

Health Coverage Options for Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Categories of Immigrants

This job aid provides information and guidance Navigators, Certified Application Counselors (CACs), and Enrollment Assistance Personnel (EAPs) (collectively, assisters) need to know about health coverage options for DACA recipients and certain other noncitizens.

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Version 1.0. September 2024. This information is intended only for the use of entities and individuals certified to serve as Navigators, certified application counselors, or non-Navigator assistance personnel in a Federally facilitated Marketplace. The terms “Federally facilitated Marketplace” and “FFM,” as used in this document, include FFMs where the state performs plan management functions. Some information in this manual may also be of interest to individuals helping consumers in State-based Marketplaces and State-based Marketplaces using the Federal Platform. This material was produced and disseminated at U.S. tax filer expense.

Overview of DACA

In 2012, the United States Department of Homeland Security (DHS) established the Deferred Action for Childhood Arrivals (DACA) policy. This policy created a process to defer removal of certain noncitizens who years earlier came to the U.S. as children, meet other criteria, and do not present other circumstances that would warrant removal. In 2022, DHS published the DACA Final Rule, putting into effect regulations governing DACA.ⁱ

Although deferred action does not confer a lawful immigration status, DACA recipients may stay in the U.S. while their deferred action is in effect. Individuals may request consideration of deferred action for a period of two years, subject to renewal, and if approved, will then be eligible for work authorization if they can demonstrate economic necessity.ⁱⁱ

In order to be considered for DACA, individuals must demonstrate to U.S. Citizenship and Immigration Services (USCIS) through verifiable documentation that they meet the following guidelines and merit a favorable exercise of discretion.

1. Were under the age of 31 as of June 15, 2012 (born on or after June 16, 1981);
2. Came to the U.S. before their 16th birthday;
3. Have continuously resided in the U.S. since June 15, 2007, up to the time of filing their request for DACA;
4. Were physically present in the U.S. on June 15, 2012, and at the time they filed a request for DACA with USCIS;
5. Had no lawful immigration status both on June 15, 2012, and at the time they filed their request for DACA, meaning that:
 - a. They either
 - i. never had a lawful immigration status on or before June 15, 2012, or
 - ii. Any lawful immigration status or parole they had before June 15, 2012, expired on or before June 15, 2012, and
 - b. Any lawful status they had after June 15, 2012, expired or otherwise terminated before they submitted their request for DACA;
6. Are currently enrolled in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the U.S. Coast Guard or U.S. armed forces; and

7. Have not been convicted of a felony or a misdemeanor that meets certain criteria, and do not otherwise pose a threat to national security or public safety.ⁱⁱⁱ

NOTE: A District Court order currently prevents USCIS from processing initial DACA requests. USCIS continues to accept and process DACA renewal requests and accompanying applications for employment authorization. For more information, please see: [DACA Litigation Information and Frequently Asked Questions](#).

Regulatory Summary of CMS Lawfully Present Final Rule

On May 8, 2024, a U.S. Department of Health and Human Services (HHS) final rule appeared in the Federal Register modifying the definition of “lawfully present” used to determine eligibility for enrollment in a Qualified Health Plan (QHP) through the Health Insurance Marketplace^{®1} and a Basic Health Program (BHP). Under this rule, DACA recipients will be treated the same as other individuals granted deferred action for purposes of eligibility for coverage through a Marketplace plan or a BHP standard health plan. The rule also includes modifications to the definition of “lawfully present” used to determine eligibility for coverage through a Marketplace or a BHP to create administrative efficiencies, streamline verification processes, and promote clarity and transparency.

Effective November 1, 2024, DACA recipients and other noncitizens impacted by the final rule who meet all other eligibility requirements will be eligible to enroll in:

1. a QHP through the Marketplace with financial assistance like advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs) or
2. a BHP standard health plan.

This final rule does not make any changes to the definition of “lawfully present” for Medicaid and the Children’s Health Insurance Program (CHIP) under section 214 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 214 option; P.L. 111-3), often referred to as the “CHIPRA 214 option”, at this time. The Centers for Medicare & Medicaid Services (CMS)’s current guidance regarding the definition of “lawfully present” used in determining eligibility for Medicaid and CHIP under the CHIPRA 214 option, based on State Health Official (SHO) letters, [SHO #10-006](#) and [SHO #12-002](#), continues to apply. Therefore, DACA recipients remain ineligible for full Medicaid and CHIP coverage.

