

Considerations for Residency Programs Regarding Accepting Undocumented Students Who Are DACA Recipients

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Abstract

The Deferred Action for Childhood Arrivals (DACA) initiative provides for the temporary deferral of enforcement of immigration laws for certain undocumented individuals brought to the United States before age 16. More than 50 medical schools now consider applicants who are DACA recipients, and medical school graduates with DACA are eligible to continue their training in graduate medical education. In this article, the authors summarize current policy and provide data on DACA recipients in medical school. They then review the implications for considering DACA recipients in graduate medical

education, including employment guidelines, employer responsibilities, training at Veterans Affairs facilities, research funding, and professional licensure. They conclude by discussing the future of the DACA program and best practices for supporting students who are DACA recipients.

First, there are no employment restrictions for DACA recipients with valid work authorization documents as long as their employers use Form I-9 Employment Eligibility Verification. Second, unlike H-1B or J-1 visa holders, DACA recipients do not generate additional immigration-

related costs for their residency programs. Next, provisions in the Civil Rights Act prohibit employers from discriminating against applicants based on national origin or, in some cases, citizenship status. Furthermore, trainees with DACA are eligible to rotate through Veterans Affairs facilities. Finally, some states, like California and New York, have adopted policies and regulations allowing trainees with DACA who meet all professional requirements to receive a medical license. Given this state of affairs, DACA recipients should have equal standing to their peers when being evaluated for residency positions.

Editor's Note: An Invited Commentary by N.I. Poll-Hunter, G.H. Young, and M. Shick appears on pages XXX–XXX.

A historic wave of new state and national laws and policies have allowed undocumented youth—that is, young people without legal immigration status—to pursue higher education in the United States. The most notable is a federal, Executive Branch initiative called Deferred Action for Childhood Arrivals (DACA), announced by then President Obama in August 2012. This initiative provides individuals who came to the United States as children, and who meet certain other requirements, the opportunity to stay in this country without fear of deportation as well as the

ability to obtain work permits.¹ DACA has afforded new opportunities to recipients, such as new jobs, health care access through employer-provided insurance, driver's licenses, and banking options. These benefits have fostered both greater social and economic incorporation of these youth into American society and a significant increase in their educational and career attainment.²

DACA was created after many unsuccessful attempts to pass federal legislation on immigration reform. The Development, Relief, and Education for Alien Minors (DREAM) Act is a long-contested piece of proposed legislation, originally introduced in 2001, that would provide a pathway to citizenship for eligible undocumented youth.³ Subsequent attempts to pass immigration legislation for undocumented youth fell short in 2010 and 2013.^{4,5} While the need remains for comprehensive immigration reform for undocumented youth and their families, DACA provides a sufficient basis for medical schools and residency programs to extend opportunities for training to DACA recipients.

Notably, a DACA recipient may change his or her immigration status. One study found that, of the 19,095 DACA-eligible

youths surveyed, 14% also were eligible for another form of immigration relief,⁶ which may include eligibility for a U visa for victims of crimes, sponsorship through family petitions, or asylum for individuals who fear persecution in their home countries.⁷ Others may become eligible for other forms of immigration relief during their training (e.g., if their application is adjudicated or if they marry a U.S. citizen or qualify for another form of relief). In addition, immigration law itself is evolving and may offer remedies to this group of longtime residents in the future. Therefore, although it is difficult to predict changes in an individual's immigration status, it makes sense to invest in students who have overcome enormous obstacles to pursue their medical education and who will be able to contribute their skills and experience to the field of medicine.

About DACA

DACA provides for the temporary deferral of enforcement of immigration laws for certain undocumented individuals who came to the United States as children. To be eligible for DACA, an individual must (1) have entered the United States before age 16; (2) have continuously resided in the

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United States from 2007 to the present time; (3) be currently enrolled in school or have completed high school or an equivalent degree; and (4) have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors. Individuals approved for DACA receive work authorization (i.e., an Employment Authorization Document [EAD]) and are eligible for a Social Security number. Individuals granted an EAD through this program can meet Form I-9 requirements to be hired lawfully as employees. This work permit can be renewed every two years, if an individual continues to be eligible for DACA. As of September 30, 2016, 752,154 individuals have been approved for DACA and 588,151 individuals have been granted notices of DACA renewals through the United States Citizenship and Immigration Services (USCIS) process.⁸ The DACA program does not have an expiration date and will continue unless rescinded.

