



January 27, 2023

Daniel Tsai
Deputy Administrator and Director
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Deputy Administrator Tsai,

On behalf of the Chronic Illness and Disability Partnership (CIDP), we are writing to express our concerns with regard to the ending of the Medicaid continuous coverage requirements in April 2023. CIDP consists of national organizations representing individuals living with a wide range of chronic illnesses and disabilities, including cancer, diabetes, HIV, hepatitis B and C, and mental health and substance use disorders, with a focus on the needs of low-income individuals. While our organizations are national in scope, we also affiliate with strong regional, state, and community-based advocacy networks.

We appreciate the actions that CMS is taking to work in partnership with state Medicaid programs, Medicaid managed care organizations (MCOs), and Medicaid providers to prepare for the unwinding of the PHE-related Medicaid provisions, including the end of the enhanced FMAP and continuous coverage provisions that have been in effect since 2020. In particular, we commend CMS on the guidance and tips it has shared with states over the past year. We also support the recent publication of a Proposed Rule, Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes; if key provisions of the Proposed Rule, such as those pertaining to returned mail, are fully adopted and promptly implemented, they will offer greater protections for people with chronic illnesses and disabilities. However, we remain concerned that additional protections must be in place to ensure that people living with chronic conditions and disabilities avoid dangerous disruptions in care and treatment.

We urge CMS to actively monitor state actions during the unwinding of the Medicaid continuous coverage requirements and to be prepared to exercise its enforcement authority as necessary to ensure that people with chronic conditions and disabilities do not experience harmful disruptions in access to care and treatment. Specifically, we urge CMS to take the following steps:

1) Require states to make their PHE unwinding plans public.

While some state Medicaid agencies have embraced transparent processes with consumer engagement opportunities and publicly available draft transition plans, many other states have posted little to no information about how the transition will be implemented.¹ It is impossible for consumers, providers, and advocates to prepare for and eventually monitor state action without access to these plans. We urge CMS to require that states make plans publicly available with opportunity for meaningful community engagement.

2) Actively monitor state data submissions and the impact of the unwinding on beneficiaries with chronic illness and disabilities.

Leading policy analysts are estimating that as many as 14 to 18 million individuals could lose eligibility for Medicaid once the PHE ends.² With a transition of this size and scope, it is critical that CMS actively monitor how states are managing the transition and enforce Medicaid laws to ensure that vulnerable consumers are protected. We appreciate the additional continuous coverage unwinding protections included in the appropriations bill passed by Congress in December 2022, including the requirement that states submit monthly, *public* reports to CMS, with an automatic penalty for not doing so.³ In particular, we appreciate the requirement that states report the number of individuals terminated from each state’s program for procedural reasons, including failure to respond to notices. If this number is high (in comparison with national or regional averages), CMS should work with the state to ensure appropriate steps are being taken to reach beneficiaries and to assist them to complete the renewal process. CMS should be prepared to use the additional authority included in the 2023 appropriations bill to require corrective action where necessary—up to and including pausing procedural terminations.

¹ Georgetown University Health Policy Institute, Center for Children and Families, 50-State Unwinding Tracker, <https://ccf.georgetown.edu/2022/09/06/state-unwinding-tracker/>.

² Jennifer Tolbert and Meghan Ammula, Kaiser Family Foundation, 10 Things to Know About the Unwinding of the Medicaid Continuous Enrollment Requirement (December 8, 2022), <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-the-unwinding-of-the-medicaid-continuous-enrollment-requirement/>; Urban Institute, The Impact of the COVID-19 Public Health Emergency Expiration on All Types of Health Coverage (December 5, 2022), <https://www.urban.org/research/publication/impact-covid-19-public-health-emergency-expiration-all-types-health-coverage>.

³ Consolidated Appropriations Act, 2023, § 5131(b). This enforcement authority builds on CMS’s exercise of its existing authority under sections 1902(a)(6) and 1902(a)(75) of the Social Security Act, including by requiring all states to submit data demonstrating progress in completing pending applications and renewals on a monthly basis for a minimum of 14 months. CMS, Medicaid and Children’s Health Insurance Program Eligibility and Enrollment Data Specifications for Reporting During Unwinding (December 2022), <https://www.medicaid.gov/resources-for-states/downloads/unwinding-data-specifications.pdf>.

In addition to reviewing states' monthly data submissions, we strongly urge CMS to monitor and assess the ongoing impact of the unwinding on individuals who qualify for Medicaid based on disability, a vulnerable group for whom interruptions in coverage may be especially dangerous. High numbers of disability renewals resulting in disenrollment may be an important flag for erroneous disenrollment of eligible beneficiaries given the relatively stable eligibility of this group. Further, we emphasize that states' continued receipt of increased FMAP is contingent upon their compliance with federal requirements for conducting eligibility redeterminations, including those applicable to ex parte determinations.⁴ We appreciate the guidance CMS has provided to states encouraging ex parte renewals for non-MAGI populations, and we urge CMS to closely monitor states' data submissions and hold them accountable to these requirements.⁵

3) Take corrective action in response to state compliance issues.

It is imperative that CMS use every authority available to it to ensure that beneficiaries are protected. Where CMS learns that states may be erroneously disenrolling eligible beneficiaries, failing to adhere to statutory or regulatory requirements for the unwinding process, or taking other actions that may harm beneficiaries, we urge CMS to take quick corrective action. For example, the 2023 appropriations bill specifically authorizes the Secretary to take corrective action against states who fail to comply with federal requirements for eligibility redeterminations and unwinding reporting, including requiring states to submit a corrective action plan and pausing disenrollments for procedural reasons.

We appreciate the work CMS is doing to ensure Medicaid beneficiaries have access to care and treatment and respectfully request a meeting at your earliest convenience. If we can be of any assistance, please reach out to Elizabeth Kaplan (ekaplan@law.harvard.edu).

Respectfully submitted by the Chronic Illness and Disability Partnership and allied organizations.

CC:

Anne Marie Costello, Deputy Director

Sarah deLone, Director of the Children and Adults Health Programs Group

Alissa Deboy, Director of the Disabled and Elderly Health Programs Group

⁴ Consolidated Appropriations Act, 2023, § 5131; see 42 C.F.R. § 435.916(a)(2), (b) (requiring ex parte redeterminations for non-MAGI beneficiaries when sufficient information is available to the state agency).

⁵ CMS, Ex Parte Renewal: Strategies to Maximize Automation, Increase Renewal Rates, and Support Unwinding Efforts (October 2022), <https://www.medicaid.gov/resources-for-states/downloads/ex-parte-renewal-102022.pdf>.