

# United States Senate

WASHINGTON, DC 20510

June 11, 2024

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue S.W.  
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health & Human Services  
200 Independence Avenue S.W.  
Washington, D.C. 20201

Dear Secretary Becerra and Administrator Brooks-LaSure,

I write to you with questions about the Department of Health and Human Services's (HHS) statutory authority to extend the unwinding period of Medicaid's continuous eligibility requirements (referred to as "Medicaid unwinding"). As Finance Committee chairman in 2020, I was part of drafting the Family First Coronavirus Response Act that established Medicaid's continuous eligibility requirements in exchange for a 6.2 percent increase in a state's federal medical assistance percentage (FMAP).<sup>1</sup> I shared the goal of ensuring vulnerable Americans did not lose health insurance coverage during the public health emergency for COVID-19. With the heart of the COVID-19 pandemic behind us, the Consolidated Appropriations Act (CAA) of 2023 tasked the Centers for Medicare and Medicaid Services (CMS) with overseeing the Medicaid unwinding period with state data reporting and enforcement through June 30, 2024. However, on May 9, 2024, CMCS issued an informational bulletin extending certain temporary Medicaid unwinding-related flexibilities through June 30, 2025.<sup>2</sup> Also, CMCS issued an informational bulletin on May 30, 2024, extending current state data reporting past the time period specified in CAA of 2023.<sup>3</sup>

The Congressional Budget Office's (CBO) February 2024 baseline recently found that outlays for grants to states for Medicaid increased by \$74 billion over the FY 2023-2029 period, compared to CBO's May 2023 baseline. Of this, 73 percent (or \$54 billion) of the increase in outlays is observed in the FY 2023-2025 period. CBO estimated that the Medicaid unwinding policies in CAA of 2023 would save \$22.1 billion in outlays with much of that savings attributed to enrollment effects of ending continuous eligibility and not the sunset of the enhanced

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<sup>1</sup> Public Law 116-127.

<sup>2</sup> Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS), Center for Medicaid and CHIP Services (CMCS), "Extension of Temporary Unwinding-Related Flexibilities," May 9, 2024, <https://www.medicaid.gov/media/176456>.

<sup>3</sup> HHS, CMS, CMCS, "Continuation of Certain Medicaid and CHIP Eligibility Processing Data Reporting," May 30, 2024, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho24002.pdf>.

FMAP.<sup>4, 5</sup> The recent administrative actions taken by CMCS and higher than expected Medicaid enrollment calls into question whether the federal government is realizing the \$22.1 billion savings it used to offset spending elsewhere. I take an interest in ensuring HHS is following its statutory authority and respecting legislative authority when billions of taxpayer dollars are at stake.

The May 9, 2024, CMCS informational bulletin extended the Medicaid unwinding period through June 30, 2025.<sup>6</sup> The CAA of 2023 requires CMS to conduct public reporting, enforcement, and corrective action of the Medicaid unwinding with state Medicaid programs through June 30, 2024.<sup>7</sup> CMS has claimed the Medicaid unwinding-related flexibilities referred to are available to states under Section 1902 of the Social Security Act (SSA), independent of the CAA of 2023. However, CMCS has stated, “[a]s described in prior CMS guidance, states will have up to 12 months to initiate, and 14 months to complete, a renewal for all individuals enrolled in Medicaid, CHIP, and the Basic Health Program (BHP) following the end of the continuous enrollment condition.”<sup>8</sup> CMCS has stated the continuous enrollment condition ended on March 31, 2023.<sup>9</sup> Furthermore, CMCS has stated the CAA of 2023 established reporting requirements and enforcement authority “that begins on April 1, 2023 and ends on June 30, 2024 (a time frame that will overlap with states’ unwinding periods).”<sup>10</sup> CMCS has also written that states “must *complete* renewals for individuals enrolled as of the last day of the continuous enrollment condition within 14 months (i.e., in light of the CAA’s amendment, May 31, 2024).”<sup>11</sup> In separate documents, CMCS consistently references its reporting and enforcement authority for a time period that ends on June 30, 2024.<sup>12</sup> Given CMCS’s recent announcement

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<sup>4</sup> Congressional Budget Office (CBO), “Summary - Estimated Budgetary Effects of Divisions O Through MM of the Consolidated Appropriations Act, 2023 (Public Law 117-328), as Enacted on December 29, 2022,” January 12, 2023, [https://www.cbo.gov/system/files/2023-01/PL117-328\\_1-12-23.pdf](https://www.cbo.gov/system/files/2023-01/PL117-328_1-12-23.pdf).

