

***VIA ELECTRONIC TRANSMISSION***

April 11, 2025

HHS Secretary Robert F. Kennedy Jr.  
CMS Administrator Dr. Mehmet Oz  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9884-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

**RE: Opposition to CMS-9884-P Proposed Rule “Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability” (RIN 0938-AV61)**

Dear Secretary Kennedy and Administrator Oz,

The Center for Reproductive Rights (“The Center”) submits this comment in opposition to the Centers for Medicare & Medicaid Services (CMS) and Department of Health and Human Services (HHS) Marketplace Integrity and Affordability Proposed Rule (“Proposed Rule”).<sup>1</sup>

Since 1992, the Center has used the power of law to advance reproductive rights as fundamental human rights worldwide. Our litigation and advocacy over the past 33 years have expanded access to reproductive health care around the nation and the world. We have played a key role in securing legal victories in the United States, Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to life-saving obstetric care, contraception, safe abortion services, and comprehensive sexuality information. We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every person is free to decide whether or when to have children and whether or when to get married; where access to quality reproductive health care is guaranteed; and where everyone can make these decisions free from coercion or discrimination. As an organization committed to advancing policies that uphold reproductive rights, including the right to available, high quality, accessible, acceptable maternal health care, as fundamental human rights, we oppose this rule on the grounds that it would undermine access to this essential health care.

This Proposed Rule would significantly deepen existing barriers to care for Deferred Action for Childhood Arrivals (DACA) recipients and low-income families—many of whom are Black, Indigenous, Latina, Asian American, Native Hawaiian, or Pacific Islanders (AANHPI). These communities already face systemic obstacles to accessing affordable, high-quality health care, and this Proposed Rule would exacerbate those disparities.<sup>2</sup> By excluding DACA recipients from the definition of “lawfully present,”

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<sup>1</sup> Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability, 90 Fed. Reg. 12,942 (proposed Mar. 19, 2025) (to be codified at 45 C.F.R. § 147, and § 155-156) [hereinafter “Proposed Rule”].

<sup>2</sup> See, Isobel Mohyeddin, *DACA Recipients’ Access to Health Care: 2024 Report*, NAT’L IMMIGR. L. CTR. (May 29, 2024), [https://www.nilc.org/wp-content/uploads/2024/05/NILC\\_DACA-Report\\_2024\\_06-27-24.pdf](https://www.nilc.org/wp-content/uploads/2024/05/NILC_DACA-Report_2024_06-27-24.pdf) (20% of DACA-status survey respondents indicated that they are not covered by any kind of health insurance or health care plan, nearly three times as much

the Proposed Rule would cut off access to the health insurance marketplace and the Basic Health Program (BHP)—which for some is the only viable pathway to care.<sup>3</sup> In addition, by increasing barriers to enrollment, the Proposed Rule would also negatively impact the ability of low-income families to secure health insurance coverage and access affordable, quality health care.

The Proposed Rule undermines core public health goals and further entrenches inequities in our health care system, by restricting access to health care for DACA recipients and low-income families. These policy changes will deny vulnerable communities access to affordable, comprehensive care. The Proposed Rule moves us further from that goal by exacerbating structural barriers to care and denying the resources necessary for communities to thrive.

## **I. Revoking Affordable Care Act eligibility for DACA recipients will worsen maternal health outcomes and reinforce systemic inequities.**

The Proposed Rule strips DACA recipients of eligibility for Affordable Care Act (ACA) Marketplace coverage and subsidies by removing DACA recipients from the rule’s definition of “lawfully present”. When the Biden administration proposed expanding ACA eligibility to DACA recipients, it was projected that nearly 100,000 individuals with DACA and other immigration statuses could gain access to health coverage.<sup>4</sup> Rescinding this expansion would deny thousands access to affordable health care, jeopardizing their health and economic security.<sup>5</sup>

The United States is experiencing multiple and intersecting crises in reproductive health care, which have been exacerbated by the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*.<sup>6</sup>

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as the general U.S. population [7.7% in 2023] and 21% of DACA-status respondents experienced worse mental and/or physical health conditions because of concerns related to their immigration status); Caroline Medina, *Fact Sheet: Protecting and Advancing Health Care for Transgender Adult Communities*, CTR. FOR AM. PROGRESS, (Aug. 25, 2021)

