



# Consolidated Appropriations Act, 2023: Medicaid and CHIP Provisions Explained

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On December 29, 2022, President Biden signed into law the Consolidated Appropriations Act, 2023 (P.L. 117-328).<sup>1</sup> The Consolidated Appropriations Act includes a number of provisions related to Medicaid and the Children’s Health Insurance Program (CHIP). This includes, among others, delinking the Medicaid continuous coverage requirement from the COVID-19 public health emergency and starting its unwinding after March 31, 2023; requiring all states to provide 12 months of continuous eligibility for children in both Medicaid and CHIP; extending federal funding for CHIP for an additional two years; making permanent a state option to provide 12 months postpartum coverage in Medicaid and CHIP; significantly increasing federal Medicaid funding for Puerto Rico and the other territories over the next five years; and instituting several Medicaid and CHIP improvements related to mental health and juvenile justice.

This issue brief explains the Consolidated Appropriation Act’s Medicaid and CHIP provisions.



## Provisions Covered in This Brief

### 1. Unwinding Medicaid Continuous Coverage Requirement

- ▶ Changes to Matching Rates and Continuous Coverage Requirement
- ▶ Medicaid Beneficiary Protections
- ▶ Data Reporting Requirements
- ▶ Corrective Action by Secretary

### 2. Children’s Coverage

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- ▶ Extension of Federal CHIP Funding
- ▶ Extension of Stability Protection
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### 3. Maternal Health

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# 1. Unwinding of Medicaid Continuous Coverage Requirement

## ► Medicaid Matching Rate Increase Phaseout and Beneficiary Protections and Data Reporting Requirements Added to Expiration of Continuous Coverage Requirement

Under current law, as enacted by the Families First Coronavirus Response Act, states are receiving a 6.2 percentage point increase in their federal Medicaid matching rates (known as the FMAPs) for the duration of the COVID-19 public health emergency. (The CHIP matching rate was increased by 4.34 percentage points during this period as well.) As a condition of the increase, states cannot cut eligibility or make it harder for eligible families to enroll. They must also provide continuous coverage: they cannot involuntarily disenroll any Medicaid beneficiary who was already enrolled or has newly enrolled during the public health emergency. As a consequence, Medicaid enrollment has increased by 30 percent (an additional 19.5 million people according to federal data) and the uninsured rate has declined for children (as well as for adults), reversing recent troubling coverage trends showing more uninsured children.<sup>2</sup>

Section 5131 of the Consolidated Appropriations Act phases out the matching rate increase starting April 1, 2023, with the increase fully eliminated after December 31, 2023. Specifically, the FMAP increase is scheduled to decline to 5 percentage points for April-June 2023, decline to 2.5 percentage points for July-September 2023 and then fall to 1.5 percentage points for October-December 2023.<sup>3</sup> (This also has the effect of reducing the Families First increase in the CHIP matching rate from 4.34 percentage points to 3.5 percentage points for April-June 2023, to 1.75 percentage points for July-September 2023, and then to 1.05 percentage points for October-December 2023.) See Table 1.

Most importantly, the continuous coverage protection ends as of March 31, 2023. The Consolidated Appropriations Act makes it clear that states can take up to a full year to initiate all renewals. (The Centers for Medicare and Medicaid Services (CMS) has previously issued guidance allowing states up to 14 months to resume routine eligibility and enrollment processes, 12 months to initiate renewals and an additional two months to complete the process.)

## ► Medicaid Beneficiary Protections

However, as a condition of receiving these phased-down FMAP increases, states have to satisfy a number of requirements. States are required to conduct renewals in accordance with all federal requirements, including using some temporary flexibilities that are available to smooth out the unwinding and avoid procedural disenrollments.<sup>4</sup> They must also ensure they have up-to-date contact information using the National Change of Address Database maintained by the United State Postal Service, other public program information, or other reliable sources of contact information. Furthermore, the state may not disenroll anyone on the basis of returned mail until the state has made a good faith effort to contact the individual using more than one communication mode (e.g., mail, phone, text, email). To be eligible for the phased-down FMAP increases during the period they are available, states also continue to be subject to the original requirements that they may not make their Medicaid eligibility standards, methodologies and procedures more restrictive or raise premiums.

**Table 1. Phase-Down of Families First FMAP Increases**

Phase-Down Period	Medicaid Matching Rate Increase (Percentage Points)	CHIP Matching Rate Increase (Percentage Points)
Present - March 31, 2023	6.2	4.34
April 1, 2023 - June 30, 2023	5.0	3.50
July 1, 2023 - September 30, 2023	2.5	1.75
October 1, 2023 - December 31, 2023	1.5	1.05



### ► Data Reporting Requirements

Separately, irrespective of whether states accept the phased-down FMAP increases, states must ensure the availability of critical data needed to monitor the unwinding of the continuous coverage requirement. The Consolidated Appropriations Act requires states to report key monitoring data and requires CMS to publish state-specific data on a timely basis. This includes the following data for each month beginning April 2023 and continuing through June 2024:

- Number of eligibility renewals initiated;
- Number of enrollees renewed on a total and ex-parte basis;
- Number of individuals whose coverage for medical assistance, child health assistance, or pregnancy-related assistance was terminated, and the number of individuals terminated for procedural reasons;
- Number of children enrolled in separate CHIP programs;
- Total call center volume, average wait times, and average abandonment rate for each call center;
- Such other information related to eligibility determinations and renewals as identified by the Secretary of Health and Human Services (hereafter referred to as the “Secretary”).

