



April 4, 2023

***Re: Ensuring Language Access for Limited English Proficient (LEP) Individuals and Effective Communication for Individuals with Disabilities During the States' Unwinding of the Medicaid Continuous Enrollment Condition***

Dear State Health Official:

The U.S. Department of Health and Human Services' Office for Civil Rights (OCR) is writing this letter to remind states of their independent obligations under federal civil rights laws to ensure that individuals and families continue to have access to Medicaid and Children's Health Insurance Program (CHIP) coverage upon the expiration of the Families First Coronavirus Response Act (FFCRA) continuous enrollment condition.<sup>1</sup> States are required to take reasonable steps to provide meaningful language access for individuals with limited English proficiency (LEP) and ensure effective communication with individuals with disabilities. This letter explains these civil rights requirements and best practices.

According to recent census data, approximately 68 million people in the United States speak a language other than English at home,<sup>2</sup> and up to 1 in 4 adults have some type of disability.<sup>3</sup> As of November 2022, nearly 92 million individuals were enrolled in Medicaid and CHIP.<sup>4</sup> The Department's Assistant Secretary of Planning and Evaluation (ASPE) estimates that, approximately 15 million individuals will leave the program based on historical patterns of coverage loss.<sup>5</sup> Changes in Medicaid coverage occur for several reasons, including loss of Medicaid eligibility due to income fluctuations or changes in family circumstances, becoming eligible for a different source of coverage (e.g., through an employer), or the loss of Medicaid coverage due to procedural reasons (e.g., not returning necessary documentation to verify eligibility) despite meeting eligibility requirements for coverage. For example, this loss of coverage can occur if enrollees have difficulty navigating the renewal process, states are unable to contact enrollees due to a change of address, or other administrative hurdles.<sup>6</sup> ASPE also found that: "Children and young adults will be impacted disproportionately, with 5.3 million children and 4.7 million adults ages 18-34 predicted to lose Medicaid/CHIP coverage. Nearly

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<sup>1</sup> Under section 6008(b)(3) of FFCRA, states have been unable to terminate enrollment for most individuals enrolled in Medicaid as of March 18, 2020, as a condition of claiming the increased 6.2 percentage point Federal Medical Assistance Percentage (FMAP) under the FFCRA. As a result of the Consolidated Appropriations Act, 2023, this continuous enrollment condition ended on March 31, 2023; states must, over time, return to normal eligibility and enrollment operations, in a process referred to as "unwinding." To learn more, visit [Medicaid.gov/unwinding](http://Medicaid.gov/unwinding).

<sup>2</sup> Sandy Dietrich & Erik Hernandez, *Nearly 68 Million People Spoke a Language Other Than English at Home in 2019*, U.S. Census Bureau (Dec. 8, 2022), "[What Languages Do We Speak in the United States?](#)"

<sup>3</sup> Centers for Disease Control & Prevention (CDC), U.S. Dep't of Health & Human Servs., [Disability Impacts All of Us](#), (last visited March 1, 2023).

<sup>4</sup> [Medicaid.gov](http://Medicaid.gov), November 2022, [Medicaid & CHIP Enrollment Data Highlights](#) (last visited March 1, 2023).

<sup>5</sup> ASPE, U.S. Dep't of Health & Human Servs., Issue Brief, [Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches](#), at 1, 3-5 (Aug. 19, 2022) (using longitudinal survey data and 2021 continuous enrollment information).

<sup>6</sup> *Id.*

one-third of those estimated to lose coverage are Latino (4.6 million) and 15 percent (2.2 million) are Black.”<sup>7</sup> An estimated 52 percent of Latino individuals and 48 percent of Black persons would be disenrolled despite being eligible for Medicaid—in comparison, an estimated 40 percent of non-Hispanic Whites would lose coverage despite being eligible.<sup>8</sup> Further, ASPE data predict that over half of the persons losing coverage would be individuals with income below the Federal Poverty Level.<sup>9</sup> The unwinding will create additional administrative burdens, and according to the Office of Management and Budget, such burdens “do not fall equally on all entities and individuals, leading to disproportionate utilization of critical services..., often by the people and communities who need them most.”<sup>10</sup> Notably, those most impacted will be the communities identified in Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.<sup>11</sup> Given that there are higher rates of disability and LEP in certain communities of color and among low-income persons,<sup>12</sup> it is imperative that states carefully consider their obligations toward these vulnerable communities.