<https://www.americanprogress.org/article/fact-sheet-protecting-advancing-health-care-transgender-adult-communities/> (In addition to having lower rates of insurance compared with cisgender people, transgender individuals encounter challenges with public and private insurers that deny coverage for gender-affirming care, leaving patients with large out-of-pocket costs); Latoya Hill et al., *Health Coverage by Race and Ethnicity, 2010-2023*, KFF (Feb. 13, 2025), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/> (There were gains in coverage across most racial and ethnic groups between 2019 and 2023 after several years of rising uninsured rates during the first Trump administration. The coverage gains between 2019 and 2023 were largely driven by increases in Medicaid coverage, reflecting policies to stabilize and expand access to affordable coverage that were implemented during the COVID-19 pandemic. These coverage gains helped narrow differences in uninsured rates for Hispanic, Black, and American Indian or Alaska Native (AIAN) people compared with White people, but the gains may be at risk due to potential Medicaid cuts and the expiration of the enhanced Marketplace subsidies).

<sup>3</sup> Celeste Dorantes, Access to Benefits are Essential for DACA Recipients and their Families to Thrive, THE CTR. FOR L. & SOCIAL POL. (Sep. 25, 2024), <https://www.clasp.org/publications/fact-sheet/access-to-benefits-are-essential-for-daca-recipients-and-their-families-to-thrive/>.

<sup>4</sup> Shelby Gonzales, *People With DACA Can Now Purchase Affordable Care Act Marketplace Coverage*, CTR. ON BUDGET & POL’Y PRIORITIES (Nov. 14, 2024), <https://www.cbpp.org/blog/people-with-daca-can-now-purchase-affordable-care-act-marketplace-coverage>.

<sup>5</sup> Isobel Mohyeddin, *DACA Recipients’ Access to Health Care: 2024 Report*, NAT’L IMMIGR. L. CTR. (May 29, 2024), [https://www.nilc.org/wp-content/uploads/2024/05/NILC\\_DACA-Report\\_2024\\_06-27-24.pdf](https://www.nilc.org/wp-content/uploads/2024/05/NILC_DACA-Report_2024_06-27-24.pdf).

<sup>6</sup> *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf) [hereinafter *Dobbs*]; See also, Eugene Declercq et al., *The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion*, THE COMMONWEALTH FUND (Dec. 14, 2022), <https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes>; HUM. RTS. WATCH ET AL., *HUMAN RIGHTS CRISIS: ABORTION IN THE UNITED STATES AFTER DOBBS*, (Apr. 18, 2023, 12:01 AM),

Black, Indigenous, Latina, and AANHPI women and birthing people are experiencing worsening rates of maternal mortality and morbidity because of systemic racism and discrimination exacerbating barriers to health care and health coverage.<sup>7</sup> Restrictive abortion laws and bans at the state level increase barriers to pregnancy-related care, including abortion care and miscarriage management.<sup>8</sup> Abortion bans and restrictions also pose additional complications for DACA recipients in communities targeted by Immigration and Customs Enforcement (ICE) officers or where travel is subject to scrutiny by Customs and Border Patrol (CBP). Those seeking or aiding others in accessing abortion care must navigate CBP immigration checkpoints, possible ICE enforcement in or around health care facilities, and may face legal challenges for leaving their state to access abortion care in states where it is legal.<sup>9</sup>

Abortion bans are contributing to increased rates of maternal mortality and morbidity, and increased rates of infant mortality, by forcing women to continue pregnancies even in the face of severe pregnancy complications or where the fetus has no chance of survival.<sup>10</sup> It is critical that the communities that have been most impacted by these crises have access to quality health care. By maintaining or broadening access to insurance coverage before and during pregnancy, CMS can help improve maternal and infant health outcomes, especially for people seeking to become pregnant in states with abortion bans. Guaranteeing access to necessary postpartum care will also support those who suffer lasting health complications from high-risk pregnancies. By excluding DACA recipients from the definition of “lawfully present,” CMS will be denying them vital access to critical coverage and services. CMS should instead support policies that continue to expand coverage to DACA recipients, thereby ensuring that anyone planning to become pregnant can access quality prenatal and postpartum care, which will help improve birth outcomes.<sup>11</sup>

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<https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs>; BLACK MAT. HEALTH FED. POL. COLLECTIVE, *THE INTERSECTION OF ABORTION ACCESS AND BLACK MATERNAL HEALTH*, THE CENTURY FOUND. (June 22, 2022) <https://tcf.org/content/facts/the-intersection-of-abortion-access-and-black-maternal-health/>.

<sup>7</sup> Latoya Hill et al., *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KFF (Oct. 25, 2024), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/>.