<sup>5</sup> Note: CBO estimated that for the \$22.1 billion in savings, \$15.0 billion was for the enrollment effect of ending continuous eligibility and \$7.1 billion was for the phasing down of the enhanced federal medical assistance percentage (FMAP).

<sup>6</sup> HHS, CMS, CMCS, “Extension of Temporary Unwinding-Related Flexibilities,” May 9, 2024, <https://www.medicaid.gov/media/176456>.

<sup>7</sup> HHS, CMS, CMCS, Letter to State Health Official #23-002, “Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023,” January 27, 2023, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf>.

<sup>8</sup> *Ib.*

<sup>9</sup> HHS, CMS, CMCS, “End of the COVID-19 Public Health Emergency (PHE) and the COVID-19 National Emergency and Implications for Medicaid and the Children’s Health Insurance Program (CHIP),” May 8, 2023, <https://www.medicaid.gov/state-resource-center/downloads/cib050823.pdf>.

<sup>10</sup> HHS, CMS, CMCS, Letter to State Health Official #23-002, “Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023,” January 27, 2023, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf>.

<sup>11</sup> HHS, CMS, CMCS, “Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023,” January 5, 2023, <https://www.medicaid.gov/federal-policy-guidance/downloads/cib010523.pdf>.

<sup>12</sup> HHS, CMS, CMCS, Letter to State Health Official #23-002, “Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023,” January 27, 2023, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf>; CMS, “Consolidated Appropriations Act, 2023: FMAP Reduction for Failure to Meet Reporting Requirements under Section 1902(tt)(1) of the Social

extending the Medicaid unwinding period through June 30, 2025, I have questions about this extension. To ensure Congress understands HHS's actions, please provide detailed answers to the following questions by no later than June 25, 2024:

1. I request a list of states that have asked CMCS to extend the Medicaid unwinding period through June 30, 2025.
2. In CMCS's January 5, 2023, informational bulletin it writes that states "must *complete* renewals for individuals enrolled as of the last day of the continuous enrollment condition within 14 months (i.e., in light of the CAA's amendment, May 31, 2024)." <sup>13</sup> CMCS has stated the continuous enrollment condition ended on March 31, 2023. <sup>14</sup> I request CMCS's rationale and statutory authority for why it can extend the unwinding flexibilities past June 30, 2024, which is 14 months after the continuous enrollment condition ended.
3. In CMCS's May 9, 2024, informational bulletin it refers to the "official unwinding period." <sup>15</sup> I request you define the "official unwinding period" and the time period associated with it.
4. I request that CMCS share its findings of its Section 1902(e)(14)(A) waiver strategies that CMCS determines can be implemented on a longstanding basis.
5. CMCS states in its May 9, 2024, informational bulletin that "[s]pecifically, we will permit continued use of the Section 1902(e)(14)(A) waivers through which states completed an *ex parte* income determination without having requested additional income information or documentation for individuals" who meet certain criteria. <sup>16</sup> I request a state-by-state breakdown of the number of applications reviewed, the number of disenrollments, and the number of enrollments continued as a result of *ex parte* income determinations.
6. CMCS states in its May 30, 2024, informational bulletin "that CMS is extending current state reporting of certain metrics contained in the Unwinding Data Report." <sup>17</sup> The letter specifically cites 42 CFR § 430.49 and 42 CFR § 435.927. These statutes reference the April 1, 2023, through June 30, 2024, period in determining compliance for the state data reporting period and corrective action plans. I request you provide the specific statutory authority the agency has to perform the data reporting activities after June 30, 2024.

