November 7, 2022

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2421-P
P.O. Box 8016
Baltimore, MD 21244–8016

Re: Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes [CMS–2421–P]

The undersigned organizations submit these comments in response to the Department of Health and Human Services (HHS, Department) and the Center for Medicare and Medicaid Services (CMS) Notice of Proposed Rulemaking (proposed rule) CMS-2421-P.

We strongly support the direction CMS and the Biden-Harris Administration are taking in reducing administrative barriers that keep eligible people from enrolling in or maintaining their health coverage in Medicaid, CHIP, and the Basic Health Program. While the Affordable Care Act (ACA) and other recent actions made significant strides in this area, as many as 7 million people – about one-quarter of all people without insurance – are eligible for Medicaid or CHIP but not enrolled, according to the Kaiser Family Foundation, many of them because of difficulty enrolling or remaining enrolled.[1] And with the end of the Public Health Emergency likely in 2023, 15 million people may lose Medicaid coverage as redeterminations resume during the unwinding, with nearly half of them – 6.8 million –losing coverage for administrative reasons despite being eligible.[2] Additional administrative streamlining is needed, therefore, and we urge CMS to take prompt action adopting and implementing the new rules.

The proposed rule would make important improvements that would specifically benefit people who have been historically and/or systemically disadvantaged by the current system, including

- People aged 65 and over and people with disabilities, whose circumstances should make their eligibility relatively stable, will see simplified enrollment and retention processes that parallel similar practices that have been in place for other types of Medicaid enrollees for more than a decade.

- Children, who often experience delays in coverage when enrolling in CHIP or gaps when moving between Medicaid and CHIP; the proposed rule will lessen this enrollment

[1] Kendal, Robin Rudowitz, and Anthony Damico. A Closer Look at the Remaining Uninsured Population Eligible for Medicaid and CHIP. Kaiser Family Foundation, November 2021.
[2] Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches. ASPE, Office of Health Policy, August 2022.

volatility, which disproportionately harms Black, Hispanic, American Indian and Alaskan Native children.[3]

- People with high medical expenses in the 32 states with a medically needy program, who will, at the state's option, be able to deduct their projected, regular medical expenses from their income to allow them to remain eligible for home and community-based services, as people receiving care in facilities may do now.

We also support other elements of the proposed rule that will generally make it easier for eligible people to get and keep coverage by addressing common sources of disenrollment for reasons other than eligibility:

- The proposed rule would require states to take affirmative steps to locate people whose mail is returned, a common reason for eligible people to lose coverage. While this requirement adds to states' responsibilities at a time they will be managing the high-volume unwinding process, this is all the more the reason that such a measure is critical right now, so people's eligibility is protected as millions of notices requiring a response are mailed to program enrollees.

- The proposed rule strengthens ACA provisions intended to smooth transitions between programs by requiring more coordination across programs (Medicaid, CHIP, and the Basic Health Program) in determining eligibility and notifying people of their status, making unnecessary gaps in coverage less likely.

- The proposed rule would allow the verification of citizenship and identity of applicants using state vital statistics data or a Department of Homeland Security database without requiring the applicant to provide additional paper documentation.

- The proposed rule establishes reasonable timeframes – for both the state agencies and enrollees – for application acceptances and eligibility renewals so that if people are eligible for coverage, they can get it quickly.

Areas for improvement

The proposed rule is broad in its scope and goes a long way to lowering the process barriers that impede coverage for eligible people. We suggest several improvements that would further strengthen the rule.

1. Adopt stronger enforcement of timeliness requirements. States' compliance with current timeliness requirements – for example, making determinations of eligibility within 45 days of application – has been inconsistent. Prior to the pandemic, in 2019, 15 states completed determinations within this limit for less than 90 percent of their applications, and certain states'

[3] Medicaid and CHIP Payment and Access Commission, July 2022. "Transitions Between Medicaid, CHIP, and Exchange Coverage." Available at: https://www.macpac.gov/wp-content/uploads/2022/07/Coverage-transitions-issue-brief.pdf.

performance was considerably worse.[4] In 2022, 15 states again did not reach 90 percent compliance[5]; nine of those states were the same as in 2019.[6] The proposed rule establishes and clarifies timeliness standards for both new applications and renewals, but those standards are less effective if states violate them with impunity. States should face meaningful sanctions for egregious levels of noncompliance, and we urge CMS to specify such sanctions in the new rule.