In addition, in state-based marketplace (SBM) states where systems for determining eligibility for Medicaid and CHIP are not integrated with the systems used to determine eligibility for marketplace subsidies—states must report the number of individuals whose accounts were received via electronic transfer by the marketplace or the Basic Health Program (BHP), the number of individuals determined eligible for a marketplace plan or BHP, and the number of individuals who selected a marketplace Qualified Health Plan (QHP) or were enrolled in a BHP plan. (This would not apply to states where CMS reports such information on behalf of the state, such as in a federally-facilitated marketplace or FFM state.) In SBM states where eligibility systems are integrated, states must report the number of individuals determined eligible for a QHP or BHP and the number of individuals who selected a QHP or enrolled in a BHP plan.

Starting in July 2023 and continuing through June 2024, if a state does not report the required data, *it will be penalized with a reduction in the state’s regular FMAP by .25 percentage points for each quarter in which the state fails to satisfy the reporting requirements.* The penalty is cumulative, up to a maximum of one percentage point. This penalty applies whether or not the state is receiving the phased-down FMAP increases discussed above.

### ► Secretary May Require Corrective Action Plan

Finally, if the Secretary determines that a state is not in compliance with all federal requirements applicable to eligibility redeterminations or with the unwinding reporting requirements during the period between April 1, 2023 and June 30, 2024, the Secretary may require the state to submit and implement a corrective action plan. The state will have not more than 14 days to submit such a plan, then 21 days to obtain approval for the plan from the Secretary and the state must begin implementation of the corrective action plan within 14 days following approval. If the state fails to submit or implement an approved corrective action plan, the Secretary may then require the state to suspend making all or some terminations of eligibility due to procedural reasons and also impose a civil monetary penalty of up to \$100,000 for each day the state is not in compliance. This penalty is in addition to the FMAP reduction for not meeting data reporting requirements.<sup>5</sup>

While unwinding of the continuous coverage requirement will threaten health coverage for many millions,<sup>6</sup> the Consolidated Appropriations Act provides some powerful tools to mitigate the coverage losses (including a requirement for all states to institute 12-months continuous eligibility for children, discussed below) and brings some much-needed transparency and accountability to the process as Governors and their state Medicaid agencies conduct full, fresh redeterminations of eligibility for all Medicaid beneficiaries. States can begin disenrolling low-income children, families and others as early as April 1, 2023.



## 2. Children's Coverage

### ► Requirement for Medicaid and CHIP 12-Months Continuous Eligibility for Children

While there is a longstanding option for states to provide up to 12 months of continuous eligibility for children in their Medicaid and CHIP programs, as of January 2022, only 24 states did so for all children in both Medicaid and CHIP. Some additional states provided continuous eligibility only for some children or only for children in separate state CHIP programs. Seventeen states and the District of Columbia did not have continuous eligibility for Medicaid or CHIP for any children.<sup>7</sup> Section 5112 of the Consolidated Appropriations Act permanently requires all states to implement 12 months of continuous eligibility for all children under age 19 in both Medicaid and CHIP. This requirement takes effect on January 1, 2024.<sup>8</sup>

While this provision would not be required to be implemented until after the continuous coverage requirement is lifted (i.e., after March 31, 2023 as discussed above), over the long run, it would significantly reduce the risk that children face periods of uninsurance over the course of a year. That would help reverse some of the coverage losses among children that will certainly occur (including among children who continue to be eligible but lose their coverage due to procedural disenrollments) when the continuous coverage requirement expires. And of course, states could elect to implement this continuous eligibility option more quickly under current law before continuous eligibility becomes mandatory in 2024.

Prior to the pandemic and the application of the continuous coverage requirement, nearly 10 percent of children were uninsured for at least part of the year. But among children with incomes below 250 percent of the federal poverty line, 13 percent of children experienced a gap in coverage at some point during a year or were uninsured for the entire year. These gaps in coverage were even more prevalent among children in communities of color: 14 percent of Latino children and nearly 12 percent of Black children experienced uninsurance over the course of a year.<sup>9</sup>

Mandatory continuous eligibility for children will reduce the risk of gaps in coverage and limit the impact of churn when children cycle on and off health coverage due to temporary changes in family income. Continuous eligibility also ensures that parents who take on extra shifts, receive a raise at work, or have seasonal employment do not risk losing their child's Medicaid or CHIP coverage. This, in turn, would improve health status and well-being as individuals with continuous coverage experience fewer unmet health care needs and are in better health.<sup>10</sup> It would also promote health equity, mitigate the financial impact of income volatility on families, drive more efficient health care utilization and spending, reduce administrative burden and costs for states, enhance measurement of quality of care and increase accountability for managed care plans.<sup>11</sup> Moreover, with a handful of states like Oregon, New Mexico and Washington already moving towards covering children from birth to age 6 continuously through section 1115 waivers, this requirement will raise the national floor and make great progress towards universal coverage of children.<sup>12</sup>