Other Impacted Noncitizens

The Final Rule makes additional changes to the definition of “lawfully present” for Marketplaces and BHPs. These changes result in certain discrete groups of noncitizens no longer being

¹ Health Insurance Marketplace[®] is a registered service mark of the U.S. Department of Health & Human Services.

excluded from being considered "lawfully present" for purposes of enrolling in Marketplace and BHP coverage. Key changes include:

- Noncitizens with Work Authorization: Noncitizens granted employment authorization are considered lawfully present regardless of their underlying immigration status or category. Noncitizens with employment authorization might be issued an Employment Authorization Document (EAD), also called a work permit or I-766. Noncitizens might have other documentation that establishes their authorization to work.
- Family Unity Beneficiaries: Certain Family Unity Beneficiaries who were previously excluded from the definition of "lawfully present" are now considered eligible.
- Lawful Permanent Resident Applicants: Individuals with a pending application for adjustment of status to lawful permanent resident (LPR) are no longer required to have an approved immigrant visa petition to be considered lawfully present.
- Removal of 180 day Waiting Period for Certain Noncitizen Children: Individuals under age 14 applying for asylum, withholding of removal, or relief under the Convention Against Torture are **no longer required wait for 180 days** while an application for these immigration categories is pending to be considered lawfully present.
- Special Immigrant Juvenile Children: Children with an approved petition for Special Immigrant Juvenile (SIJ) classification are lawfully present.

Marketplace Eligibility

To qualify for health coverage through a Marketplace, a consumer must be a U.S. citizen or national or be "lawfully present" in the U.S. and expect to remain so for the entire period for which coverage is sought.^{iv} Because of the changes that the Final Rule made to the Marketplace definition of "lawfully present," DACA recipients and certain other noncitizens who meet all other Marketplace eligibility requirements may now be eligible for coverage through the Marketplace.

The ACA requires Marketplaces to verify that applicants are lawfully present in the U.S.^v The Marketplace verifies citizenship and immigration status through the Social Security Administration (SSA) and/or DHS; this information will be used only by the Marketplace to determine consumers' eligibility for Marketplace coverage.

DACA recipients generally have Social Security numbers, and all Marketplace applicants who have a Social Security number (SSN) must provide this number when applying for coverage.^{vi} Consumers who attest to having an eligible immigration status should also provide a document that the agency can use to verify their immigration status and a USCIS/A number they have available; DACA recipients will generally have an Employment Authorization Document (EAD or I-766). There are several types of acceptable documents that a consumer might show to establish their immigration status.^{vii}

Data matching issues (DMIs), or “inconsistencies,” occur when information a consumer enters in their Marketplace application doesn’t match the data that the Marketplace has from trusted data sources, like SSA records or Internal Revenue Service (IRS) databases. Consumers with citizenship/immigration DMIs have 95 days from the date of the eligibility determination notice to resolve the issue. For more information on DMIs refer to [How to Resolve Income Data Matching Inconsistencies \(DMIs\) webinar](#) or [Resolving Data Matching Issues \(DMIs\) job aid](#).

If application filers need help with the identity verification process, they can call the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325).

Eligibility for Marketplace Financial Assistance

DACA recipients and certain other noncitizens may now be eligible for APTC and CSRs to help lower their coverage costs based on their household size, income, and other eligibility criteria.^{viii} Most consumers must have an annual household income between 100 percent and 400 percent of the federal poverty level (FPL) to be eligible for financial assistance. DACA recipients and other noncitizens impacted by the final rule may be eligible for APTC and CSRs even if their household income is below 100 percent of the FPL, since they are ineligible for full Medicaid coverage due to their immigration status.

The American Rescue Plan Act of 2021 (ARP) made the premium tax credit (PTC) available to eligible consumers with household income above 400 percent of the FPL, and it capped how much of a family’s household income they will pay towards the premiums for a benchmark plan before PTC becomes available at 8.5 percent. The Inflation Reduction Act, signed into law on August 16, 2022, extended these enhanced Marketplace tax credits through taxable years beginning in 2025. Under the enhanced subsidies made available through the ARP Act and the Inflation Reduction Act, DACA recipients and certain other noncitizens with household incomes up to 150 percent of the FPL may be eligible for zero-dollar premium silver plans, if otherwise eligible for APTC.^{ix}

Mixed Immigration Status

Some consumers live in a mixed immigration status household, which is a household made up of people holding different citizenship or immigration statuses. In this situation, each household member may be eligible for different health coverage options based on their citizenship or immigration status. The Marketplace collects citizenship and immigration information only for applicants who are applying for coverage for themselves, and not for household members who are not seeking coverage.

