



COLORADO
Department of Health Care
Policy & Financing

1570 Grant Street
Denver, CO 80203

September 14, 2020

Anne Marie Costello
Acting Deputy Administrator & Director, Center for Medicaid & CHIP Services
Centers for Medicare and Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244

Dear Ms. Costello:

On behalf of the Colorado Department of Health Care Policy & Financing, the state's Medicaid Agency, I am writing with three requests to help the Department plan for the end of the COVID-19 Public Health Emergency (PHE) in a way that best meets the needs of our Health First Colorado (Colorado's Medicaid program) and Child Health Plan *Plus* (CHP+, Colorado's Children's Health Insurance Program) members and providers. Specifically, we respectfully request that Centers for Medicare and Medicaid Services (CMS):

- 1) Provide at least 60 days' notice before and at least 90 days after the end of the PHE for the state to notify members and providers of changes. The Department originally made this request to CMS and Regional Director of the U.S. Department of Health and Human Services (HHS) for Region VIII on July 1, 2020 and August 3, 2020 so we can comply with all federally required noticing and appeals procedures. This will allow time to notify and connect members who are no longer eligible to other coverage options and disenroll them from coverage for which they no longer qualify, where appropriate.
- 2) Issue additional guidance on CMS's policy, legal, and operational requirements for states when redetermining and, where appropriate, disenrolling Health First Colorado members covered under the Families First Coronavirus Response Act's Continuous Coverage and Maintenance of Effort provisions.
- 3) Issue additional guidance that aligns CHP+ redetermination timeframes with Health First Colorado timeframes to allow for noticing to members whose coverage may change at the end of the PHE. Because changes to CHP+ were submitted by a state plan amendment rather than a waiver, the Continuous Coverage for that program is set to expire the *day the PHE ends*, rather than *the end of the month in which the*



PHE ends. We request that redetermination timeframes for children and pregnant women covered by CHP+ be aligned with the timeframes for those enrolled in Health First Colorado.

The Department has at least 40 Medicaid projects and 65 Home and Community Based Services (HCBS) items that will need to be reversed with the end of the PHE. Some of the 40 projects are significant, with claims processing and eligibility system changes that take time to implement and will have unintended consequences if rushed. To best serve our members and providers, and to comply with federal and state requirements, it is critical that the Department have enough time to reverse the programmatic changes that have been implemented due to the PHE, including:

- Implementing changes to claims and eligibility systems.
- Updating operational and policy changes authorized through Colorado's 1135 waiver, State Plan Amendments, blanket waivers, state rule changes, verification plan, and Appendix K amendments.
- Complying with federal due process requirements for noticing and state fair hearings for member disenrollment or reduction in coverage when the Continuous Coverage and MOE provisions are no longer in effect.
- Accounting for eligibility technicians' increased workloads--technicians will have to redetermine eligibility for hundreds of thousands of members, ensure members are enrolled in programs that they are eligible for and disenroll members who are no longer eligible.
- Helping disenrolled members secure healthcare coverage through our Connect for Health Colorado Individual Exchange, which will necessitate time for communications with affected individuals and enrollment into available commercial plans.

Additional details about the first two requests are outlined below.

Sufficient Notice Before and Time to Implement Changes After the End of the Public Health Emergency (PHE)

Provide States With at Least 60 Days' Notice Before the End of the PHE

The Department requests that the U.S. Department of Health and Human Services (HHS) and Centers for Medicare and Medicaid Services (CMS) provide at least 60 -days' notice before the end of the PHE if the emergency period will not be extended. As you know, the Continuous Coverage and Maintenance of Effort (MOE) requirements under the Families First Coronavirus Response Act (P.L. 116-127) are linked to the end of the PHE. We estimate that the end of the PHE may affect up to 332,000 Coloradans if the PHE ends in October 2020.



Without this notice provided at least 60 days before the end of the PHE, our members may receive a redetermination notice that would be inaccurate if the PHE is extended again. This notice from HHS is necessary to avoid miscommunications to members and the resubmissions of required information to determine eligibility. In addition, hundreds of thousands of cases would need to be reworked by our state's understaffed and underfunded counties during this recession.

Further, the Department has implemented many operational and policy changes authorized through the 1135 waiver, State Plan Amendments, blanket waivers, state rule changes, and Appendix K amendments that have impacts on providers. Many of these authorizations end immediately with the expiration of the PHE. These changes require system changes to the Department's eligibility and claims processing systems, state regulations changes, and noticing to providers. Once again, without at least 60 days' notice before the federal decision to end the PHE, the Department will not have the time to reverse these processes. There is significant risk that the Department would continue to operate without federal authority if adequate federal notice is not given to states.

Without at least 60 days' notice before the end of the PHE, the potential unintended and avoidable consequences include states' failure to meet due process requirements, the payment of claims by states for ineligible individuals, and an increase in individuals who do not have health care coverage during the COVID-19 global pandemic.

Provide States With at Least 90 Days After the End of the PHE to Complete Continuous Coverage Disenrollment if the PHE ends in October 2020

In addition to the federal government providing states at least 60 days' notice before the end of the PHE, the Department requests a minimum of 90 days after the PHE ends to disenroll individuals covered under the Continuous Coverage requirement who are no longer eligible for Medicaid or CHIP coverage. The Department is currently requesting 90 days to complete the redetermination and noticing process for Medicaid and CHIP members that may be subject to disenrollment. This will allow time to connect these members to other coverage options. However, if the PHE is extended, additional time beyond the 90 days may be required since the caseload covered under the Continuous Coverage will increase. The state's eligibility workforce to process these changes will not increase as caseload increases, so the disenrollment process will require additional time if the PHE continues to be extended beyond the current October date.

Our goal is to ensure our members have appropriate notice to prevent a loss of healthcare coverage. Furthermore, federal law requires Colorado - and all other states - to properly notice members during the disenrollment process and to provide them with the opportunity for a hearing when requested. Because many members request and qualify for continuation of benefits during the appeals process, states will need continuing Federal Financial Participation (FFP) for these members until their appeals are final.



The Department requests that CMS specify that the FFP remain available for services provided to those covered under a continuation of benefits during the appeal process, until the disenrollment process is complete. This includes the time necessary to complete appeal hearings, which, to be clear, will extend beyond the requested 90 days because of due process requirements and a backlog of appeals that occurs when a large number of members are disenrolled at the same time.

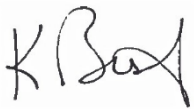
Guidance on Outstanding Policy, Legal, and Operational Questions

We are requesting additional guidance on policy, legal, and operational requirements for states when redetermining and disenrolling Health First Colorado members covered under the Continuous Coverage and Maintenance of Effort provisions. In particular, we seek your guidance on the following questions:

- *What flexibility do states have to stagger redeterminations and renewals following the end of the PHE to make the workload more manageable?*
- *Will FFP continue for members covered under the Continuous Coverage provisions if the state is making a good faith effort to complete the process within 90 days and then continue FFP beyond the 90 days if the state can't complete all disenrollment's within that goal?*
- *Will FFP continue until appeals are final for members who appeal disenrollment after the PHE ends?*

Thank you for your consideration of these requests. If you have any questions or would like to meet to discuss further, please contact the Department's Deputy Chief of Staff Chris Underwood at Chris.Underwood@state.co.us.

Sincerely,



Kim Bimestefer
Executive Director

Cc: Tracy Johnson, Medicaid Director
Susan Beckman, Region 8 Director, Health and Human Services

