

# Congress of the United States

Washington, DC 20515

March 17, 2023

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

Dear Secretary Becerra:

We, the undersigned members of the Congressional Tri-Caucus – composed of the Congressional Hispanic Caucus, the Congressional Asian Pacific American Caucus, and the Congressional Black Caucus – are deeply concerned that as states and territories begin the process of “unwinding” the Medicaid continuous coverage requirement, millions of low-income individuals – disproportionately people of color<sup>i</sup> – are at risk of improperly losing their health insurance. In the *Consolidated Appropriations Act, 2023*, Congress enacted robust beneficiary protections to prevent improper coverage loss and empowered the Secretary of Health and Human Services (HHS) by providing substantial additional enforcement tools to ensure that states and territories meet their obligations to protect families’ health care. During the unwinding, we respectfully request that you prioritize beneficiary access to care and use your new authority to prevent eligible Medicaid families from losing health coverage.

At the beginning of the COVID-19 pandemic, Congress passed legislation to provide additional financial resources to state and territory Medicaid programs and to protect access to health insurance for vulnerable, low-income people. These continuous coverage protections essentially ensured that no one could be disenrolled from Medicaid during the public health emergency. As a result, more than 90 million low-income people are now enrolled in Medicaid and CHIP. This coverage has guaranteed these beneficiaries access to quality, affordable health insurance during the pandemic’s peak. However, as states and territories conduct eligibility redeterminations and begin terminating families for the first time in three years, essential coverage could be jeopardized for millions of still-eligible individuals.

An August 2022 report by the Assistant Secretary for Planning and Evaluation (ASPE) estimates that 15 million people will lose Medicaid if the program operates as it did in the past,<sup>ii</sup> including nearly 5 million Latinos, more than 2 million African Americans, and nearly 1 million Asian Americans and Pacific Islanders. Already deep health disparities will worsen, due to preventable losses in health coverage. More than half of the people of color and three-fourths of the children whom ASPE projects to lose coverage will remain eligible for Medicaid but be terminated procedurally, because of state and territory administrative burdens.

To prevent a major civil rights and health equity disaster, we believe that you should set the bar high in clearly defining and enforcing states’ and territories’ legal obligations to prevent eligible beneficiaries from losing coverage. Such clarity will give states and territories strong new incentives for improving their policies to better protect eligible families.

**Specifically, we encourage you to consider an approach to enforcement that preserves Medicaid coverage as continuous coverage requirements end.** Since significant Medicaid terminations may occur during the unwinding’s initial months, rapid mitigation measures must feature robust beneficiary protections—especially an immediate halt to procedural terminations whenever needed to prevent beneficiaries from losing coverage due to potential state legal violations. As mitigation efforts begin in a state or a territory, we also encourage you

to consider the simultaneous initiation of the corrective action plan process, so that if mitigation fails, CMS can protect families by swiftly pivoting to enforcement.

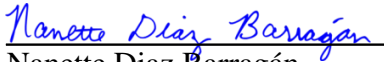
**In your communications with states and territories, we believe it will be most helpful to emphasize two core legal obligations to prevent a new epidemic of paperwork-driven terminations:**

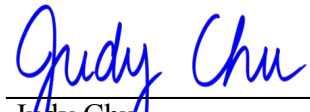
- **The duty to base renewals on data matches, rather than paperwork demanded of families, to the “maximum extent practicable.”**<sup>iii</sup> A state or territory violates this obligation if it has many fewer such renewals than other, similarly situated states or territories.<sup>iv</sup> According to leading experts, “Increasing the proportion of renewals that a state conducts electronically — without sending paperwork to beneficiaries — will likely be the most important single step states and territories and CMS can take to avoid coverage losses.”<sup>v</sup>
- **The duty to avoid disparate, adverse impact on communities of color in redetermining Medicaid eligibility.**<sup>vi</sup> This obligation supplements those under Medicaid statutes and regulations. It requires:
  - *Ensuring that call centers have sufficient staffing* so that families are not forced to wait for hours to provide information about their address or eligibility. Families of color disproportionately need fully accessible call centers, as they face barriers to providing information on-line and in-person. Compared to others, people of color are less likely to have broadband access,<sup>vii</sup> internet facility,<sup>viii</sup> and jobs that provide time off to meet with Medicaid staff.<sup>ix</sup>
  - *Ensuring full linguistic access* when families respond to state and territory requests for information. This includes providing skilled, professional translation services in call centers and state and territory offices.
  - *Using all available methods to update addresses* so state and territory information requests reach their intended recipients. Anything less than the most robust possible approach will take a disproportionate toll in communities of color. That is because families of color are more likely than non-Hispanic, White families to have changed addresses during the pandemic.<sup>x</sup>
  - *Empowering trusted community groups, managed care organizations, and essential community providers* to help the greatest possible number of beneficiaries complete any paperwork needed to retain coverage.
  - *Ensuring that states and territories fully consult and confer with Indian Health Program and Urban Indian Organizations*, as early during the unwinding process as possible.<sup>xi</sup>