### **Role of Federal Civil Rights Laws.**

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI),<sup>13</sup> Section 504 of the Rehabilitation Act of 1973 (Section 504),<sup>14</sup> Title II of the Americans with Disabilities Act (Title

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<sup>7</sup> *Id.* at 1, 7.

<sup>8</sup> *Id.* at 9 (see data in Fig. 4).

<sup>9</sup> *Id.* at 7.

<sup>10</sup> U.S. Office of Mgt. & Budget, Study to Identify Methods to Assess Equity: Report to the President, at 21 (July 2021), [Study to Identify Methods to Assess Equity: Report to the President \(whitehouse.gov\)](#).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> See Sweta Halder, Samantha Artiga, Robin Rudowitz, and Anthony Damico, *Unwinding of the PHE: Maintaining Medicaid for People with Limited English Proficiency*, Kaiser Family Foundation (Mar. 3, 2022), [Unwinding of the PHE: Maintaining Medicaid for People with Limited English Proficiency | KFF](#) (“Because people of color are significantly more likely to have LEP than White people, these barriers can also exacerbate racial and ethnic health disparities.”); and CDC, [Adults with Disabilities: Ethnicity and Race](#), (infographic of research by Elizabeth A. Courtney-Long, Sebastian D. Romano, Dianna D. Carroll & Michael H. Fox, *Socioeconomic Factors at the Intersection of Race & Ethnicity Influencing Health Risks for People with Disabilities*, 4 J. Racial & Ethnic Health Disparities, 213 (2017), [Socioeconomic Factors at the Intersection of Race and Ethnicity Influencing Health Risks for People with Disabilities | SpringerLink](#) (showing 1/5 adult White persons have a disability, whereas that rate is 1/4 for Black people, and 3/10 for Native Americans, although Hispanic/Latino persons reportedly have fewer)). These racial disparities are higher among children. See, e.g., Natalie A.E. Young, U.S. Bureau of Census, *Childhood Disability in the United States: 2019*, at 8 (Fig. 5) (Mar. 25, 2021), [Childhood Disability in the United States: 2019 \(census.gov\)](#).

<sup>13</sup> Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), prohibits discrimination on the basis of race, color, or national origin (including LEP) in programs and activities receiving federal financial assistance. See 45 C.F.R. § 80.

<sup>14</sup> Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), prohibits discrimination against otherwise qualified individuals on the basis of disability in programs and activities receiving financial assistance from HHS (45 C.F.R. § 84), and programs or activities conducted by HHS (45 C.F.R. § 85).

II),<sup>15</sup> and Section 1557 of the Affordable Care Act (Section 1557).<sup>16</sup> These laws prohibit covered entities, including entities receiving federal financial assistance and state and local government entities, from discrimination on the basis of, among other things, race, color, national origin, and disability. Accordingly, covered entities must provide an equal opportunity to participate in and benefit from programs; communications with individuals with disabilities must be as effective as with others; and reasonable steps must be taken to provide meaningful access to people with LEP.<sup>17</sup> Thus, states—and other covered entities subject to these laws (e.g., Medicaid providers and insurance companies)—must ensure their communications during the unwinding period comply with these laws. OCR would like to help states and covered entities satisfy their obligations under these laws, which are separate from those required under Medicaid and CHIP program regulations implemented and enforced by the Centers for Medicare & Medicaid Services (CMS).<sup>18</sup>

Obligations to provide effective communication to people with disabilities and take steps to provide meaningful access to individuals with LEP also apply to subrecipients of federal financial assistance, who must similarly comply with all applicable civil rights laws. For example, if a state agency contracts with an external entity to provide Medicaid or CHIP information for applicants and enrollees (e.g., a call center), that external entity must ensure taking steps to provide meaningful access for individuals with LEP and ensure effective communication with individuals with disabilities.

### **Equal access for communities of color and language access for individuals with limited English proficiency.**

As we note above, Title VI and Section 1557 prohibit entities receiving federal financial assistance from discrimination on the basis of race, color, and national origin in their programs and activities. Programs that receive Federal financial assistance cannot discriminate, either directly or indirectly. This prohibition applies to both: (1) intentional discrimination and (2) procedures, criteria, or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin. Thus, a recipient of federal financial assistance may not, based on race, color, or national origin:

- Deny services or other benefits provided as a part of health or human service programs;

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<sup>15</sup> Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub. L. 110-325, 122 Stat. 3553 (2008)), prohibits discrimination on the basis of disability by public entities. The ADA regulations generally designate HHS as the agency with responsibility for investigating complaints of discrimination in “programs, services, and regulatory activities relating to the provision of health care and social services.” 28 C.F.R. § 35.190(b)(3).