For more information about mixed immigration households, refer to [Health Coverage Options for Immigrants job aid](#), and [Immigrant Eligibility for Marketplace and Medicaid and CHIP Coverage webinar](#).

Special Enrollment Periods

DACA recipients will qualify for the existing Special Enrollment Period (SEP) for individuals who become newly eligible to enroll in a QHP through a Marketplace (unless they are ineligible to enroll in a QHP for another reason).^x

DACA recipients and other impacted noncitizens who apply through the Marketplace between November 1, 2024, and December 31, 2024, should attest that they newly gained eligible immigration status, and that they gained eligible immigration status on November 1, 2024 (the effective date of the rule).

Even though the rule will become effective during the Open Enrollment Period, attesting to eligibility for the SEP can help DACA recipients and other noncitizens impacted by the Final Rule have their Marketplace coverage start sooner.

DACA recipients and other noncitizens impacted by the Final Rule who wish to enroll in coverage starting December 1, 2024, should complete an application for 2024 coverage between November 1 – November 30, 2024, and attest to newly gaining eligible immigration status.

DACA recipients and other noncitizens impacted by the Final Rule who wish to enroll in coverage starting January 1, 2025, should complete an application for 2025 coverage between December 1 – December 31, 2024, and attest to newly gaining eligible immigration status.

For more information about Special Enrollment Periods, including application functionality, refer to the [Immigrant Eligibility for Marketplace and Medicaid and CHIP Coverage webinar](#) and [Special Enrollment Periods job aid](#).

Medicaid and CHIP Eligibility

The Final Rule does not change or expand eligibility for DACA recipients or other noncitizens impacted by the Final Rule in Medicaid or CHIP. States that have elected the option to cover "lawfully present" children and/or pregnant individuals in Medicaid and CHIP under the CHIPRA 214 option should continue to reference and implement the definition of "lawfully present" set forth in the State Health Official Letters [#10-006](#) and [#12-002](#).

DACA recipients remain ineligible for full Medicaid and CHIP coverage. DACA recipients may continue to be eligible for limited Medicaid coverage for the treatment of an emergency medical condition, if they meet all other eligibility requirements in the state except for U.S. citizenship or eligible immigration status.

Basic Health Program Eligibility

Similar to Marketplace eligibility, starting November 1, 2024, DACA recipients and other noncitizens impacted by the Final Rule will now be eligible under the definition of "lawfully present" used to determine eligibility for a BHP standard health plan in those States that elect to operate the program, if otherwise eligible.

Through the BHP, states can provide coverage to individuals who are citizens or lawfully present noncitizens, who do not qualify for Medicaid, CHIP, or other minimum essential coverage and have household income that exceeds 133 percent but does not exceed 200 percent of the FPL. However, DACA recipients and other lawfully present noncitizens impacted by the Final Rule may be eligible for BHP coverage even if their income is below 133 percent of the FPL, because they are unable to qualify for Medicaid due to their noncitizen status.

Note: Minnesota has operated a BHP since January 1, 2015. New York implemented a BHP on April 1, 2015. As of April 1, 2024, New York suspended its BHP, known as the Essential Plan, and transitioned all eligible BHP enrollees to a new Marketplace coverage program under a section 1332 waiver known as the Essential Plan Expansion. Oregon's BHP began July 1, 2024.^{xi}

Assister Tips

A consumer's immigration status may be a sensitive topic. Assisters should be mindful of this during conversations with consumers. Below are some legal requirements as well as recommended best practices for assisters when discussing consumers' immigration status.

