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Comments on the Department of Health and Human Services' Proposed Rule entitled "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," Docket No. CMS-9894-P

June 23, 2023

Via Electronic Submission

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9894-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Department of Health and Human Services-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,* HHS Docket No. CMS-9894-P

To Whom it May Concern:

Lawyers for Civil Rights ("LCR") respectfully submits these comments in complete support of the Proposed Rule entitled "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," posted by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services ("HHS") on April 26, 2023.

Based in Boston, LCR is a non-profit organization that provides free legal services to immigrants and communities of color. For over 50 years, LCR has fought against discrimination and sought equal opportunity for people of color and immigrants through creative and courageous legal action, education, and economic empowerment in collaboration with law firms and community partners. As a civil rights leader in health justice and immigration advocacy, LCR respectfully submits these comments in support of expanding health care access for Deferred Action for Childhood Arrivals ("DACA") recipients.

I. Introduction

Currently, an individual is eligible to enroll in a Qualified Health Plan through an Exchange, Medicaid, or the Children's Health Insurance Program a/k/a CHIP (collectively, the "Health

Plans") if he or she "is a citizen or national of the United States or is lawfully present in the United States."[1] HHS currently defines "lawfully present" to exclude DACA recipients.[2]

The Proposed Rule will clarify the definition of "lawfully present" to include DACA recipients and will increase DACA recipients' access to affordable health care by allowing them to enroll in the Health Plans. LCR fully supports HHS' Proposed Rule, and highlights below the benefits the Proposed Rule would have on the economy and health equity in the United States.

II. Providing DACA recipients with access to the Health Plans will reduce costs to the health care system, ensure and improve DACA recipients' productivity in the economy, and be an investment that pays dividends to the United States.

The current definition of "lawfully present," which excludes DACA recipients from eligibility to enroll in the Health Plans, has resulted in many DACA recipients being underinsured or not insured at all.[3] And the disparity between uninsured non-citizens and uninsured citizens is significant.[4] While some DACA recipients have been able to obtain employer-based insurance coverage,[5] such coverage is contingent upon maintaining employment. Unfortunately, the COVID-19 pandemic has resulted in significant reductions in work hours and job loss, which has negatively affected DACA recipients' eligibility to continue receiving employer-based insurance coverage.[6] Had DACA recipients not been excluded from the definition of "lawfully present"

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[1] Eligibility, 45 CFR § 152.14(a)(1) (2010).

[2] See id. at § 152.2; Centers for Medicare and Medicaid Services, MEDICAID AND CHIP COVERAGE OF "LAWFULLY RESIDING" CHILDREN AND PREGNANT WOMEN (Jul. 1, 2010), https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf.

[3] See KAISER FAMILY FOUNDATION, Key Facts on Deferred Action for Childhood Arrivals (DACA), (Apr. 13, 2023), https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/ ("While individuals with DACA status can be authorized to work, they remain ineligible for many federal programs, including health coverage through Medicaid, the Children's Health Insurance Program (CHIP), and the Affordable Care Act (ACA) health insurance Marketplaces. These restrictions result in higher uninsured rates among DACA recipients, contributing to barriers accessing health care.") [hereinafter "KFF 2023").

[4] See KAISER FAMILY FOUNDATION, Health Coverage and Care of Immigrants, (Dec. 22, 2022), https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/ \ [hereinafter "KFF 2022"].

[5] See Marissa Raymond-Flesch et al., "There is No Help Out There and If There Is, It's Really Hard to Find": A Qualitative Study of the Health Concerns and Health Care Access of Latino 'DREAMers', 55 J. ADOLESCENT HEALTH 323, 324, 327 (May 23, 2014), https://www.jahonline.org/action/showPdf?pii=S1054-139X%2814%2900235-3 ("Although DACA enables these young adults to seek legal employment, their access to health care remains limited. … Participants reported that while DACA improved their access to health care in some ways, many challenges remain. DACA may improve health care access by leading to employment opportunities with job-based insurance.").

