

VIA ELECTRONIC SUBMISSION

October 29, 2012

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9995-IFC2
P.O. Box 8016
Baltimore, MD 21244-8016

RE: CMS-9995-IFC2

Comments on CMS' Interim Final Rule Changes to Definition of "Lawfully Present" in the Pre-Existing Condition Insurance Plan Program of the Affordable Care Act of 2010

Dear Sir/Madam:

The undersigned Texas organizations appreciate the opportunity to comment on the Interim Final Rule (77 Fed. Reg. 52614, Aug. 30, 2012) - Changes to Definition of "Lawfully Present" in the Pre-Existing Condition Insurance Plan (PCIP) Program of the Affordable Care Act of 2010 (ACA). We oppose the exclusion of young people granted deferred action under Deferred Action for Childhood Arrivals (DACA) from health care coverage provisions under the ACA as proposed through this rule change and in the State Health Official letter sent by the Centers for Medicaid and Medicaid Services (CMS) on August 28, 21012 (SHO#12-002).

The **Center for Public Policy Priorities (CPPP)** is a nonpartisan, nonprofit 501(c)(3) policy institute established in 1985 and committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. Improving access to health care for Texans has been at the core of our mission and activities since our founding. We have worked closely with statewide advocacy networks, state decision-makers, and our state Medicaid and CHIP programs to improve access to care for Texans and to seek solutions to Texas' severe uninsured problem.

The **Children's Defense Fund** provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, drop out of school, get into trouble or suffer family breakdown. CDF began in 1973 and is a private, nonprofit organization supported by foundation and corporate grants and individual donations.

Driscoll Health Plan is a non-profit community-based health insurance plan offering health care coverage to the communities of South Texas. Driscoll Health Plan insurance products include STAR Medicaid, CHIP, and CHIP Perinatal. Driscoll Health Plan is affiliated with Driscoll Children's Hospital which has been taking care of kids and their families in South Texas and the Rio Grande Valley for nearly 60 years.

The **La Fe Policy Research and Education Center** works to continually improve the Bienestar (well-being) of Mexican Americans through policy analysis, education, leadership development, and civic involvement. Bienestar affirms our culture, community experience, values, and advocacy to achieve equality of opportunity through responsive social and health policies.

The **National Association of Social Workers/Texas Chapter** is a professional membership association that advocates the profession of social work, and promotes sound public policy that is designed to ensure that human needs are met

For the last twenty-five years, **Texans Care for Children** has served as the state's leading multi-issue child advocacy organization and now has a membership network of more than 240 organizations and individuals across Texas that build support for changes at the state level.

The Texas Pediatric Society is the Texas Chapter of the American Academy of Pediatrics. TPS believes the most important resource of the State of Texas is its children and pledges its efforts to promote their health and welfare. TPS represents 3,500 pediatricians and medical students.

All of our organizations support the primary goal of the ACA – to expand access to affordable health coverage to millions of currently uninsured individuals. Because of our worst-in-the-nation uninsured rate, Texas likely stands to gain more from the ACA in terms of newly covered individuals than any other state. Unfortunately, the policies outlined in proposed rule change and the State Health Official letter will block access to affordable coverage by largely vulnerable, uninsured youth and young adults, exacerbating disparities and putting the health of a group of young people in America at risk.

Texas is home to about 210,000 children and young adults who are or will be eligible for deferred action under DACA, including 150,000 people age 15-30 who are eligible now and another 60,000 who will be eligible when they turn 15¹. Not all of these children and young adults are uninsured, but most likely are. In Texas, non-citizens and young adults have very high rates of uninsurance. Data from the U.S. Census Bureau show 69 percent of non-citizens (both legal and unauthorized immigrants) from age 15 to 30 in Texas are uninsured.²

¹ Migration Policy Institute, "Relief from Deportation: Demographic Profile of the DREAMers Potentially Eligible under the Deferred Action Policy," Aug. 2012, www.migrationpolicy.org/pubs/FS24_deferredaction.pdf.