- Navigators are legally required under 45 CFR § 155.205(c) to provide free oral interpretation and written translation assistance by qualified persons free of charge for consumers with Limited English Proficiency (LEP). For more information, refer to [Serving Consumers with Limited English Proficiency](#).
- Assisters should inform consumers that documentation of citizenship and immigration status is only necessary for those applying for coverage, not for other members of the household.
- Assisters should inform consumers that the Marketplace will not require a Social Security Number (SSN) from individuals who are not applying for coverage for themselves. Individuals who are applying for coverage for themselves are required to provide an SSN on their application if they have one.
- Assisters should provide information about eligible immigration statuses to help consumers decide who in their family may have an eligible immigration status to apply for health coverage. Assisters should provide consumers information on acceptable documentation to show someone's immigration status. For more information about acceptable documents needed to apply, refer to [Immigration Document Types](#).
- Assisters should avoid unnecessary questions, especially questions about the immigration status of individuals who aren't applying for health coverage and live in mixed immigration status households. Asking unnecessary questions regarding the immigration status of non-applicant family or household members could violate Title VI of the Civil Rights Act of 1964 or Section 1557 of the Affordable Care Act.

- Assistors should avoid words such as "undocumented," "unauthorized," "alien" or "illegal." Instead, provide fact sheets and other materials that describe lawfully present immigration status, such as the [webinar slide deck](#) and fact sheets listed at the end of this job aid.
- Assistors may encourage consumers to consult an attorney if the consumer has questions about eligible immigration statuses or if the consumer needs help obtaining immigration documents.
- Assistors should let consumers know that Marketplace coverage, including financial assistance with APTC and CSR and BHP, will not count in the DHS public charge inadmissibility determination.^{xii}

For a consumer to request consideration of DACA (or to request renewal), they must create a USCIS account and submit:

- [Form I-821D](#), Consideration of Deferred Action for Childhood Arrivals,
- [Form I-765](#), Application for Employment Authorization, and
- [Form I-765WS](#), Establishing an economic need for employment.

NOTE: A District Court order currently prevents USCIS from processing initial DACA requests. USCIS continues to accept and process DACA renewal requests and accompanying applications for employment authorization. For more information, please see: [DACA Litigation Information and Frequently Asked Questions](#).

Additional Resources

[Advance Payments of the Premium Tax Credit \(APTC\) and Cost-Sharing Reductions \(CSR\) Basics Webinar](#)

Final Rule: [Clarifying the Eligibility of Deferred Action for Childhood Arrivals \(DACA\) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program](#) (CMS-9894-F)

Final Rule Fact Sheet: [HHS Final Rule Clarifying the Eligibility of Deferred Action for Childhood Arrivals \(DACA\) Recipients and Certain Other Noncitizens](#) (May 03, 2024)

Final Rule White House Press Release: [Biden-Harris Administration Finalizes Policies to Increase Access to Health Coverage for DACA Recipients](#) (May 03, 2024)

[DHS final rule on DACA](#)

[Immigrant Eligibility for Marketplace and Medicaid and CHIP Coverage webinar](#) and [Medicaid and CHIP Coverage of Lawfully Residing Children and Pregnant Individuals](#)

[Medicaid and CHIP Coverage of Individuals with Deferred Action for Childhood Arrivals \(DACA\)](#)

[How to Resolve Income Data Matching Inconsistencies \(DMIs\) webinar](#)

[Health Coverage Options for Immigrants job aid](#)

[Health Coverage Options for Certain Ukrainian Nationals](#)

[Health Coverage Options for Afghan Evacuees](#)

[Medicaid Eligibility for COFA Migrants](#)

[Resolving Data Matching Issues \(DMIs\) job aid](#)

[Serving Consumers with Limited English Proficiency](#)

[Special Enrollment Periods job aid](#)

i [2012 DHS memo](#), [2022 DHS DACA Final Rule](#), [8 CFR 236.21](#), [8 CFR 236.22\(b\)\(6\)](#)

ii [8 CFR 274a](#)

iii [8 CFR 236.22\(b\)\(6\)](#)

iv [45 CFR 155.305\(a\)\(1\)](#)

v [42 U.S.C. 18081\(c\)\(2\)\(B\)](#)

vi [45 CFR 155.310\(a\)\(3\)\(i\)](#)

vii [Immigration Document Types](#)

viii [26 U.S.C. 36B\(e\)\(2\)](#), [42 U.S.C. 18082\(d\)](#)

ix See Section 9661 of the American Rescue Plan Act of 2021, [Public Law 117-2](#) (March 11, 2021), and Section 12001 of the Inflation Reduction Act of 2022, [Public Law 117-169](#) (August 16, 2022).

x [45 CFR 155.420\(d\)\(3\)](#)

xi [Basic Health Program](#)

xii [Public Charge Resources](#)