[6] See NATIONAL IMMIGRATION LAW CENTER, Tracking DACA Recipients' Access to Health Care at 2 (June 1, 2022), *available at* https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf (reporting that 34% of DACA recipients were uninsured, 80% of insured received such insurance through their employers, and 18% lost their employer-provided health care coverage during the COVID-19 pandemic) [hereinafter "NILC 2022"].

when they lost employer-based insurance, they would have qualified for Medicaid or for a special enrollment opportunity to purchase individual market health coverage, either on or off the Exchange.[7]

When DACA recipients are uninsured, the data demonstrate that treatment is delayed or avoided altogether, which results in health disparities, increased health care costs, and other economic and societal burdens down the road. Such outcomes are particularly likely given the many other significant observable barriers experienced by DACA recipients, which include:

- Cost,[8]
- Linguistic barriers to communication,[9]
- Limited health care literacy,[10]
- Difficulty navigating the health care system,[11]
- Fear or mistrust of health care providers and institutions,[12]
- Fear of being discriminated against or deported in pursuit of seeking treatment,[13]
- Confusion about eligibility for insurance coverage under any available program,[14]
- Exclusions from certain COVID-19-related support policies,[15] and
- Employment status.[16]

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[7] See Daniel McDermott et al., How Has the Pandemic Affected Health Coverage in the U.S.?, KAISER FAMILY FOUNDATION (Dec. 9, 2020), https://www.kff.org/policy-watch/how-has-the-pandemic-affected-health-coverage-in-the-u-s/. In fact, 40% of uninsured individuals before the pandemic could have received health care coverage for free, either through Medicaid or a zero-premium bronze plan on the Exchange. See id.; see also Rachel Garfield et al., Eligibility for ACA Health Coverage Following Job Loss, KAISER FAMILY FOUNDATION (May 13, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/eligibility-for-aca-health-coverage-following-job-loss/; Karen Pollitz & Gary Claxton, Changes in Income and Health Coverage Eligibility After Job Loss Due to COVID-19, KAISER FAMILY FOUNDATION (Apr. 14, 2020), https://www.kff.org/health-reform/issue-brief/changes-in-income-and-health-coverage-eligibility-after-job-loss-due-to-covid-19/.

[8] See Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 325–6.

[9] See KFF 2022.

[10] See id.; Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 326.

[11] See Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 326.

[12] See id.; KFF 2022.

[13] See KFF 2022; Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 326. DACA recipients have specifically expressed a "persistent fear of disclosing information to authorities and health care institutions," including immigration status. Id. at 327; see also id. at 324, 326 (same); NILC 2022 at 2 (reporting that "[b]eyond eligibility barriers, respondents reported fear that using services could hurt their immigration status" and that 47% of such respondents delayed medical care because of their immigration status).

[14] See Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 327; KFF 2022.

[15] See L.J. Dawson, As Many Americans Get COVID-19 Vaccines and Financial Support, Undocumented Immigrants Keep Falling Through the Cracks, TIME (Mar. 8, 2021), https://time.com/5944806/undocumented-immigrants-covid-19/ (Although 9.3 million unauthorized immigrants' income met the threshold for COVID-19 aid, they were blocked from accessing such aid.).

[16] See NILC 2022 at 2 (Job loss, in particular during the COVID-19 pandemic, has resulted in a loss of employer-provided health care coverage.).

With respect to the most common barrier to seeking treatment (cost),[17] DACA recipients cite to financial priorities taking precedence—with such financial priorities having been exacerbated by the COVID-19 pandemic, including those relating to housing (mortgage or rent payments) and transportation (car payments, public transportation fares).[18] The COVID-19 pandemic also exacerbated DACA recipients' fear or mistrust of health care providers and institutions, leading in some cases to a reluctance to obtain COVID-19 vaccines[19] and potentially contributing to a general decline in DACA recipients' health and well-being. Given the foregoing—individually or in combination—DACA recipients have often treated professionally provided health care as a "last resort," seeking home remedies or resolutions from family members or the community before seeking medical care from a licensed provider.[20]

Delaying or avoiding treatment due to any or all of the foregoing barriers has observable adverse consequences. First and foremost, delaying or avoiding care increases morbidity and mortality—a statistic that has been aggravated by the COVID-19 pandemic and has had a greater effect on essential workers.[21] Second, there has been a shift in the costs from relatively inexpensive preventive treatment to higher-cost emergency care.[22] And, higher-cost emergency care and

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[17] See Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 325–6.

[18] See Tom K. Wong et al., 2021 Survey of DACA Recipients Underscores the Importance of a Pathway to Citizenship, CENTER FOR AMERICAN PROGRESS (February 3, 2022), https://www.americanprogress.org/article/2021-survey-of-daca-recipients-underscores-the-importance-of-a-pathway-to-citizenship/ [hereinafter "Wong 2021 Survey"]

[19] See Dawson, supra note 15; see also id. ("Even though the COVID-19 vaccine [was] available to everyone no matter their citizenship, a distrust of government and law enforcement in the immigrant community and a lack of culturally competent vaccination information and even misinformation … made some undocumented immigrants reluctant to come forward early in the vaccination rollout.").

