



# Health Care Reform in Indian Country

Self-Governance Communication & Education

*Self-Governance Tribes Striving Towards Excellence in Health Care*

## CMS Issues State Health Official Letter Addressing Medicaid Unwinding

April 26, 2022

**This issue brief seeks to provide guidance to Tribes on steps to take in preparation for changes to current enrollment and eligibility rules for the Medicaid program that will occur as a result of the end of the COVID-19 public health emergency.**

### **Background**

During the COVID-19 public health emergency (PHE), the Federal government has provided States with an increased Federal Medical Assistance Percentage (FMAP) for Medicaid services so long as they met certain conditions, including continuing to provide Medicaid coverage for all persons enrolled in Medicaid as of March 18, 2020.<sup>1</sup> Known as the "continuous coverage requirement," this condition contributed to a substantial increase in Medicaid enrollment. When the PHE ends,<sup>2</sup> the continuous coverage requirement also ends. It is estimated that up to 16 million people could lose their Medicaid coverage as a result.<sup>3</sup>

The transition away from the Medicaid program flexibilities and protections in place during the PHE is a process referred to as "unwinding." The Centers for Medicaid & Medicare Services (CMS) issued a State Health Official (SHO) Letter on March 3, 2022 to address Medicaid unwinding as it concerns enrollment and eligibility issues. This brief provides an overview of that SHO Letter and recommends the following five action items for Tribes in preparing for unwinding and its effect on Medicaid enrollment:<sup>4</sup>

1. Request consultation with State regarding unwinding operational plan development and access to State Medicaid rolls;
2. Encourage State to align Medicaid renewals with other programs;
3. Seek State distribution of Indian-specific guidance on Marketplace plans for American Indians and Alaska Natives (AI/ANs);
4. Advocate that State apply for 1902(e)(14)(a) waivers; and
5. Request consultation with CMS to discuss coverage loss concerns and oversight.

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<sup>1</sup> Families First Coronavirus Response Act, P.L. 116-127, Sec. 6608.

<sup>2</sup> It is not yet clear when the federal government will declare an end to the PHE. The Department of Health and Human Services has stated that it will provide a 60-day notice prior to the end of the PHE.

<sup>3</sup> SHO# 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* at 4 (Mar. 3, 2022), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22001.pdf>.

<sup>4</sup> We note that the end of the PHE raises another set of concerns for Tribes in the area of changes to Medicaid services and flexibilities, such as telehealth flexibilities, but those are separate from the enrollment-related concerns addressed in CMS's SHO Letter and in this brief.

On Thursday, April 28, 2022 CMS will be holding an [All Tribes Consultation Webinar on Medicaid Unwinding](#).

### **Overview of CMS's March 2022 SHO Letter**

After the end of the PHE's continuous enrollment requirement, States will need to conduct eligibility re-determinations for all Medicaid enrollees.<sup>5</sup> The SHO Letter provides that States must initiate eligibility and enrollment actions during the 12-months following the end of the PHE, and such actions must be completed within 14 months after the end of the PHE.<sup>6</sup>

States must develop an unwinding operational plan that describes how the State will go about its Medicaid enrollment and eligibility work, including identifying a reasonable schedule.<sup>7</sup> CMS says that it "expects states to adopt a risk-based approach to prioritize pending renewals, changes in circumstances, and post-enrollment verifications" and that such approach "ensures states prioritize their workload in a manner that considers the need to prevent inappropriate terminations and promote smooth program transitions for individuals no longer eligible."<sup>8</sup>

CMS's SHO Letter also encourages States to engage with Tribes and Tribal Organizations regarding the development of their unwinding operational plan,<sup>9</sup> align renewals with other programs to the extent possible,<sup>10</sup> facilitate a smooth transition to Marketplace coverage for persons determined ineligible for Medicaid,<sup>11</sup> and seek temporary waivers through a State Plan Amendment (SPA) in order to promote continuity of coverage.<sup>12</sup>

### **Action Items for Tribes:**

#### **1. Request Consultation with States regarding Unwinding Operational Plan Development**

CMS's SHO Letter provides that States are "strongly encouraged" to engage with the Indian Health Service, Tribes and Tribal Organizations, and Urban Indian Organizations in the development of their unwinding operational plans.<sup>13</sup> Reaching out to States to engage on the development of these plans is very important to ensure impacts on Tribal citizens are considered. Additionally, although CMS requires unwinding operational plans, States are not required to submit them to CMS.<sup>14</sup> Thus, Tribal engagement in the process is particularly important to encourage compliance with CMS's guidance and be able to alert CMS if States are taking action that increases risk of inappropriate termination or other unnecessary coverage gaps. ***CMS is encouraging all Medicaid enrollees to update their mailing addresses so that they can be sure to receive a renewal notice from their State.*** Tribes can work with their State Medicaid programs to contact their Medicaid patients if the States give them notice and access to the names and contact information of AI/ANs enrolled in their programs.

