



Weekly Checkup

Dreaming Big, Bungling Bigger

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Last Thursday, President Biden **announced** a plan to provide Deferred Action for Childhood Arrivals (DACA) recipients, better known as “Dreamers,” with access to Medicaid and Affordable Care Act (ACA) Marketplace coverage. The Centers for Medicare and Medicaid Services (CMS) has **submitted** a proposed rule to do as much, though text is not yet available. While we wait, let’s dive into what this proposal would do – and whether the president has the authority to do it.

A quick background on DACA: The program – established in 2012 by President Obama – provides legal protections to individuals who came to the United States illegally as children. Since 2021, new applicants have been blocked due to a **court ruling**. Estimates of how many individuals are in the program vary, but Department of Health and Human Services (HHS) Secretary Xavier Becerra **stated** that around 580,000 individuals currently receive DACA protections, while a potential **2.3 million individuals** would qualify if the definition applied to any person who came here unlawfully as a child. Depending on the source, between **one-third** and **almost one-half** of DACA recipients lack health insurance.

The president’s proposal would provide Dreamers with full access to both traditional and expanded Medicaid, the Children’s Health Insurance Program (CHIP), and the ACA Marketplaces, including ACA subsidies. **The Biden Administration proposes to provide this access by amending the definition of “lawful presence” as it relates to Medicaid, CHIP, and ACA eligibility. What, exactly, gives the president the authority to make such a major definitional change by executive fiat is unclear.** As of this writing, CMS has not released any proposed rule text.

So, what *might* provide the president with the authority to make this change? While the Department of Homeland Security (DHS) **has defined** DACA recipients as lawfully present, HHS regulations **explicitly exclude** DACA recipients from receiving Medicaid, CHIP, ACA Marketplace access, or ACA subsidies. HHS’ exclusion of DACA recipients was part of the actions taken by the Obama Administration to establish the DACA program, however, and not the result of previously existing statute – which means it can be undone by executive action.

While one can have a great deal of sympathy for Dreamers and not take issue with *whom* is being made eligible, one can still take issue with *how* they’re being made eligible. To be sure, Congress gets most of the blame for making possible this back-door approach to legislating. Immigration reform is hard, so Congress has simply allowed **the executive branch** to dictate it as it sees fit – and at some point or another, that lackadaisical approach was going to affect health policy. If the numbers on uninsured Dreamers are accurate, potentially 197,000–272,000 people who came to this country unlawfully could be added to the federal dole. This action, along with the “temporarily” expanded ACA subsidies in the American Rescue Plan and the Medicaid continuous enrollment provision, is part of a string of actions over the last several years that adds more and more individuals onto government health care programs – a de facto single-payer system by hook or by crook. **Through its inaction, Congress is allowing both health and immigration policy to be made via executive fiat, and bungling both.**