<sup>16</sup> Section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. § 18116) prohibits discrimination on the grounds of race, color, national origin (including LEP), sex, age, or disability in any health program or activity that receives Federal financial assistance from HHS or is administered by HHS.

<sup>17</sup> Specifically, these laws require that programs must be accessible to and usable by people with disabilities (Title II, Section 504); communication with individuals with disabilities must be as effective as it is with others (Title II); reasonable steps must be taken to provide meaningful access to LEP individuals (Section 1557; 2003 HHS LEP Guidance (*infra* n. 21), and individuals must be provided with an equal opportunity to participate in and benefit from programs (Title VI, Section 1557, Title II, Section 504).

<sup>18</sup> For Medicaid, *see* 42 C.F.R. §§ 435.905(b), 435.907(g), 435.916(g), 435.917(a), 435.956(b), 431.206(e), 431.205(e); for separate CHIP, *see* 42 C.F.R. §§ 457.110(a), 457.340(e).



Additionally, covered entities are also required to provide effective communication for companions at no cost to the individual. Companions are family members, friends or associates of a person seeking access to a program or activity of an entity who, along with such person, is an appropriate person with whom the entity should communicate.

### **Best Practices.**

This unwinding period requires careful attention to language access and effective communication obligations so that people of color and individuals with LEP or disabilities are not disenrolled because of ineffective communications. States should develop, review, or update plans for the provision of services, including how people will be informed of the existence of such plans and services. OCR encourages states to take proactive steps to help ensure meaningful access and effective communication:<sup>25</sup>

- Adequately fund and staff call centers to ensure they are accessible without prolonged delays. Persons of color are less likely to have broadband or internet access,<sup>26</sup> or transportation or jobs that permit the time and access<sup>27</sup> needed to meet with Medicaid enrollment staff in person, and therefore may rely more on call centers.
- As a condition of claiming the increased Medicaid FMAP after March 31, 2023, a state must attempt to ensure that it has up-to-date contact information for each individual for whom it conducts a renewal. This condition requires that states use the United States Postal Service National Change of Address database, information maintained by state health and human services agencies, Medicaid and CHIP managed care organizations, or other reliable sources of contact information.<sup>28</sup> Families of color are more likely to be unhoused, experience housing insecurity, or have changed addresses during the pandemic, and therefore may not have registered the move on all public records.<sup>29</sup>
- Provide materials in large-print, Braille, and other accessible formats as needed.
- Ensure that websites, information kiosks, and other information and communication technologies are accessible to individuals with disabilities.
- Provide notices and other vital documents (such as applications, renewals, and

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<sup>25</sup> While this section is presented as covering best practices, some of these practices may be required under the statutes under some circumstances.

<sup>26</sup> See, e.g., Sara Atske and Andrew Perrin, [Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.](#), Pew Research Center (July 16, 2021); [ASPE Issue Brief](#).

<sup>27</sup> See, e.g., U.S. Bureau of Labor Statistics, BLS Reports, Labor Force Characteristics by Race and Ethnicity, 2021 (Jan. 2023), [Labor force characteristics by race and ethnicity, 2021 : BLS Reports: U.S. Bureau of Labor Statistics](#); Wendy Heaps, Erin Abramsohn, and Elizabeth Skillen, *Public Transportation in the US: A Driver of Health and Equity*, Health Affairs, Health Policy Brief (July 29, 2021), [Public Transportation In The US: A Driver Of Health And Equity | Health Affairs](#).

<sup>28</sup> For additional guidance about state requirements and best practices, please see the Center for Medicaid & CHIP Services State Health Official Letter “Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023”: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf>.

<sup>29</sup> See, e.g., Teresa Wiltz, [‘A Pileup of Inequities’: Why People of Color Are Hit Hardest by Homelessness | The Pew Charitable Trusts \(pewtrusts.org\)](#).

supplemental forms)<sup>30</sup> pertaining to unwinding in the top 15 non-English languages spoken by individuals with LEP persons in your state. CMS has created unwinding communication toolkits in multiple languages, available at [Medicaid.gov/unwinding](https://www.Medicaid.gov/unwinding).