[20] See Marissa Raymond-Flesch, 55 J. ADOLESCENT HEALTH at 325.

[21] See Medha D. Makhlouf & Patrick J. Glen, A Pathway to Health Care Citizenship for DACA Beneficiaries, 12 CALIF. L. REV. ONLINE 29, 31 (2021-2022), https://heinonline.org/HOL/P?h=hein.journals/callro12&i=30 (The DACA carve-out "contributes to the preexisting problem of stratified access to health care by immigration status and race, and it prevents some DACA beneficiaries from using health care efficiently."); id. at 40 ("[T]he DACA carve-out weakens efforts to combat public health threats like COVID-19 because it makes health care less accessible for hundreds of thousands of beneficiaries. … Delayed testing or treatment for COVID-19 contributes to the uncontrolled spread of the virus. Moreover, many DACA beneficiaries have worked continuously in essential jobs through the pandemic. Protecting their health is a public health imperative and also, arguably, morally required because of their service."); Mark E. Czeisler et al., Delay or Avoidance of Medical Care Because of COVID-19-Related Concerns – United States, June 2020, CENTERS FOR DISEASE CONTROL AND PREVENTION MORBIDITY AND MORTALITY WEEKLY REPORT (Sep. 11, 2020), http://dx.doi.org/10.15585/mmwr.mm6936a4 (Delayed or avoided medical care due to health insurance status might increase morbidity and mortality associated with treatable and preventable health conditions including COVID-19.).

[22] See Devyani Ramgobin et al., Papering Over the Cracks: COVID-19's Amplification of the Failures of Employer-Based Health Insurance Coverage,11 J. CMTY. HOSP. INT. MED. PERSPECT. 107, 108-109 (Jan. 26, 2021), https://doi.org/10.1080/20009666.2020.1851869 ("[I]t is likely that in the face of a pandemic and high cost of treatment, many uninsured individuals will forgo visits to the emergency rooms across the country. … Coupled with the loss of employment and lack of health insurance, individuals might find themselves without access to medical care, even though they may live within the vicinity of several hospitals… The cost of health services that uninsured individuals receive that they do not directly pay for

other forms of treatment received by uninsured individuals are less likely to be paid for by such individuals.[23] Thus, the cost is absorbed by government agencies and by the providers and institutions that furnish the care at no or at a reduced charge to the uninsured individual.[24]

Clarifying that DACA recipients are eligible for coverage under the Health Plans is also likely to have net economic benefits. Overall, DACA recipients are relatively young and healthy.[25] Thus, making clear that DACA recipients are eligible for coverage will mitigate systemic costs—in a country with the highest health care costs per capita, year after year[26]—by including these younger and healthier individuals in the risk pools that constitute the Affordable Care Act ("ACA") insurance market.[27]

DACA recipients make significant contributions to the United States economy—contributions that will increase if DACA recipients have greater access to health care. Because of DACA, many have enrolled in higher education and are employed.[28] In these capacities, DACA recipients have been able to demonstrate their productivity in the country's workforce. They contribute towards health care programs and yet, they have been "barred from eligibility for

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are absorbed by the federal government, localities, states, philanthropic donations, practitioners, and institutions that provide care to those uninsured at no, or reduced, charge. In 2001 for example, public subsidies to hospitals amounted to 23.6 USD billion with overall public support from state, federal, and local governments accounting for 75-85% of the value of uncompensated care provided to uninsured people."); Medha D. Makhlouf, 12 CALIF. L. REV. ONLINE at 31 ("People without access to affordable health coverage tend to delay and avoid seeking health care until their illness or injury is advanced or urgent.");

[23] See KFF 2023.

[24] Such providers and institutions may also write the cost off as a bad debt or charity care. See AMERICAN HOSPITAL ASSOCIATION, Fact Sheet: Uncompensated Hospital Care Cost, (February 2022), https://www.aha.org/fact-sheets/2020-01-06-fact-sheet-uncompensated-hospital-care-cost.

[25] See, generally, KFF 2023; and See Medha D. Makhlouf, 12 CALIF. L. REV. ONLINE at 39-40.

[26] See Munira Z. Gunja et al., U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes, THE COMMONWEALTH FUND ISSUE BRIEFS (Jan. 31, 2023), https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022#:~:text=In%202021%2C%20the%20U.S.%20spent,higher%20than%20in%20South%20Korea.