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<sup>5</sup> In general, Medicaid renewal is required annually.

<sup>6</sup> SHO# 22-001 at 3–4, 7–8.

<sup>7</sup> *Id.* at 3–4.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 40.

<sup>10</sup> *Id.* at 20–21.

<sup>11</sup> *Id.* at 27–28.

<sup>12</sup> *Id.* at 24.

<sup>13</sup> *Id.* at 40.

<sup>14</sup> *Id.* at 18.

## **2. Encourage State to Align Medicaid Renewals with Other Programs**

CMS's SHO Letter encourages States to use this opportunity to plan a new enrollment and eligibility schedule to work to align Medicaid renewals with renewals for certain other programs. For example, CMS says States could align renewals with the Supplemental Nutrition Assistance Program (SNAP) to ease administrative burdens on both States and individuals.<sup>15</sup> States can also align renewals for everyone in a particular household or to reduce gaps in coverage for persons who have missed their Medicaid initial enrollment period.<sup>16</sup>

## **3. Seek State Distribution of Indian-specific Guidance on Marketplace Plans for AI/ANs**

States are required to promptly assess Marketplace eligibility for persons determined ineligible for renewal.<sup>17</sup> CMS encourages States to facilitate a smooth transition to Marketplace coverage for newly ineligible persons and, in particular, encourages States to improve their materials that notify individuals of their ability to seek coverage and financial assistance through the Marketplace and access Navigator and Assister programs.<sup>18</sup> Tribes should work with States to encourage distribution of Indian-specific guidance regarding the availability of Marketplace plans with zero- or limited-cost sharing for AI/ANs.

## **4. Advocate that State Applies for 1902(e)(14)(a) Waivers**

CMS's SHO Letter provides that States may submit a SPA to seek temporary waivers under Section 1902(e)(14)(A) of the Social Security Act.<sup>19</sup> This provision allows CMS to grant waivers "as are necessary to ensure that States establish income and eligibility determination systems that protect beneficiaries."<sup>20</sup> CMS has said that it will grant such waivers on a temporary basis for five purposes:

- To renew Medicaid eligibility for SNAP participants without conducting separate income redeterminations;
- To renew individuals in households whose attestation of zero-dollar income was verified within the last year even if financial data for the renewal has not been received;
- To renew persons who do not respond to requests to confirm their income by the Asset Verification System within a reasonable amount of time;
- To accept updated contact information from managed care plans without additional confirmation; and
- To extend the time allowed for fair hearing decisions to be issued.<sup>21</sup>

If appropriate, Tribes should consider asking their State to seek temporary waivers for these five purposes.

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<sup>15</sup> *Id.* at 20.

<sup>16</sup> *Id.* at 21.

<sup>17</sup> *Id.* at 27.

<sup>18</sup> *Id.* at 28.

<sup>19</sup> *Id.* at 29.

<sup>20</sup> *Id.* at 24.

<sup>21</sup> *Id.* at 24–25.

## **5. Request Consultation with CMS to Discuss Coverage Loss Concerns and Oversight**

Finally, Tribal action is needed to invoke government-to-government consultation with CMS to discuss any concerns Tribes have regarding Medicaid coverage loss and their State's approach to Medicaid unwinding. Some issues to discuss may include:

- Expeditious review and approval of state waivers of either temporary extensions or permanency of COVID services;
- Continuation of the enhanced tax credits for the Marketplace under the PHE<sup>22</sup>; and,
- Continuation of the enhanced FMAP for states expanding Medicaid under the ACA to encourage more coverage<sup>23</sup>.

Such consultation can increase CMS oversight and potentially increase State compliance with the protections CMS recommends in its SHO Letter.

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<sup>22</sup> Please note that enhanced tax credits will no longer be available after the PHE.

<sup>23</sup> Please note that enhanced FMAP for states expanding Medicaid will no longer be available after the PHE.