### ► Two-Year Extension of Federal CHIP Funding, Other CHIP Provisions

CHIP serves a vital role in America's health care system by providing comprehensive, affordable health coverage to more than seven million children and pregnant women whose family incomes are over income eligibility levels for Medicaid but may otherwise be uninsured.<sup>13</sup> First enacted in 1997, CHIP has been a success story in advancing children's coverage. However, due to the temporary and capped nature of the program's federal funding structure, Congress has had to repeatedly act to provide additional years of federal funding. During the 2017 funding extension debate, Congress actually let annual funding for CHIP lapse entirely from September 30, 2017 until January 22, 2018 forcing states to rely on carryover funding and, in some cases, to notify families that they were planning to close enrollment. While Congress ultimately acted to provide federal CHIP funding for an additional ten years, federal CHIP funding was due to expire again after federal fiscal year 2027.

Section 5111 of the Consolidated Appropriations Act extends federal funding for CHIP for another two years, through the end of fiscal year 2029, ensuring more stability for states and families that depend on the CHIP program. It also extends through fiscal year 2029 a number of related CHIP financing provisions including redistribution (which transfers unspent funds after two years to states facing federal funding shortfalls), the Child Enrollment Contingency Fund (which provides additional federal CHIP funds to states that have higher-than-expected enrollment and have exhausted their available CHIP funding) and the qualifying state option (which allows states that expanded children's coverage in Medicaid prior to enactment of CHIP to fund a portion of such Medicaid child expansions).

The Consolidated Appropriations Act also extends for two years other related child health provisions including the Pediatric Quality Measures Program (PQMP) and grants for child-specific outreach and enrollment. Federal funding for the PQMP, which supports the advancement and reporting of evidence-based, consensus-driven pediatric quality measures, is extended through fiscal year 2029. The PQMP will receive \$15 million for each of fiscal years 2028 and 2029. Federal funding for child outreach and enrollment grants is extended for two years with an additional \$40 million appropriated for the combined period of fiscal years 2028 and 2029. These grants serve an important role in helping to ensure eligible children can access and maintain Medicaid and CHIP coverage.

#### ► **Two-Year Extension of Stability Protection for Children's Coverage in Medicaid and CHIP**

Section 5111 of the Consolidated Appropriations Act also extends the existing Medicaid and CHIP stability provision for children for another two years through September 30, 2029, which prohibits states from cutting Medicaid and CHIP income eligibility for children or making it harder for eligible children to enroll. Originally included in the Affordable Care Act (ACA) and subsequently extended in CHIP funding reauthorization legislation, the stability provision prohibits states from making their eligibility standards, methodologies and procedures more restrictive, such as cutting income eligibility or imposing new barriers to enrollment like increased premiums.

#### ► **Two-Year Extension of Express Lane Eligibility Option for States**

Express Lane Eligibility (ELE) is a state option that allows states to use the eligibility findings from other public programs like the Supplemental Nutrition Assistance Program (SNAP) to streamline enrollment and/or renewal for children in Medicaid and CHIP. Seven states currently use ELE in their Medicaid programs or in both their Medicaid and CHIP programs.<sup>14</sup> The ELE state option was previously set to expire at the end of fiscal year 2027. Section 5111(d)(1) of the Consolidated Appropriations Act extends the ELE state option for another two years, through the end of fiscal year 2029.





### 3. Maternal Health

#### ► Permanent Option for Medicaid and CHIP 12-Months Postpartum Coverage

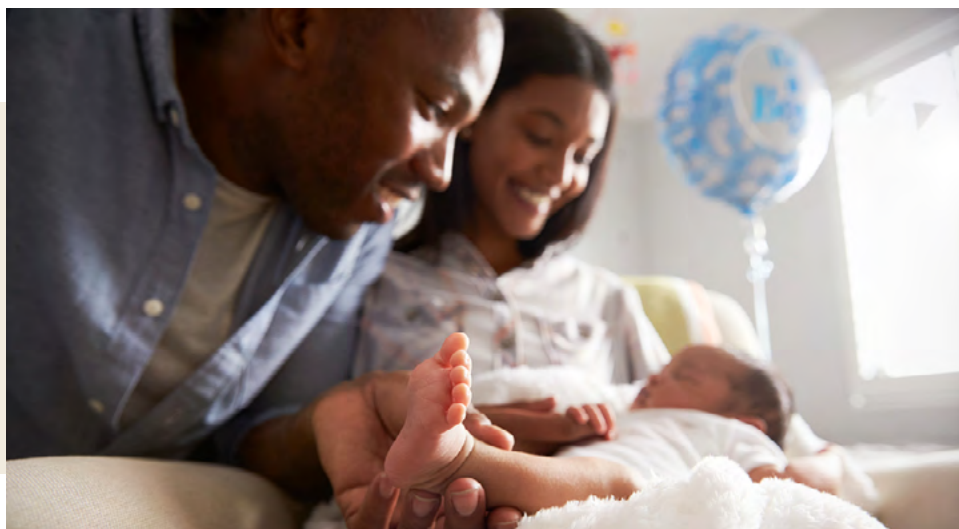
Section 5113 of the Consolidated Appropriations Act makes permanent the American Rescue Plan Act's state plan option to provide 12 months of postpartum coverage in both Medicaid and CHIP, which first took effect on April 1, 2022. (The American Rescue Plan option had been temporary and only available for five years.) Making the option permanent puts to rest any state concerns about the option expiring and gives states certainty that once they take up the option to lengthen the postpartum coverage period from the previous 60-day duration to 12 months after the end of pregnancy, they will continue to receive federal Medicaid matching funds.<sup>15</sup>

