

April 24, 2023

The Honorable Xavier Becerra
Secretary, Department of Health and Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Dear Secretary Becerra:

In just two years, the Biden-Harris Administration has made incredible progress promoting health equity and bringing millions of people the financial security and health care access that result from high-quality, affordable health coverage. We are grateful for your team's extraordinary work, led by Centers for Medicare & Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure and Deputy Administrators Daniel Tsai and Ellen Montz, to preserve struggling families' health care as Medicaid continuous coverage requirements unwind.

In light of these accomplishments, we remain concerned that unwinding could cause the largest Medicaid losses in history, with disproportionate harm experienced by communities of color, mothers, and children. To prevent a civil rights and health equity disaster, we urge you to make the strongest possible use of the powers recently granted by Congress for holding states accountable to preserve eligible families' health care.

Without vigorous federal intervention, state Medicaid programs are likely to operate as they did in the past. If that happens during the unwinding, the Assistant Secretary of Planning and Evaluation (ASPE) projects that [15 million people will be terminated](#). Such losses would greatly exceed the [largest previous annual drop in Medicaid coverage](#), when the number enrolled fell by 2 million in 2018 and again in 2019.

Unprecedented Medicaid terminations, focused on historically disadvantaged communities, would deepen already severe health inequities. More than half of those whom ASPE expects to lose Medicaid are people of color, including nearly 5 million Latinos, more than 2 million African Americans, and almost 1 million Asian Americans and Pacific Islanders. Other research suggests that [nearly 7 million children are at risk of losing coverage](#), and that [children of color are particularly vulnerable](#). Among all Black children in America, 13% will lose Medicaid if the program operates as it did in the past, as will 12% of all Native American children, 12% of all Latino children, 10% of all children who are Native Hawaiians or Pacific Islanders, and 6% of all Asian American children in the United States.

Needless red tape and bureaucracy threaten to take a terrible toll. More than half of all people of color and three-fourths of all children losing Medicaid will remain eligible but be terminated because of state administrative requirements, according to ASPE. These projections fit recent history, when states like [Tennessee](#), [Texas](#), and [Utah](#) redetermined numerous families and saw huge coverage losses. In each state, more than 80% of all terminated families were dropped only because the state did not receive a response to its requests for information. This happened when forms were mailed to the wrong address or never delivered, the family did not understand the forms, the family could not reach a Medicaid call center to provide requested information, renewal procedures were not accessible to people with limited English proficiency or people with disabilities, or for other reasons.

The *Consolidated Appropriations Act, 2023*, (CAA) gave you unprecedented authority to prevent such patterns from recurring on a vastly larger scale during the unwinding. If a state does not fulfill "all Federal requirements applicable to Medicaid redeterminations," CMS can require a corrective action plan, reduce the state's federal matching rates, impose civil monetary penalties, or place procedural terminations on "hold" pending corrective action.

While many important strategies can limit coverage loss, such as measures to facilitate a smooth transition from Medicaid to CHIP, the Marketplace, or employer-based coverage, we urge you to take four key steps to prevent a tidal wave of paperwork terminations from ending health care for millions of eligible families:

First, CMS mitigation plans should prevent states from wrongfully terminating beneficiaries for purely procedural reasons. CMS is working with states to remedy longstanding violations of federal legal requirements. If a state is implementing a "mitigation plan" to fix those violations, CMS will not use its CAA authority to cut federal matching rates. For a state to benefit from sanction suspension, we believe it should be barred from ending families' coverage due to

legal violations that have not yet been fixed. Accordingly, when a state's violations threaten to cause procedural terminations of eligible people, its mitigation plan should forbid procedural terminations until the violations end.

Second, CMS should hold state and local Medicaid agencies accountable for compliance with civil rights laws. In §5131(a)(4) and (b), the CAA authorizes CMS to use all enforcement tools if a state violates any "Federal requirement applicable to eligibility redeterminations." Such requirements include [regulations](#) under Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act barring practices that have [discriminatory effects](#), based on race or national origin, unless those practices are necessary to accomplish a substantial legitimate objective. The Administration has already made clear that a failure to make redetermination processes [accessible to people with limited English proficiency and to people with disabilities violates federal civil rights laws. Those laws can also be violated by other renewal practices](#) that threaten to trigger significant procedural terminations with discriminatory effects, such as:

- **Underfunding of call centers that causes prolonged delays and effectively prevents telephonic renewal.** Families of color disproportionately need fully accessible call centers, as such families face systemic barriers to receiving and providing information on-line and in-person. Compared to others, people of color are less likely to have [broadband access, digital fluency](#), and jobs that provide [paid time off](#) to meet with Medicaid staff.
- **Using complex language on essential forms and notices that is incomprehensible to people with low literacy skills,** who [disproportionately](#) include people of color and immigrants.
- **Refusing to let Medicaid plans and providers help their members and patients renew coverage,** including through completing forms telephonically. Without one-on-one assistance completing renewal forms that could be [at least 8 pages long](#)—longer than the long-form [federal income tax return](#)—families of color will suffer disproportionate terminations. As the White House Office of Management and Budget observed, [administrative burdens like form completion "do not fall equally](#) on all entities and individuals, leading to disproportionate underutilization of critical services..., often by the people and communities who need them the most. Burdens that seem minor ... can have substantial negative effects for individuals already facing scarcity. "