2. Require the change to the income calculation for "medically needy" enrollees using home and community-based services (HCBS). As noted above, the proposed rule would give states the option to allow people with high medical expenses to use projected expenses in their spend-down calculation, which would keep people continuously enrolled. Because this is already applied to people receiving institutional-based care, one rationale given for the proposed change is to correct Medicaid's historical bias towards institutional-based care. We agree with this rationale put forward by CMS to correct its current rules, but we believe it should go even further to require states to allow people who receive HCBS to deduct their anticipated medical expenses too. A majority of states use the "medically needy" option in their Medicaid program; making this change mandatory would streamline the process and reduce unnecessary burden on how people with extensive health care needs receiving HCBS must demonstrate their eligibility.

3. Inform applicants and enrollees of the new rules. Changing official regulations is a step towards more stability in enrollment and retention. What must follow is an effort to educate current and potential enrollees about the new, streamlined processes and ensure that outreach efforts – whether in person, electronic, or by mail – are accessible, easily understood, and connect people to additional resources when necessary. Many people have engaged with the programs in the past and are familiar with burdensome requirements that present barriers to coverage. Others may be discouraged from engaging if they do not understand or are intimidated by what will be required of them. These deterrents would likely be strongest among people with limited time to navigate the system, limited English proficiency, low levels of understanding of the health and health care systems, and other disadvantaged and disenfranchised groups. While communication and education may not be part of the final rule itself, it is important that they not be given short shrift in the rule's implementation.

4. Take additional steps to encourage states to maximize ex parte renewals and streamline eligibility assessments. Perhaps the most important tool states can use to quickly process eligible beneficiaries is an "ex parte" renewal procedure. In this process, states use existing data sources to determine a person's eligibility rather than relying on a flawed multi-step process of mailing out notices and requiring an individual to respond with proof of their eligibility. Maximizing the use of ex parte renewals is a state obligation under federal law, but, before Medicaid redeterminations were suspended with the PHE, states used ex parte renewals in varying degrees. To ensure that states truly maximize this strategy, we urge CMS to advance rule making that does more to ensure states meet federal requirements to maximize data driven renewals by

[4] Medicaid MAGI and CHIP Application Processing Time Report. CMS, November 7, 2019. https://www.medicaid.gov/state-overviews/downloads/magi-and-chip-application-processing-time/magi-application-time-report-2019.pdf

[5] MAGI Application Processing Time Snapshot Report: January - March 2022. CMS, September 1, 2022. https://www.medicaid.gov/state-overviews/downloads/magi-app-process-time-snapshot-rpt-jan-mar-2022.pdf

[6] Alaska, California, Maine, Missouri, North Dakota, Ohio, South Carolina, Virginia, and Wyoming.

requiring states to meet a minimum percentage of renewals done ex parte, specifying that Medicaid agencies *must* use all available program data, and encouraging states to standardize their application processes across all social programs. While these issues likely require additional future rulemaking, we urge CMS to consider how these changes would impact provisions in the existing rule.

Implementation timeline

While we understand the administrative demands states will face as the PHE ends and the unwinding begins, we believe this underscores the need for the most rapid implementation possible, particularly for the elements of the rule that have the greatest potential to help reduce the erroneous disenrollment of eligible people. The provisions related to returned mail, streamlining processes for people over age 65 and people with disabilities, and facilitating transitions between Medicaid and CHIP are prime examples. We strongly urge a 90-day compliance timeline for these provisions. Furthermore, we urge CMS to work closely with states to quickly improve data infrastructure to support the requirements proposed in this rule, particularly as they relate to the use of Medicare low-income subsidy data to facilitate application and eligibility determinations.

People who are eligible for Medicaid, CHIP, and the Basic Health Program should not have to surmount unnecessary obstacles to access their benefits. Improved technological capabilities and a record of successful administrative simplifications for some, but not all, enrollees demonstrate that further streamlining is possible without sacrificing program integrity. We are encouraged by the improvements promised by the proposed rule and we look forward to additional administrative action to further simplify these essential public programs.

