



## The Daily Dish

# Executive Overreach and the ACA

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Three weeks ago, the press reported that President Biden had made participants in the Deferred Action for Childhood Arrivals (DACA) program - aka “Dreamers” - eligible for subsidies in the Affordable Care Act (ACA) exchanges. I remember thinking: “How did he do that?” My memory was that the ACA explicitly precluded participation by illegal immigrants, but I got busy consuming Diet Coke and Twizzlers while ordering red wine and the issue slipped my mind.

But it came back, so I checked the [text](#) of the ACA and there it was:

*ACCESS LIMITED TO LAWFUL RESIDENTS.—If an individual is not, or is not reasonably expected to be for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States, the individual shall not be treated as a qualified individual and may not be covered under a qualified health plan in the individual market that is offered through an Exchange.*

The same language appears in several sections of the law. It seems like congressional intent is pretty clear.

So, I went back to the descriptions of the initiative. To my surprise, *Politico* [reported](#): “President Joe Biden on Friday announced a final rule that will open up Obamacare plans to tens of thousands of immigrants who came to the United States as children but do not qualify for government health insurance because they lack legal status.” Ok, but how? Then came the magic: “Specifically, the rule amends the definition of ‘lawfully present’ to include DACA recipients, also known as Dreamers, for purposes of qualifying for marketplace subsidies.”

The whole point of “deferred action” was a commitment of the federal government to place enforcement of immigration law against Dreamers at the bottom of the priorities. The president has wide latitude in setting priorities, so this was a *de facto* way of telling these individuals who did not have legal status that they could continue to live their lives without fear of detention and deportation.

But it did not provide them with legal status. They are not lawfully present, and it is the plain reading of the ACA that they should not be eligible for benefits.