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June 23, 2023

Submitted via: <https://www.regulations.gov>

Honorable Xavier Becerra, Secretary
Honorable Chiquita Brooks-LaSure, CMS Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9894-P
7500 Security Boulevard
Baltimore, MD 21244-8016

Re: Comment in Response to *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*, RIN 0938-AV23, File Code CMS-9894-P

Dear Secretary Becerra and Administrator Brooks-LaSure:

The Tahirih Justice Center ("Tahirih") and ASISTA welcome the opportunity to comment¹ in response to the aforementioned Proposed Rule ("Proposed Rule") published by the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) in the Federal Register on April 26, 2023, *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*.

Tahirih is the largest multicity direct services and policy advocacy organization specializing in assisting immigrant survivors of gender-based violence. In five cities across the country, Tahirih

¹ All sources cited shall be incorporated into the administrative record as if set forth fully herein.

offers legal and social services to immigrants fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, forced and child marriage, and female genital mutilation/cutting (FGM/C). Through direct legal and social services, policy advocacy, and training and education, Tahirih protects immigrant survivors and promotes a world where they can live in safety and with dignity. Tahirih has provided free legal assistance to more than 31,000 individuals, many of whom have experienced the significant psychological and neurobiological effects of trauma.

Since its founding in 1997, Tahirih has also served as an expert resource for the media, Congress, policymakers, and others on immigration remedies for survivors fleeing gender-based violence. *See, e.g.,* Tahirih Justice Center, *Tahirih in the News*;² Tahirih Justice Center, *Congressional Testimony*;³ Tahirih Justice Center, *Comments*.⁴

ASISTA's mission is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking, and other crimes created by the Violence Against Women Act ("VAWA") and the Trafficking Victims Protection Act ("TVPA"). ASISTA assists advocates and attorneys across the United States in their work on behalf of immigrant survivors.

Tahirih and ASISTA welcome the Proposed Rule's clarification that DACA recipients are eligible for designated affordable health coverage options, and we urge HHS and CMS to include a provision that provides the same eligibility for survivors of gender-based and other violence during the pendency of their petitions for U nonimmigrant status.

I. Inclusion of Petitioners for U Nonimmigrant Status Protects Survivors and Furthers the Goals of the Affordable Care Act

U nonimmigrant status is available to survivors of certain qualifying crimes who have suffered substantial physical or mental abuse and have cooperated in the investigation or prosecution of criminal activity.⁵ Once a petitioner for U status has received a determination from the United States Citizenship & Immigration Services (USCIS) that their petition is bona fide or is otherwise placed on

² *See* <https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news>.

³ *See* https://www.tahirih.org/news-media/publications/?publication_categories=congressional_testimony.

⁴ *See* https://www.tahirih.org/news-media/publications/?publication_categories=comments.

⁵ *See* the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA 2000), Pub. L. 106-386, 114 Stat. 1464, 1533 (Oct. 28, 2000), *as amended by* the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960, 3053 (Jan. 5, 2006); Violence Against Women and Department of Justice Reauthorization Act of 2005—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (Aug. 12, 2006); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008); and Title VIII of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 110 (Mar. 7, 2013).

the waiting list for U status, that individual is granted “deferred action.”⁶ While they await final adjudication of their petitions, U status petitioners with deferred action are protected from removal and they (and their qualifying family members) are then eligible for the specified health coverage based on their lawful presence in the U.S.

But limiting eligibility to those U status petitioners who have already received bona fide determinations and wait list status excludes many survivors from access to essential benefits. Among those survivors excluded from health coverage eligibility are those awaiting their bona fide determinations, those who must respond to USCIS’s Requests for Evidence (RFEs) after filing their petitions, or those who must overcome other procedural hurdles before receiving an adjudication.

This limitation is significant. The exceedingly long wait times for U nonimmigrant status adjudication results in the denial of eligibility for affordable health coverage for some of the most vulnerable members of our communities. As of December 2022, the backlog of petitions surpassed more than 191,000 petitions for crime victims alone, not counting their dependents.⁷ This delay in eligibility is particularly harmful to survivors, who may have serious physical and mental health needs related to their survivorship and the abuse suffered. Clarifying that all survivors who petition for a U visa are eligible for access to these essential affordable health care options is consistent with this Administration’s commitment—and the moral imperative—to protect and prioritize the needs of survivors of gender-based and other violence. Tahirih and ASISTA urge HHS and CMS to include these individuals within the scope of this Proposed Rule.