Although DACA recipients are eligible to enter medical school, little is generally known about the challenges they face when applying to residency programs and seeking employment. The purpose of this article is to discuss the implications of DACA for residency applications, medical licensure, and employment, to facilitate the fair consideration of residency applicants who are DACA recipients. We begin with a summary of the current policy landscape and provide data on DACA recipients in undergraduate medical education. We then review and analyze the policy implications for considering DACA recipients in graduate medical education, including employment guidelines, employer responsibilities, training at Veterans Affairs (VA) facilities, research funding, and professional licensure. Finally, we discuss the future of the DACA program and best practices for the inclusion of students who are DACA recipients.

What we describe here reflects the most accurate information available in a constantly changing legal environment, but we are not legal experts. The information we present was gathered in collaboration with medical students who are DACA recipients, medical school staff, and community organizations concerned with legal, immigration, and education issues.

DACA Recipients in Undergraduate Medical Education

Community and academic groups have advocated for improving access

to medical school for DACA recipients. Kuczewski and Brubaker⁹ argued that refusing to consider a medical school application from a DACA recipient is “arbitrary discrimination” because DACA removes employment barriers to becoming a practicing physician. Increased awareness of the issue has led medical schools to reevaluate their policies on DACA recipients, and more than 50 U.S. MD-granting medical schools now reportedly consider such students for admission.¹⁰

The ability to obtain work authorization has opened doors for undocumented individuals to complete their medical training. Although some undocumented students did complete medical school prior to DACA, without a work permit, they were barred from applying to residency programs, obtaining a medical license, and seeking employment. These individuals thus were forced to suspend their training. After DACA alleviated these obstacles, Loyola University Chicago Stritch School of Medicine, along with a handful of other medical schools, began accepting DACA recipients in 2013.^{11–13} Other benefits that stem from obtaining DACA, such as the ability to obtain permission to travel abroad and obtain a driver’s license to travel to clerkship sites, have created greater equity for DACA recipients enrolled in medical school.

Services offered by the Association of American Medical Colleges

Significant progress has been made in facilitating DACA recipients’ applications to medical school. In January 2015, the Association of American Medical Colleges (AAMC) added a DACA category to the American Medical College Application Service (AMCAS).¹⁴ At the same time, the AAMC included DACA recipients among those who are eligible to apply for the Fee Assistance Program for reduced medical school application fees and other resources.¹⁵ For the first time, DACA recipients who met the Fee Assistance Program criteria were able to access financial assistance for applying to medical school. In April 2015, a notation regarding DACA recipients was listed in the Medical School Admissions Requirements, to let prospective students know which schools would consider such applicants for admission.¹⁶ To help the medical education community gain a greater understanding of DACA

applicants, the AAMC’s Group on Student Affairs hosted two informational Webinars. In September 2014, the first Webinar covered steps for the consideration and inclusion of DACA recipients in undergraduate medical education.¹⁷ In March 2015, a follow-up Webinar focused on strategies to address the financial barriers DACA recipients face in medicine.¹⁸ As medical institutions and organizations like the AAMC continue to remove the barriers to medical school eligibility for DACA recipients, awareness and access will continue to improve.

An increasing number of applicants who are DACA recipients have applied for, and gained admission to, medical school. The AAMC reported that 26 DACA recipients applied to medical school in 2014, and 46 applied in 2015, through the AMCAS service. The number of AMCAS applicants for 2016 was 113, an increase of 146% from 2015. The AAMC also reported that 65 individuals who are DACA recipients who applied to medical school for admission from 2014 to 2016 matriculated at MD-granting medical schools.¹⁹ Additionally, a national organization called Pre-Health Dreamers, whose mission is to support undocumented students pursuing health science careers, reported that seven members who are approved for DACA or were approved during the admissions process are currently enrolled in DO-granting medical schools.²⁰

