

# FREQUENTLY ASKED QUESTIONS

## Exclusion of People Granted “Deferred Action for Childhood Arrivals” from Affordable Health Care

Revised SEPTEMBER 20, 2012

For general information on DACA, see [www.nilc.org/FAQdeferredactionyouth.html](http://www.nilc.org/FAQdeferredactionyouth.html).  
For general FAQs on federal health care reform (ACA) and health care, see pp. 8-9.

### PART 1: RESTRICTED ACCESS TO HEALTH CARE

#### What are the health care restrictions released by the Obama administration on August 28, 2012?

The Obama administration released two official policy announcements on August 28, 2012, that specifically affect the eligibility for federal health care programs of individuals granted deferred action under the administration’s “deferred action for childhood arrivals” (DACA) policy. The policies announced on August 28—which were issued as federal regulations and guidance—*change* federal rules by excluding individuals granted deferred action under DACA from affordable health insurance options that are available to other lawfully present individuals.

Before the changes announced on August 28, DACA beneficiaries would have *gained* access to more options for affordable and comprehensive health insurance. Youth granted deferred action under DACA who are under 21 years of age or pregnant and who are otherwise eligible would have been able to apply for free or low-cost health insurance through a state’s Medicaid program or Children’s Health Insurance Program (CHIP) in about half of the states. In some states, pregnant women will continue to have access to federal health insurance coverage under CHIP regardless of their immigration status.<sup>1</sup>

After 2014, DACA beneficiaries would have had additional options to buy affordable health insurance in their state as a result of federal health care reform (referred to as the Affordable Care Act, ACA, or “Obamacare”).

<sup>1</sup> See “Medical Assistance Programs for Immigrants in Various States” (NILC, last updated July 2012), [www.nilc.org/document.html?id=159](http://www.nilc.org/document.html?id=159).

THIS IS A REVISION AND UPDATE of the FAQ formerly titled “Deferred Action for Childhood Arrivals (DACA) and Restricted Access to Health Care,” originally published Aug. 29, 2012.

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As a result of the August 28 changes, individuals granted deferred action under DACA will remain excluded from almost all affordable health insurance options. DACA beneficiaries will be treated as though they are undocumented, even though they are otherwise considered lawfully present and will have access to a work permit and a Social Security number. Unless their state has established a state-funded health coverage program, their only opportunity to have access to affordable, comprehensive health insurance may be through employment.

### **When do the restrictions go into effect?**

The restrictions are effective August 30, 2012. There is an opportunity to provide formal feedback about the restriction on eligibility for provisions in the ACA—including the Pre-Existing Condition Insurance Plan (PCIP), the health insurance exchanges, and health insurance premium tax credits—until October 29, 2012. Despite this public comment period, the exclusion from affordable health care options immediately applies to individuals granted deferred action under DACA who would otherwise be eligible based on age, income, or ability to pay.

### **BEFORE August 30, 2012, what health care access did DACA beneficiaries have, but lose due to the rule change?**

Before Aug. 30, 2012, individuals granted deferred action under DACA would have had the same access to health care and health insurance as other lawfully present individuals, including individuals granted deferred action based on other grounds. For example, individuals with deferred action that is not granted under DACA can:

- Enroll in low-cost, comprehensive health insurance available through Medicaid or CHIP in about half the states, if they are under age 21 or pregnant. See below for more details.
- Enroll in a state's high-risk insurance pool, referred to as the Pre-Existing Condition Insurance Plan (PCIP). This allows U.S. citizens and lawfully present immigrants who are currently uninsured and cannot get health insurance because they have a certain medical condition (such as cancer, high blood pressure, diabetes, depression) to be able to buy health insurance.

**AFTER** January 1, 2014, individuals granted deferred action based on reasons other than DACA:

- Will be able to buy affordable, comprehensive health insurance through a newly created marketplace, often referred to as the "health insurance exchanges" or simply as "the Exchange." Undocumented individuals are not eligible to buy health insurance through the Exchange.
- Can apply for financial assistance to pay for the private health insurance purchased through the Exchange. The financial assistance will be provided in the form of federal tax credits, known as "premium tax credits" and "cost-sharing reductions." The amount of the tax credit will be based on income. As a result, the price of health

insurance will vary based on an individual's or family's income so that the costs of health insurance will be more affordable. See below for more info.

- Can enroll in a "Basic Health Plan" if their state has one. The Basic Health Plan will be another affordable health insurance option for low-income and working families.
- Will be required to have health insurance under the individual mandate unless it is unaffordable.

