

Congress of the United States

Washington, DC 20515

March 5, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

We write today to urge the Centers for Medicare & Medicaid Services (CMS) to ensure states honor their long-standing commitments to achieve full compliance with federal Medicaid and Children’s Health Insurance Program (CHIP) eligibility and enrollment requirements. The end of COVID-19 pandemic protections unveiled long-standing problems with many states’ eligibility and enrollment systems and operations that are unnecessarily leaving millions of low-income Americans—including children—without health coverage. It does not have to be this way—states are able to make choices regarding their operations and policies—and these choices have real consequences for Americans’ health and wellbeing.

We commend CMS for its ongoing work to promote continuity of coverage for people enrolled in Medicaid and CHIP. We also believe it is imperative that CMS acts not only to mitigate and correct the inappropriate coverage losses that are happening now, but also to ensure states make permanent fixes to their eligibility and enrollment systems that are failing so many families and children. As CMS continues its work to address these critical gaps in state systems and processes, it is essential that these efforts are carried out with the maximum transparency possible.

In March 2020, Congress acted quickly to ensure families enrolled in Medicaid maintained their health coverage throughout the COVID-19 pandemic, including by conditioning a temporary increase in the federal matching rate on a requirement that states not disenroll nearly any Medicaid beneficiary (the “continuous enrollment condition”).¹ At the end of 2022, Congress provided states with certainty regarding the end date of the continuous enrollment condition and gave states and CMS the necessary tools and resources to return to normal eligibility and enrollment operations.² The process of returning to normal eligibility and enrollment operations (known as “unwinding”) revealed the staggering degree to which many states’ eligibility and enrollment systems are not, and have not been, operating properly to fully implement the law. Areas of noncompliance include renewal requirements as well as initial application requirements,

¹ Section 6008(b)(3) of the Families First Coronavirus Response Act (Pub. L. No. 116-127).

² Section 5113 of the Consolidated Appropriations Act, 2023 (Pub. L. No. 117-328).

such as states' failure to timely process applications.^{3,4} This has left the health coverage of tens of millions of low-income Americans' hanging in the balance, with catastrophic consequences as a result, such as missed cancer diagnoses and people with chronic illnesses going without needed lifesaving medications.

It has been more than a decade since Congress established, and CMS issued implementing regulations outlining, states' responsibilities for establishing a coordinated, seamless system of coverage that enables people to enroll in, maintain coverage in, and, as necessary, move between insurance affordability programs, based on the program for which they are eligible. Further, states have had, and will continue to have, the ability to draw down enhanced federal funding to support the systems upgrades needed to come into compliance.

Nevertheless, many states still operate deficient Medicaid and CHIP systems that are unable to perform federally required functions. For example, some states are not allowing beneficiaries to submit renewal forms online or are not automatically renewing eligibility when information is available to the state that confirms ongoing eligibility.^{5,6} We support CMS' actions to address these significant deficiencies during states' unwinding periods by requiring state Medicaid agencies to adopt temporary mitigations and urging states to take up the many optional strategies CMS made available to promote coverage.⁷ We also remain deeply concerned that, without further and expedient action, these state failings will continue well into the future.

As you know, starting in early 2023, CMS approved states' mitigation strategies to allow them to continue to qualify for the temporary increase in federal matching funds made available by the Families First Coronavirus Response Act. At that time, states committed to achieving full compliance with federal renewal requirements without mitigation strategies.⁸ We appreciate CMS' sustained push for states to take every step possible, including adopting the many flexibilities CMS has offered to protect coverage, as well as CMS' recent commitment to allow states to maintain the mitigations and flexibilities authorized under section 1902(e)(14)(A) of the Social Security Act, through at least December 31, 2024.

We now urge CMS to expeditiously address failures in state systems by requiring all states to commit to a specific and detailed plan to adopt sustainable, long-term systems fixes. Further, to promote transparency and state accountability for identified gaps and adherence with

³42 CFR 435.912(c)(3) stipulates that the determination of eligibility for any applicant may not exceed 45 days (or 90 days for applicants who apply for Medicaid on the basis of a disability).

⁴ CMS, *Medicaid and CHIP Unwinding Operations Snapshot—October 2023 Data* (January 2024) (<https://www.medicaid.gov/sites/default/files/2024-01/medicaid-chip-unwinding-oper-snap-october2023.pdf>).

⁵ CMS, *Summary of State Mitigation Strategies for Complying with Medicaid Renewal Requirements Described in the Consolidated Appropriations Act, 2023* (July 2023) (<https://www.medicaid.gov/sites/default/files/2023-07/sum-st-mit-strat-comply-medi-renew-req.pdf>).

⁶ CMS, *Preliminary Overview of State Assessments Regarding Compliance with Medicaid and CHIP Automatic Renewal Requirements at the Individual Level, as of September 21, 2023* (September 2023) (https://www.medicaid.gov/sites/default/files/2023-09/state-asesment-compliance-auto-ren-req_0.pdf).

⁷ CMS, *Unwinding and Returning to Regular Operations after COVID-19: COVID-19 PHE Unwinding Section 1902(e)(14)(A) Waiver Approvals* (<https://www.medicaid.gov/resources-for-states/coronavirus-disease-2019-covid-19/unwinding-and-returning-regular-operations-after-covid-19/covid-19-phe-unwinding-section-1902e14a-waiver-approvals/index.html>) (accessed January 9, 2024).

⁸ See note 5.

their plans for fixing them, these plans should be made public, and CMS should continue to require states to submit and make public states' eligibility and enrollment operations data.⁹ As the Ranking Member of the House Committee on Energy and Commerce and the Chairman of the Senate Committee on Finance, which have sole jurisdiction over the Medicaid program, we are requesting information about agency actions via written responses to the following questions by March 29, 2024:

1. What is CMS' plan for ensuring all states come into compliance with federal eligibility and enrollment requirements? When will CMS reach agreement with states about their plans to come into compliance, and when will CMS make those agreements public?
2. Is CMS prioritizing areas of noncompliance a state must address first? If so, what factors are CMS considering in setting out these priorities?
3. How will CMS monitor whether states have indeed come into compliance, and in the event a state does not come into compliance timely, what remedies does CMS plan to seek? For example, does CMS intend to continue to allow states that are out of compliance with eligibility and enrollment requirements to claim the 90 percent federal match available for certain eligibility and enrollment activities?¹⁰
4. Are there tools or resources that would assist CMS in effectively overseeing and monitoring state compliance during and/or following the end of states' unwinding periods?

We join CMS in calling on states to go beyond the minimum requirements to promote health coverage and access to care for their residents, including by adopting the many flexibilities CMS recently made available.¹¹ We also urge CMS to be transparent in how it will ensure every state achieves long-term compliance with Medicaid eligibility and enrollment requirements in an expeditious manner.

Sincerely,



Frank Pallone, Jr.
Ranking Member
House Committee on Energy and Commerce



Ron Wyden
Chairman
Senate Committee on Finance

cc: The Honorable Xavier Becerra
Secretary
Department of Health and Human Services

⁹ CMS, *Unwinding and Returning to Regular Operations after COVID-19: Data Reporting* (<https://www.medicaid.gov/resources-for-states/coronavirus-disease-2019-covid-19/unwinding-data-reporting/index.html>) (accessed January 9, 2024).

¹⁰ 42 CFR 433.112.

¹¹ See note 7.