<sup>8</sup> *Voices from Abortion Ban States*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/exceptions-plaintiffs-voices-abortion-ban-states/> (last visited Apr. 11, 2025); Alice Miranda Ollstein, *Trump admin moves to drop fight over emergency abortions, reversing Biden admin stance*, POLITICO, (Mar. 4, 2025 4:24 PM, updated Mar. 4, 2025 7:29 PM), <https://www.politico.com/news/2025/03/04/trump-emergency-abortions-00211399>.

<sup>9</sup> Asees Bhasin, *Dobbs v. Jackson Women’s Health and Its Devastating Implications for Immigrants’ Rights*, THE PETRIE-FLOM CTR. AT HARV. L. SCH. (Sep. 27, 2022), <https://blog.petrieflom.law.harvard.edu/2022/09/27/dobbs-immigrants-rights/>; *Know Your Rights: Abortion Access for Immigrants*, NAT’L IMMIGR. L. CTR., <https://www.nilc.org/resources/abortion-access/> (last visited April 11, 2025) (Getting an abortion in a place where it is legal will not affect your immigration status. Neither you nor your family members will be required to share any information about abortion services you have received on an immigration or citizenship application. Receiving an abortion in a state where it is not legal will *generally* not affect your immigration status, but you should always talk to an immigration attorney about your individual circumstances).

<sup>10</sup> *Two New Studies Provide Broadest Evidence to Date of Unequal Impacts of Abortion Bans*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, <https://publichealth.jhu.edu/2025/two-new-studies-provide-broadest-evidence-to-date-of-unequal-impacts-of-abortion-bans> (last visited Apr. 11, 2025); *Study finds higher maternal mortality rates in states with more abortion restrictions*, TUL. UNIV. CELIA SCOTT WEATHERHEAD SCH. OF PUB. HEALTH AND TROPICAL MED., <https://sph.tulane.edu/study-finds-higher-maternal-mortality-rates-states-more-abortion-restrictions> (last visited Apr. 11, 2025).

<sup>11</sup> Joan Alker, *New CCF-Commonwealth Fund Report Highlights Long-Term Benefits of Medicaid Coverage for Pregnant Women and Children*, GEO. UNIV. CTR. FOR CHILD. AND FAMILIES (Dec. 9, 2020), <https://ccf.georgetown.edu/2020/12/09/new-georgetown-university-ccf-commonwealth-fund-report-highlights-long-term-benefits-of-medicaid-coverage-for-pregnant-women-and-children/>.

## II. Increasing barriers to enrollment will worsen maternal health outcomes for low-income people.

The Proposed Rule's elimination of the special enrollment period (SEP) for individuals with incomes at or below 150% of the Federal Poverty Level would create a significant barrier to timely and consistent health coverage.<sup>12</sup> Restricting the enrollment period directly undermines individuals' ability to seek essential health care, including reproductive care. For women and individuals with the capacity for pregnancy, this can result in missed health conditions that lead to pregnancy complications and hospitalizations later down the road.<sup>13</sup> Moreover, shortening the enrollment window compounds longstanding inequities for low-income populations, and especially for Black, Latina, Indigenous, and AANHPI communities. Families already navigating language barriers, limited internet access, and complex plan choices will now have even less time to find and enroll in a plan that meets their needs.<sup>14</sup>

The Proposed Rule also outlines additional income verification measures that erect additional barriers to enrollment. Low-income families often experience more instability in their income due to inconsistent work hours, multiple part-time jobs, or informal employment.<sup>15</sup> This can make it more difficult to provide proof of income, especially when they receive no clear or regular documentation, such as pay stubs or tax returns.<sup>16</sup> Immigrant families, particularly those with members who do not have access to certain government-issued documents, might be excluded from subsidies entirely or face delays in receiving assistance. For families where some members might be eligible for subsidies and others are not,

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[children/](#); Rebecca Myerson et al., *Medicaid Expansion Increased Preconception Health Counseling, Folic Acid Intake, And Postpartum Contraception*, 39 HEALTH AFF. 1883, 1883-1890 (Nov. 2, 2020), available at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00106>.

<sup>12</sup> Stan Dorn, *Helping Special Enrollment Periods Work under the Affordable Care Act*, URB. INST., (Jun. 2016) <https://www.urban.org/sites/default/files/publication/81806/2000834-Helping-Special-Enrollment-Periods-Work-Under-the-Affordable-Care-Act.pdf>.

