

2021 Guidance for Residency Programs on Considering Applicants with Deferred Action for Childhood Arrivals

This brief communication provides updated guidance to residency programs on considering applicants with Deferred Action for Childhood Arrivals (DACA). In 2015, we authored a guide that provided comprehensive information on this topic and was subsequently [published](#) in Academic Medicine in 2017.¹ This update provides supplemental information given changes since 2017 in the legal and political landscape.

This information is intended for decision makers and leaders who influence residency programs at their institutions. Our goal is to encourage fair consideration of U.S. medical students with DACA who are applying to residency programs. This guide was compiled in good faith and reflects our best efforts to be accurate. This is not legal advice. Please take appropriate steps and consult with your institution's legal resources to ensure compliance with your state, municipal, and institutional policies.

This guide encourages residency programs to consider applicants with DACA for residency slots as they would consider any other applicant. Upon review of applications, you are sure to find that these candidates have substantial accomplishments and a breadth of life experiences, cultural agility, linguistic expertise, and unique perspectives to bring to patient care. Often, individuals with DACA know how to navigate systems in underserved communities that can be an asset to a cohort of trainees. Without question, each individual has overcome significant obstacles as they pursued higher education and a medical degree. Candidates for residency with DACA are resilient and persistent in their educational attainment despite substantial odds and deserve equitable consideration.

Sincerely,

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Summary of 2017 Guidance:

We encourage you to review our [article](#) in Academic Medicine that provides detailed information on considering applicants with DACA for residency positions.² A brief summary:

- In general, DACA recipients should not be treated differently from other candidates with work authorization. DACA recipients with valid Employment Authorization have the necessary documentation and information for the Form I-9 Employment Eligibility Verification. Unlike H-1B or J-1 visa holders, DACA recipients do *not* generate additional immigration related costs for their residency programs and do not require sponsorship to maintain their employment authorization.
- Provisions in the Civil Rights Act and the Immigration Reform and Control Act prohibit employers from discriminating based on national origin or, in some cases, citizenship status.
- Trainees with DACA are eligible to rotate through Veterans Affairs facilities.
- Various states have adopted policies and regulations to affirmatively allow trainees with DACA who meet all professional requirements to receive a medical license.
 - **Update:** Of note, the requirements for obtaining provisional trainee licenses or temporary trainee permits for GME purposes can be met by MD graduates with DACA. Resident practice permissions vary by state and typically require: 1) employment authorization, 2) completion of education from an accredited medical school, 3) criminal background check, and 4) passing the USMLE Step 1 and 2, all of which DACA recipients can achieve.
 - Permissions for undocumented students with DACA to obtain full professional licensure (following the completion of residency training) are governed by each state's medical licensing board. Thus, it is possible for a trainee with DACA to complete residency in a state where they may not be able to receive a full medical license.
- The cost of medical school is a significant barrier to pursuing a medical education and a sustainable solution to financing medical school for undocumented students is necessary.

2021 DACA Program Updates:

1. Does the Electronic Residency Application Service (ERAS) include DACA?

In 2017 the AAMC added a mechanism for residency applicants to indicate DACA under the citizenship question on the ERAS application. In 2019, the ERAS form was updated and asks a series of questions on work authorization, which are included in the 2021 ERAS form. First, an

applicant will see “Are you currently authorized to work in the United States?” which a DACA recipient would select “Yes.” Subsequently, an applicant will indicate the authority by which they have work authorization, which includes the option to select “DACA - Deferred Action for Childhood Arrivals.” The following question is “Will you need visa sponsorship through ECFMG (J-1) or the teaching hospital (H1-B) to complete the entirety of your GME training?” which a DACA recipient would select “No”. If an applicant’s citizenship status changes during the residency application cycle, ERAS allows for this field to be updated. See Appendix A for a sample form. Program directors can be assured that the work authorization section listed in ERAS is up to date for DACA recipients.

2. What is happening with DACA?

Deferred Action for Childhood Arrivals (DACA) is a federal, executive branch initiative announced by former President Obama in June 2012 for certain undocumented individuals who came to the U.S. as children. DACA has afforded many individuals new opportunities by providing access to work authorization, a social security number, and reprieve from deportation. Participants of the program must renew their DACA every two years so long as the program remains in existence.

On September 5, 2017, the Trump Administration announced that it would terminate DACA by halting the review of initial applications and a wind-down process for existing DACA recipients. The Trump administration argued that DACA is an unlawful immigration policy signed by President Obama, who did not have authority to create the program. Soon after the 2017 announcement, multiple lawsuits were filed across the country that challenged the Trump administration’s actions to terminate DACA. On June 18, 2020, the Supreme Court issued a decision finding that the Trump administration’s termination of DACA violated federal law. This means that:

- A. The DACA program continues to be in effect.
- B. Individuals currently in the program are able to renew their DACA (I-821D) which maintains deferred action from deportation for two years at a time.
- C. Individuals currently in the program are also able to renew their employment authorization (I-765). This employment authorization is *not* contingent on employer sponsorship.