Remaining financial barriers

DACA recipients remain ineligible for federal financial aid to pay for their education. In some states, undocumented immigrants who reside in that state, including DACA recipients, may be eligible to pay in-state tuition at public schools.²¹ DACA recipients may be eligible for private scholarships or may seek bank or private loans for educational expenses. Bank loans, however, typically require a cosigner with significant assets who is a U.S. citizen or permanent resident; securing such a cosigner can be a significant obstacle for these students. Private loans from outside formal financial institutions carry risks because the loans are unsecured. A few U.S. medical schools have offered institutionally sponsored loan options for accepted students who are DACA recipients.^{22,23} Other schools offer

merit- or need-based scholarships, but these almost always fall short of the full cost of attendance, leaving a gap that students must fill on their own. To fill these gaps, DACA recipients must find creative alternative means of raising funds. Unfortunately, students who are DACA recipients who are unable to secure the funds to cover the cost of medical school are in jeopardy of losing their seats. Creating sustainable solutions to financing medical school for undocumented students is needed.

DACA Recipients in Graduate Medical Education

Educators and administrators in graduate medical education should be aware of the existence of DACA applicants and the implications of their immigration status to ensure their fair consideration for residency programs. Additionally, graduate medical education programs may be interested in recruiting DACA recipients because of their unique ability to provide care for vulnerable immigrant populations. Previous reports have outlined the unique opportunity that DACA recipients present for improving care to minority and non-English-speaking patients and for working in physician shortage areas.^{24,25} In fact, AMCAS data for the 2014–2016 application cycles revealed that 98% (181/185) of medical school applicants who are DACA recipients reported speaking at least one other language in addition to English.¹⁹ Moreover, 5.4 million undocumented immigrants remain ineligible for health coverage under the Affordable Care Act, and in national survey data, 69% of undocumented adults reported not having health insurance.^{26,27} Thus, DACA recipients bring invaluable personal experiences as representatives of immigrant communities and can provide these populations and others with culturally sensitive care.

DACA recipients recently have started to apply for residency positions. To facilitate the residency application process for these individuals, the AAMC added DACA as an option in the Electronic Residency Application Services (ERAS) in July 2015.²⁸ The AAMC reported that eight individuals selected DACA on their ERAS applications in 2015—six for residency positions and two for fellowship positions.²⁹ These resourceful

students all managed to begin or complete their undergraduate medical education before DACA was enacted. The National Resident Matching Program does not keep track of the number of applicants who select DACA.³⁰ We have confirmed, however, that at least three DACA recipients who applied through ERAS for the National Resident Matching Program in 2016 were successfully matched into programs.³¹

A larger group of current medical students who are DACA recipients will apply to residency programs in September 2017. In an effort to raise awareness about DACA and provide guidance to residency program directors, we wrote a guide that was distributed to various AAMC constituencies in September 2015 and October 2016.^{32,33} As we did in the guide, we review here the following aspects of DACA that relate to graduate medical education—employment guidelines, employer responsibilities, training at VA facilities, research funding, and professional licensure.

Employment guidelines

There are no employment restrictions for DACA recipients, as long as they have a valid EAD and their employer uses Form I-9 Employment Eligibility Verification. Furthermore, federal laws, such as the Immigration and Nationality Act and Title VII of the Civil Rights Act,^{34,35} prohibit employers from discriminating against individuals based on their national origin or, in some cases, their citizenship status. Employers also are generally prohibited by the Immigration Reform and Control Act from making employment conditional on U.S. citizenship. Residents who are DACA recipients are eligible for reimbursements from the Centers for Medicare and Medicaid Services (CMS). According to guidelines provided by a CMS representative, these DACA recipients may be included “in the FTE [full-time equivalent] count for a particular cost reporting period.”³⁶

Employer responsibilities

Distinguishing between DACA recipients and international students with visas, including H-1B and J-1 visa holders, is important when determining an employer’s responsibilities. Unlike J-1 visa holders, DACA recipients do not

generate additional immigration-related costs for their residency program, because a student’s DACA eligibility is not dependent on, or related to, his or her employer sponsoring a visa petition. A DACA application is approved independent of the individual’s employment status. The State Department has no jurisdiction or oversight over the DACA program, unlike the J-1 visa program. The laws governing work authorization for DACA recipients are different from those governing the visa programs that bring international students and foreign nationals to the United States. DACA recipients are subject to the same employment eligibility verification process as their peers who are U.S. citizens or permanent residents.

