



January 31, 2020

**VIA ELECTRONIC SUBMISSION**

Commissioner Andrew Saul  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235-6401

**Attention: Docket No. SSA-2018-0026, RIN 0960-AI27**  
**Proposed Rulemaking: Rules Regarding the Frequency and Notice of Continuing Disability Reviews**

Dear Sir/Madam:

Thank you for the opportunity to comment on SSA Docket No. SSA-2018-0026, “Rules Regarding the Frequency and Notice of Continuing Disability Reviews” (hereinafter referred to as “the proposed rule”).

The Georgetown University Center for Children and Families (CCF) is an independent, nonpartisan policy and research center founded in 2005 with a mission to expand and improve high-quality, affordable health coverage for children and families. As part of the McCourt School of Public Policy, CCF provides research, develops strategies, and offers solutions to improve the health of children and families, particularly those with low and moderate incomes. In particular, CCF examines policy development and implementation efforts related to Medicaid, the Children’s Health Insurance Program (CHIP), and the Affordable Care Act (ACA).

The proposed rule would increase the number and frequency of Continuing Disability Reviews (CDRs) for millions of low-income children and parents receiving Supplemental Security Income (SSI). These additional reviews will result in some current beneficiaries losing eligibility for SSI, which the proposed rule estimates will, on net, lower federal SSI payments by \$0.6 billion over 10 years.<sup>1</sup> The proposed rule does not, however, estimate the impact of the loss of SSI eligibility on Medicaid coverage for affected beneficiaries. Nor does the proposed rule estimate the administrative costs to state Medicaid agencies and to the Center for Medicare & Medicaid Services (CMS) resulting from this eligibility “churn.” In fact, other than a single reference to Medicaid as a source of health care for some beneficiaries, the proposed rule does not consider Medicaid’s role for individuals receiving SSI at all.<sup>2</sup> We urge that the portions of the proposed rule relating to SSI be withdrawn and that the Social Security Administration (SSA) reconsider its proposal taking into account the relationship between SSI and Medicaid eligibility and the implications of increased

CDRs for Medicaid beneficiaries, providers, managed care plans, state agencies, and state and federal spending.

***Receipt of SSI is inextricably linked to Medicaid eligibility.***

In most states, enrollment in SSI automatically qualifies individuals with disabilities for Medicaid, but states may use more restrictive criteria (related to income and assets, disability, or both) and states also have the option of covering additional people with low incomes or high medical expenses through other eligibility pathways (such as poverty level, medically needy, and special income level).<sup>3</sup> The Medicaid and CHIP Payment and Access Commission (MACPAC), a nonpartisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, summarized the Medicaid eligibility levels for people with disabilities by state in [MACStats Exhibit 37](#).

Because Medicaid offers multiple eligibility pathways, if a person loses SSI, whether temporarily during an appeal process or permanently, or if any other circumstances related to Medicaid eligibility change, federal law requires that state Medicaid agencies consider all bases of Medicaid eligibility before issuing a determination of ineligibility (see 42 CFR 435.916(f)). Moreover, if Medicaid eligibility is denied, benefits must continue during the appeal process if the beneficiary requests such continuation in a timely way (see 42 CFR §§ 431.230 and 438.420).

These layered eligibility rules underscore a clear intention to ensure that eligible children and families, especially those with disabilities, are able to enroll in Medicaid and stay enrolled, even as they age or if their technical eligibility category changes. Research shows that continuous coverage is critical to maintaining access to health care, and even short gaps in coverage can lead to delayed care and unmet medical needs.<sup>4</sup> This is especially important for children with special health care needs and disabilities, where lack of access to treatment exposes children to significant risk of irreparable injury.

***Medicaid is a critical support for children and parents with disabilities receiving SSI.***

Over 10 million people qualify for Medicaid on the basis of disability, including children with disabilities that they have had since birth and others who have disabling conditions acquired through illness, injury, or trauma. Over one-third of Medicaid beneficiaries who qualify on the basis of disability do so through receipt of SSI.<sup>5</sup> People with disabilities only make up 15% of Medicaid enrollees, but 39% of total program expenditures.<sup>6</sup>

Almost one in five children (18%) in the U.S. have special health care needs, and Medicaid and CHIP cover about half of them (47%).<sup>7</sup> Only a subset of children with disabilities (less than one in six) qualify for Medicaid because they receive federal SSI benefits; the majority qualify for Medicaid either based on family income or through state adoption of optional coverage groups for children with disabilities.<sup>8</sup> While it is likely that a child losing SSI and thus Medicaid eligibility under §1902(a)(10)(A)(i)(II) would still be eligible for Medicaid as a low-income child under §§1902(a)(10)(A)(i)(VI) or (VII), the proposed rule does not

address the relationship between SSI and Medicaid eligibility for children with disabilities or the implications of eligibility group changes.