**To promote transparency and accountability, we believe CMS should provide state and territory performance data to the public and to Congress as soon as possible after the end of each month.** Without rapid publication, it may be impossible to intervene in time to prevent significant coverage losses. Further, we recommend that each state and territory should be required to report all redetermination outcomes by race, ethnicity, and age, at the earliest feasible date. Finally, we believe that CMS should use its authority under the CAA to require each state and territory to publish its unwinding and mitigation plans.<sup>xii</sup>

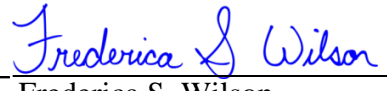
As you continue defining your approach to implementing the CAA, we respectfully request that you act boldly to protect health care access for tens of millions of low-income, vulnerable individuals. To continue this Administration’s legacy of expanded access to care, we know that you will do everything possible to clearly inform states and territories about their legal duties and, whenever necessary to protect struggling families, to swiftly impose powerful mitigation measures and take a strong enforcement posture. Please let us know if there’s anything we can do to support you in that effort.

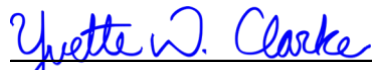
Sincerely,


  
Nanette Diaz Barragán  
Member of Congress  
Chairwoman, Congressional  
Hispanic Caucus


  
Judy Chu  
Member of Congress  
Chairwoman, Congressional  
Asian Pacific American Caucus


  
Steven Horsford  
Member of Congress  
Chairman, Congressional  
Black Caucus

  
Frederica S. Wilson  
Member of Congress

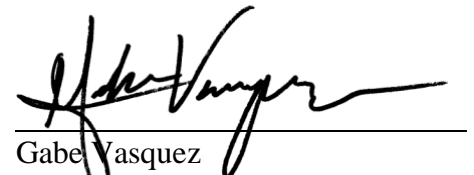
  
Yvette D. Clarke  
Member of Congress


  
Adriano Espaillat  
Member of Congress

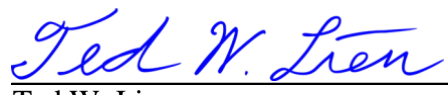
  
Grace Meng  
Member of Congress

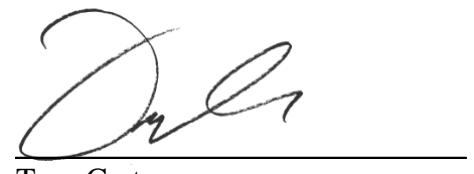
  
Robin L. Kelly  
Member of Congress

  
Darren Soto  
Member of Congress


  
Gabe Vasquez  
Member of Congress

  
Tony Cardenas  
Member of Congress

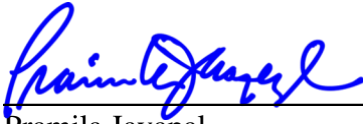
  
Ted W. Lieu  
Member of Congress

  
Troy Carter  
Member of Congress

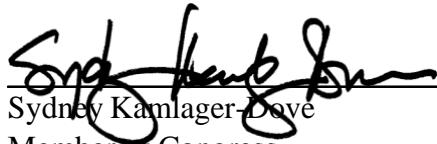
  
Sylvia R. Garcia  
Member of Congress

  
Andrea Salinas  
Member of Congress

  
Jim Tokuda  
Member of Congress



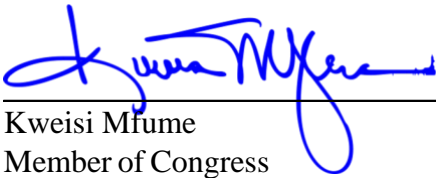
Pramila Jayapal  
Member of Congress



Sydney Kamlager-Dove  
Member of Congress



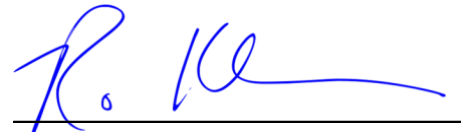
Lisa Blunt Rochester  
Member of Congress