<sup>13</sup> Judith Solomon, *Closing the Coverage Gap Would Improve Black Maternal Health*, CTR. ON BUDGET & POL'Y PRIORITIES, (Jul. 26, 2021) <https://www.cbpp.org/research/health/closing-the-coverage-gap-would-improve-black-maternal-health>; Maria W. Steenland and Laura R. Wherry, *Medicaid Expansion Led To Reductions In Postpartum Hospitalizations*, 42 HEALTH AFF. 18, 18-25 (Jan. 9, 2023), available at <https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2022.00819>.

<sup>14</sup> MEDICAID AND CHIP PAYMENT ACCESS COMMISSION, *ENROLLMENT AND ACCESS BARRIERS FOR PEOPLE WITH LIMITED ENGLISH PROFICIENCY* (Jul. 2024), <https://www.macpac.gov/wp-content/uploads/2024/07/Enrollment-and-Access-Barriers-for-People-with-Limited-English-Proficiency.pdf>; Bradley Corallo, *Housing Affordability, Adequacy, and Access to the Internet in Homes of Medicaid Enrollees*, KFF (Sep. 22, 2021), <https://www.kff.org/medicaid/issue-brief/housing-affordability-adequacy-and-access-to-the-internet-in-homes-of-medicaid-enrollees/>; Krutika Amin et al., *How might internet connectivity affect health care access?*, PETERSON-KFF HEALTH SYSTEM TRACKER (Dec. 14, 2020), <https://www.healthsystemtracker.org/chart-collection/how-might-internet-connectivity-affect-health-care-access/#Share%20of%20population%20with%20no%20internet%20access%20at%20home%20in%202019,%20by%20insurance%20status>.

<sup>15</sup> Yoshie Sano et al., *Well-Being and Stability among Low-income Families: A 10-Year Review of Research*, 42 J. OF FAMILY AND ECONOMIC ISSUES S107, S107-S117 (Oct. 25, 2020), available at [https://pmc.ncbi.nlm.nih.gov/articles/PMC7585735/pdf/10834\\_2020\\_Article\\_9715.pdf](https://pmc.ncbi.nlm.nih.gov/articles/PMC7585735/pdf/10834_2020_Article_9715.pdf); Leiha Edmonds, *When Employment Is Unstable or Low-Paying, Work Requirements Don't Lift People from Poverty*, URB. INST. (May 15, 2019), <https://www.urban.org/urban-wire/when-employment-unstable-or-low-paying-work-requirements-dont-lift-people-poverty>; Lauren Bauer et al., *Low-income workers experience—by far—the most earnings and work hours instability*, BROOKINGS (Jan. 9, 2025), <https://www.brookings.edu/articles/low-income-workers-experience-by-far-the-most-earnings-and-work-hours-instability/>.

<sup>16</sup> Claire Thornton, *'This isn't trivial': Applying for welfare benefits is too difficult, low-income Americans say*, USA TODAY, (Jan. 25, 2023, 7:00 AM), <https://www.usatoday.com/story/news/nation/2023/01/25/welfare-benefits-low-income-struggle-for-access/11069891002/>.

navigating the income verification process can be confusing and discourage them from seeking coverage.<sup>17</sup>

The Proposed Rule not only threatens access to coverage, but it also threatens the ability of people to make timely, informed, autonomous decisions about their health, particularly for people at the intersections of poverty, immigration status, and structural racism. This includes the ability to decide when and whether to become pregnant, to have a healthy pregnancy, and to raise healthy children. Protecting year-round access to affordable coverage is essential to ensuring reproductive health care access and advancing maternal health equity.<sup>18</sup> Previous ACA enrollment improvements that made it easier to navigate the system and enroll increased coverage rates significantly, and reversing them will lead to higher uninsured rates, reduced access to health care, including sexual and reproductive health services, and increased emergency health costs for everyone.<sup>19</sup>

### **III. Expanding access to insurance coverage and essential health care will ensure the U.S. is in line with its human rights obligations and recommendations from treaty monitoring bodies.**

The U.S. has ratified international instruments that commit the United States to guaranteeing sexual and reproductive health and rights. These include the International Covenant on Civil Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention Against Torture. In 2022, CERD expressed concern about the impact of systemic racism on access to sexual and reproductive health services, including culturally sensitive, respectful maternal health care. CERD recommended that the U.S. take “an intersectional, culturally respectful approach in...removing barriers to comprehensive SRHR access and reducing maternal mortality and morbidity.”<sup>20</sup> This rule jeopardizes advancements that have been made in the last four years to close racial gaps in access to health care, including in sexual and reproductive care.

