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MEMORANDUM

September 1, 2023

TO: TRIBAL HEALTH CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *The Centers for Medicare & Medicaid Services Issue a Letter to State Medicaid Agencies Regarding Improper Medicaid Disenrollment*

On August 31, 2023, the Centers for Medicare & Medicaid Services (CMS) issued a letter, enclosed, requiring State Medicaid Agencies to review their systems for determining Medicaid eligibility and ensure they are compliant with federal regulations. The letter reports that CMS has found major errors in these systems. As a result, a substantial number of individuals, including over 1 million children, have been improperly disenrolled from the Medicaid program. State Medicaid Agencies now have two weeks to review their systems and come into compliance or risk penalties.

As previously reported, during the pandemic, the Families First Coronavirus Response Act (PL 116-127) required States to keep people on their Medicaid rolls without regular eligibility checks in exchange for enhanced federal funding. In April 2023, State Medicaid Agencies were required to restart eligibility determinations and terminate coverage for those they found were no longer eligible. This is known as “Medicaid Unwinding.”

There has been significant concern that State Medicaid Agencies are unwinding too quickly, leading to the improper disenrollment of individuals who remain eligible for Medicaid. In fact, of the 5.5 million people who have been disenrolled nationwide, nearly three quarters have lost their coverage due to procedural reasons such as failure to return the proper paperwork.¹ Many procedurally disenrolled individuals may otherwise remain eligible for Medicaid coverage. The Biden Administration has expressed concern about this issue, and this letter amounts to one of the strongest actions CMS has taken since the start of unwinding.

The letter is primarily concerned with the high number of disenrolled children. Children, comparatively, have more generous eligibility requirements than adults—all but two states cover children who are at or above 200% of the federal poverty level. Nonetheless, over one million

¹ KFF, Medicaid Enrollment and Unwinding Tracker, September 1, 2023, <https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-and-unwinding-tracker/>.

children have lost their Medicaid or Children's Health Insurance Program nationwide, and they account for 43% of all disenrollments.

CMS reports in the letter that the disenrollment of children may be due to technical errors in in some State's *ex parte* renewal procedures. *Ex parte* renewals allow individuals to have their Medicaid coverage automatically renewed by using state databases, such as state wage records, to verify an individual meets the income requirements. This is meant to lower the burden on individuals and State Medicaid Agencies.

However, the letter reports that even after completing *ex parte* renewals, some States appear to be sending renewal forms requesting information for all household members and to have disenrolled everyone in that household if the forms are not returned, including those who should have been deemed eligible through the *ex parte* process. This, according to the letter, is not compliant with federal regulations, which require States to check the eligibility of enrollees on an individual, not household, basis. Federal regulations also prohibit States from requiring additional information to renew coverage from those that have already been renewed *ex parte*. CMS warns that these errors particularly affect children, who have different eligibility requirements than adults.

CMS is therefore requiring all State Medicaid Agencies to review their renewal procedures to ensure compliance with federal regulations in the next two weeks or risk consequences, including financial penalties.² States that are not compliant must—

1. pause procedural terminations;
2. reinstate coverage for affected individuals, including retroactively;
3. fix the State's systems and procedures; and
4. implement one or more of the mitigation strategies CMS outlined in the letter.

Conclusion

If you have any questions or would like additional information on any of the issues raised in this report, please do not hesitate to contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282), Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745), or Elizabeth Bailey (ebailey@hobbsstrauss.com or 678-764-7100).

² Penalties will be pursuant to section 1902(tt)(2) of the Social Security Act.