Sincerely,

2020 Mom
ACA Consumer Advocacy
ADAP Advocacy Association
African American Clergy Collective of Tennessee
AIDS Action Baltimore
Alabama Arise
Alabama Asset Building Coalition
Allergy & Asthma Network
American Association of Birth Centers
American Network of Oral Health Coalitions
American Occupational Therapy Association (AOTA)
American Public Health Association
The Arc of Indiana
The Arizona Partnership for Immunization
Asian & Pacific Islander American Health Forum (APIAHF)
Association of Asian Pacific Community Health Organizations (AAPCHO)
Black Clergy Collaborative of Memphis
Brighter Beginnings
CASA
Center for Health and Social Care Integration at Rush
Center for Medicare Advocacy
Center for the Study of Social Policy (CSSP)
Champaign County Health Care Consumers
Children's Action Alliance
Children's Advocacy Alliance
Children's HealthWatch
The Children's Partnership

The Coalition for Hemophilia
The Consortium
Citizen Action of Wisconsin
Cobalt
Colorado Consumer Health Initiative
Colorado Hospital Association
Community Access National Network
Community Catalyst
Community Service Society of NY
Conscious Talk Radio
Consumer Action
Consumers for Affordable Health Care
Crossroads AME
D M Shine LLC
Every Body Texas
EXELTH
Families USA
Family Voices NJ
Feeding Texas
First 1,000 Days Kansas
First Focus on Children
Florida Health Justice Project
Florida Policy Institute
Futures Without Violence
Good Life Outcomes, at Change Happens!
Granite State Progress
Greater Wisconsin Agency on Aging Resources, Inc.
Health Action New Mexico
Health Care For All
Health Care for America Now (HCAN)
HealthBegins
HealthConnect One
HealthHIV
Hoosier Action
Indiana Chapter of the American Academy of Pediatrics
Indiana Disability Rights
Indiana Family to Family
Indiana Legal Services
Indiana Primary Health Care Association
International Foundation for AiArthritis
Iowa Citizens for Community Improvement
Kentucky Center for Economic Policy
Kentucky Equal Justice Center
Kentucky Voices for Health
Kids Forward
The Leadership Conference on Civil and Human Rights
Legal Council for Health Justice
Lighthouse Community Development Corporation
Louisiana Budget Project
Maryland Health Care for All! Coalition
Medicaid Matters New York
Medicaid Medicare CHIP Services Dental Association
Michigan League for Public Policy
Minnesota Budget Project
Minnesota Oral Health Coalition
Mississippi Center for Justice
Mississippi Health Advocacy Program
Missouri Budget Project
Missouri Rural Crisis Center
MJ Health and Life Insurance LLC
NAACP
NAMI Texas
National Adult Day Services Association (NADSA)
National Association of Pediatric Nurse Practitioners
National Association of Social Workers, CT Chapter
National Center on Adoption and Permanency
National Disability Rights Network (NDRN)
National League for Nursing
National Network for Arab American Communities (NNAAC)
National Urban League
NC Child
Nebraska Appleseed
Network Lobby for Catholic Social Justice
Network of Behavioral Health Providers
Network of Jewish Human Service Agencies
New Hampshire Oral Health Coalition
New Jersey Citizen Action
North Carolina AIDS Action Network
North Carolina Justice Center
Northwest Harvest
Oral Health Kansas, Inc.
PA Coalition for Oral Health

PA Health Funders Collaborative
Partners in Care Foundation
Pennsylvania Council of Churches
People's Action
PlusInc
Protect Our Healthcare Coalition RI
Public Health Solutions
School-Based Health Alliance
Service Employees International Union
South Carolina Appleseed Legal Justice Center
South Dakota Voices for Peace
SPACEs In Action
SPAN Parent Advocacy Network
St. Frances Cares
TENAC
Tennessee Disability Coalition
Tennessee Health Care Campaign
Tennessee Justice Center
Texas Parent to Parent
UnidosUS
Universal Health Care Action Network of Ohio
US of Care
UUFHCT
Virginia Coalition of Latino Organizations
Voices for Virginia's Children
West Virginia Citizen Action Group
West Virginians for Affordable Health Care
Wisconsin Aging Advocacy Network
Wisconsin Board for People with Developmental Disabilities
Wisconsin Faith Voices for Justice
Wisconsin PNHP (Physicians for a National Health Program)
Woori Juntos
Young Invincibles