Training at VA facilities

DACA recipients’ eligibility to rotate or train at VA facilities has not always been clearly understood. A memo initially interpreting VA hiring policy was issued on August 8, 2014, stating that DACA recipients could not be hired directly by the VA.³⁷ This memo left some question as to whether medical schools could assign DACA recipients to the VA, as trainees are not hired directly by the VA but complete their educational rotations through affiliation agreements. The deputy chief of the Office of Academic Affiliations at the VA released a statement on February 23, 2016, providing updated guidance for the VA’s hiring of individuals who are DACA recipients. The policy states that “DACA trainees holding Employment Authorization Documents ... may be appointed under Title 38 and allowed to rotate [through the] VA.”³⁸ This policy essentially removed all known barriers to DACA recipients training at VA facilities during undergraduate and graduate medical education.

Research funding

In general, residents who are DACA recipients are eligible for the same funding that is available to other individuals who are authorized to work in the United States. Some grants or research funding programs may restrict funds to U.S. citizens and lawful permanent residents only. We recommend that these groups contact their funding agencies and inquire about the reason for such restrictions, which often have been in place for years without the rules having

been updated to incorporate more recent immigration programs such as DACA. Investigating the sources of funding and related guidelines may clarify whether a DACA recipient is allowed to receive research funding.

Professional licensure

According to the United States Federation of State Medical Boards, each state is allowed to specify permissions and restrictions on licensure.³⁹ No nationwide guidelines restrict licensure, only state guidelines, and state policies regarding access to medical licenses for noncitizens vary. California, for example, offers access to professional licenses, including medical licenses, to eligible applicants regardless of their immigration status, according to a recently implemented professional licensing law.⁴⁰ In New York, the Board of Regents approved regulations on May 17, 2016, allowing individuals approved for DACA and other immigration categories to obtain certification or licensure if all other professional requirements are met.⁴¹ Other states require that an individual be lawfully present in the United States and/or have a Social Security number to obtain a medical license. Since USCIS has confirmed that DACA recipients are lawfully present, they are eligible for licensure in these states, provided all other professional requirements are met. Some states, however, offer professional licenses only to a certain subset of immigrants, and DACA recipients currently do not qualify.⁴² These policies are evolving, however, with a trend toward expanding access to professional licenses for immigrants.

Notably, medical licensure examinations and other national assessments are first taken during medical school. Undocumented students who entered medical school prior to the implementation of DACA informed us that immigration status does not prohibit an undocumented medical student from accessing and completing the National Board of Medical Examiners examinations, the United States Medical Licensing Exams, or clerkship or other clinical requirements established by the medical student's institution. Medical schools only verify students' enrollment before allowing them access to these resources.⁴³

There are no restrictions on Drug Enforcement Administration licenses or other specific professional licenses for DACA recipients. Drug Enforcement Administration licenses require a Social Security number and verification of medical credentials, along with basic personal information.⁴⁴ Other professional licenses similarly require verification of medical credentials. Residents, and subsequently practicing physicians, who are DACA recipients can provide all this information.

The Future of DACA

DACA was enacted by the Executive Branch as a temporary deferral of the enforcement of immigration laws. While the only way to truly reform the U.S. immigration system is for Congress to pass legislation, the president and the Department of Homeland Security have the legal authority to set priorities for the allocation of limited enforcement resources. Other administrations have set a precedent using executive discretion in this way. Between 1976 and 2011, presidents from both parties used executive discretion in the context of immigration on at least 21 occasions.⁴⁵ In the three years since the DACA initiative was established, all efforts to challenge or repeal the program have been unsuccessful.⁴⁶ In fact, all 50 states have granted driver's licenses to DACA recipients, despite initial resistance from a few states,⁴⁷ and several have confirmed that DACA recipients qualify to pay in-state tuition rates at public schools if they are otherwise eligible for admission.⁴⁸

As with any executive policy, the current or future president could expand, revise, or terminate DACA. Immigration experts and advocates, however, believe that the success of DACA would make it politically difficult for a president to overturn the policy. Regardless of the future of DACA, undocumented immigrants will continue to push for their right to an education and employment within the context of a changing political landscape. Yet, DACA will continue to fall short of fully integrating these individuals into U.S. society, so comprehensive immigration reform is needed. While accepting applicants who are DACA recipients requires some tolerance for uncertainty, we encourage medical schools and residency programs to view DACA as they

would any other policy that can affect the eligibility of their trainees—such as changes to funding programs or work and education visa programs—and to stay informed of any changes to these policies and to communicate those changes to trainees.