More than 30 states have elected the option so far, and even more are expected to take it this year.<sup>16</sup> Several other states have extended postpartum Medicaid coverage via a Section 1115 waiver. Taken together, this constitutes one of the fastest, most widespread adoptions of an optional Medicaid policy in recent memory.

Still, keeping the 12 months of postpartum coverage optional—instead of making it mandatory for all states—will leave many new mothers behind. As of this date, there are 15 states that have not yet acted to extend 12 months of postpartum coverage: Alaska, Arkansas, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, South Dakota, Texas, Utah, Wisconsin, and Wyoming.<sup>17</sup>

Medicaid and CHIP cover about 43 percent of births each year and as a result, providing 12 months of postpartum coverage in these programs is a critical step in responding to the alarming maternal mortality crisis in the U.S. that disproportionately affects women of color.<sup>18</sup> When Medicaid and CHIP coverage ends at 60 days postpartum, many women are at risk of becoming uninsured and missing out on critical access to care that can prevent pregnancy-related deaths. The Congressional Budget Office (CBO), for example, has previously estimated that about 45 percent of women covered by Medicaid on the basis of pregnancy now become uninsured after the end of the 60-day postpartum coverage period.<sup>19</sup>

Research, however, finds that about 53 percent of maternal deaths happen between 7 to 365 days postpartum and loss of health coverage is cited as one of the reasons many women do not seek postpartum care.<sup>20</sup> Under the public health emergency continuous coverage requirement, the pregnant women eligibility group saw the greatest percentage increase in enrollment of any category with roughly 64 percent—or 652,000—more beneficiaries in the pregnant women eligibility group in April 2022, compared to February 2020.<sup>21</sup> The pace of growth signals that the continuous coverage requirement filled a critical gap for postpartum women. At the same time, its expiration places their health coverage at significant risk as states begin to redetermine eligibility and disenroll some beneficiaries.





## 4. Medicaid in Puerto Rico and the Other Territories

### ► Five-Year Increase in Federal Medicaid Funding for Puerto Rico and Permanent Increases for the Other Territories

Unlike for the states, federal Medicaid funding for Puerto Rico and the other territories is capped, with the regular block grant amounts set at highly inadequate levels. Moreover, the regular FMAP for the territories is set at 55 percent, even though the FMAPs for the territories would equal 83 percent if they were calculated in the same way the matching rate for states is determined, due to the territories' lower per-capita income. This has forced the territories to operate Medicaid programs that are far less generous than those in the states, with the territories not meeting various federal eligibility, benefit and other requirements that apply to the states.<sup>22</sup> At the same time, the residents of the territories heavily rely on Medicaid for their health coverage: for example, according to data from the Census Bureau's Puerto Rico Community Survey, in 2021, nearly 47 percent of all residents of Puerto Rico were covered by Medicaid alone or in combination with other health insurance and nearly 62 percent of all Puerto Rican children had Medicaid coverage.<sup>23</sup>

However, over the last decade, on a temporary basis, Congress has provided to the territories additional federal Medicaid funding and FMAP increases to both avoid draconian cuts and allow the territories to institute modest eligibility, benefit and provider rate improvements. Under the latest funding extensions, Puerto Rico's FMAP was set at 76 percent and the FMAPs for American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands were set at 83 percent. But prior to enactment of the Consolidated Appropriations Act, the FMAPs for all the territories would have reverted to the regular 55 percent on December 23, 2022. (This FMAP reduction was to have originally taken effect on December 16, 2022 but it was pushed back one week by a short-term appropriations bill.) This fiscal cliff would have meant that the federal government would have picked up much less of the cost of the territories' Medicaid programs. The territories would then have had to make up the difference with their own funds, or as is far more likely, they would had to institute deep, damaging cuts over time to compensate for these large reductions in federal financial support.<sup>24</sup>

Section 5101 of the Consolidated Appropriations Act extends the 76 percent FMAP for Puerto Rico for another five years (through the end of federal fiscal year 2027) and extends the 83 percent FMAPs for the other territories on a permanent basis.