[27] See Makhlouf supra note 25 at 39-40 (The "DACA carve-out exacerbates two sources of inefficiency in the health care system that contribute to the high cost of health care in the United States. People without access to affordable health coverage tend to delay and avoid seeking health care until their illness or injury is advanced or urgent. The DACA carve-out steers beneficiaries away from relatively inexpensive preventative care and treatment and toward higher-cost emergency services. The carve-out also excludes a generally younger and healthier segment of the population from the risk pools that make up the ACA insurance market, thereby forgoing an opportunity to mitigate systemic costs. … Providing DACA beneficiaries with access to subsidized health coverage may also be economically beneficial in a larger sense because access to health care promotes better health, which helps people to be more productive members of the workforce.").

[28] See Tom K. Wong et al., DACA Recipients' Economic and Educational Gains Continue to Grow, CENTER FOR AMERICAN PROGRESS (Aug. 28, 2017), https://www.americanprogress.org/article/daca-recipients-economic-educational-gains-continue-grow/ (Reporting that 91% of respondents are employed and 36% of respondents 25 years and older have a bachelor's degree or higher.).

ACA, Medicaid, and other government subsidized health care."[29] Because of their higher education and employment experience, DACA recipients have been able to obtain higher-paying jobs, which has led to greater financial independence for not only the DACA recipients but also their families.[30] Consequently, DACA recipients have made significant investments, such as buying a car or a house for the first time, for which States have collected taxes and other fees, as well as investments in their own communities.[31]

The contributions of DACA recipients have been particularly highlighted during the recent COVID-19 pandemic. Many DACA recipients have served on the frontlines of the COVID-19 pandemic as essential workers, including physicians, medical students, teachers, and workers in the transportation, manufacturing, and waste management/support services industries.[32] Those who put themselves at risk by serving as essential workers to ensure that care is provided to those in need, goods continue to move through the economy, and the economy continues to grow, should be provided access to affordable health insurance coverage through the Health Plans, so that they may continue to be productive members of this country's workforce.

In sum, removing the exclusion currently barring DACA recipients from being eligible to receive insurance coverage through the Health Plans will be an investment that will continue to pay dividends for years to come.

III. Increasing access to the Health Plans for and encouraging the use of existing programs and benefits by DACA recipients is a net benefit to, and good investment in, health equity and economic outcomes in the United States.

Since its inception, DACA has improved outcomes for its recipients and for the United States economy. According to 2022 survey results, after receiving DACA:

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[29] Jose M., In Major Victory for DACA Recipients, President Biden Announces Health Care Expansion for DACA Recipients, UNITED WE DREAM (Apr. 13, 2023), https://unitedwedream.org/press/in-major-victory-for-daca-recipients-president-biden-announces-health-care-expansion-for-daca-recipients/.

[30] See Wong 2021 Survey (Reporting that 62.6% of respondents said that their increased earnings "helped [them] become financially independent" and 61.1% of respondents said that their increased earnings "helped [their] families financially.").

[31] See id. (Reporting that 50.6% of respondents reported buying their first car after receiving DACA and 16.5% of respondents purchased their first home after receiving DACA.).

[32] See Dawson, supra note 15 (An estimated 80% of undocumented immigrants were essential workers during the COVID-19 pandemic.); Nicole Prchal Svajlenka, A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response, CENTER FOR AMERICAN PROGRESS (Apr. 6, 2020), https://www.americanprogress.org/article/demographic-profile-daca-recipients-frontlines-coronavirus-response/#:~:text=DACA%20recipients%2C%20for%20example%2C%20are,to%20America%27s%20youngest%20generation%20remotely. (Hundreds of thousands of DACA recipients were essential workers during the COVID-19 pandemic, including health care providers, teachers, and workers of the food industry.); Daniela Alulema, DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID-19 Pandemic, as Supreme Court Decision Looms, Center for Migration Studies (Mar. 30, 2020), https://cmsny.org/daca-essential-workers-covid/ (Tens of thousands of DACA recipients were essential workers during the COVID-19 pandemic, including health care providers and workers in the transportation, manufacturing, and waste management/support services industries.).

