



WESTERN CENTER
ON LAW & POVERTY



August 21, 2020

Will Lightbourne
Director, Department of Health Care Services
1501 Capitol Avenue, MS 0000
P.O. Box 997413
Sacramento, CA 95899-7413

Via email: Will.Lightbourne@dhcs.ca.gov

RE: Urgent Fix Needed for Ongoing Medi-Cal Negative Actions During COVID-19

Dear Director Lightbourne:

The Department's duty requires continuous Medi-Cal eligibility for millions of Californians during this pandemic. But on April 1, Medi-Cal eligibility discontinued or downgraded for over 200,000 beneficiaries. Since then, beneficiaries contacted consumer assistance offices statewide for help, in part because counties understandably have struggled to maintain operations. Advocates verified that starting April 1, Medi-Cal eligibility terminated on the first day of every month through August. We write in partnership to help the Department fix this problem once and for all.

Beginning on March 18, most Medi-Cal negative actions during the public health emergency violate Section 6008 of the Families First Coronavirus Response Act (limited exceptions only for death, voluntary request, or out-of-state move). Terminating and downgrading eligibility also violates Welfare and Institutions Code Sections 10500 ("secure for every person the amount of aid to which [they are] entitled") and 14005.37(d) ("Medi-Cal eligibility shall not be terminated ... until the county makes a specific determination based on facts clearly demonstrating that the beneficiary is no longer eligible ... and due process rights guaranteed ... have been met.").

Consistent with these mandates, CMS clarified that, "where feasible, states should automatically reinstate coverage for individuals terminated after March 18, 2020 and should suspend any terminations already scheduled to occur during the emergency period." If the Department's "good faith effort to identify and reinstate individuals" falls short, the state may "at a minimum" notify beneficiaries that they may request

August 21, 2020

Urgent Fix Needed for Ongoing Medi-Cal Negative Actions During COVID-19

reinstatement. See [Families First Coronavirus Response Act – Increased FMAP FAQs](#) (updated April 13, 2020).

Make no mistake: we saw the Department act quickly and heroically to comply with these new and evolving requirements needed to help people access medical care. Then counties and SAWS did their best under difficult circumstances to maintain and reinstate Medi-Cal eligibility. Despite these good-faith efforts, Medi-Cal beneficiaries have seen their coverage lapse or otherwise change negatively every month. These sudden, unlawful, and widespread Medi-Cal cutoffs cause lasting health and financial harm:

- On August 1, a dialysis patient was assessed a new \$1,530 share of cost. Now the patient and his wife do not know how they will continue life-sustaining care, since with their limited and fixed income, they cannot afford to pay out of pocket.
- Residents of Inyo and Lake Counties losing SSI saw their Medi-Cal set to end on August 1. In one case, the beneficiary contacted advocates who worked with the county to stop the termination just in time. In another, after a 68-year-old beneficiary's parents died and his SSI ended, his Medi-Cal terminated on August 1 before advocates could intervene. Now he cannot access medical care.
- In Ventura County, a resident with disabilities learned from their medical provider that their Medi-Cal was set to terminate on August 1. When advocates called the county, a representative said bank statements were needed to keep Medi-Cal active after August 1.
- In early August, a resident of Los Angeles County visited the emergency room when he experienced sudden vision loss. There he learned that his Medi-Cal had terminated on July 1. This shocked the patient and caused billing problems.
- In Sacramento County, a MAGI beneficiary scheduled urgent eye surgery for mid-June. After she learned of a problem with her Medi-Cal, she contacted an advocate who confirmed eligibility discontinued on June 1. Only after advocate intervention could the beneficiary keep her scheduled surgery.
- A 65-year-old resident with heart conditions saw her Medi-Cal eligibility terminate on May 1. Then her \$144 monthly Part B premium was deducted from her monthly Social Security payments. As a result, she struggled to pay rent, household expenses, and medical bills – including for an emergency dental procedure after her Medi-Cal terminated. If the Medi-Cal remained active, she would have avoided all of these harms.
- In Los Angeles County, a convalescent home resident had an unaffordable share of cost newly assessed effective May 1. She died in June. Now the family is struggling to pay her medical bills. As the advocate says, the family should be allowed to grieve instead of jumping through countless hoops caused by this erroneous negative action.
- On May 1, a 65-year-old Regional Center participant with multiple medical conditions suffered a new share of cost assessment that she could not afford. The tardy notice of action arrived on May 8. The coverage interruption jeopardized her access to medically-necessary services.
- A Los Angeles County child services provider reported at least three children who have lost Medi-Cal coverage since April. The provider reported this generated “scary times” and “heartbreaking” outcomes for the families.
- On April 1, an IHSS recipient in Los Angeles County was assessed a new and unaffordable share of cost. Since the client speaks only Russian and has hearing loss, she could not contact the

August 21, 2020

Urgent Fix Needed for Ongoing Medi-Cal Negative Actions During COVID-19

county to request a correction. Meanwhile, her IHSS hours were interrupted. Only after advocate intervention did the county rescind the negative action.

