

FREQUENTLY ASKED QUESTIONS

Exclusion of DACA Recipients from Affordable Health Care Programs

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For general information on DACA, see www.nilc.org/daca/.

Exclusion of DACA Recipients from the definition of ‘lawfully present’ in health care affordability programs

Department of Homeland Security (DHS) regulations make clear that recipients of Deferred Action for Childhood Arrivals (DACA) are lawfully present immigrants. However, DACA recipients are excluded from the definitions of lawfully present that apply to the Affordable Care Act and many states’ CHIP and Medicaid programs.¹ As a result, they are unable to access these vital healthcare affordability resources. This exclusion is the result of administrative actions the Obama administration, which created DACA, took in 2012. The current administration could reverse the exclusion through its own administrative action, without any need for Congressional involvement.

What are the sources of the restrictions on DACA recipients’ eligibility for health care?

On August 28, 2012, the Obama administration took two administrative actions that restricted DACA recipients’ eligibility for health care. It modified the regulation that provides the definition of ‘lawfully present’ under the Affordable Care Act by adding a subsection that explicitly excludes DACA recipients.² On the same date, the Centers for Medicare and Medicaid Services (CMS) released a letter to state health officials which stated that DACA recipients were exempted from the definition of “lawfully residing” under a CHIP program option that allows states to cover lawfully residing children and pregnant people in Medicaid and CHIP.³

These policies do not affect any other immigration category and do not affect individuals granted deferred action under bases other than DACA.

What do DACA recipients have access to in terms of health insurance?

DACA recipients currently have the same access to health care and health insurance as undocumented immigrants. For example, individuals granted deferred action under the DACA policy:

- Can buy full-price health insurance outside of the marketplaces created by the ACA.

¹ See 45 CFR 152.2(8), <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-152/subpart-A/section-152.2> and CMS letter to State Health Officials 12-02, <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf>.

² 45 CFR 152.2(8), <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-152/subpart-A/section-152.2>.

³ SHO 12-002, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-12-002.pdf>.

- Can get health insurance through their employer, if it is available.
- Can access some medical services at no cost or on a sliding-fee scale at community health centers and hospital clinics.
- Depending on where they live, may have access to state or locally-funded programs. See NILC's "Medical Assistance Programs for Immigrants in Various States" table, available at www.nilc.org/medical-assistance-various-states/, for more information about how medical coverage varies in the states.

In addition, the following health-specific programs are available regardless of immigration status in all states:

- Basic treatment for emergency medical conditions.
- Services provided by community health centers and free clinics.
- Public health services (immunizations, treatment of communicable diseases such as tuberculosis, HIV, sexually transmitted diseases).
- Treatment for emergency medical conditions, including labor and delivery, under emergency Medicaid.
- Hospital and community health center 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.

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

No. The restrictions apply only to DACA recipients. Individuals granted deferred action through other avenues will have access to all the options for affordable health insurance discussed below.

What do people granted deferred action outside of DACA have access to in terms of health care?

People granted "non-DACA" deferred action:

- 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 <https://www.nilc.org/issues/health-care/lawfully-residing-medicaid-chip/> for more details.
- Can buy private, comprehensive insurance, and receive subsidies, through the health care marketplaces established under the ACA. The names these marketplaces may depend on the state, such as "Covered California" or the "New York State of Health."
- Can enroll in a "Basic Health Program," if their state has one.
- May have access to some medical services at no cost or on a sliding-fee scale at community health centers and hospital clinics.

Can DACA-eligible individuals enroll in health insurance provided by an employer?

Yes. If an employer offers health insurance to its employees, an employee granted deferred action through the DACA process may enroll in it like any other employee.

How do the health care restrictions affect DACA recipients who are pregnant?

Under the federal Emergency Medical Treatment and Active Labor Act, people are allowed to give birth in any hospital that has an emergency department, regardless of their immigration status.⁴ This law applies in every state. For people 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.”

Almost half the states have opted under CHIP to provide prenatal health care to financially eligible individuals, regardless of their immigration status. However, in a majority of states, DACA recipients are often unable to obtain financial assistance with regular prenatal care. DACA recipients also find it difficult to obtain medical attention after delivery (postpartum care), since emergency Medicaid does not cover routine postpartum services.

What are the key policy concerns about the restrictions?

In addition to restricting DACA recipients’ access to health care, excluding them from the definition of lawfully present:

- Treats DACA recipients as different and “less than” other lawfully present immigrants, including other recipients of deferred action.
- Sets a bad precedent for future immigration policies that might treat newly legalized immigrants as a separate class that has fewer rights than other lawfully present immigrants.
- Violates the spirit and compromises of the Affordable Care Act, which was intended to expand health care.
- Undermines DACA program’s goals of enhancing the well-being of people who came into the country as children.

The exclusion of DACA recipients from eligibility for healthcare goes beyond the existing harmful restrictions on access to health care for immigrants enacted by Congress, such as the five-year bar and categorical exclusion of undocumented immigrants from most public insurance programs. However, unlike those statutory restrictions, the exclusion of DACA recipients from health coverage can and should be undone through administrative action by CMS. NILC continues to work towards that end in its advocacy.

⁴ 42 USC 1395dd, <https://www.law.cornell.edu/uscode/text/42/1395dd>.