A. Egregious Adjudication Timelines Will Exclude Survivors from Health Coverage for Years

Although the Proposed Rule provides health coverage eligibility for survivors granted deferred action, eligibility will remain out of reach for those awaiting even preliminary adjudication of their petitions for U nonimmigrant status. USCIS delays are so extreme that a simple bona fide determination takes five years or more.⁸ Delays are extended for those who must respond to an RFE or otherwise engage in additional procedural steps.⁹ During this period, survivors are excluded from eligibility for these affordable health coverage options because they are not yet in deferred action—due solely to processing backlogs and delays at USCIS. Rather than burden survivors with half a decade of delay in access to affordable health coverage to address health concerns that may be directly or indirectly caused by crime-related trauma, DHS and CMS can make all petitioners for U nonimmigrant status eligible for this benefit.

B. Survivors May Have Increased Health Care Needs

Affordable health coverage is particularly important to survivors of gender-based and other violence. Survivors of violence are likely to require care for mental and behavioral health conditions, chronic

⁶ <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>.

⁷ https://www.uscis.gov/sites/default/files/document/data/l918_FY23_Q1.pdf.

⁸ See <https://egov.uscis.gov/processing-times/>.

⁹ See <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>.

pain, and a wide variety of other health and medical concerns.¹⁰ For many, health care access is a “vital part of healing and self-determination.”¹¹ Depriving this vulnerable population of access to essential affordable care for years compounds trauma and delays healing. Investing in survivors’ healing also benefits society, as healing enables survivors to more effectively contribute to their communities in the long term,

C. Eligibility for U Petitioners Advances This Administration’s Promise to Protect and Support Survivors of Gender-Based Violence

The U.S. government has repeatedly reaffirmed its commitment to protect and prioritize the various needs—including access to quality, affordable health coverage—of survivors of gender-based violence. The Affordable Care Act recognizes the links between gender-based violence and survivors’ health and prioritized support for survivors.¹² As noted in the preamble of this Proposed Rule, one of the primary aims of the Affordable Care Act is to “make affordable health insurance available to more people,”¹³ and “excluding certain noncitizen groups from such coverage was not only not statutorily mandated, it failed to best effectuate congressional intent in the ACA.”¹⁴

The purposes of the Affordable Care Act directly align with the current Administration’s consistent commitment to protect and respond to the needs of survivors of gender-based violence.¹⁵ As President Biden affirmed just last month, “No one — no one, regardless of gender or sexual orientation, should experience abuse. Period. And if they do, they should have the services and support they need to get through it.”¹⁶ Extending eligibility for affordable, quality health coverage to U petitioners throughout the pendency of their petitions is a critical step the Administration can and must take to meaningfully fulfill this promise.

II. Conclusion

Tahirih and ASISTA applaud HHS and CMS for clarifying and expanding eligibility for quality, affordable health coverage to certain noncitizens in the Proposed Rule. We respectfully urge you to now further clarify that individuals with pending U nonimmigrant status petitions are also eligible for

¹⁰ <https://www.futureswithoutviolence.org/wp-content/uploads/Threats-to-Medicaid-Endanger-Survivors-Access-to-Health-Care-2.19.pdf>

¹¹ <https://www.futureswithoutviolence.org/health/health-policy-and-enrollment/>

¹² See New Hampshire Coalition Against Domestic and Sexual Violence, *The Affordable Care Act and Domestic and Sexual Violence*, at 1, available at https://www.nhcadsv.org/uploads/1/0/7/5/107511883/affordable_care_act_1_.pdf.

¹³ <https://www.hhs.gov/healthcare/about-the-aca/index.html>; see also 88 Fed. Reg. at 25,316 (noting “the broad aims of the ACA to increase access to health coverage”).

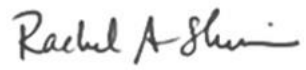
¹⁴ 88 Fed. Reg. at 25,316.

¹⁵ See, e.g., *U.S. National Plan to End Gender-Based Violence: Strategies for Action* (published May 25, 2023).

¹⁶ *Id.* at 3.

these essential benefits.

Sincerely,



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