During every month since April, advocates sent many of these and several other similar cases to the Department's Medi-Cal Eligibility Division for investigation. Other advocates sent lists of multiple negative actions to their counties for correction every month. Just when we think these negative actions only impact some beneficiaries, we see another case that fits a different pattern.

After we started raising these concerns in early April, the Department confirmed that over 200,000 Medi-Cal beneficiaries suffered negative actions effective April 1. By mid-July, the Department sent notices to this group of beneficiaries informing that they could contact their local county to request reinstatement. The notice provided only a website address where beneficiaries could learn how to contact their counties. For beneficiaries needing help with medical costs incurred during the erroneous negative actions, the letter provided no information. We understand that the Department has sent no similar notice to beneficiaries who suffered negative actions on May 1, June 1, July 1, or August 1.

Fortunately, we learned that the Department and counties are working together to restore Medi-Cal eligibility – but only for beneficiaries impacted on April 1. As of last week, the Department reported that approximately half had already been fixed. And by the week of August 24, the Department expects to correct eligibility for all beneficiaries in this batch who have gone without coverage since April. Now is the time to complete the job for all beneficiaries, and ensure Medi-Cal eligibility for people who need it. We offer the following suggestions:

- (1) **Send corrective notices:** The Department should send revised mailers with county-specific phone numbers and Conlan claim information to *all beneficiaries negatively impacted since April 1*. This will allow beneficiaries to pursue reinstatements and resolve billing problems that resulted from the erroneous negative actions.
- (2) **Reinstate eligibility:** The Department and counties should pull lists of *all negative actions since April 1* (other than death, move, and voluntary request) and take corrective action where needed. The Department should set a two-week deadline to complete corrections for these beneficiaries who have already gone months without health care. If county manual corrections do not meet the two-week deadline, the Department should restore eligibility in MEDS so that beneficiaries can access care. We know this may create MEDS-SAWS disconnects, which is an administrative hiccup to remedy after beneficiaries get the medical care they need. Correcting these administrative inconveniences down the line will be a lesser harm than the thousands of beneficiaries currently suffering when their Medi-Cal is interrupted.
- (3) **Prevent future negative actions starting September 1:** The Department should confirm with SAWS that the mid-August special release and any upcoming releases will stop all remaining “batch” (automated) Medi-Cal eligibility terminations. At the same time, the Department should require SAWS to pull lists of pending negative actions after the mid-month MEDS cutoffs and act where needed to stop the pending negative actions before they take effect. Finally, no manual Medi-Cal negative action should take effect without supervisor clearance.
- (4) **Notify providers:** Many beneficiaries first learn of their Medi-Cal terminations when they try to access care. So to promote continuity of care and help beneficiaries resolve these discontinuance errors, the Department should issue a provider bulletin. At a minimum, the provider communication should: (a) inform providers that (regardless of any change in circumstances) no one should have lost their eligibility since March unless they moved out of California, died, or requested that their Medi-Cal be terminated; (b) discuss the eligibility errors and likelihood that the patient will have coverage restored soon, with instructions to deliver care; and (c) inform providers how they can help their patients request an eligibility correction by contacting their counties and by providing the Health Consumer Alliance phone number (888-804-3536) for patients who need extra assistance.

August 21, 2020

Urgent Fix Needed for Ongoing Medi-Cal Negative Actions During COVID-19

We are grateful that the Department has remained nimble and responsive to the health care needs of Medi-Cal beneficiaries during this pandemic. So why stop short on these foundational Medi-Cal eligibility issues? Without taking the swift actions suggested above, even more harmful health consequences will result, and additional negative actions will take effect on September 1.

By August 28, please respond with your plans to address these concerns. You may contact David Kane at dkane@wclp.org and (213) 235-2623 via writing and to set up a call to discuss further. Together we look forward to getting this done soon. Thousands of Medi-Cal beneficiaries are counting on us.

Sincerely,

APLA Health
Asian Resources, Inc.
Bet Tzedek Legal Services
California Advocates for Nursing Home Reform
California Pan-Ethnic Health Network
Center for Health Care Rights
Children Now
Community Clinic Association of Los Angeles County
Community Health Councils
Disability Rights California
Health Consumer Alliance*
Justice in Aging
Legal Aid Society of San Mateo County
Maternal & Child Health Access
National Health Law Program
San Francisco AIDS Foundation
Western Center on Law & Poverty

* The HCA is a network of consumer assistance programs operated by community-based legal services organizations across the state of California: Bay Area Legal Aid, California Rural Legal Assistance, Central California Legal Services, Community Legal Aid of SoCal, Greater Bakersfield Legal Assistance, Inland Counties Legal Services, Legal Aid Society of San Diego, Legal Aid Society of San Mateo, Legal Services of Northern California, and Neighborhood Legal Services of Los Angeles County. The HCA's policy work is supported by the National Health Law Program and Western Center on Law & Poverty.

CC: Jacey Cooper
René Mollow
Sandra Williams
Yingjia Huang
Cathy Senderling-McDonald