

Unwinding Medicaid Continuous Coverage Protections: Implications and Advocacy for Individuals Dually Eligible for Medicare and Medicaid

FEBRUARY 2023

Starting in the spring of 2023, millions of older adults who are dually eligible for Medicare and Medicaid will face redeterminations of their Medicaid eligibility, a process that had been suspended during the COVID-19 Public Health Emergency. Emergency flexibilities in delivery of Medicaid services will also begin to expire. This process will present significant challenges for dual eligible individuals and for states. This fact sheet provides advocates with information about the “unwinding” process and identifies steps that advocates can take with their states and partners to address the specific challenges facing dual eligible individuals during this transition.

Medicaid Redeterminations Paused During the Public Health Emergency

In 2020, the President and Secretary of Health and Human Services declared a Public Health Emergency (PHE) due to the COVID-19 pandemic. The PHE provided states with many [waiver options and other flexibilities](#) in their Medicaid programs to respond to the pandemic. These included expanding options for Home and Community-Based Services (HCBS) and made states more willing to increase rate payments for providers. The PHE also authorized [Medicare flexibilities](#) such as waiver of the three-day hospital stay requirement for access to skilled nursing facility care, and expanded home health access and telehealth under Medicare.

Soon after the declaration, Congress passed the Families First Coronavirus Relief Act, which gave states enhanced Medicaid federal funding (FMAP) of 6.2% for the duration of the PHE on the condition that states comply with maintenance of effort provisions. These provisions required states to provide continuous coverage for individuals eligible for Medicaid as of March 12, 2020. As a result, states have not executed redeterminations since early 2020. Because states were prohibited from tightening their Medicaid eligibility criteria, and millions of people became newly eligible during the PHE, the Medicaid program grew by approximately [19.5 million enrollees, or nearly 30%](#), between February 2020 and September 2022.

Important Information for People Who Became Medicare Eligible During the PHE

On November 6, 2020, HHS promulgated an Interim Final Rule (IFR) requiring states to redetermine eligibility for Medicaid enrollees who became Medicare-eligible during the PHE and shift those no longer eligible for full-scope Medicaid to a Medicare Savings Program (MSP). Justice in Aging and partners filed a lawsuit (*Carr v. Becerra*) challenging the IFR as unlawful as it cut access to services covered by Medicaid but not by Medicare, such as dental, vision and home care services needed to avoid institutionalization. On January 31, 2023, the court certified a class (individuals enrolled in Medicare and an MSP (QMB, SLMB, QI/ALMB) who were cut off of full-scope Medicaid during the PHE) and issued a nationwide preliminary injunction that invalidated this aspect of the IFR and ordered HHS to direct states to reinstate full Medicaid coverage. This means that states must promptly reinstate full Medicaid coverage for older adults and people with disabilities on Medicare who were cut off of Medicaid benefits at any time since March 18, 2020 and before March 31, 2023. The reinstatement is retroactive to the date of termination and these individuals will stay on their Medicaid benefits while their status is redetermined during the unwinding period.

[Read more about the preliminary injunction and what advocates can do to help their clients.](#)

The Biden Administration renewed the PHE in January 2023. However, Congress passed the Consolidated Appropriation's Act of 2023 (CAA), which included a glidepath to reduce, and eventually eliminate the enhanced 6.2% FMAP, allowing states to begin re-determinations as early as February 2023. Under the law, states will continue receiving enhanced funding, but it will be phased down quarterly beginning April 1 through the end of the year. States may begin Medicaid disenrollments as early as April 1, 2023. However, for states to continue receiving the enhanced FMAP, they must first conduct [ex parte reviews](#) of eligibility before requiring information from beneficiaries and must ensure beneficiaries have adequate opportunity to return redetermination forms. States must also provide a monthly report to the federal government listing their terminations and renewals. The CAA requires states to complete all redeterminations within a 14-month period, referred to as the “unwinding” period.

Challenges Facing Individuals with Medicare and Medicaid

The demographic characteristics of the dual eligible population present obstacles to successfully navigating the redetermination process. Compared to Medicare-only enrollees, people dually eligible for Medicare and Medicaid have higher rates of disability and [require more assistance with activities of daily living](#), experience higher rates of poverty leading to housing instability, and [often need communication accommodations](#) due to disability or limited English Proficiency. These characteristics may necessitate more specialized outreach from states and make it challenging for dually eligible individuals to complete renewal forms and collect and submit documents to verify their eligibility.

The consequences of improper disenrollment are also particularly dire for this population. Dually eligible individuals could lose Medicaid services not covered by Medicare, such as Non-Emergency Medical Transportation, dental care, and HCBS, which prevent unnecessary hospitalizations and institutionalizations. Losing Medicaid can also significantly impact older adults' Medicare coverage and financial security. People terminated from Medicaid lose Medicaid payment of their Medicare premiums and, in most cases, lose protection from Medicare deductibles and co-insurance. Since Medicare premiums are usually deducted from Social Security payments, the loss of Medicaid could also put older adults at sudden and significant risk of financial insecurity. Further, dually eligible individuals who are enrolled in

Medicare Dual-Eligible Special Needs Plans (D-SNPs) will be disenrolled from their plans because of their loss of dual status, leading to confusion and potential disruption in care. Some also will lose eligibility for the Medicare Part D Low-income Subsidy (LIS), leading to higher prescription drug costs.