² U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2012.

It is likely that many of the uninsured young people affected by this policy live in low-income, working families, with parents working in industries where employers do not offer health coverage.³ They are likely to be among those who do not have a regular source of care due to their income, insurance, and immigration status.⁴ Having a regular source of care eliminates costly emergency room visits and reduces overall future health care needs. Excluding the DACA youth from the coverage options in health reform does not eliminate their need for health care; it merely blocks opportunities for preventive care and maintains a reliance on the health care safety net, which research has shown contributes to poor health outcomes and increased health disparities.

A motivation for creating the DACA program is to integrate certain individuals into the fabric of their communities, despite their previously undocumented status. The DACA program ensures that these young people are issued Social Security numbers and are authorized to work, yet the prohibitions on eligibility for coverage and care promulgated by the rule change and State Health Official letter erect barriers to the benefits of health reform, making DACA youth in Texas:

- Not eligible for Texas Medicaid or CHIP;
- Not eligible the Pre-existing Condition Insurance Plan;
- Not eligible to purchase private, comprehensive health insurance in the exchanges when it becomes available January 1, 2014;
- Not eligible for federal tax credits to make private health insurance affordable in the exchanges (even if these young people are paying federal taxes); and
- Not eligible for the Basic Health Plan (if Texas creates one).

Allowing these deserving young people the opportunity to work while at the same time preventing them from buying health insurance undermines their ability to participate and contribute fully to the economy and to their communities. It also undermines progress made in reducing disproportionately high rates of uninsurance among the nation's young adults, whose jobs often do not provide them with coverage.

Recommendation:

Our organizations recommend deletion of subsection 8 of 45 CFR § 152.2, effective immediately.

~~(8) Exception. 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,~~

³ Kaiser Commission on Medicaid and the Uninsured, "Five Facts About the Uninsured Population," September 2012.

⁴ Kaiser Commission on Medicaid and the Uninsured, "Key Facts on Health Coverage for Low-Income Immigrants Today and Under Health Reform," February 2012.

~~2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.~~

We recommend deleting this exception to the definition of “lawfully present” as well as immediate action to amend the guidance in SHO# 12-002 for the following reasons:

- As described above, this policy prevents DACA children and young adults from accessing health coverage options created by the ACA. This runs counter to the goals of the ACA of expanding coverage and reducing disparities and will undermine Texas’ ability to reduce our uninsured rate, decrease uncompensated care, and improve health outcomes.
- This policy undermines the ACA’s goal of streamlined health coverage enrollment. DACA children and young adults will have Social Security Numbers and work authorization, just like many other lawfully present immigrants who have access to Medicaid, CHIP, and tax credits in the health insurance exchange. The unnecessary complexity and confusion that will be caused by having to determine which deferred action status an applicant has will cause unnecessary barriers and delays.
- The policy increases health care premiums for everyone. Removing the young people (who tend to be in better health) who benefit from DACA from the health insurance exchanges, will likely increase the proportion of less healthy individuals in the exchange pool, increasing premiums. Furthermore, uninsured Texans who rely on safety net clinics and emergency rooms increase costs for Texas counties.
- The policy is unjust and inequitable. Individuals granted deferred action have long been considered “lawfully present,” and individuals granted deferred action on grounds other than DACA are still considered lawfully present and will have access to affordable coverage under the ACA. Creating a distinction between children and young adults granted deferred action under DACA and others granted deferred action for different reasons is arbitrary, unnecessary, and unjust.

Thank you for your attention to these comments. For further information, please contact Anne Dunkelberg or Stacey Pogue at the Center for Public Policy Priorities at (512) 320-0222.

Sincerely,

Center for Public Policy Priorities
Children’s Defense Fund—Texas
Driscoll Health Plan
La Fe Policy Research and Education Center
National Association of Social Workers/Texas Chapter
Texans Care for Children
Texas Pediatric Society