

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

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

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



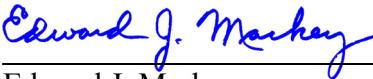
Mazie K. Hirono
United States Senator



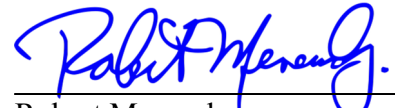
Pramila Jayapal
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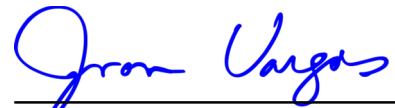
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Grace F. Napolitano

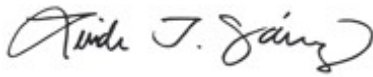
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Bonnie Watson Coleman
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Kathy Castor

Kathy Castor
Member of Congress



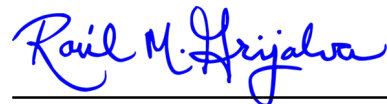
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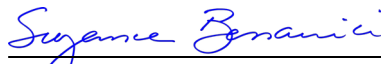
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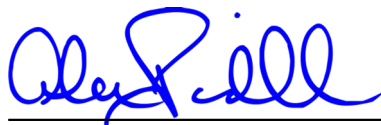
Christopher S. Murphy
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Catherine Cortez Masto
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Jeffrey A. Merkley
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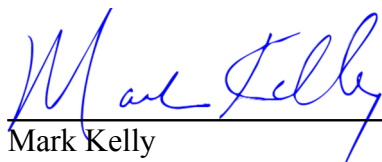
Alex Padilla
Chair, Subcommittee on
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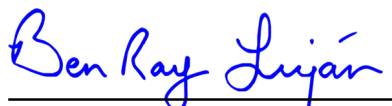
Benjamin L. Cardin
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Tim Kaine
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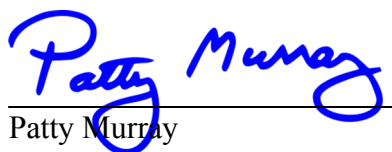
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Jacky Rosen
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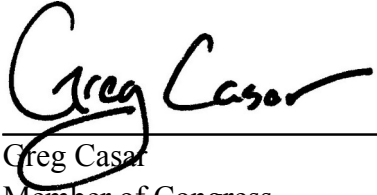
Jamie Raskin
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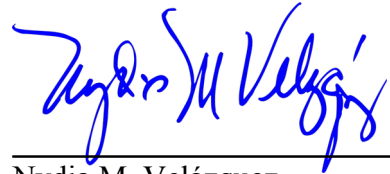
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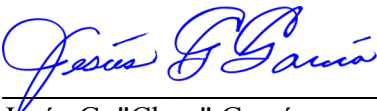
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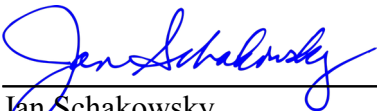
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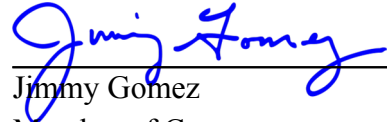
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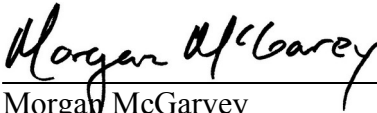
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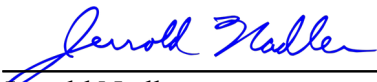
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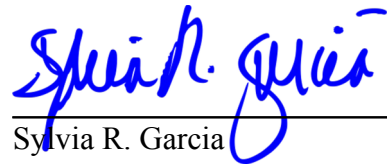
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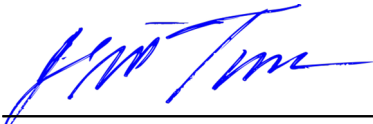
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Andrea Salinas
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Yvette D. Clarke
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Ritchie Torres
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Teresa Leger Fernández
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