Best Practices for Supporting Trainees Who Are DACA Recipients

Opening the doors to undocumented students requires an active commitment from everyone involved, especially senior leadership. We recommend addressing the following four areas when enacting institutional change to include DACA recipients: (1) student autonomy and privacy, (2) continuing education and professional development for staff and administrators, (3) institutional transparency, and (4) a holistic review framework.

Being an undocumented immigrant makes a student vulnerable. Many undocumented individuals have been separated from their loved ones because of immigration enforcement policies. "Staying under the radar" likely has been a means of survival at some point in their lives. Some may wish to disclose their circumstances, while others may not. While an institution may be proud to share its message of inclusion, doing so may have unintended consequences for undocumented students and their families. It is important to honor their autonomy and privacy, as schools would do for any student.

Continuing education and professional development for decision makers and program directors are critical to their being allies of vulnerable or potentially marginalized groups. These senior leaders must take personal responsibility for staying up-to-date on the issues pertaining to undocumented individuals. As new barriers or challenges arise, leaders and support staff must educate themselves to become effective advocates for these trainees.

All institutions and programs should be transparent about their policies toward undocumented students' eligibility for admission. Part of the difficulty of being an undocumented student is the uncertainty about one's eligibility for certain programs or resources. Many

spend countless hours researching their eligibility and determining their options, often receiving inaccurate or conflicting information. The very act of an institution or program publishing its policy on undocumented students' eligibility for admission, whatever the policy may be, is helpful. We recommend that programs be as specific as possible about what they offer to undocumented individuals and provide contact information for an administrator or staff member who is familiar with the policies and services for undocumented trainees.

We believe that medical schools and residency programs should evaluate applicants according to their merits and credentials, while also considering their personal characteristics. For example, an applicant may have one or more immigration contingencies, which should be evaluated on a case-by-case basis. Although the focus of this article is DACA recipients, other immigration programs exist, which also confer eligibility for work authorization and a Social Security number as outlined by USCIS.⁴⁹ Holistic review is a relatively new concept in graduate medical education, but we nonetheless advocate for it here. Decision makers should be aware of how an applicant's immigration journey may have affected his or her educational progress. For example, there may be gaps or disruptions in enrollment due to unforeseen challenges brought on by the student's immigration experiences or the immigration challenges of family members. Lack of access to financial aid may have caused the student to interrupt his or her studies to work to cover tuition, for example. Undocumented applicants often are persistent, hardworking, and committed to their career goals despite the many obstacles they face.

Conclusion

Undocumented students are part of the medical community. Many institutions have created and sustained policies supporting their training. As medical schools and residency programs continue to open their doors to DACA recipients, the community must increase its capacity to fully include these students. By including DACA recipients, residency programs will ensure not only the success of these trainees in medicine but also the viability of the DACA program itself, thereby laying the foundation for

immigration reform for undocumented immigrants.

Currently, there are no employment barriers to residency training for DACA recipients who have successfully completed all the residency application requirements. Applicants who are DACA recipients should be aware, however, that eligibility for professional licensure varies by state, and institutions should keep abreast of updates to professional licensure eligibility to best advise their trainees. Despite these state-by-state differences, DACA recipients should have equal standing to their peers when being evaluated for residency positions.

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Disclaimer: The guidelines presented in this article are not intended as legal advice. Readers are encouraged to consult legal counsel at their institutions and specific local policies as they enact changes to include recipients of Deferred Action for Childhood Arrivals in their programs.

Previous presentations: An abridged version of these guidelines was distributed through the Association of American Medical Colleges' listserv in September 2015 and October 2016.

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