It also provides sufficient federal block grant funding for each of the next five years to not only sustain Puerto Rico's Medicaid program at that higher level but also allow for some further programmatic improvements. This would ensure greatly needed fiscal stability for Puerto Rico for the medium term and for the other territories over the long term and thereby increase access to needed care for low-income individuals and families in Puerto Rico and the other territories.<sup>25</sup>

The cost of this increased federal support for Puerto Rico and the territories is offset by rolling back a 2021 decision from CMS which found that under one of the previous federal funding increases enacted by Congress, the regular block grant amounts for Puerto Rico in fiscal year 2022 and future years would be significantly higher than was previously expected.<sup>26</sup> While the Consolidated Appropriations Act drastically reduces federal funding for Puerto Rico after fiscal year 2027, relative to current law, the funding levels under the CMS interpretation would have still been highly insufficient to sustain Puerto Rico's current program for the rest of fiscal year 2023 at a 76 percent FMAP, with potential federal funding shortfalls of as much as \$600 million in fiscal year 2023 alone. In contrast, as noted above, the Consolidated Appropriations Act should provide sufficient block grant funding levels to sustain and improve Puerto Rico's program at a 76 percent FMAP for the next five years (fiscal years 2023-2027).

Finally, the Consolidated Appropriations Act requires Puerto Rico and the other territories to satisfy several requirements as a condition of a portion of the funding and/or FMAP increases. For example, Puerto Rico must continue to set a payment floor for physician services equal to 75 percent of Medicare rates, make annual reports to Congress on how the funding increases enhanced access, and designate a contracting and procurement lead for the Medicaid program. In addition, Puerto Rico must implement an asset verification system by 2026, as is already required for states.

It is important to recognize, however, that despite these funding increases, Puerto Rico and the other territories will not be able to come into fuller compliance with federal eligibility, benefit and other requirements—and thus dramatically increase access to needed care among low-income residents of the territories—without elimination of their block grant structure entirely and permanent state-like financial treatment under which the federal government picks up a fixed percentage of the territories' Medicaid costs.



## 5. Mental Health

### ► Required Services for Certain Justice-Involved Youth

Under section 5121 of the Consolidated Appropriations Act, starting January 1, 2025, state Medicaid and CHIP programs are required to have a plan in place and in accordance with such plan provide: (1) in the 30 days prior to release, or within one week or soon as practicable after release, certain screenings and diagnostic services in accordance with Early Periodic Screening Diagnostic and Treatment (EPSDT) requirements, including behavioral health screenings or diagnostic services to eligible juvenile youth in public institutions and (2) in the 30 days prior to release and for at least 30 days following release, targeted case management services, including referrals to appropriate care and services. The Consolidated Appropriations Act also makes Medicaid federal financial participation available under the provision for these activities. Section 5121(c) of the Act also aligns CHIP rules with existing Medicaid rules regarding suspension rather than termination of coverage while a child is an inmate of a public institution and related requirements regarding redeterminations of coverage.<sup>27</sup> These provisions could be particularly helpful for youth in the juvenile justice system who are more likely to have mental health needs.<sup>28</sup>

### ► State Option for Coverage of Certain Justice-Involved Youth

Under section 5122 of the Consolidated Appropriations Act, starting January 1, 2025, states will have the option to provide Medicaid and CHIP coverage to juvenile youth in public institutions during the initial period pending disposition of charges and receive federal financial participation under Medicaid. Under prior law, states have generally been prohibited from using federal funds such as Medicaid and CHIP to provide medical care to inmates of a public institution—often referred to as the inmate exclusion.<sup>29</sup> Notably, a number of states have pending 1115 demonstration requests focused on improving health outcomes for justice involved individuals.<sup>30</sup>

### ► Medicaid and CHIP Provider Directories

Starting July 1, 2025, section 5123 of the Consolidated Appropriations Act requires state Medicaid and CHIP fee-for-service programs and managed care plans to publish, and update on at least a quarterly basis, public searchable provider network directories including information on the specialty of the provider, whether the provider is accepting new Medicaid-covered patients, the provider's cultural and linguistic capabilities, and whether the provider offers services via telehealth and other information. Such provider directories must include Medicaid participating physicians, hospitals, pharmacies, providers of mental health and substance use disorder services, providers of long term service and supports and other providers as required by the Secretary or the state. Often referred to as ghost or phantom networks, directories with listings of providers who did not see or were not accepting new Medicaid patients have been linked to access barriers.<sup>31</sup>

### ► Guidance and Technical Assistance for Continuum of Crisis Response Services

Section 5124 of the Consolidated Appropriations Act requires the Secretary, in coordination with CMS and the HHS Assistant Secretary for Mental Health and Substance Use, to issue guidance to states and set up a technical assistance center by July 1, 2025 on continuum of crisis services in Medicaid and CHIP to address mental health and substance use disorder needs, including outlining the federal authorities under which states can finance and enhance the availability of crisis response services in Medicaid and CHIP, addressing how Medicaid and CHIP can support crisis call centers including the 988 crisis services hotline, and providing a compendium of best practices for the successful operation of continuum of crisis response services under Medicaid and CHIP. It also provides \$8 million in funding to the Secretary to carry out these activities.





## 6. Other Medicaid Provisions

### ► Four Year Extension of the Medicaid Money Follows the Person Demonstration

The Medicaid Money Follows the Person (MFP) demonstration is a federal grant program that provides states with enhanced federal matching funds to help transition individuals receiving long term services and supports (LTSS) from institutional settings to community-based settings.<sup>32</sup> The program was first established in 2005 under the Deficit Reduction Act and has subsequently been amended and extended a number of times. According to CMS, as of May 2022, 36 states were listed as current grantees under the MFP demonstration.<sup>33</sup> Prior to enactment of the Consolidated Appropriations Act, funding for the program was available only through September 30, 2023.

