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June 23, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building, Room 445–G
200 Independence Avenue, SW
Washington, DC 20201

Re: 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 for Deferred Action for Childhood Arrivals Recipients [CMS–9894–P]

Dear Secretary Becerra and Administrator Brooks-LaSure:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate this opportunity to offer our comments to the U.S. Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS) on the proposed clarifications to eligibility criteria for Qualified Health Plans (QHP) through an Exchange, state-based Basic Health Programs (BHPs), and some Medicaid and Children's Health Insurance Programs (CHIP), as well as certain insurance affordability programs.

Background

The Patient Protection and Affordable Care Act (ACA) generally requires that, in order to enroll in a QHP purchased through an Exchange or in a state-operated BHP (currently either Minnesota or New York), an individual must be either a citizen or national of the United States or be "lawfully present" in the United States. This "lawfully present" requirement also applies to insurance affordability programs, including premium tax credits (PTC), advance payments of the premium tax credit (APTC), and cost-sharing reductions (CSRs). Similar definitions of "lawfully residing" apply to state Medicaid and CHIP Programs.

The ACA does not define "lawfully present" beyond specifying that individuals are considered lawfully present if they are reasonably expected to be lawfully present for the period of their enrollment and places the onus on CMS to verify that Exchange applicants meet these requirements. In 2012, CMS amended its regulatory definition of "lawfully present" for Pre-Existing Condition Insurance Plan Program (PCIP) and Exchange purposes to add an exception stating that an individual granted deferred action under DHS' Deferred Action for Childhood Arrivals (DACA) policy was not considered lawfully present, thereby treating DACA recipients differently from other deferred action recipients for purposes of these benefit programs. CMS added a similar exclusion for DACA recipients for "lawfully residing" for purposes of Medicaid or CHIP eligibility.

This proposed rule would make certain clarifications and adjustments to the definitions used to determine whether an individual is eligible to enroll in a QHP through an Exchange, a state-based BHP, and state Medicaid and CHIP by amending the definitions of "lawfully present" and "lawfully residing," most significantly removing the current exception for DACA recipients so they are treated the same as other noncitizens in a valid nonimmigrant status that are granted deferred action. The definition would also be refined to definitively include certain additional noncitizen groups, including those who are currently transitioning from an employment-based nonimmigrant status to lawful permanent resident status and individuals with an approved petition for Special Immigrant Juvenile classification, among others. CMS notes that these changes are intended to avoid coverage gaps and that each of these additional groups is relatively small in number. The rule is clear that the proposed definitions would be used solely for the purposes of determining eligibility for specific HHS health programs and are not intended to define lawful presence for purposes of any other law or program.

In the proposed rule, HHS cites a 2021 survey of DACA recipients which found that 34 percent of respondents reported that they were not covered by health insurance, 47 percent attested to having experienced a delay in medical care due to their immigration status, and 67 percent said that they or a family member were unable to pay medical bills or expenses.[1] If finalized, CMS anticipates that the rule could expand access to health care to 129,000 previously uninsured individuals.

AMA Feedback

The AMA believes that health care is a basic human right and providing health care services is an ethical obligation of a civil society. We remain committed to advocating for expanded health insurance coverage for all and amplifying the voices of individuals from historically marginalized and minoritized communities. To this end, the AMA opposes federal and state legislation denying or restricting legal immigrants' access to Medicaid. We also support extending eligibility to purchase ACA marketplace coverage to undocumented immigrants and DACA recipients and advancing policies that address the unmet medical needs of unaccompanied undocumented minor children. We support a health care system that is focused on increasing equity and access, is cost-conscious, and reduces administrative burdens on physicians.

The AMA knows that expanding access and advancing health equity improves population health and is likely to result in reduced costs for the American taxpayer since individuals without insurance are less likely to receive preventative or routine health screenings and may delay necessary medical care, often resulting in higher health care costs down the road. We also concur with HHS' reasoning in the rule that such policies may have added economic benefits by reducing the number of work days missed by DACA recipients, 200,000 of whom serve as frontline health care workers, and would provide DACA recipients with stability that would allow them to obtain education and lawful employment, and may have a positive impact on the exchange risk pools, given that DACA recipients are relatively young and healthy. **For these reasons, the AMA generally supports these proposals and their intent to expand access to affordable health care coverage and services for vulnerable, disenfranchised patient populations.**

The AMA appreciates that the proposed definitional changes would only affect qualifying status for these federal health programs and that any information collected would not be used to affect one's immigration status, which the AMA opposes. The AMA also supports CMS' proposal to align the terms "lawfully

[1] National Immigration Law Center. Tracking DACA Recipients' Access to Health Care. https:// www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.

present" and "lawfully residing" and include cross references for greater consistency across federal programs. In alignment with this sentiment, the AMA supports increasing access to the Supplemental Nutrition Assistance Program (SNAP) for DACA recipients, including eliminating the five-year SNAP waiting period for otherwise qualifying immigrants. Regarding the definition of "qualified noncitizen" for Medicaid and CHIP eligibility purposes, the AMA agrees it could be beneficial to specifically list certain included groups, such as victims of human trafficking. The AMA supports policies that remove barriers to low-cost health care plans and minimize gaps in health care coverage for refugees and that make available resources needed to eliminate health disparities affecting immigrants, refugees, and asylees. We agree that adding more specificity to this definition could lead to greater clarity, more consistent application across the states, and enhanced protections for these and other vulnerable populations.

Conclusion

The AMA appreciates this opportunity to provide feedback on the proposed amendments to the qualifying criteria for these critical federal health programs and looks forward to continuing to engage on this and other policies that expand access to health care services, particularly for historically marginalized populations. If you have questions or would like to discuss the content of this letter further, please contact Margaret Garikes, Vice President, Federal Affairs, at margaret.garikes@ama-assn.org or 202-789-7409.

Sincerely,

James L. Madara, MD