### **AFTER August 30, 2012, what health care access do DACA beneficiaries have?**

After Aug. 30, 2012, DACA beneficiaries will have the same access to health care and health insurance as undocumented immigrants. For example, individuals granted deferred action under DACA :

- Can continue to seek emergency services and nonemergency care at community health centers.
- Can continue to receive immunizations or other medical services under the local public health department.
- Remain eligible under state-funded health care programs they are currently enrolled in. (See below for more details.)

However, due to the recent restrictions, DACA beneficiaries:

- Cannot get comprehensive health insurance under Medicaid or CHIP in their state unless the state has a separate, state-funded program.
- Do not have access to prenatal care unless their state has elected the federal option to provide prenatal care regardless of the woman's immigration status.
- Cannot apply today for the high-risk insurance pool (the PCIP), unless the state where they reside has a separate state-funded high-risk pool that is available regardless of status.
- Will not be able to buy private, comprehensive health insurance in the Exchange after January 1, 2014.
- Will not be eligible for federal tax credits to help make private health insurance through the Exchange more affordable, even if they are paying federal taxes.
- Will not be eligible for the Basic Health Plan if their state has this program.
- After 2014, will likely not be required to have health insurance under the individual mandate.
- May be able to buy full-price health insurance *outside* of the exchange, if it is available.

### **Do the DACA health care restrictions affect all individuals granted deferred action?**

No. The restrictions apply only to individuals granted deferred action under DACA. Individuals granted deferred action based on other grounds should continue to have access to all of the options for affordable health care discussed above.

### **What are the key policy concerns about the health care restrictions?**

The restrictions:

- Create an unnecessary and unprecedented distinction between individuals granted deferred action under DACA and other individuals granted deferred action based on other grounds as well as other lawfully present individuals.
- Treat DACA individuals as different and “less than” other lawfully present immigrants.
- Further restrict access to health care for immigrants, especially children and pregnant women.
- Exclude DACA beneficiaries from the key provisions of the ACA two years before they have been implemented.
- Embolden state lawmakers to discriminate against this group in providing services.
- Set a bad precedent for future DREAM Act or other legalization proposals to treat newly legalized immigrants differently and with fewer rights than other lawfully present immigrants.
- Lend credibility to the inaccurate claims that immigrants come to the U.S. to get health care or public benefits rather than for job opportunities and to reunite with family members.
- Deny opportunities to seek affordable health care to the nation’s youth and future generations.
- Signal that it is permissible for lawmakers to make decisions that hurt real people for political gain in the short term rather than make decisions based on what’s best for individuals and the country in the long term.
- Signal that health care reform and comprehensive immigration reform will continue to treat immigrants as second-class citizens.

### **How do the health care restrictions affect pregnant women who are granted deferred action through DACA?**

In every state today, undocumented pregnant women can deliver in any hospital. For women with very low incomes, the cost of that hospital visit may be paid for by the federal government through a special Medicaid program known as “emergency Medicaid.” However, in the majority of states, undocumented women are often unable to seek regular care (prenatal care) during their pregnancy. Without prenatal care, there is a greater chance of a high-risk birth, birth defects, and low birth-weight. Undocumented women also find it difficult to seek medical attention for themselves after delivery (postpartum care), since

emergency Medicaid does not cover services that are not related to labor and delivery. It's important to note that children born to women who are enrolled in Medicaid, including emergency Medicaid, should automatically be considered eligible for Medicaid and immediately enrolled.

Prior to August 28, DACA beneficiaries who are pregnant would have been able to seek prenatal and comprehensive medical care in almost half the states under the Medicaid and CHIP programs. After 2014, if they were over income for Medicaid or CHIP eligibility, they would have been able to buy health insurance in the Exchange and receive tax credits to help pay for it.

After August 28, pregnant women granted deferred action through DACA will be able to seek health care only during their labor and delivery (through emergency Medicaid) in most states. In some states they may be able to get prenatal care either through a state-funded health program or if the state elected a federal option to provide prenatal care under CHIP, regardless of status.

#### Example A

In many states, a single, pregnant woman who is granted deferred action under DACA will remain without access to prenatal care and will not be able to see a regular doctor during her pregnancy to make sure that her pregnancy is going well. She still will be able to deliver in the hospital as she can today, but she will not be able to get any follow-up care for herself after the pregnancy that can help her stay healthy for her newborn. Depending on where she lives, she may have access to prenatal, or other nonemergency medical care on a sliding-fee scale at community health centers and hospital clinics.