Section 5114 of the Consolidated Appropriations Act extends funding for the Medicaid Money Follows the Person demonstration at current funding levels of \$450 million per year for each of fiscal years 2024 through 2027. It also modifies program rules to require a state to use demonstration grant funds within four years of receipt or have any unused portion of the funds rescinded by the Secretary. Any such rescissions would then be added to the mandatory program appropriation for the following year. Importantly, as noted by CMS guidance issued in 2013, MFP provides an opportunity for states to offer community-based services and supports to individuals and youth transitioning from pediatric residential treatment facilities or psychiatric hospitals.<sup>34</sup> However, according to a 2017 Department of Health and Human Services report to Congress, “few MFP participants are transitioning from psychiatric facilities.”<sup>35</sup> With this four-year funding extension, states could leverage MFP to support transitions from pediatric residential treatment

and psychiatric facilities and facilitate access to home and community-based services and supports for youth with behavioral health needs.

### ► Four-Year Extension of Spousal Impoverishment Protections for Individuals Receiving Home and Community-Based Services

Under Medicaid’s spousal impoverishment rules, a portion of a married couple’s combined resources is protected for the spouse living in the community when determining financial eligibility for an individual seeking long term care. Section 2404 of the ACA expanded these protections beyond institutional care to also require states to apply the protections to community spouses of individuals receiving Medicaid home and community-based services. However, due to the temporary nature of the provision, Congress has had to act multiple times to extend spousal impoverishment protections for individuals receiving home and community-based services including most recently in the Consolidated Appropriations Act, 2023, which extended the protections through September 30, 2023. Section 5115 of the Consolidated Appropriations Act, 2023 extends the ACA spousal impoverishment protections for another four years, through the end of fiscal year 2027.

### ► Funding for the Medicaid Improvement Fund

Section 5141 of the Consolidated Appropriations Act sets aside \$7 billion in funding for the Medicaid Improvement Fund, established under section 1941 of the Social Security Act, for fiscal year 2028 and thereafter. Based on historical practice, some or all of this funding will be available to be rescinded by Congress to offset the cost of future Medicaid legislation.

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## Endnotes

<sup>1</sup> For the statutory language of P.L. 117-328, see <https://www.congress.gov/bill/117th-congress/house-bill/2617/text>.

<sup>2</sup> Centers for Medicare and Medicaid Services, “August 2022 Medicaid and CHIP Enrollment Trend Snapshot,” November 29, 2022, available at <https://www.medicaid.gov/sites/default/files/2022-11/august-2022-medicaid-chip-enrollment-trend-snapshot.pdf>; and Joan Alker, Aubrianna Osorio and Edwin Park, “Number of Uninsured Children Stabilized and Improved Slightly During the Pandemic,” Georgetown University Center for Children and Families, December 7, 2022, available at <https://ccf.georgetown.edu/2022/12/07/number-of-uninsured-children-stabilized-and-improved-slightly-during-the-pandemic-2/>.

<sup>3</sup> Tricia Brooks, “Unwinding Wednesday #15: Congress Proposes to End Medicaid Continuous Coverage Protection in Early 2023; Adds Transparency and Accountability Requirements,” Say Ahhh! Blog, Georgetown University Center for Children and Families, December 20, 2022, available at <https://ccf.georgetown.edu/2022/12/20/congress-proposes-to-end-medicaid-continuous-enrollment-protection-in-early-2023/>.

<sup>4</sup> Alexa Gardner, “CMS Spotlights State Strategies for Protecting Continuity of Health Coverage when PHE Lifts,” Say Ahhh! Blog, Georgetown University Center for Children and Families, August 11, 2022, available at <https://ccf.georgetown.edu/2022/08/11/cms-spotlights-state-strategies-for-protecting-continuity-of-health-coverage-when-phe-lifts/>.

<sup>5</sup> Brooks, op. cit.

<sup>6</sup> Joan Alker and Tricia Brooks, “Millions of Children May Lose Medicaid: What Can Be Done to Help Prevent Them from Becoming Uninsured?,” Georgetown University Center for Children and Families, February 2022, available at <https://ccf.georgetown.edu/2022/02/17/millions-of-children-may-lose-medicaid-what-can-be-done-to-help-prevent-them-from-becoming-uninsured/>; Office of the Assistant Secretary for Planning and Evaluation, “Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches,” U.S. Department of Health and Human Services, August 19, 2022, available at <https://aspe.hhs.gov/reports/unwinding-medicaid-continuous-enrollment-provision>; and Matthew Buettgens and Andrew Green, “The Impact of the COVID-19 Public Health Emergency Expiration on All Types of Coverage,” Urban Institute, December 5, 2022, available at <https://www.urban.org/research/publication/impact-covid-19-public-health-emergency-expiration-all-types-health-coverage>.