- 47.4 percent of respondents moved to a job with better pay.
- 40.6 percent of respondents moved to a job with better working conditions.
- 40.6 percent of respondents moved to a job that "better fits [their] education and training."
- 42.1 percent of respondents moved to a job that "better fits [their] long-term career goals."
- 46.6 percent of respondents moved to a job with health insurance or other benefits.
- 13.7 percent of respondents obtained professional licenses, a figure that increases to 15.9 percent among respondents 25 years and older.[33]

DACA recipients and their households also constitute a significant tax base. According to the Center for Economic Progress, DACA recipients and their households pay $6.2 billion in federal taxes and $3.3 billion in state and local taxes each year.[34] The payroll taxes paid by DACA recipients are estimated to contribute more than $40 billion in support of Social Security and Medicare over the course of a ten year period.[35] With respect to undocumented immigrants specifically, a 2015 study concluded that unauthorized immigrants as a whole contributed more to the Medicare Trust Fund than they received. [36] Increasing DACA recipients' participation in the Health Plans will strengthen the risk group as a whole, as discussed above, and also provide a financial benefit to insurers on the whole.[37]

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[33] See Tom K. Wong et al., DACA Boosts Recipients' Well-Being and Economic Contributions: 2022 Survey Results, CENTER FOR AMERICAN PROGRESS (April 27, 2023), https://www.americanprogress.org/article/daca-boosts-recipients-well-being-and-economic-contributions-2022-survey-results/.

[34] See Nicole Prchal Svajlenka et al., The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition - Center for American Progress, CENTER FOR AMERICAN PROGRESS (November 24, 2021), https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/.

[35] See Cathy Cha, We Stand With You, HAAS JR (June 18, 2020) https://www.haasjr.org/perspectives/letters-from-the-president/we-stand-with-you?gclid=Cj0KCQjwpPKiBhDvARIsACn-gzCq1kTY2NPLOgwrlSiMv_KNPUswFbS8FffNWB4c-M9wTMELbVLbS7MaAgedEALw_wcB; : What We Know About DACA Recipients in the United States - Center for American Progress.

[36] See Zallman, L., Wilson, F.A., Stimpson, J.P. et al. Unauthorized Immigrants Prolong the Life of Medicare's Trust Fund, J GEN INTERN MED 31, 122–127 (2016) https://doi.org/10.1007/s11606-015-3418-z ("…from 2000 to 2011, unauthorized immigrants contributed $2.2 to $3.8 billion more to the Medicare Trust Fund than they withdrew annually (a total surplus of $35.1 billion). Had unauthorized immigrants neither contributed to nor withdrawn from the Trust Fund during those 11 years, it would become insolvent in 2029—1 year earlier than currently predicted**. *If 10 % of unauthorized immigrants became authorized annually for the subsequent 7 years, Medicare Trust Fund surpluses contributed by unauthorized immigrants would total $45.7 billion***.) (emphasis added).

[37] See Leah Zallman, et. al., Immigrants Pay More In Private Insurance Premiums Than They Receive In Benefits, HEALTH AFFAIRS (Oct. 2018) https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.0309 ("Immigrants accounted for 12.6 percent of premiums paid to private insurers in 2014, but only 9.1 percent of insurer expenditures. Immigrants' annual premiums exceeded their care expenditures by $1,123 per enrollee (for a total of $24.7 billion), which offsets a deficit of $163 per US-born enrollee. Their net subsidy persisted even after ten years of US residence. In 2008–14, the surplus premiums of immigrants totaled $174.4 billion.").

After taxes, DACA recipients and their households have a combined $25.3 billion in spending power to put back into their communities.[38] Moreover, DACA recipients "own 68,000 homes, making $760 million in mortgage payments and $2.5 billion in rental payments annually."[39] This spending power and home ownership has strengthened the economy measurably[40] and further demonstrates the dividends that the DACA program has provided to the United States economy.

Affirmative steps to remove barriers to health insurance for DACA recipients, such as this regulatory change, can also be expected to help close the uninsurance gap more broadly. Many lawfully present immigrants who are eligible for coverage remain uninsured.[41] Reasons for this gap in coverage include a range of enrollment barriers, including those discussed above. Research suggests that changes to immigration policy made by the Trump Administration contributed to growing fears among immigrant families about enrolling themselves and/or their children in Medicaid and CHIP even if they were eligible.[42] In particular, changes to the public charge policy[43] likely contributed to decreases in participation in Medicaid among immigrant families and their primarily U.S.-born children. While the Biden Administration reversed many of these changes, including the changes to the public charge policy, and has increased investments in outreach and enrollment assistance,[44] the Proposed Rule, if finalized, would close a meaningful gap in granting access to Health Plan coverage for DACA recipients. The Proposed Rule would also help reverse some of the punitive messaging that has kept eligible immigrants from accessing health care and other benefits to which they are entitled.