Medicaid is also a critical source of coverage for parents with disabilities, though public data specific to this population is limited. Parents with disabilities who lose SSI may be eligible for Medicaid under a different eligibility pathway, but whether an adult with a disabling condition continues to qualify for Medicaid benefits after losing SSI would depend, in part, on whether the state has adopted the Medicaid expansion under the ACA or an optional coverage group for adults with disabilities. State adoption of the various optional pathways to Medicaid eligibility for nonelderly adults with disabilities varies significantly, and some parents losing SSI under the proposed rule may fall in a health coverage gap.<sup>9</sup>

SSA should work with CMS to determine the number of children and parents receiving Medicaid on the basis of receipt of SSI and whether they may also be eligible for Medicaid under another pathway if they lost SSI benefits under the proposed rule. This analysis is critical to accurately determining the impact of the proposed rule on health insurance coverage for these vulnerable groups and Medicaid costs for states and the federal government.

***More frequent disability reviews for Supplemental Security Income are likely to cause eligible children and parents to lose Medicaid coverage due to churn.***

Barriers to Medicaid coverage such as more frequent eligibility reviews and more complicated renewal processes make it harder for eligible children and families to stay continuously covered. Continuous coverage is especially important for children and parents with disabilities who have more frequent and more expensive health care needs.<sup>10</sup>

Under the proposed rule, some children currently subject to continuing disability reviews (CDR) every three years would be classified in the new diary category, Medical Improvement Likely (MIL), and subject to a CDR every two years. The proposed rule describes some specific groups that would be moved to this more frequent review category, including: children with cancer, anxiety, and speech impairments, as well as a new, age-based review at 6 and 12 years old. The proposed rule does not provide sufficient evidence to justify these changes, especially the addition of the arbitrary reviews at ages 6 and 12, nor does it adequately address the impact of the proposed changes on insurance coverage status for children.

The proposed rule would also subject some parents to more frequent CDRs by classifying them in the new MIL category. For example, some parents with cancer would be subject to more frequent reviews, as would “Step 5” parents (those who qualify for SSI following a determination that they cannot work, even in jobs that are different from previous employment experience). The rule does not quantify how many parents would be subject to more frequent reviews nor does it assess the impact of these more frequent reviews on their health insurance coverage. Maintaining coverage for the whole family is critical to

overall financial security and family health – healthy parents are better parents and children are more likely to have health coverage when their parents are also covered.<sup>11</sup>

Research shows that increasing red tape causes gaps in coverage, or churn, for both children and parents. Churn is the unnecessary and unproductive cycling of families off and back on Medicaid. Churning on and off coverage increases costs for beneficiaries in the form of lost benefits, short-term hardship, and increased effort reapplying. But churn also increases costs for state agencies because it is more resource-intensive to process a new application instead of a renewal and states often experience higher per member per month (PMPM) costs following gaps in coverage.<sup>12</sup>

As described above, children and parents losing SSI should not lose Medicaid unless they are ineligible under another eligibility pathway and benefits should continue during the pendency of an appeal. The law is clear, but in practice, eligible children and families churn on and off coverage all the time. For example, Disability Rights Florida has filed suit against Florida state agencies for improperly revoking Medicaid benefits from beneficiaries whose original eligibility was related to disabilities.<sup>13</sup>

Thus, it is likely that some eligible individuals, including eligible children and parents, will lose Medicaid benefits because of the increased churn associated with more frequent CDRs under the proposed rule. The SSA has not considered the impact of children and parents losing health coverage as a result of these proposed policy changes.

***The proposed rule does not adequately consider the implications of the proposed policy changes on Medicaid managed care organizations.***

The vast majority of children eligible for Medicaid based on family income receive their services through capitated managed care arrangements, but for children and adults with disabilities, the majority receive their care on a fee-for-service (FFS) basis.<sup>14</sup> Under managed care, the state makes monthly payments to Medicaid managed care organizations (MCOs) on a per member basis. Whereas under FFS, the state pays providers directly for each service provided. The Kaiser Family Foundation [Medicaid Managed Care Market Tracker](#) shows the managed care penetration rates by eligibility group in each state.

Thus, if a child's eligibility changes from one based on disability to one based on poverty, the child may be moving to managed care for the first time, switching to a different MCO, or even if the same MCO serves both groups, subject to a different PMPM rate. The calculations behind the PMPM payments are governed by the statutory actuarial soundness requirement and require states to factor in expected utilization and cost data grouped by eligibility category, age, gender, and locality.<sup>15</sup> A child or parent losing SSI may still have special health care needs and higher than expected health care costs compared to a typical, poverty-related child/parent, but the proposed rule does not consider how these delivery systems and payment rates would be impacted.