Kweisi Mfume  
Member of Congress



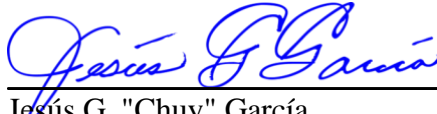
Gwen S. Moore  
Member of Congress



Ro Khanna  
Member of Congress



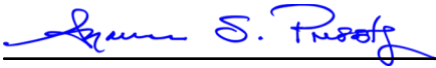
Eleanor Holmes Norton  
Member of Congress



Jesús G. "Chuy" García  
Member of Congress



Barbara Lee  
Member of Congress



Ayanna Pressley  
Member of Congress



Cori Bush  
Member of Congress



Lauren Underwood  
Member of Congress




Grace F. Napolitano  
Member of Congress



André Carson  
Member of Congress




Dwight Evans  
Member of Congress




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Joe Neguse  
Member of Congress



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Ritchie Torres  
Member of Congress



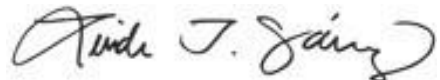
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Colin Z. Allred  
Member of Congress



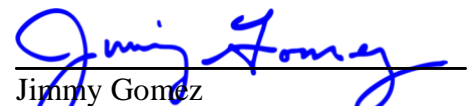
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Lizzie Fletcher  
Member of Congress



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Linda T. Sánchez  
Member of Congress



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Jimmy Gomez  
Member of Congress



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Raul Ruiz, M.D.  
Member of Congress




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Jason Crow  
Member of Congress




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Gregorio Kilili Camacho Sablan  
Member of Congress



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Greg Casar  
Member of Congress



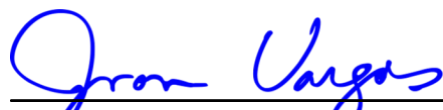
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Ruben Gallego  
Member of Congress



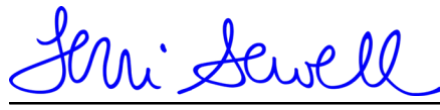
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Katie Porter  
Member of Congress



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Juan Vargas  
Member of Congress



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Terri A. Sewell  
Member of Congress



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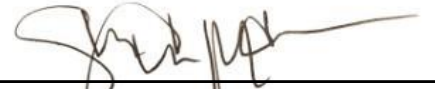
Shontel M. Brown  
Member of Congress



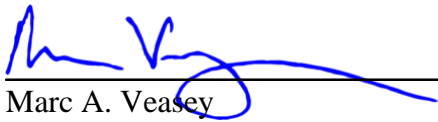
Raúl M. Grijalva  
Member of Congress



Donald G. Davis  
Member of Congress



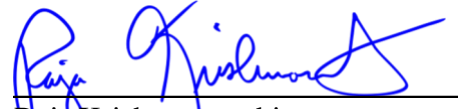
Sheila Cherfilus-McCormick  
Member of Congress



Marc A. Veasey  
Member of Congress



Donald M. Payne, Jr.  
Member of Congress



Raja Krishnamoorthi  
Member of Congress



Emanuel Cleaver, II  
Member of Congress



Robert Garcia  
Member of Congress




Lori Trahan  
Member of Congress



Stacey E. Plaskett  
Member of Congress



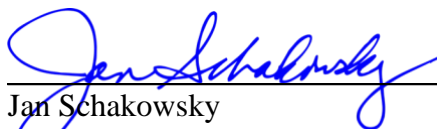
Al Green  
Member of Congress



Bonnie Watson Coleman  
Member of Congress



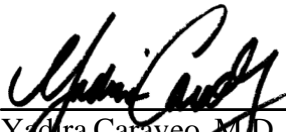
Summer Lee  
Member of Congress



Jan Schakowsky  
Member of Congress




Robert C. "Bobby" Scott  
Member of Congress



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Yadira Caraveo, M.D.  
Member of Congress



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Henry C. "Hank" Johnson, Jr.  
Member of Congress