<sup>7</sup> Tricia Brooks and Alexa Gardner, “Continuous Coverage in Medicaid and CHIP,” Georgetown University Center for Children and Families, July 2021, available at <https://ccf.georgetown.edu/2021/07/19/continuous-coverage-in-medicaid-and-chip/>; and Tricia Brooks et al., “Medicaid and CHIP Eligibility and Enrollment Policies as of January 2022: Findings from a 50-State Survey,” Kaiser Family Foundation, March 16, 2022, available at <https://www.kff.org/medicaid/report/medicaid-and-chip-eligibility-and-enrollment-policies-as-of-january-2022-findings-from-a-50-state-survey/>. As of January 2022, the 17 states (plus the District of Columbia) without any continuous eligibility for children in either Medicaid or CHIP were Arizona, Connecticut, Georgia, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia and Wisconsin. Note, however, that Arizona is implementing 12-months continuous eligibility for children in its separate state CHIP program, but not Medicaid, starting January 1, 2023.

<sup>8</sup> Joan Alker, “Medicaid Unwinding Will Begin in April but There’s Good News in Congressional Funding Agreement,” Say Ahhh! Blog, Georgetown University Center for Children and Families, December 20, 2022, available at <https://ccf.georgetown.edu/2022/12/20/medicaid-unwinding-will-begin-in-april-but-theres-good-news-in-congressional-funding-agreement/>.

<sup>9</sup> Joan Alker and Aubrianna Osorio, “Why Is Medicaid/CHIP Continuous Eligibility So Important for Kids?,” Say Ahhh! Blog, Georgetown University Center for Children and Families, October 8, 2021, available at <https://ccf.georgetown.edu/2021/10/08/why-is-medicaid-chip-continuous-eligibility-so-important-for-kids/>.

<sup>10</sup> Brooks and Gardner, op cit and Government Accountability Office, “States Made Multiple Program Changes, and Beneficiaries Generally Reported Access Comparable to Private Insurance,” November 2012, available at [www.gao.gov/assets/gao-13-55.pdf](http://www.gao.gov/assets/gao-13-55.pdf).

<sup>11</sup> Brooks and Gardner, op cit.

<sup>12</sup> See, for example, Joan Alker and Elisabeth Wright Burak, “Oregon Leads the Nation by Covering Children in Medicaid from Birth to Kindergarten – Which State Will Be Next??,” Say Ahhh! Blog, Georgetown University Center for Children and Families, September 28, 2022, available at <https://ccf.georgetown.edu/2022/09/28/oregon-leads-the-nation-by-covering-children-in-medicaid-from-birth-to-kindergarten-which-state-will-be-next/>.

<sup>13</sup> See Joan Alker and Anne Dwyer, “Future of Children’s Health Coverage: Next Steps for CHIP,” Georgetown University Center for Children and Families, August 24, 2021, available at <https://ccf.georgetown.edu/2021/08/24/future-of-childrens-health-coverage-next-steps-for-chip/>; and Centers for Medicare and Medicaid Services, “August 2022 Medicaid and CHIP Enrollment Trend Snapshot,” November 29, 2022, available at <https://www.medicaid.gov/sites/default/files/2022-11/august-2022-medicaid-chip-enrollment-trend-snapshot.pdf>.

<sup>14</sup> Centers for Medicare and Medicaid Services, “Express Lane Eligibility for Medicaid and CHIP Coverage,” Updated August 6, 2021, available at <https://www.medicaid.gov/medicaid/enrollment-strategies/express-lane-eligibility-medicaid-and-chip-coverage/index.html>.

<sup>15</sup> Maggie Clark, “Permanent Medicaid Postpartum Coverage Option, Maternal Health Infrastructure Investments in 2022 End-of-Year Omnibus Bill,” Say Ahhh! Blog, Georgetown University Center for Children and Families, January 4, 2023, available at <https://ccf.georgetown.edu/2023/01/04/permanent-medicaid-postpartum-coverage-option-maternal-health-infrastructure-investments-in-2022-year-end-omnibus-bill/>.

<sup>16</sup> Kaiser Family Foundation, “Medicaid Postpartum Coverage Extension Tracker,” December 8, 2022, available at <https://www.kff.org/medicaid/issue-brief/medicaid-postpartum-coverage-extension-tracker/>.

<sup>17</sup> Kaiser Family Foundation, “Medicaid Postpartum Coverage Extension Tracker,” op. cit.

<sup>18</sup> Maggie Clark, “Increase in Maternal Mortality During COVID Underscores Need for Policy Changes,” Say Ahhh! Blog, Georgetown University Center for Children and Families, February 25, 2022, available at <https://ccf.georgetown.edu/2022/02/25/increase-in-maternal-mortality-during-covid-underscores-need-for-policy-changes/>.

<sup>19</sup> Congressional Budget Office, “Reconciliation Recommendations of the House Committee on Energy and Commerce,” February 14, 2021, available at <https://www.cbo.gov/publication/57002>.



<sup>20</sup> Susannah Trost et al., “Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 36 US States 2017-2019,” Centers for Disease Control and Prevention, 2022, available at <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/data-mmrc.html>.

<sup>21</sup> Centers for Medicare and Medicaid Services, “Medicaid and CHIP and the COVID-19 Public Health Emergency: Preliminary Medicaid and CHIP Data Snapshot Services through April 30, 2022, available at <https://www.medicaid.gov/state-resource-center/downloads/covid-19-medicaid-data-snapshot-04302022-updated.pdf>; and Maggie Clark, “Early Research Shows Benefits of One Year of Postpartum Medicaid,” Say Ahhh! Blog, Georgetown University Center for Children and Families, December 15, 2022, available at <https://ccf.georgetown.edu/2022/12/15/early-research-shows-benefits-of-one-year-of-postpartum-medicaid-as-states-and-congress-consider/>.