Third, CMS should promote transparency and accountability by publishing state unwinding and performance indicator data as soon as possible. Without rapid publication, stakeholders may be unable to intervene in time to prevent significant coverage losses. The consequences of delayed publication could be particularly serious in many of the states where most Medicaid beneficiaries are people of color. To prevent rapid, inequitable losses, CMS cannot let the risk of data errors deter the prompt release of preliminary numbers. Instead, CMS should publish state reports as soon as possible, noting that the numbers are preliminary and subject to later correction. America has long used this approach for employment statistics, [releasing](#) each month's preliminary numbers during the first week of the following month.

Fourth, CMS should hold states accountable for renewing coverage based on data matches "to the maximum extent practicable," as required by Affordable Care Act (ACA) §1413(c)(3). This requirement, which applies to all beneficiaries, including older adults and people with disabilities, eliminates the need for eligible people to complete paperwork. Any state with data-based renewal rates far below its peers is, by definition, failing to achieve such rates at "maximum practicable" levels. We believe longstanding problems with a state's eligibility system should not affect CMS's determination of the maximum practicable level of data-based renewals. A state's past refusals to modernize its systems should not be rewarded by lessening the state's duties to protect its residents. Eligible people must not be terminated because they did not complete paperwork telling the state what it should have been able to learn on its own.

The steps we urge would protect the Biden-Harris Administration's extraordinary legacy of bringing quality, affordable health coverage to more people than [ever before in our country's history](#). Please know that the undersigned organizations stand ready to support your efforts to protect the [more than 90 million people](#) in America who now rely on Medicaid and CHIP for their health care. For further information, please feel free to contact Joyce Liu at the Asian & Pacific Islander American Health Forum (jliu@apiahf.org), Deborah Weinstein at the Coalition on Human Needs (dweinstein@chn.org), Peggy Ramin at the Leadership Conference on Civil and Human Rights (ramin@civilrights.org), Lisa Malone at NAACP (lmalone@naacpnet.org), Chandos Cullen at the National Council of Urban Indian Health (ccullen@ncuih.org), Morgan Polk at the National Urban League (mpolk@nul.org), Andrea Harris at Protect Our Care (aharris@protectourcare.org), or Stan Dorn at UnidosUS (sdorn@unidosus.org).

Sincerely,

National organizations

ACA Consumer Advocacy
African Bureau for Immigration and Social Affairs (ABISA)
All4Ed
Allergy & Asthma Network
Alliance for Women's Health and Prevention
Alliance of Community Health Plans (ACHP)
Allies for Independence
American Academy of Pediatrics
American Association of People with Disabilities
American Association on Health and Disability
American College of Physicians
American Friends Service Committee
American Geriatrics Society
American Heart Association
American Kidney Fund
American Lung Association
American Muslim Health Professionals
American Public Health Association
America's Physician Groups
Asian & Pacific Islander American Health Forum
Asian Pacific Institute on Gender-Based Violence
Association for Community Affiliated Plans (ACAP)
Association of Asian Pacific Community Health Organizations (AAPCHO)
Association of Maternal & Child Health Programs
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Binational Institute of Human Development
Campaign for Tobacco-Free Kids
Caring Across Generations
Catholic Health Association of the United States
Center for Elder Law & Justice
Center for Law and Social Policy (CLASP)
CenterLink: The Community of LGBT Centers
Child Neurology Foundation

Children's Advocacy Institute
Children's HealthWatch
CHW Strength
Coalition for Asian American Children and Families
Coalition on Human Needs
Community Catalyst
Compassion & Choices
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Consumers For Affordable Health Care
COVID Survivors for Change
Center for the Study of Social Policy (CSSP)
Cystic Fibrosis Foundation
Disability Law Center
Disability Policy Consortium
Disability Rights Education and Defense Fund (DREDF)
Epilepsy Foundation
Families USA
First Focus on Children
Foundation for Sarcoidosis Research
Health & Medicine Policy Research Group
Health Care Voices
HIV Medicine Association
Hunger to Health Collaboratory
JDRF
Justice in Aging
Kappa Alpha Psi Fraternity, Inc.
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
LeadingAge
League of Women Voters of the United States
Legal Action Center
MANA, A National Latina Organization
March of Dimes
Medicare Rights Center
Mental Health America