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



- <sup>i</sup> People of color comprise 45% of U.S. residents under age 65, according to American Community Survey data for 2021. By contrast, 56% of those whom ASPE projects to lose Medicaid under the unwinding are people of color, and 61% of those whom ASPE projects to be terminated for administrative reasons, despite continued eligibility, are people of color. Assistant Secretary for Planning and Evaluation, Office of Health Policy (ASPE), “Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches,” HP-2022-20, Issue Brief, August 19, 2022, [https://www.aspe.hhs.gov/sites/default/files/documents/60f0ac74ee06eb578d30b0f39ac94323/aspe-end-mcaid-continuous-coverage.pdf?\\_ga=2.47335719.1429122297.1668138950-1864737861.1662580005](https://www.aspe.hhs.gov/sites/default/files/documents/60f0ac74ee06eb578d30b0f39ac94323/aspe-end-mcaid-continuous-coverage.pdf?_ga=2.47335719.1429122297.1668138950-1864737861.1662580005)
- <sup>ii</sup> ASPE, Unwinding the Medicaid Continuous Enrollment Provision.
- <sup>iii</sup> See ACA §1413(c)(3).
- <sup>iv</sup> By definition, a state that has a much lower level of data-based renewals than other states that are similarly situated is failing to achieve the “maximum practicable level” of such renewals.
- <sup>v</sup> Kinda Serafi, Cindy Mann, and Nina V. Punukollu (Manatt Health), “The Risk of Coverage Loss for Medicaid Beneficiaries as the COVID-19 Public Health Emergency Ends,” *The Commonwealth Fund Blog*, Sept. 23, 2021, <https://www.commonwealthfund.org/blog/2021/risk-coverage-loss-medicaid-beneficiaries-covid-19>.
- <sup>vi</sup> See U.S. Department of Justice, “Proving Discrimination – Disparate Impact,” in *Title VI Legal Manual*, Updated February 3, 2021, <https://www.justice.gov/crt/fcs/T6Manual7>; CMS, “Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority: Final Rule,” 85 *Federal Register* 119, June 19, 2020, 37160-37248, <https://www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-11758.pdf>.
- <sup>vii</sup> Sara Atske and Andrew Perrin, Home broadband adoption, computer ownership vary by race, ethnicity in the U.S., Pew Research Center, July 16, 2021, <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>; Share Tibken, The broadband gap’s dirty secret: Redlining still exists in digital form, CNET, June 28, 2021, <https://www.cnet.com/home/internet/features/the-broadband-gaps-dirty-secret-redlining-still-exists-in-digital-form/>.
- <sup>viii</sup> The National Skills Coalition, Applying a racial equity lens to digital literacy, Digital Skills Series, March 20, 2020, <https://nationalskillscoalition.org/wp-content/uploads/2020/12/Digital-Skills-Racial-Equity-Final.pdf>; David Thompson, “The Digital Divide—The Hispanic Population in the U.S. Has Low Rates of Digital Literacy,” *Latin Post*, November 4, 2021, <https://www.latinpost.com/articles/152668/20211104/the-digital-divide-the-hispanic-population-in-the-us-has-low-rates-of-digital-literacy.htm>.
- <sup>ix</sup> Chantel Boyens, Michael Karpman, and Jack Smalligan. Access to Paid Leave Is Lowest among Workers with the Greatest Needs: Findings from the December 2021 Well-Being and Basic Needs Survey. Urban Institute, July 2022, <https://www.urban.org/sites/default/files/2022-07/Access%20to%20Paid%20Leave%20Is%20Lowest%20among%20Workers%20with%20the%20Greatest%20Needs.pdf>.
- <sup>x</sup> U.S. Census Bureau, Geographic Mobility: 2020 to 2021, November 2021, <https://www.census.gov/data/tables/2021/demo/geographic-mobility/cps-2021.html>; Yang Chun, et al., “Racial and Ethnic Disparities in Housing Instability during the COVID-19 Pandemic: The Role of Assets and Income Shocks,” *J. Econ Race Policy* 2022 Dec. 2: 19, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9716543/>.
- <sup>xi</sup> Such consultation is required by Social Security Act §1902(a)(73) and Executive Order 13175. This unique protection for American Indian and Alaska Native beneficiaries stems from the United States’ government to government relationship with Indian Tribes and the nation’s trust responsibility to provide healthcare services to American Indians and Alaska Natives.
- <sup>xii</sup> New subsection (tt)(1)(F) of Social Security Act §1902 requires each state to publish “Such other information related to eligibility redeterminations and renewals... as identified by the Secretary.”