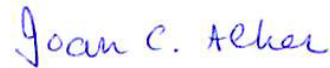
***The provisions of the proposed rule relating to SSI should be withdrawn.***

Though receipt of SSI is inextricably linked to Medicaid eligibility for many children and parents, the proposed rule does not account for the impact of the proposed changes to SSI on Medicaid. The SSA should withdraw the portions of the rule related to SSI and conduct a robust analysis that includes the impact of the proposed changes on Medicaid. We believe that increased CDRs will have an adverse impact on Medicaid beneficiaries, providers, managed care plans, and state agencies. If implemented, the proposed rule would increase churn, resulting in eligible children and parents losing critical health coverage, and increase the rate of uninsurance among these vulnerable groups. The rule is also likely to create confusion as children and families switch Medicaid delivery systems and may cause Medicaid managed care payment rates to be in violation of federal actuarial soundness requirements. The cost of proposed SSI changes on Medicaid must be considered before the proposed rules can go forward.

Our comments include numerous citations to supporting research for the benefit of the SSA. We direct SSA to each of the studies cited and made available through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the formal administrative record on this proposed rule for purposes of the Administrative Procedures Act.

If you have questions regarding our comments, you may contact us at (202) 784-3138.

Sincerely,



Joan Alker  
Research Professor  
Executive Director



Kelly Whitener  
Associate Professor of the  
Practice

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<sup>1</sup> 84 FR at 63596.

<sup>2</sup> 84 FR at 63591.

<sup>3</sup> See SSA §1902(a)(10)(A)(i)(II) and 42 CFR §§ 435.120 and 435.121 for the mandatory Medicaid coverage rules for individuals receiving SSI.

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<sup>4</sup> Olson, L. and Larson, K., American Academy of Pediatrics, “The Continuing Importance of Continuous Health Insurance for Children’s Access to Care, 2016, available at <https://www.aap.org/en-us/professional-resources/Research/research-findings/Pages/The-Continuing-Importance-of-Continuous-Health-Insurance-for-Childrens-Access-to-Care.aspx>.

<sup>5</sup> Medicaid and CHIP Payment and Access Commission, “People with disabilities,” available at <https://www.macpac.gov/subtopic/people-with-disabilities/>.

<sup>6</sup> Department of Health and Human Services, 2017 Actuarial Report on the Financial Outlook for Medicaid, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2017.pdf>.

<sup>7</sup> Musumeci, M. and Chidambaram, P., Kaiser Family Foundation, “Medicaid’s Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending,” June 2019, available at <https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/>.

<sup>8</sup> Ibid.

<sup>9</sup> Musumeci, M. and Chidambaram, P., Kaiser Family Foundation, “Medicaid Financial Eligibility for Seniors and People with Disabilities: Findings from a 50-State Survey,” June 2019, available at <https://www.kff.org/medicaid/issue-brief/medicaid-financial-eligibility-for-seniors-and-people-with-disabilities-findings-from-a-50-state-survey/>.

<sup>10</sup> Kennedy, J., Wood, E.G., and Frieden, L., “Disparities in Insurance Coverage, Health Services Use, and Access Following Implementation of the Affordable Care Act: A Comparison of Disabled and Nondisabled Working-Age Adults,” November 2017, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5798675/>.

<sup>11</sup> Wagnerman, K., Georgetown University Center for Children and Families, “Research Update: How Medicaid Coverage for Parents Benefits Children,” January 2018, available at <https://ccf.georgetown.edu/2018/01/12/research-update-how-medicaid-coverage-for-parents-benefits-children/>.

<sup>12</sup> See Rosenbaum, D., Center on Budget and Policy Priorities, “Lessons Churned: Measuring the Impact of Churn in Health and Human Services Programs on Participants and State and Local Agencies,” March 2015, available at <https://www.cbpp.org/research/lessons-churned-measuring-the-impact-of-churn-in-health-and-human-services-programs-on> and Ku, L., and Steinmetz, E., George Washington University, “Bridging the Gap: Continuity and Quality of Coverage in Medicaid,” September 2013, available at <https://ccf.georgetown.edu/wp-content/uploads/2013/09/GW-Continuity-Report-9-10-13.pdf>.

<sup>13</sup> Disability Rights Florida, “Lawsuit against Florida Agencies Improperly Stripping Medicaid from Patients,” August 2019, news release available at <http://www.disabilityrightsflorida.org/newsroom/story/lawsuit-against-florida-agencies-improperly-stripping-medicaid-from-patient>.

<sup>14</sup> <https://www.macpac.gov/publication/percentage-of-medicaid-enrollees-in-managed-care-by-state-and-eligibility-group/>

<sup>15</sup> See SSA §1903(m)(2)(A)(iii) for the statutory rules on actuarial soundness and the detailed requirements provided by the Centers for Medicare & Medicaid Services in the 2019-2020 Medicaid Managed Care Rate Development Guide, available at <https://www.medicaid.gov/medicaid/managed-care/downloads/guidance/2019-2020-medicaid-rate-guide.pdf>.