On July 16, 2021, the U.S. The District Court for the Southern District in Texas declared that the DACA program is unlawful and issued a permanent injunction that prohibited the Department of Homeland Security (DHS) from administering the DACA program, but temporarily allowed those individuals who have been granted DACA to renew their DACA requests. **This means the program remains in effect for those who already obtained DACA on**

or before June 16, 2021. Unfortunately, initial DACA applications (those who have not submitted previously), are not eligible to submit new DACA applications. For up-to-date information on DACA, please visit the National Immigration Law Center <https://www.nilc.org/issues/daca/> and USCIS uscis.gov/DACA

On September 27, 2021, under the Biden Administration, the DHS [announced a rule](#) to fortify and preserve the DACA policy amid legal challenges. The rule will undergo a 60 day public comment period before issuing a final rule.

3. How do these announcements impact current DACA medical students and residents?

Our guidance from 2016 is still applicable today. At least 76 individuals with DACA have successfully matched into residency and fellowship positions through the National Resident Match Program and several have already completed their residency training.⁶ Due to the Supreme Court's decision, individuals with DACA continue to have access to all the benefits the program confers (access to a social security number, employment authorization document, and lawful presence in the U.S) which allows them to continue participating in residency and fellowship programs. Thus, we strongly recommend that residency programs continue to consider applicants with DACA as they would any other applicant and help educate their staff and other stakeholders that the program is still in effect. Under the Biden administration, DACA has more support and will likely be safeguarded from further executive order jeopardizing it. Having been in effect for almost ten years, the program has a strong tenure at this point. DACA recipients have successfully renewed their DACA applications up to five times since the program's inception.

The Supreme Court decision last summer ruled to reinstate DACA based on violations of the administrative procedures act, not necessarily constitutionality. Congressional leaders who oppose DACA may still try to bring additional actions to rescind DACA, creating continued uncertainty about the longevity of the program. However, this uncertainty should not discourage programs from continuing to support their current and prospective DACA residents and fellows. Individuals have worked hard for many years and have overcome significant challenges to reach this point in their educational journeys. They deserve the chance to continue their training. Furthermore, regardless of the outcome of DACA, a DACA recipient may currently be in the process of changing their immigration status, or may have the opportunity to change their immigration status in the near future. According to a national study by Professor Tom Wong at the University of California, San Diego, an estimated 14.3 percent of DACA-eligible youth surveyed were eligible for another form of immigration relief, including eligibility for U nonimmigrant status for survivors of certain crimes or eligibility for lawful permanent residence through a family-based visa petition.⁷ Over two dozen medical students with DACA have

adjusted their immigration status while in medical school in the past five years (most commonly through marriage to a U.S. citizen).

In addition, advocates continue to lobby for the Dream Act, a proposed federal legislation that would grant a pathway to citizenship for DACA recipients and other undocumented youth. An [overwhelming majority of Americans](#) support protecting and legalizing undocumented youth.⁸ [The Dream Act](#) or other immigration legislation could permanently protect these youth in the future.^{9,10}

4. How do I hire a DACA recipient once they have matched?

Onboarding for a DACA recipient is generally no different from hiring and onboarding other trainees. They will have to complete required clinical onboarding for the site, trainee licensure applications (applications are state-by-state), an application for a National Provider Identification (NPI) number, and other site-specific requirements. DACA recipients can provide required, accepted forms of identification and complete background checks. During onboarding, a new hire will complete a Form I-9 employment clearance, verifying their eligibility to work in the US.

In 2012, USCIS [issued guidance](#) for completing a Form I-9 for an employee with DACA.¹¹ More information on Form I-9 is available in USCIS's [Handbook for Employers](#).¹² If a DACA recipient received a one-year extension of their deferred action and work authorization see guidance [here](#).¹³ The Immigration Legal Resources Center has a [DACA Workers' Rights Guide](#).¹⁴ USCIS has also published [reminders for DACA recipients and employers](#), and an extensive [Q&A on DACA](#).^{15,16}

5. Can I hire a DACA recipient even if my hospital receives federal funding to finance our operations?

Yes, DACA recipients are eligible for reimbursements from the Centers for Medicare and Medicaid Services (CMS) as detailed in our [2017 article](#). While DACA recipients are ineligible for federal financial aid (loans), this does not preclude their eligibility for CMS reimbursement when hired as a resident.

6. What advocacy is the medical community doing to support students and trainees with DACA?

The medical community has been actively supporting undocumented students with DACA. The Association of American Medical Colleges (AAMC) led an [amicus brief](#), in

collaboration with other health professions groups, in support of the DACA litigation that came before the Supreme Court.¹⁷ This document highlighted the positive impact that DACA has on undocumented students who wish to become medical professionals, the communities they serve, and the medical community overall. Especially during the current pandemic, healthcare workers with DACA have fulfilled a critical workforce need. According to the [Center for American Progress](#), there are 29,000 healthcare workers who are DACA recipients working on the frontlines.¹⁸ Furthermore, the AAMC led a [health professions letter](#), signed by 70 organizations, that was sent to Senate leadership on July 9, 2019, to urge for passage of legislation that would provide a pathway to citizenship for undocumented young people and those approved for DACA.¹⁹ Individual institutions, higher education systems, and healthcare entities are also engaging in direct advocacy to support undocumented students (see Appendix B for more information).