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[38] Id.

[39] Nicole Prchal Svajlenka and Philip E. Wolgin, What We Know About the Demographic and Economic Impacts of DACA Recipients: Spring 2020 Edition, Center for American Progress (Apr. 6, 2020) https://www.americanprogress.org/article/know-demographic-economic-impacts-daca-recipients-spring-2020-edition/.

[40] See, e.g., Dawson, supra note 30.

[41] See Samantha Artiga and Petry Ubri, Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health, KAISER FAMILY FOUNDATION (Dec. 13, 2017) https://www.kff.org/racial-equity-and-health-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/.

[42] See id.

[43] See KAISER FAMILY FOUNDATION, Changes to "Public Charge" Inadmissibility Rule: Implications for Health and Health Coverage (Aug. 12, 2019) https://www.kff.org/racial-equity-and-health-policy/fact-sheet/public-charge-policies-for-immigrants-implications-for-health-coverage/ ("Under longstanding policy, if authorities determine that an individual is "likely to become a public charge," they may deny that person's application for lawful permanent residence or their entry into the U.S. Certain immigrants, including refugees and asylees and other humanitarian immigrants, are exempt from public charge determinations under law." The Trump administration rule "broaden[ed] the programs that the federal government will consider in public charge determinations to include previously excluded health, nutrition, and housing programs, and outlines the factors the federal government will consider in making a public charge consideration.").

[44] See KAISER FAMILY FOUNDATION, Health Coverage and Care of Immigrants (December 20, 2022, updated on *March 30, 2023)* https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/.

Finally, although DACA recipients were disproportionately exposed to COVID-19 while participating on the front-lines as essential workers during the pandemic,[45] they received fewer pandemic-related government benefits, such as stimulus checks, despite being eligible for those benefits.[46] According to a recent study, "24% of respondents reported having someone in their home who was denied a stimulus check, even though they were otherwise eligible, because their spouse or parents filed taxes with an Individual Taxpayer Identification Number (ITIN)."[47] These failures to properly include DACA recipients in programs that they are otherwise eligible for, may have an impact on their willingness to apply for and participate in other government programs.

The Biden Administration has emphasized the availability of Federal programs, opportunities, and resources that have been and continue to be available to DACA recipients.[48] Specifically, there are 24 various Federal government programs or credits that DACA recipients may take advantage of, including the National Farmworker Jobs Program and the Child Tax Credit and Earned Income Tax Credit among other credits, and Emergency Medicaid.[49] Providing DACA recipients with access to the Health Plans may encourage DACA recipients to utilize these valuable programs, as well as other Federal programs that they are eligible for. The increased use of these programs could lead to even better outcomes for the DACA recipients, their families, their communities, and society at large. By including younger, healthier DACA recipients in the overall risk pool of ACA participants and ensuring their overall health and welfare, the economic well-being of the United States and society at large will benefit significantly.

IV. Conclusion

DACA recipients have contributed significantly to the economy, enhanced their communities, and served our country on the front lines as essential workers during the COVID-19 pandemic. DACA recipients contribute greatly to society, while getting less in terms of benefits. Treating DACA recipients like other immigrants "lawfully present" in the United States effectuates the purpose of the ACA by expanding access to health insurance and improving health benefits, not only for DACA recipients and their families, but to communities across the United States. If the rule is finalized as proposed, it would increase access to health care for DACA recipients, many of whom participate in the health care system as providers themselves.

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[45] See Dawson supra note 15.

[46] See Amid Changes to the DACA Program and COVID-19, DACA Recipients are Fired Up and Civically Engaged UNITED WE DREAM (October 20, 2020, updated March 16, 2022) https://unitedwedream.org/resources/amid-changes-to-the-daca-program-and-covid-19-daca-recipients-are-fired-up-and-civically-engaged/

[47] See id.

[48] See THE WHITE HOUSE FACT SHEET: Fact Sheet: President Biden Announces Plan to Expand Health Coverage to DACA Recipients (April 13, 2023) https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/13/fact-sheet-fact-sheet-president-biden-announces-plan-to-expand-health-coverage-to-daca-recipients/.

[49] See id.

For all the foregoing reasons, Lawyers for Civil Rights strongly supports the Proposed Rule and urges that it be adopted.[50]

Respectfully submitted,

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[50] LCR's comment letter for the Proposed Rule was drafted with assistance from the law firm of Proskauer Rose LLP.