MomsRising
NAACP
National Alliance of State & Territorial AIDS Directors (NASTAD)
National Action Network
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Hispanic Nurses
National Association of Community Health Workers (NACHW)
National Association of Hispanic Federal Executives
National Association of Pediatric Nurse Practitioners
National Association of Rural Health Clinics
National Association of School Nurses
National Association of Social Workers
National Birth Equity Collaborative
National Center for Medical-Legal Partnership
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Council of Asian Pacific Islander Physicians
National Council of Jewish Women
National Council of Negro Women (NCNW)
National Council of Urban Indian Health (NCUIH)
National Disability Rights Network (NDRN)
National Employment Law Project
National Family Planning & Reproductive Health Association
National Health Care for the Homeless Council
National Health Council
National Health Law Program
National Hemophilia Foundation
National Hispanic Medical Association
National Immigration Law Center
National Kidney Foundation
National Latina Institute for Reproductive Justice
National League for Nursing
National Multiple Sclerosis Society
National Network for Youth
National Organization for Rare Disorders
National Organization for Women

National Partnership for Women & Families
National Patient Advocate Foundation
National Resource Center on Domestic Violence
National Rural Health Association
National Urban League
National Women's Law Center
Network Lobby for Catholic Social Justice
Partners In Health
Partnership for America's Children
People Power United
Prevent Blindness
Prevention Institute
Protect Our Care
Public Advocacy for Kids (PAK)
Public Citizen
RESULTS
SER Jobs for Progress National
SIECUS: Sex Ed for Social Change
Sisters of Mercy of the Americas Justice Team
Sojourners
SPAN Parent Advocacy Network
Susan G. Komen
The Arc of the United States
The Children's Agenda
The Children's Partnership
The Kennedy Forum
The Leadership Conference on Civil and Human Rights
True Colors United
UnidosUS
Union for Reform Judaism
United States of Care
Voto Latino
Young Invincibles
ZERO TO THREE

State and local organizations

AIDS Foundation Chicago

Akron Urban League

Alabama Arise

Alabama Disabilities Advocacy Program

Arizona Center for Disability Law

Austin Area Urban League

Autistic Self Advocacy Network

Buffalo Urban League

Catalyst Miami

Centro Sávila

Citizen Action of Wisconsin

Citizens' Committee for Children of New York

Connecticut Oral Health Initiative, Inc.

Delta Dental of Colorado Foundation

Disability Law Center of Alaska

Disability Law Center of Utah

Disability Law Colorado

DisAbility Rights Idaho

Disability Rights Michigan

Disability Rights Mississippi

Disability Rights New Jersey

Disability Rights North Carolina

Disability Rights Oregon

Disability Rights South Carolina

Family Voices NJ

Florida Community Health Worker Coalition

Florida Policy Institute

Florida Voices for Health

Free Gift Baptist Church

Greater Baltimore Urban League

Greater Sacramento Urban League

Health Action New Mexico

Hoosier Action

Houston Area Urban League

Impetus - Let's Get Started LLC
Indianapolis Urban League
Inland Empire - Immigrant Youth Collective
Inland Equity Community Land Trust
Kentucky Equal Justice Center
Knoxville Area Urban League
La Unión del Pueblo Entero (LUPE)
Lakeshore Foundation
Lorain County Urban League
Make the Road Nevada
Metropolitan Wilmington Urban League
Mississippi Urban League
NAACP - Mansfield Unit #3190
NAACP Gloucester Branch, Gloucester, Virginia
NAACP Ohio
National Association of Hispanic Nurses Alabama
NC Counts Coalition
North Dakota Protection & Advocacy Project
Oasis Legal Services
Oklahoma Policy Institute
Paraquad, Inc.
PATHS Medical Center
Pinellas County Urban League
Protect Our Healthcare Coalition RI
Safe States Alliance
San Antonio, Texas NAACP
San Gabriel Valley NAACP
Shriver Center on Poverty Law
Sisters of Charity of Nazareth Congregational Leadership
Sisters of Charity of Nazareth Western Province Leadership
South Carolina Appleseed Legal Justice Center
South Carolina Christian Action Council
South Dakota Voices for Peace
Tennessee Disability Coalition
Tennessee Health Care Campaign

Tennessee Justice Center
The Oregon Primary Care Association
Umemba Health, LLC
Unite Oregon
Universal Health Care Action Network of Ohio
Universal Health Care Foundation of Connecticut
Urban League of Central Carolinas
Urban League of Greater Hartford
Urban League of Greater Kansas City
Urban League of Greater Oklahoma City, Inc.
Urban League of Greater Pittsburgh
Urban League of Philadelphia
Urban League of Rochester, Inc.
Urban League of Springfield, Inc.
Urban League of the Upstate
Urban League of West Michigan
Vermont Office of the Health Care Advocate
Virginia Interfaith Center for Public Policy
Virginia Poverty Law Center
Voices for Virginia's Children
Washington State Association of Head Start & ECEAP

C.C.: Ambassador Susan Rice, Director, Domestic Policy Council, The White House
The Honorable Chiquita Brooks-LaSure, Administrator, Centers for Medicare and Medicaid Services
The Honorable Daniel Tsai, Deputy Administrator and Director of the Center for Medicaid and CHIP Services