

# Health Care in Motion

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## Biden Administration Extends ACA Coverage to DACA Recipients: What this Means for Healthcare Access

After a lengthy advocacy battle, the Biden Administration released a [final rule](#) last week extending eligibility for Affordable Care Act (ACA) coverage to people enrolled in the [Deferred Action for Childhood Arrivals \(DACA\) program](#), also known as DACA recipients. Read on to learn more about how this change expands access to healthcare, including for people living with and vulnerable to HIV.

### What Is DACA?

Congress spent over a decade attempting to create protections for people who were brought to the U.S. as children but who lack lawful immigration status. The legislative vehicle to provide a pathway to U.S. citizenship for these individuals is the Development, Relief and Education for Alien Minors (DREAM) Act. After the bill died once again in Congress, President Obama took [executive action](#) in 2012 to create the [DACA program](#). DACA enables undocumented immigrants who were brought to the U.S. as children, and who meet certain residency, age, and education or military service requirements, to apply for protection from immigration removal proceedings. DACA also allows recipients to obtain work authorization and a Social Security Number and to apply for a driver's license.

### Who Are DACA Recipients?

- 580,000 DACA recipients in the U.S. as of December 2022
- The two largest states of residency are California (28% of recipients) and Texas (17%)
- Many are uninsured (an estimated 47% of DACA-eligible individuals)
- 43% of DACA-eligible individuals have income under 200% FPL; 54% are employed

Source: [KFF Key Facts on DACA](#)

While DACA helped to ensure certain undocumented immigrants could live and work in the U.S., it also had significant limitations. DACA did not provide immigrants with a pathway to citizenship, and DACA recipients have historically been barred from federal health coverage programs, including ACA coverage and subsidies, Medicaid, and CHIP.

## What Does the New Rule Do?

Under the ACA, only U.S. citizens or noncitizens who are “lawfully present” in the U.S. are eligible to enroll in plans through the marketplaces. The final rule clarifies the definition of “lawfully present” to include DACA recipients, enabling them to enroll in the following plan types:

### How the New Rule Will Help End HIV

DACA is an important source of protection for many younger immigrants who have lived most of their lives in the U.S. and have no other current source of lawful immigration status. Although CHLPI is not aware of statistics as to how many people living with HIV are enrolled in DACA, HIV has a disproportionate impact on low-income communities, people who are uninsured, and certain immigrant communities. Groups that serve [LGBTQ immigrants](#) have expressed support for DACA.

Expanding ACA coverage to DACA recipients could help take pressure off strained safety net systems that provide medications, care, and treatment for uninsured people with HIV. Many Ryan White HIV/AIDS Programs have been providing HIV care and treatment for DACA recipients or have been helping DACA recipients to enroll in much more expensive unsubsidized insurance plans outside of the marketplaces. Enabling DACA recipients who do not have HIV to enroll in ACA plans could also help more people vulnerable to HIV to access PrEP.

**Qualified Health Plans (QHPs)**, which are individual or small group plans purchased through the marketplaces. DACA recipients will also be eligible for premium tax credits (PTCs) and cost-sharing reductions (CSRs), both of which help make QHPs more affordable.

**Basic Health Plans (BHPs)**, which are optional programs under the ACA that states may establish to provide affordable coverage for individuals up to 200% FPL who do not qualify for Medicaid.

The proposed rule had floated extending the new definition of “lawfully present” to enable DACA recipients to apply for Medicaid and CHIP as well. However, citing many comments noting stretched state resources and unprecedented administrative burden on state Medicaid agencies as result of the unwinding of the COVID-19 pandemic-era continuous coverage requirements, the Administration ultimately opted not to extend this expanded definition to Medicaid and CHIP. Medicaid and CHIP will continue to use a definition of “lawfully present” that excludes DACA recipients.

The Administration estimates that the new rule could lead to [100,000](#) previously uninsured DACA recipients signing up for ACA coverage.

## What's Next?

The final rule is effective November 1, 2024, in time for DACA recipients to enroll in coverage during the 2025 open enrollment period. However, the rule – and the DACA program’s very existence – is still very much dependent on the resolution of ongoing litigation still making its way through the courts, and on the outcome of the November 2024 elections.

To understand the threat to DACA, it’s important to understand its history. In 2017, President Trump [rescinded](#) the DACA program via executive action. Litigation quickly followed, and in June of 2020, the U.S. Supreme Court [ruled](#) that the Trump Administration’s abrupt termination of the program was unlawful, citing numerous process issues with how the Administration sought to end DACA. Undeterred, the Trump

Administration took new actions to restrict the program, most notably blocking any new DACA applications. More [litigation](#) ensued, including a federal court case in Texas challenging the legality of DACA. Largely as a result of that pending litigation, all new DACA applications received since July 2021 have been placed on hold pending appeal. In the midst of these legal challenges, in 2022, President Biden signaled a continuing commitment to the program by codifying it in a [final regulation](#) following formal rulemaking. However, DACA still remains closed to new applicants until the [current litigation](#) is resolved, likely by the Supreme Court.

Even if DACA survives the court challenge, a future Administration could take action to unwind the program through the rulemaking process. Going forward, it will be important for healthcare advocates to continue to press for improved access to healthcare for immigrants, including youth and younger adults currently eligible for DACA.

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