

Congress of the United States
Washington, DC 20515

July 13, 2023

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Becerra:

We write to you with deep concern regarding the Department of Health and Human Services (HHS) proposed rule to provide Medicaid, CHIP, and Affordable Care Act (ACA) Marketplace access to illegal aliens living in the U.S. under the unlawful Deferred Action for Childhood Arrivals (DACA) program.¹

In October 2022, the U.S. Court of Appeals for the Fifth Circuit ruled the DACA program illegal but allowed those illegal aliens already protected by the program to maintain their prior protected status.² On April 26, 2023, your Department announced its proposed rule to expand the definition of “lawfully present” to now include DACA recipients who were previously shielded from deportation under the deferred action program President Obama unilaterally created in June 2012.³ HHS states in its proposed rule that this expansion intends to make hundreds of thousands of previously ineligible illegal aliens now eligible for various healthcare programs like Qualified Health Plans, premium tax credits, cost sharing reductions, and the Basic Health Program.⁴ The Department estimates that this expansion will cost more than \$100 million in its first year alone.⁵

By providing health insurance to DACA recipients, this policy further burdens programs intended to serve U.S. citizens and simultaneously encourages more aliens to enter our country illegally in the hopes of receiving similar protection and services. Unfortunately, this approach appears to align with the open-borders agenda advanced by your colleague, Secretary Alejandro Mayorkas, with hundreds of thousands of aliens apprehended trying to enter our country illegally every month.⁶

The Biden Administration’s decision also undermines the promise made by President Obama that the Affordable Care Act would not provide healthcare coverage to illegal immigrants, which reflects just how radical the current administration has been on immigration issues. Given that more than 25 million Americans are uninsured, we find it unimaginable that the government

¹ Centers for Medicare & Medicaid Services, (CMS) 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, 88 Fed. Reg. 25313 (Apr. 26, 2023) (“CMS Proposed Rule”).

² Eileen Sullivan, *Appeals Court Says DACA is Illegal but Keeps Program Alive for Now*, N.Y. Times (Oct. 5, 2022), <https://www.nytimes.com/2022/10/05/us/politics/daca-appeals-immigration-biden.html>.

³ Memorandum from the Secretary of Homeland Security to Acting Commissioner of U.S. Customs and Border Protection, Director of U.S. Citizenship and Immigration Services, and Director of U.S. Immigration and Customs Enforcement (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁴ CMS Proposed Rule.

⁵ *Id.*

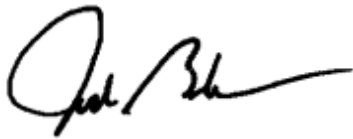
⁶ U.S. Customs and Border Protection, *Southwest Land Border Encounters* (2023), <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

would prioritize providing illegal aliens with health insurance coverage.⁷ With Social Security's Old-Age, Survivors, and Disability Insurance Program and Medicare Hospital Insurance set to go insolvent by 2033 and 2028, respectively, we should make sure federal taxpayer dollars spent on healthcare go toward those with a legal entitlement to those resources.^{8,9}

Clearly, it is not in Americans' interest to have the federal government use taxpayer dollars to provide health care to illegal aliens as their government fails to enforce existing immigration law against those same individuals.

We urge you to abandon the proposed rule and not expand the definition of "lawfully present." It is time for the federal government to prioritize Americans' interests, and prioritizing health insurance coverage for American citizens and those here legally would be a strong start.

Sincerely,



Josh Brecheen
Member of Congress



JD Vance
U.S. Senator



Paul A. Gosar, D.D.S.
Member of Congress



Josh Hawley
U.S. Senator



Bob Good
Member of Congress



Lauren Boebert
Member of Congress



Ken Buck
Member of Congress



Brian Babin, D.D.S.
Member of Congress

⁷ Dep't of Health and Human Svcs., Ass't Sec. Planning and Evaluation: Office of Health Policy, National Uninsured Rate Reaches All-Time Low in Early 2022 (2022), <https://aspe.hhs.gov/reports/2022-uninsured-at-all-time-low>.

⁸ Congressional Budget Office, CBO's 2022 Long-Term Projections for Social Security (2022), <https://www.cbo.gov/publication/58564>.

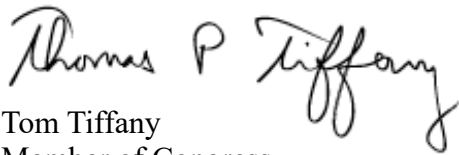
⁹ CMS, The 2022 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds (2022), <https://www.cms.gov/files/document/2022-medicare-trustees-report.pdf>.



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