the definition of those "lawfully present" to include DACA recipients will also extend to those enrolled in the Basic Health Plan. While CMS notes that only two states have opted for a Basic Health Plan so far, we do appreciate CMS' foresight to ensure that DACA recipients will be able to enroll in a Basic Health Plan should other states choose this option in the future.

CONCLUSION

Thank you for the opportunity to comment on the proposed rule clarifying that DACA recipients are considered to be "lawfully present" for purposes of determining eligibility in the Exchanges, Basic Health Plan, Medicaid and CHIP programs. If you have any questions, please feel free to contact me or have your staff contact Anna Schwamlein Howard, Policy Principal, Access and Quality of Care at Anna.Howard@cancer.org.

Sincerely,

Lisa A. Lacasse, MBA
President
American Cancer Society Cancer Action Network

[4] Building on the Evidence Base: Studies on the Effects of Medicaid Expansion, February 2020 to March 2021. Published May 6, 2021. https://www.kff.org/report-section/building-on-the-evidence-base-studies-on-the-effects-of-medicaid-expansion-february-2020-to-march-2021-report/.

[5] Han, Xuesong, et al. Association Between Medicaid Expansion Under the Affordable Care Act and Survival Among Newly Diagnosed Cancer Patients. Journal of the National Cancer Institute. 2022 Aug 8;114(8):1176-1185. doi: 10.1093/jnci/djac077.