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Security Act Frequently Asked Questions for State Medicaid and CHIP Agencies," June 30, 2023, <https://www.medicaid.gov/federal-policy-guidance/downloads/fmap-rdctn-repot-medcid-chip-agncs-06302023.pdf>.

<sup>13</sup> HHS, CMS, CMCS, "Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023," January 5, 2023, <https://www.medicaid.gov/federal-policy-guidance/downloads/cib010523.pdf>.

<sup>14</sup> HHS, CMS, CMCS, "End of the COVID-19 Public Health Emergency (PHE) and the COVID-19 National Emergency and Implications for Medicaid and the Children's Health Insurance Program (CHIP)," May 8, 2023, <https://www.medicaid.gov/state-resource-center/downloads/cib050823.pdf>.

<sup>15</sup> HHS, CMS, CMCS, "Extension of Temporary Unwinding-Related Flexibilities," May 9, 2024, <https://www.medicaid.gov/media/176456>.

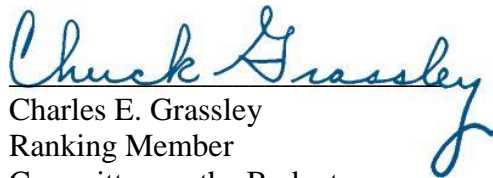
<sup>16</sup> *Ib.*

<sup>17</sup> HHS, CMS, CMCS, "Continuation of Certain Medicaid and CHIP Eligibility Processing Data Reporting," May 30, 2024, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho24002.pdf>.

7. CMCS is quoted in a May 9, 2024, article saying that it is “reviewing all Section 1902(e)(14)(A) waiver strategies to determine which can be implemented on a longstanding basis under other authorities.”<sup>18</sup> The article states that the “[CMCS] indicated other unwinding-related flexibilities might be permanently extended and codified.”<sup>19</sup> I request a list of these Medicaid unwinding-related flexibilities that might be permanently extended. If CMCS cannot provide a list, I request that CMCS share its findings. In addition, I request an explanation as to why permanently extending the Medicaid unwinding flexibilities needs to be codified if HHS believes it has the statutory authority to establish them permanently under its existing authority.
8. According to HHS’s response in the Finance Committee’s hearing on the President’s Fiscal Year 2024 Health and Human Services Budget, CMS spent two years “working with all states to prepare for the unwinding of this ‘continuous enrollment’ condition in order to ensure that as many people as possible maintain health coverage.”<sup>20</sup> Given this statement, I request the specific reasoning for extending the Medicaid unwinding period another year through June 30, 2025, given the agency spent two years preparing.
9. HHS has cited that Section 1902(e)(14)(A) permits CMCS to approve time-limited waivers “as are necessary to ensure that states establish income and eligibility determination systems that protect beneficiaries.”<sup>21</sup> The agency also stated the adoption of Section 1902(e)(14)(A) strategies and other temporary COVID-19-related flexibilities is optional for states. I request a detailed list of time-limited waivers provided to states under its 1902(e)(14)(A) authority on or before December 31, 2019.

Congress must have a detailed understanding of your agency’s recent action and ensure it aligns with the statutory authority provided to you by the legislative branch. I appreciate HHS’s work to ensure vulnerable Americans receive the health care coverage they are eligible for under the law. I look forward to your timely answers to my questions.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget

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<sup>18</sup> Mills-Gregg, D., “CMS Extends State Unwinding Flexibilities Through June 2025,” *Inside Health Policy*, May 9, 2024, <https://insidehealthpolicy.com/daily-news/cms-extends-state-unwinding-flexibilities-through-june-2025>.

<sup>19</sup> *Id.*

<sup>20</sup> The President’s Fiscal Year 2024 Health and Human Services Budget before the U.S. Senate Committee on Finance, 118<sup>th</sup> Cong. (2023). <https://www.finance.senate.gov/hearings/the-presidents-fiscal-year-2024-health-and-human-services-budget>.

<sup>21</sup> HHS, CMS, CMCS, Letter to State Health Officials #22-001, “RE: Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children’s Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency,” March 3, 2022, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22001.pdf>.