<sup>22</sup> Edwin Park, “How States Would Fare under Block Grants and Per Capita Caps: Lessons from Puerto Rico,” The Commonwealth Fund, January 6, 2021, available at <https://www.commonwealthfund.org/publications/issue-briefs/2021/jan/how-states-fare-medicaid-block-grants-per-capita-caps-puerto-rico>.

<sup>23</sup> Edwin Park, “End of the Year Appropriations Bill Would Avert Medicaid Fiscal Cliff for Puerto Rico and the Territories,” Say Ahhh! Blog, Georgetown University Center for Children and Families, December 20, 2022, available at <https://ccf.georgetown.edu/2022/12/20/end-of-the-year-appropriations-bill-would-avert-medicaid-fiscal-cliff-for-puerto-rico-and-the-territories/>.

<sup>24</sup> Edwin Park, “Lack of Federal Action Puts Puerto Rico and Other Territories in Peril of Dire Medicaid Fiscal Cliff Yet Again,” Say Ahhh! Blog, Georgetown University Center for Children and Families, October 4, 2022, available at <https://ccf.georgetown.edu/2022/10/04/lack-of-federal-action-puts-puerto-rico-and-other-territories-in-peril-of-dire-medicaid-fiscal-cliff-yet-again/>.

<sup>25</sup> Edwin Park, “End of the Year Appropriations Bill Would Avert Medicaid Fiscal Cliff for Puerto Rico and the Territories,” op. cit.

<sup>26</sup> Letter from CMS Deputy Administrator and Director of the Center for Medicaid and CHIP Services Daniel Tsai to Edna Marin-Ramos, Medicaid Director, Puerto Rico Medicaid Program, September 24, 2021, available at <https://www.medicaid.gov/allotment/downloads/ltr-to-med-agen-puerto-rico.pdf>.

<sup>27</sup> Centers for Medicare & Medicaid Services, SMD #21-002 RE; Implementation of At-Risk Youth Medicaid Protections for Inmates of Public Institutions (Section 1001 of the SUPPORT Act), January 19, 2021, available at <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21002.pdf>.

<sup>28</sup> Lee Underwood and Aryssa Washington, “Mental Illness and Juvenile Offender,” *International Journal of Environmental Research and Public Health*, February 18, 2016, <https://www.mdpi.com/1660-4601/13/2/228>.

<sup>29</sup> National Health Law Program, “Q&A: Are Children in Juvenile Detention Eligible for Medicaid?,” July 2013, available at <https://healthlaw.org/resource/q-a-are-children-in-juvenile-detention-eligible-for-medicaid/>.

<sup>30</sup> Cindy Mann, Kinda Serafi and Virginia Morgan, “States Push for Innovative Ways to Improve Health Outcomes for Justice-Involved Individuals,” To the Point Blog, Commonwealth Fund, September 13, 2022, available at <https://www.commonwealthfund.org/blog/2022/states-push-innovative-ways-improve-health-outcomes-justice-involved-individuals>; and Sweta Halder and Madeline Guth, “State Policies Connecting Justice Involved Populations to Medicaid Coverage and Care,” Kaiser Family Foundation, December 17, 2021, available at <https://www.kff.org/medicaid/issue-brief/state-policies-connecting-justice-involved-populations-to-medicaid-coverage-and-care/>.

<sup>31</sup> Jane Zhu et al., “Phantom Networks: Discrepancies Between Reported and Realized Mental Health Care Access in Oregon Medicaid,” *Health Affairs*, July 2022, available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00052>.

<sup>32</sup> MaryBeth Musumeci, Priya Chidambaram and Molly O’Malley Watts, “Medicaid’s Money Follows the Person Program: State Progress and Uncertainty Pending Federal Funding Reauthorization,” Kaiser Family Foundation, November 25, 2019, available at <https://www.kff.org/medicaid/issue-brief/medicaids-money-follows-the-person-program-state-progress-and-uncertainty-pending-federal-funding-reauthorization/>.

<sup>33</sup> Centers for Medicare and Medicaid Services, “List of Money Follows the Person Grantees,” Updated May 10, 2022, available at <https://www.medicaid.gov/medicaid/long-term-services-supports/money-follows-person/list-of-money-follows-person-grantees/index.html>.

<sup>34</sup> Substance Abuse and Mental Health Services Administration and Centers for Medicare and Medicaid Services, “Joint CMCS and SAMHSA Informational Bulletin: Coverage of Behavioral Health Services for Children, Youth, and Young Adults with Significant Mental Health Conditions,” May 7, 2013, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/CIB-05-07-2013.pdf>.

<sup>35</sup> U.S. Department of Health and Human Services, “Report to the President and Congress: The Money Follows the Person (MFP) Rebalancing Demonstration,” June 2017, available at <http://www.advancingstates.org/sites/nasuaad/files/mfp-rtc.pdf>.