- Avoid using complex language on essential forms or notices, so that persons with low literacy skills, who are disproportionately represented in protected classes of persons, or who have cognitive disabilities are not left without this important information. This may include providing plain language writing as well as use of images in a way that is easy to understand in website and beneficiary or potential beneficiary notices.<sup>31</sup>
- Post videos in sign language on websites that provide information about upcoming deadlines or other changes that require action on a beneficiary or potential beneficiary. Videos should be in a conspicuous location on the websites.
- Provide notices informing individuals of the availability of language assistance services and auxiliary aids and services, that they will be provided free of charge, and how to request those services.
- Ensure that eligibility and call center staff know how to obtain interpreter services, including sign language interpreters, and other auxiliary aids and services.
- Ensure that individuals serving as interpreters, including sign language interpreters, and translators are qualified to do so. Interpreters utilized for unwinding should understand the intricacies of and key terminology pertinent to Medicaid, CHIP, and, if applicable, the Basic Health Program enrollment.<sup>32</sup>
- Have translated materials drafted, reviewed, proofread, and edited by qualified translators rather than machine translation applications or software, which reduce the accuracy of information and may not detect tables or image text requiring translation.
- Engage with local communities or partner with community-based organizations to hold townhall discussions and virtual information sessions about the unwinding period, and do so in physically accessible locations on or near major transportation routes (where available) with language assistance and appropriate auxiliary aids and services.

For additional communications and technical resources for states and stakeholders during Medicaid and CHIP redeterminations, including specific guidance on Medicaid and CHIP disability and language access requirements, please visit [Medicaid.gov/unwinding](https://www.Medicaid.gov/unwinding).

OCR is deeply committed to helping states ensure that eligible individuals with LEP are provided with meaningful language access and individuals with disabilities are provided with effective communication to ensure they do not experience an otherwise unnecessary lapse in coverage. OCR has been and will continue to support CMS in its outreach efforts regarding unwinding. We joined a recent webinar on the subject, and we plan to participate in future events. As states develop and execute their unwinding operational plans, OCR is available to provide ongoing technical assistance regarding your entity's language access and effective

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<sup>30</sup> See 2003 HHS LEP Guidance, 68 Fed. Reg. at 47318 (“Whether or not a document (or the information it solicits) is ‘vital’ may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”).

<sup>31</sup> See [The Plain Language Action and Information Network \(PLAIN\)](#).

<sup>32</sup> 45 C.F.R. § 92.101(b)(3).

communication obligations.<sup>33</sup> If you have questions, please contact OCR at [OCRMail@hhs.gov](mailto:OCRMail@hhs.gov).

Sincerely,



Melanie Fontes Rainer  
Director, Office for Civil Rights

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<sup>33</sup> OCR maintains extensive online resources regarding language access for LEP individuals [here](#), and effective communication for individuals with disabilities [here](#).

## CIVIL RIGHTS RESOURCES

### Meaningful Access for Individuals with Limited English Proficiency

#### Where can I find more information about providing meaningful access to persons with Limited English Proficiency (LEP)?

The Civil Rights Division of the U.S. Department of Justice (DOJ) administers [LEP.gov](https://www.lep.gov), which shares extensive resources and information to help expand and improve language assistance services for persons with LEP. See [Commonly Asked Questions](#).

The Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services (HHS) provides [resources](#) to help states understand their obligations to provide individuals with LEP with meaningful access to programs funded by HHS.

#### How do I determine into which languages vital information should be available?

Before translating or [transcreating \(i.e., creatively translating a text so as to convey the original meaning in a manner that is sensitive to the audience's emotions and cultural background\)](#), first develop an overall strategy that includes identifying the language of the communities you need to serve and which information is vital. [This Data and Language Maps page](#) will help identify community languages.

#### What should I consider when hiring or working with an interpreter or a translator?

The [Translation and Interpretation Procurement Series \(TIPS\)](#) on LEP.gov explains how to hire interpreters or translators, work with telephonic interpreters, identify vendors, and develop a language service program.

#### Have other government entities developed centralized translation services?

In order to ensure consistency and reduce costs, some state and local governments and international organizations have centralized translation protocols and use [translation memory tools](#) and [glossaries](#).

### Effective Communication with Individuals with Disabilities

#### Where can I find more information about providing effective communication for persons with disabilities?

DOJ maintains an extensive [website addressing ADA requirements for effective communications](#), which provides resources addressing effective communication, auxiliary aids and services, companions, and more. A [toolkit](#) also contains useful resources regarding applicable laws, regulations, and standards.

The HHS Office for Civil Rights provides [resources](#) to help states understand their obligation to not discriminate on the basis of disability and other protected classes.

#### Where can I find out more information about the end of the Medicaid continuous enrollment condition?

[Medicaid's website](#) has materials regarding unwinding and returning to regular operations after the continuous enrollment condition and the COVID-19 public health emergency end.