### **What are some examples of how this affects nonpregnant individuals granted deferred action through DACA?**

#### Example B

A 15-year old male high school student wants to play sports but needs a physical to be eligible. He has asthma and also needs to see a dentist due to a severe toothache. Due to the change in rule, he will remain uninsured and without a regular doctor to visit. His parents will continue to worry about his health and be unsure how to get their son the care he needs now.

#### Example C

A child who has a severe disability or chronic illness and needs ongoing medical care may be able to seek medical treatment only when his condition worsens.

#### Example D

After 2014, consider a 25-year old individual working for an employer that does not offer health insurance to its employees. She seeks care in an emergency room and is told she has the early stages of breast cancer. She needs to buy health insurance that she can afford in order to get the medical treatment she immediately needs without incurring huge medical bills, and to seek treatment by a breast cancer specialist. Because she is not eligible for the

Exchange or tax credits under the ACA, she remains uninsured and is unsure how she will pay for the care she needs.

### **What health care options do DACA beneficiaries and undocumented individuals have right now?**

The following health-specific programs are available regardless of immigration status in all states:

- Emergency-room care.
- Community health centers.
- Public and safety-net hospitals.
- Public health services (treatment of communicable diseases such as tuberculosis, HIV, sexually transmitted diseases, immunizations).
- Emergency treatment under the emergency Medicaid program, including labor and delivery for pregnancy.
- Hospital and community health centers' financial assistance programs (also known as "charity care").

More options may be available in your state. Check with a local health care provider or immigrants' rights or health advocacy group.

### **What are the details of the policy announcements regarding the health care restrictions on DACA beneficiaries?**

#### ACA-related federal regulations

🔗 [www.federalregister.gov/articles/2012/08/30/2012-21519/pre-existing-condition-insurance-plan-program](http://www.federalregister.gov/articles/2012/08/30/2012-21519/pre-existing-condition-insurance-plan-program) 🔗

- Amends the definition of which immigrants are considered "lawfully present" for the high-risk pool (PCIP) by adding an exception for individuals granted deferred action under DACA. Individuals granted deferred action for other reasons will still be considered "lawfully present" under the federal definition.
- Issued as an interim final rule, effective August 30, 2012. There is a 60-day comment period. Comments can be sent in electronically at [www.regulations.gov](http://www.regulations.gov).
- Interim final rule adds exception for DACA beneficiaries to Title 45 of the Code of Federal Regulations section 152.2 (45 C.F.R. § 152.2), which is the definition of "lawfully present" for PCIP eligibility.
- Final rule on eligibility for the Exchange references 45 CFR section 152.2 as the definition of "lawfully present" for the Exchange; as a result, the interim final rule also prevents DACA beneficiaries from buying health insurance through the Exchange, even at full price.

- Final rule on the health premium tax credit references 45 CFR section 152.2 as the definition of “lawfully present” for premium tax credit eligibility; as a result, DACA beneficiaries cannot apply for premium tax credits (also referred to as Advanced Premium Tax Credit, or APTC).
- Interim final rule indicates eligibility for cost-sharing reductions (CSR) will be the same as premium tax credits, as there is no specific rule on eligibility for CSR yet.
- Interim final rule is silent on the Basic Health Plan (BHP), and no federal rule on BHP is available yet. Under section 1313 of the ACA, BHP is available to citizens and “lawfully present” individuals. Likely to conform BHP definition to 45 CFR section 152.2.

### Federal guidance from the Centers for Medicare and Medicaid Services (CMS)

➤ [www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf) ➤

- Letter from State Health Official/State Medicaid Director “[Re: Individuals with Deferred Action for Childhood Arrivals](#),” SHO #12-002, Aug. 28, 2012.<sup>2</sup>
- Excludes individuals granted deferred action through DACA who are under 21 years of age or pregnant from Medicaid and CHIP eligibility under the CHIPRA (Children's Health Insurance Program Reauthorization Act of 2009) option. This affects such individuals in about half of the U.S. states that have elected to offer Medicaid and CHIP to a broad group of lawfully residing children and pregnant women.
- In states that have elected the CHIP option to cover pregnant women regardless of status, prenatal care will remain available to DACA beneficiaries.
- See NILC’s “Medical Assistance Programs for Immigrants in Various States” table, available at [www.nilc.org/document.html?id=159](http://www.nilc.org/document.html?id=159), for more information about how medical coverage varies in the states.
- Refers to the definitions of “lawfully present” and “lawfully residing” adopted by CMS after 2009 for states that elect the option under CHIPRA (section 214) to expand coverage to low-income children who are otherwise eligible for Medicaid and CHIP programs. The specific categories that are considered lawfully present for Medicaid and CHIP are defined per the CMS State Health Official letter of July 1, 2010, “[Re: Medicaid and CHIP Coverage of ‘Lawfully Residing’ Children and Pregnant Women](#),” SHO #10-006, CHIPRA #17.<sup>3</sup>
- Concludes that “[b]ecause the reasons that [the U.S. Department of Homeland Security, or DHS] offered for adopting the DACA process do not pertain to eligibility for Medicaid and CHIP, [the U.S. Dept. of Health and Human Services] has determined that these benefits should not be extended as a result of DHS deferring action under DACA.”

