Unwinding of COVID Medicaid Continuous Coverage Requirements

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we’ve focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.
To achieve Justice in Aging, we must:

- **Advance equity** for low-income older adults in economic security, health care, housing, and elder justice initiatives.
- Address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income older adults in marginalized communities.
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, and economic class.
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Agenda

• Background on the Public Health Emergency (PHE) and continuous coverage protections
  • Legislative and administrative actions
  • Carr v. Becerra

• Obstacles for the dually-eligible population

• Practice tips for advocates

• State specific actions: California
Timeline: 2020

- **January** - Public Health Emergency (PHE) declared, enacting emergency waivers and flexibilities for Medicare and Medicaid

- **March** – Families First Coronavirus Response Act (FFCRA) passed
  - Gives states 6.2% Federal Medical Assistance Percentage (FMAP) increase provided
    - No stricter standards, methodologies, or procedures than was in effect on Jan 1, 2020
    - No premium increases than was in effect on Jan 1, 2020
    - **Individuals enrolled in Medicaid must remain continuously covered during the PHE** even if eligibility changes unless individual voluntarily terminates coverage or no longer resides in the state
    - No cost sharing for COVID-19 testing services, treatments, or vaccines
2020 Interim Final Rule

• **November 2020**, CMS under the Trump administration issued an Interim Final Rule (IFR)
  
  • States could receive enhanced FMAP with altered continuous coverage requirements for different Medicaid populations
  
  • Required redeterminations for Medicare-Medicaid dually eligibles
  
  • Enrollee with Medicare and full scope Medicaid was enrolled into Medicare Savings Program (MSP) and lost full Medicaid benefits
Timeline: 2021-2022

• **January** - Change in administration, PHE continues

• **March** - American Rescue Plan Act (ARPA) passes
  - Provides states 10% FMAP increase for HCBS
  - Adds Maintenance of Effort (MOE) requirement similar to FFCRA but without continuous coverage protections

• **April-present** - CMS continues issuing unwinding guidance and materials
  - Includes guidance extending 12-month unwinding period to 14-months
2023: Legislative Actions

- **January** – Congress passes Consolidated Appropriations Act of 2023 which uncouples continuous coverage from the PHE
  - Ends continuous coverage protections on March 31 regardless of when PHE actually ends
    - Phases down enhanced FMAP through Dec 2023 provided the state meets certain conditions
  - States can begin renewals as early as Feb 2023, with April terminations
    - CMS clarified states can still take up to 14 months to unwind
2023: Administrative Actions

• Unwinding Special Enrollment Periods (SEP) for Marketplace and Medicare coverage in effect for individuals losing Medicaid coverage
  • Medicare SEP if an individual's Medicaid terminates after January 1, 2023. Eliminates late enrollment penalties and a person can choose the effective date of Medicare coverage

• Biden administration announced PHE will end on May 11, ending several emergency waivers and flexibilities
Conditions for FMAP Glidepath Under CAA

- States must continue other FFCRA provisions through Dec 2023
  - Maintenance of Effort protections against imposing more restrictive eligibility standards, methodologies, or procedures
  - No premium increases
  - No cost-sharing for COVID testing and treatments
Redetermination-Based Conditions for FMAP under CAA (1/2)

• During redeterminations, states must:
  • Ensure updated contact information
  • Make good faith effort to contact individuals using more than one modality of communication prior to terminations due to returned mail
  • Conduct ex parte renewals
  • Provide reasonable time frames and modalities to return renewal forms
Redetermination-Based Conditions for FMAP under CAA (2/2)

• During redeterminations, states must (continued):
  • Determine eligibility for all Medicaid categories
  • Provide a minimum of 10 days’ notice and right to fair hearing
  • Assess eligibility and transfer applications for other insurance programs
  • Reconsider eligibility for MAGI enrollees without a new application if terminated for failure to return forms
    • States have option to extend this to non-MAGI
Reporting Requirements for FMAP Glidepath under CAA

- States must submit monthly reports to CMS to be publicly published containing:
  - Total number of initiated renewals
  - Number of renewals completed ex parte
  - Total number of terminated individuals
  - Number of individuals terminated for procedural reasons
  - Total call center volumes, average wait times, and average call abandonment rate

- States not in compliance will have an opportunity to submit corrective action plan
Class action lawsuit challenging the 2020 IFR that shifted many dually eligible individuals with full scope Medicaid to MSPs

Preliminary Injunction (PI) issued on January 31, 2023 requiring HHS to:
- Stop enforcing the IFR and to
- Reinstate continuous coverage protections for dual-eligibles
Carr v. Becerra (2/3)

• Any dually eligible individual terminated from full Medicaid must be reinstated before injunction ends on **March 31, 2023**

• Advocates should send out **model letter** to state Medicaid agencies informing them of obligation under PI
  • See additional JIA resources [here](#)
Example

• Mary, age 66, had been enrolled in MAGI adult Medicaid since she was 60.