7. What will happen if DACA recipients cannot continue their education and training?

Losing DACA will have profound impacts on the estimated 590,070 recipients.²⁰ Of these individuals, there are at least 254 medical students and residents in the U.S.²¹ A majority of these students are bilingual, come from underrepresented backgrounds, and desire to train in underserved areas.¹⁵ If these individuals are unable to continue their training, the medical community and areas in need of physicians like them will lose this talented workforce that is well-equipped to address the needs of underserved and growing immigrant communities. We are certain these individuals will continue to fight for their right to an education as they encounter ongoing legal or policy challenges.

There is also a growing community of undocumented young people without DACA. Individuals may be ineligible for the program for various reasons (a common issue is entering the U.S. after the age of 16); they may not be able to afford the high cost of DACA renewals (\$495 dollars for each renewal), or they were not able to file first-time applications when USCIS stopped accepting initial applications on October 6, 2017. We encourage leaders at institutions to continue to be inclusive of undocumented students without DACA in undergraduate medical education whenever possible. Currently there are no viable paths for the completion of residency training without employment authorization, but the current exclusion from future licensure should not be used to discriminate against undocumented students seeking to earn the MD degree. (Each year there are MD graduates that choose not to pursue residency training.) It should also be noted that graduate medical education program standards and accreditation are not predicated on the citizenship status of residents.²²

8. Do you work with an undocumented medical student without DACA?

If so, please connect with us as we are exploring opportunities for these individuals to continue their training. We can also connect you with colleagues who have faced this challenge within our small network in medical education. You can email Dr. Sunny Nakae at: nakaes@cusm.org.

Additional Resources:

Dr. Sunny Nakae of the California University of Science and Medicine will gladly try to answer logistical questions and support your local advocacy efforts. You can email her at: nakaes@cusm.org.

If you are interested in frameworks and strategies to support the growth and development of learners who are undocumented, please review our book chapter in [Critical Praxis in Student Affairs](#).

For advocacy related to DACA visit: United We Dream <https://unitedwedream.org/>

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This document was prepared by:



**PRE-HEALTH
DREAMERS**

Pre-Health Dreamers is a network of over 1,000 undocumented students and allies across 48 states. PHD investigates and shares information on career related pathways for pre-health undocumented students and advocates for more progressive institutional and governmental policies for undocumented students. More information at: www.phdreamers.org.

Appendix A:

A sample ERAS form, with answers selected for a DACA recipient.

Work Authorization

Are you currently authorized to work in the United States? * Yes No

What is your current work authorization? *

Will you need visa sponsorship through ECFMG (J-1) or the teaching hospital (H-1B) to complete the entirety of your GME training? * Yes No

Please identify which of the following will serve as your basis for work authorization for the entirety of your GME training without any need for visa sponsorship. Select all that apply. *

<input type="checkbox"/> U.S. Citizen or National, Legal Permanent Resident, Refugee, Asylee	<input type="checkbox"/> Adjustment of Status applicant (Green Card application) (EAD)
<input checked="" type="checkbox"/> DACA - Deferred Action for Childhood Arrivals	<input type="checkbox"/> Diplomatic Service
<input type="checkbox"/> E-2 - Treaty investor, spouse and children (EAD)	<input type="checkbox"/> Employment Authorization Document (EAD)
<input type="checkbox"/> F-1 - Academic Student (EAD, OPT)	<input type="checkbox"/> H-1 - Temporary worker
<input type="checkbox"/> H-1B - Specialty occupation, DoD worker, etcetera	<input type="checkbox"/> H-2B - Temporary worker- skilled and unskilled
<input type="checkbox"/> H-4 - Spouse or child of H-1, H-2, H-3 (EAD)	<input type="checkbox"/> J-1 - Visa for exchange visitor
<input type="checkbox"/> J-2 - Spouse or child of J-1 (EAD)	<input type="checkbox"/> L-2 - Dependent of Intra-Company Transferee (EAD)
<input type="checkbox"/> O-1 - Extraordinary ability in sciences, arts, education, business or athletics	<input type="checkbox"/> TN - NAFTA trade visa for Canadians and Mexicans
	<input type="checkbox"/> Other

If you currently reside in the United States or Canada, please select where:

Appendix B:

University of California System

<https://www.universityofcalifornia.edu/press-room/statement-uc-president-janet-napolitano-filing-supreme-court-brief-daca>

American Council on Education (letter includes 600 university leaders)

Link: <https://www.acenet.edu/Documents/Institutional-DACA-Letter-to-Congress.pdf>

Icahn School of Medicine at Mount Sinai, Yale Law and Yale School of Medicine NYT Op-Ed

<https://www.nytimes.com/2020/04/02/opinion/trump-coronavirus-daca.html>

Association of Jesuit Colleges and Universities

<https://www.ajcunet.edu/press-releases-blog/2017/9/5/ajcu-statement-on-daca-rescission>

US Companies Supporting DACA Recipients

<https://www.cnbc.com/2019/10/04/major-companies-tell-supreme-court-ending-daca-will-hurt-the-economy.html>

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