

The Disability and Aging Collaborative

November 10, 2022

Ambassador Susan Rice
Assistant to the President for Domestic Policy and Director
The White House Domestic Policy Council
1600 Pennsylvania Ave NW
Washington, DC 20500

Dr. Ashish Jha
Coordinator of the COVID-19 Response and Counselor to the President
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
The Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Subject: End of the Public Health Emergency

Dear Ambassador Rice, Dr. Jha, Secretary Becerra, and Administrator Brooks-LaSure,

The undersigned members of the Disability and Aging Collaborative (DAC) are writing to express concern over the end of the Public Health Emergency (PHE). We are concerned that the PHE will expire before states adequately address their unwinding plans for Medicaid beneficiaries. Additionally, many Medicaid beneficiaries lost services due to changes in Maintenance of Effort (MOE) protections in the previous administration's Interim Final Rule, which CMS has now reopened for comment. For these reasons, we ask the administration to extend the PHE declaration and provide greater than a 60-day notice before the end of the PHE.

The Disability and Aging Collaborative (DAC) is a coalition of approximately 40 national organizations that work together to advance long-term services and supports (LTSS) policy at the federal level. Formed in 2009, the DAC was one of the first coordinated efforts to bring together disability and aging

organizations. We are committed to ensuring that older adults and people with disabilities can access the support and services, including health care, they need to live in the community.

We previously sent a letter on March 14, 2022, to Secretary Becerra and Administrator Brooks-LaSure, and copied then-White House Coronavirus Response Coordinator Jefferey Zients, requesting that the administration provide states with at least 120 days advance notice before the end of the PHE. We expressed concern that older adults and people with disabilities would lose access to services only available through emergency authorities under Medicaid, and states have not yet taken steps to ensure those services would be available to beneficiaries after the PHE. Those concerns remain, especially since twenty-three states have yet to publicize their unwinding plans, and only nine states have published or plan to publish an unwinding data dashboard.¹ Our concerns about the complexity and inaccessibility of the redetermination process for people with disabilities and older adults remain, creating serious concerns about inappropriate loss of benefits for these populations. We also identified the direct care workforce crisis, which will only worsen if states lose enhanced FMAP funding at the end of the PHE.

The PHE should also be extended to accommodate Medicaid beneficiaries harmed by the previous administration's Interim Final Rule, limiting MOE protections provided under the Families First Coronavirus Relief Act. We are grateful that CMS has reopened the comment period for the IFR and recognized that the IFR's implementation "has negatively affected some Medicaid beneficiaries," specifically noting the dangers to older adults and people with disabilities who are dually eligible for full Medicaid and lose Medicaid benefits when transitioning to a Medicare Savings Program.² If the PHE is not extended beyond its current expiration of January 15, 2023, individuals will receive little reprieve from the final rule before the PHE ends.

Lastly, the enhanced FMAP provided to states under the Families First Coronavirus Relief Act (FFCRA) provided states with crucial support to programs older adults and people with disabilities rely on, including Medicaid Home and Community-Based Services (HCBS). Without the enhanced FMAP, states will inevitably be forced to cut services, with optional HCBS likely to be among those first cut unless additional investments are made. And while the investment from the American Rescue Plan into HCBS has helped substantially, a hasty end to this funding could exacerbate direct care workforce shortages and ultimately put individuals at risk of institutionalization. As the Administration for Community Living explained recently, "more than three-quarters of service providers are not accepting new clients, and more than half have cut services as a result of the direct care workforce shortage."³ Eliminating the additional funding of the PHE at this point will only make addressing these problems even more challenging.

¹ *50-State unwinding tracker*. (2022, September 6). Georgetown University Health Policy Institute. <https://ccf.georgetown.edu/2022/09/06/state-unwinding-tracker/>.

² *Medicaid program; Temporary increase in federal medical assistance percentage (FMAP) in response to the COVID-19 public health emergency (PHE); Reopening of public comment period*. (2022, September 27). Federal Register. <https://www.federalregister.gov/documents/2022/09/27/2022-20973/medicaid-program-temporary-increase-in-federal-medical-assistance-percentage-fmap-in-response-to-the?eType=EmailBlastContent&eid=475dd809-135c-4172-b18e-2b589a41966d>.

³ *ACL launches national center to strengthen the direct care workforce*. (2021, October 21). Administration for Community Living. <https://acl.gov/news-and-events/announcements/acl-launches-national-center-strengthen-direct-care-workforce>.

For these reasons, we ask the administration and HHS to extend the PHE and provide states with more than 60 days advance notice before termination to ensure states have responded to the abovementioned issues. Thank you for your work to help preserve the critical Medicaid health and long-term services that older adults and people with disabilities depend on. Please contact Hannah Diamond, Policy Advocate at Justice In Aging, at hdiamond@justiceinaging.org for any questions.

Respectfully,

Allies for Independence
American Association on Health and Disability
American Network of Community Options and Resources
Association of Maternal & Child Health Programs
Association of University Centers on Disabilities
Autistic Self Advocacy Network
Caring Across Generations
Center for Medicare Advocacy
Community Catalyst
Disability Policy Consortium
Easterseals
Justice In Aging
Lakeshore Foundation
Lutheran Services in America
National Academy of Elder Law Attorneys
National Association for Home Care & Hospice
National Association of Councils on Developmental Disabilities
National Domestic Workers Alliance
National Indian Council on Aging
National PACE Association
NCOA
SEARAC
The Arc of the United States
Well Spouse Association