<sup>2</sup> [www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf).

<sup>3</sup> <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf>.

## **PART 2: A PRIMER ON HEALTH CARE COVERAGE OPTIONS**

### **What are Medicaid and CHIP, and how do they work?**

Children under the age of 21 and pregnant women who are uninsured, low-income, and granted deferred action are eligible to enroll in a state's Medicaid program or in a state's Children's Health Insurance Program (CHIP). These two programs are often referred to in each state by other names—such as Peach Care (Georgia), or Healthy Families (California), or Child Health Plus (New York).

The goal of both the Medicaid and CHIP programs is to provide comprehensive health insurance that is free or low-cost for children and pregnant women. Medicaid is also available to seniors and persons with disabilities who are low-income. In some states Medicaid is available to other adults as well.

Under both programs, a family can choose a particular health insurance plan, choose a doctor who can speak their language and who is in their neighborhood, and go to the doctor whenever they need to, even for a check-up, for free or for a small copayment. In addition, medications that a doctor prescribes, dental care, and vision care are also provided at little or no cost under these programs. Overall, these two programs allow children and other vulnerable individuals to be able to get medical care when they are ill without having to go to an emergency room, or to get regular check-ups by a doctor so that an illness may be prevented or caught early before it gets worse—and without having to spend hundreds or thousands of dollars and accumulate huge medical bills that they'll be paying the rest of their lives.

Under federal eligibility rules that have been in effect since February 2009, immigrant children and pregnant women granted deferred action are eligible for Medicaid and CHIP in about half the states. (See the attached maps to find out which states, specifically.) Undocumented children are not eligible for Medicaid or CHIP except in New York, Illinois, Washington, the District of Columbia, and some California counties.

### **What is the health insurance “Exchange” in the ACA?**

In the U.S., having health insurance is key to accessing health care. Health insurance is often needed in order to see a doctor for regular care, get medications, and help pay for costly hospital bills. Individuals without health insurance are generally expected to pay full price for their medical care, and often hospitals and private doctor's offices turn people away if they don't have health insurance. Today you can get health insurance through an employer or from the government, if you meet certain rules; or you can buy private health insurance in the individual market.

However, under today's rules, insurance companies can deny anyone who wants to buy insurance, can charge you more if you're a woman or based on where you live, can make you pay more for the same insurance coverage, and can cancel your insurance once you start to actually use it when you get sick.



When all its provisions take effect, the Affordable Care Act will prevent insurance companies from imposing these restrictions. In addition, the ACA is designed to help consumers buy affordable health insurance and understand what they are buying.

To do this, the ACA allows every state to create its own health insurance marketplace, or “exchange.” Each state in general will have its own exchange and will refer to it under different names, such as the “Massachusetts Connector.” Each state will create a website where consumers can apply online for the health insurance plan they choose through the state’s exchange. Only if the insurance company agrees to follow the rules under the ACA will it be able to sell its insurance plan in the exchange. This will make it easier for consumers to compare and choose between plans and pick the best one for their health needs and budget.

### **What are “premium tax credits” and “cost-sharing reductions” under the ACA?**

The ACA provides financial assistance to consumers who buy health insurance through the Exchange. The financial assistance comes in the form of two types of tax credits that are based on a taxpayer’s household income. “Premium tax credits” (also referred to as APTC) would help reduce the monthly or annual cost (the premiums you’d have to pay) of having health insurance. “Cost-sharing reductions” (also referred to as CSR) would help limit the amount one would need to pay in copayments (also referred to as cost-sharing) for doctor visits or medications.

These tax credits will be available only to those who buy private health insurance through the Exchange, who have household incomes below 400 percent of the federal poverty level, who are citizens or are lawfully present, and who file federal taxes.

*This FAQ will be updated as needed to reflect the most current information available.*

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