

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](mailto:jliu@apiahf.org)), Deborah Weinstein at the Coalition on Human Needs ([dweinstein@chn.org](mailto:dweinstein@chn.org)), Peggy Ramin at the Leadership Conference on Civil and Human Rights ([ramin@civilrights.org](mailto:ramin@civilrights.org)), Lisa Malone at NAACP ([lmalone@naacpnet.org](mailto:lmalone@naacpnet.org)), Chandos Culleen at the National Council of Urban Indian Health ([cculleen@ncuih.org](mailto:cculleen@ncuih.org)), Morgan Polk at the National Urban League ([mpolk@nul.org](mailto:mpolk@nul.org)), Andrea Harris at Protect Our Care ([aharris@protectourcare.org](mailto:aharris@protectourcare.org)), or Stan Dorn at UnidosUS ([sdorn@unidosus.org](mailto: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