• A year ago, Mary turned 65. State determined she was over income for full Aged and Disabled Medicaid but met QMB requirements. State moved Mary to QMB.

• **Under Carr:** State must reinstate full Medicaid retroactive to Mary’s disenrollment.

• Mary can submit bills for services that she paid for which would have been covered by Medicaid—e.g., dental, eyeglasses, etc.
Obstacles and Solutions for Dual-Eligibles
Unwinding Challenges Facing Older Adults

• Logistical obstacles
  • Changes of address, unfamiliarity with redeterminations, accessibility issues with completing renewal forms
  • Confusion re Carr v. Becerra

• Potential losses
  • Full scope Medicaid services
  • Coverage of Medicare premiums, co-insurance
  • Disenrollment from D-SNP
Strategies for Advocates: Working with your State (1/4)

• Timing
  • Encourage states to take the entire 14-month timeline for unwinding to prevent improper terminations
  • Encourage states to consider de-prioritizing non-MAGI enrollees, including older adults, for later in the unwinding
    • Older adults typically have fixed incomes and are more likely to remain financially eligible
Strategies for Advocates: Working with your State (2/4)

• Process
  What are your state’s plans to:
  • Use ex parte reviews based on reliable, existing data sets
  • Contact enrollees deemed ineligible using more than one modality before terminating coverage due to returned mail
  • Apply reasonable compatibility threshold using existing data sets

• Appeals
  • How is your state planning to ensure due process rights are protected with clear notice around appeal rights, procedures, and reasonable time frames
Strategies for Advocates: Working with your State (3/4)

• Transparency
  • How will your state publicize state unwinding plans with detailed information on:
    • Redetermination process and timeline for mailing notices and beginning terminations
    • Follow up communications strategy for unreturned or undeliverable mail
    • Outreach plans
    • Referral process for individuals ineligible for Medicaid (Note: Medicare/Marketplace SEPs)
    • Screening process to transfer eligible individuals into MSPs timely
Strategies for Advocates: Working with your State (4/4)

• What is your state doing to comply with preliminary injunction in *Carr v. Becerra*?

• See:
  • **Model letter** to state Medicaid agencies
  • **Advocate guide**: The Nationwide Preliminary Injunction in *Carr v. Becerra* and What It Means for Medicaid Enrollees in Your State
Collaboration with Partners is Key

• Develop partnerships across the aging network
  • Including providers, health centers, AAAs, SHIP counselors, community centers, and partners serving hard-to-reach populations like LEPs and individuals with housing instability

• Update information throughout the unwinding process
  • Many individuals may have never completed redetermination, important to educate individuals on eligibility rules and process
    • Provide specific and updated information about notices and materials
State Actions: California (1/2)

• California Statistics
  • 15.2 million Medicaid individuals
  • 1.6 million dually eligible individuals
  • 700k older adults and persons with disabilities (Medicaid only)

• Operational Plan:
  • 14-month unwinding period, beginning April 2023
  • No de-prioritization of older adults
  • Maintains current renewal month timelines
State Actions: California (2/2)

• Proactive flexibilities to protect coverage
  • Update contact information using National Change of Address database & USPS in-state forwarding address, Medicaid managed care organizations
  • Streamline renewals via asset verification and reasonable explanations

• Targeted Outreach
  • Ambassador Program
  • Renewal packets mailed in colored envelopes
  • Media outreach (radio, television, billboards and ads at bus stop)
State Challenges: California

• Challenges:
  • Large number of renewals
  • Automatic ex-parte renewal success rate dropped to 25%
  • Workforce shortages
  • Difficult to determine disparities with PHE data dashboard
Resources

• Justice in Aging
  • Unwinding Medicaid Continuous Coverage Protections—What Advocates for Older Adults Need to Know
  • The Nationwide Preliminary Injunction in Carr v. Becerra and What It Means for Medicaid Enrollees in Your State

• Centers for Medicare and Medicaid Services (CMS)
  • Unwinding and Returning to Regular Operations after COVID-19
    • Includes guidance and communications toolkit in multiple languages
Additional Resources

• National Health Law Program (NHeLP):
  • Unwinding Medicaid Continuous Coverage: Checklist for Redeterminations
  • Protecting People with Disabilities and People with Limited English Proficiency during the Unwinding of the Continuous Coverage Provision

• Georgetown Center for Children and Families
  • Unwinding Medicaid Continuous Coverage Resource Page
    • Includes 50-state tracker
Questions?

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