In its 2014 Concluding Observations regarding the United States, the Human Rights Committee (also called the Committee on Civil and Political Rights or CCPR) expressed concern about “the exclusion of millions of undocumented immigrants and their children from coverage under the ACA and the limited coverage of undocumented immigrants and immigrants residing lawfully in the United States for less than five years by Medicare and Children’s Health Insurance [Program].” The Committee recommended the

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<sup>17</sup> Drishti Pillai et al., *Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants*, KFF (Sep. 17, 2023), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-and-health-care-experiences-of-immigrants-the-2023-kff-la-times-survey-of-immigrants/>.

<sup>18</sup> Jamie R. Daw et al., *Racial and Ethnic Disparities in Perinatal Insurance Coverage*, 135 *OBSTETRICS & GYNECOLOGY* 917, 917-924 (Apr. 2020), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC7098441/pdf/ong-135-917.pdf>; Elizabeth J. Ela, et al., *Insurance Churn and Postpartum Health among Texas Women with Births Covered by Medicaid/CHIP*, 32 *Women’s Health Issues* 95, 95-102 (Mar. 1, 2023), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC8940665/pdf/nihms-1764239.pdf>.

<sup>19</sup> See e.g., Joseph Choi, *Biden administration achieves fourth record-breaking ACA enrollment ahead of exit*, *THE HILL*, (Jan. 8, 2025, 5:00 AM) <https://thehill.com/policy/healthcare/5072422-biden-administration-achieves-fourth-record-breaking-aca-enrollment-ahead-of-exit/>; Sabrina Corlette and Joan Alker, *A Midterm Assessment Of President Biden’s Promise To Build On The ACA*, *HEALTH AFF. FOREFRONT*, (Feb. 3, 2023) <https://www.healthaffairs.org/content/forefront/mid-term-assessment-president-biden-s-promise-build-affordable-care-act>; Thomas Waldrop et al., *How the Biden Administration Has Advanced Health Equity*, *THE CENTURY FOUND.* (Mar. 4, 2024), <https://tcf.org/content/commentary/how-the-biden-administration-has-advanced-health-equity/>.

<sup>20</sup> Comm. on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of the United States of America* ¶135-36, U.N. Doc CERD/C/USA/CO/10-12 (2022).

United States “identify ways to facilitate access to adequate health care, including reproductive health-care services, by undocumented immigrants and immigrants and their families who have been residing lawfully in the United States for less than five years.”<sup>21</sup> The United States failed to meet this metric in the decade since this recommendation was issued, and this action from CMS further entrenches this inequity.

During its 2023 review, the CCPR issued similar Concluding Observations regarding sexual and reproductive health and expressed concern about laws that restrict the rights of persons based on their sexual orientation and gender identity, including bans on gender-affirming care. The CCPR recommended that the United States “intensify its efforts to combat violence and discrimination against persons based on their sexual orientation and gender identity, including with regard to access to housing, health and employment and in correctional facilities.”<sup>22</sup> This rule goes against the recommendations of the CCPR, and further entrenches discrimination against people based on their gender identity and sexual orientation.

By CMS’s own estimates, between 750,000 and 2 million people will lose their health insurance if these proposals are implemented.<sup>23</sup> This includes millions of immigrant women and gender expansive people who will be unable to obtain contraception, maternal health care, abortions, and other essential sexual and reproductive health services. Taking away access to affordable health care from these individuals would not only worsen health outcomes for already under-resourced communities but negatively impact our economic and health systems at large. We urge CMS to rescind these proposals.

#### **IV. Conclusion**

The Center appreciates the opportunity to comment on this Proposed Rule. If you have any questions, please contact Vandana Ranjan, ([vranjan@reprorights.org](mailto:vranjan@reprorights.org)).

Sincerely,  
Vandana Ranjan  
Senior Federal Policy Adviser, Maternal Health  
Center for Reproductive Rights

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<sup>21</sup> Comm. on Civil and Political Rts., Concluding observations on the fourth periodic report of the United States of America, ¶15, U.N. Doc CCPR/C/USA/CO/4 (2014).

<sup>22</sup> Comm. on Civil and Political Rts., Concluding observations on the fifth periodic report of the United States of America, ¶124-29(e), U.N. Doc CCPR/C/USA/CO/5 (2023).

<sup>23</sup> Proposed Rule, *supra* note 1 at 13,024