Case example: Alan became eligible for Medicare and Medicaid when he turned 65 in June 2020. He was living with his adult daughter who helped him complete forms and review mail. Last year, Alan moved into more affordable housing just for seniors and his daughter moved to a cheaper apartment an hour away. In May 2023, the Social Security Administration deducted \$164 from his monthly benefit check. Alan also went to a long-scheduled appointment with a cardiac specialist and presented his Medicaid and Medicare cards. When he was told that his Medicaid coverage was no longer valid and he would be liable for 20% co-insurance for the visit, he left, fearful that he could not afford to pay. His daughter contacted the Medicaid agency and discovered they sent forms to renew his Medicaid to their old address. His Medicaid was terminated since he did not return the forms, losing his premium subsidy for Medicare Part B.

How Advocates Can Help

Advocates play a crucial role in ensuring people dually eligible for Medicare and Medicaid do not face disruptions due to improper Medicaid terminations by working with state officials and partner organizations.

Working with Your State

TIMING: Deprioritize older adults for redeterminations.

- While states can begin terminations in April 2023, they have significant flexibility as to how to proceed with redeterminations. One approach is to deprioritize certain populations earlier in the unwinding period. Advocates can encourage states to deprioritize older adults since they often have fixed incomes and are more likely to remain financially eligible for Medicaid. Stakeholders should also advise Medicaid officials to utilize as much of the 14-month unwinding period as possible to ensure redeterminations are completed cautiously and avoid improper terminations from a rushed redetermination process.

PROCESS: Utilize ex parte renewals and reasonable compatibility standards.

- Ensure ex parte procedures, like using existing data matching to verify income, are used to the maximum extent possible.
- Remind Medicaid agencies of their obligation to establish notification procedures that employ more than one modality of communication before terminating coverage for enrollees deemed ineligible due to returned mail.
- Apply reasonable compatibility thresholds to all Medicaid population groups. Since dually eligible individuals are typically on fixed incomes, states should use existing data matching sources, like Social Security data, to verify income eligibility in the ex parte renewal process. If the individual's attested income is within a certain percentage of the data matching source, then Medicaid should be renewed without the need for additional information from the individual. This would streamline and simplify the renewal process for individuals and Medicaid agencies.

APPEALS: Ensure that due process rights are protected with clear notices of appeal rights, reasonable timeframes and navigable appeal procedures.

- Some states extended State Fair Hearing appeal deadlines during the PHE under Section 1135 Waiver Authority. States should publicize current appeal deadlines to ensure individuals are aware of any extended deadlines and resolve negative Medicaid actions.

TRANSPARENCY: Publicize state unwinding plans and provide ample notice to beneficiaries to gather information.

- Confirm with states when redeterminations will begin and how they will proceed.
- States may begin redeterminations up to the month before the month in which the continuous coverage requirement ends, meaning the redetermination process could start as early as February. While the enhanced FMAP ends on December 31, CMS has clarified that states have up to 14 months to complete redeterminations, through May 31, 2024. States also have broad discretion in how they implement redeterminations as long as they follow the procedural requirements of the CAA. For this reason, advocates should ask states how they will proceed with redeterminations, including:
 - Dates notices will be mailed.
 - Follow-up communications if renewal forms are not returned or returned as undeliverable mail.
 - Outreach and communication plans.
 - Referral process for individuals not eligible for Medicaid but eligible for Medicare, Marketplace, or other health coverage.
 - Screening process to transfer eligible individuals into Medicare Savings Programs timely, particularly individuals in group payer states (AL, AZ, CA, CO, IL, KS, KY, MO, NE, NJ, NM, SC, UT, VA).
 - Dates when terminations will begin.
- States should also immediately publicize their process for conducting redeterminations and make these materials publicly accessible for enrollees, advocates, and other stakeholders.

EMERGENCY FLEXIBILITIES: Prepare for the administrative end of the PHE.

- While the PHE was renewed in January, the Biden Administration [announced it expects to end the PHE on May 11, 2023](#). The end of the PHE will eliminate many flexibilities benefitting enrollees. Advocates should encourage states to begin incorporating beneficial changes made through PHE emergency authorities like Appendix K, into their State Plan Amendments or 1915(c) waiver applications to prevent service disruptions.

Working with Clients and Partners

Ensure strong partnerships to disseminate communications across the aging network

- Since many Medicaid beneficiaries have gone nearly three years without undergoing the redetermination process, there is bound to be great confusion, particularly for older adults recently enrolled in Medicaid. Advocates should reach out to all aging partners, including health centers, Area Agencies on Aging, State Health Insurance Assistance Program (SHIP) counselors, community organizations, and others, to provide information and support for older adults. Partnership with organizations serving language and ethnic communities, people with housing instability and other hard-to-reach populations is particularly needed.

Update information for beneficiaries

- Create accessible communications specifically for people who are dually eligible advising them about what to expect with unwinding and how to prepare.
- Work with clients to update their contact information with the state and make them aware of what notices to be looking for in the mail (or via phone/text).

Additional Resources

Centers for Medicare and Medicaid Services:

- [Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023](#)
- [Medicaid and CHIP Continuous Enrollment Unwinding: A Communications Toolkit](#)
- [Unwinding and Returning to Regular Operations after COVID-19](#)

National Center on Law and Elder Rights:

- [Unwinding the Public Health Emergency: Strategies for Advocates to Protect Medicaid Beneficiaries](#)

Georgetown University Health Policy Institute Center for Children and Families:

- [50 State Unwinding Tracker](#)

Kaiser Family Foundation:

- [Implications for Ending the COVID-19 Public Health Emergency](#)