

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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SHO #23-004

**RE: Section 5112 Requirement for
all States to Provide Continuous
Eligibility to Children in Medicaid
and CHIP under the Consolidated
Appropriations Act, 2023**

September 29, 2023

Dear State Health Official:

Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023) amended titles XIX and XXI of the Social Security Act (the Act) to require that states¹ provide 12 months of continuous eligibility (CE) for children under the age of 19 in Medicaid and the Children's Health Insurance Program (CHIP) effective January 1, 2024. The Centers for Medicare & Medicaid Services (CMS) is issuing this State Health Official (SHO) letter to provide states with guidance on implementing this requirement.

This letter provides background on the importance of CE in preventing interruptions that impede access to health coverage to support better short- and long-term health outcomes,² and describes policies related to implementing CE under the CAA, 2023 amendments. We also discuss the differences between the CE requirements that exist today and those specified in the CAA. This letter also clarifies which states will need to submit Medicaid and CHIP state plan amendments (SPA) and reminds states that section 1115 demonstration authority may also serve as a mechanism to extend the CE period for children beyond 12 months and/or to apply CE to adults.

¹ For the purposes of this letter, "states" refer to the 50 states, the District of Columbia, and the United States territories of American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

² Brooks, T., & Gardner, A. (2021). Continuous Coverage in Medicaid and CHIP. *Georgetown University Center for Children and Families*. Retrieved from: <https://ccf.georgetown.edu/wp-content/uploads/2012/03/CE-program-snapshot.pdf>

I. Background

A. Importance of CE for Medicaid and CHIP Children

CE provides coverage to children in Medicaid and CHIP for a full 12-month period regardless of changes in circumstances with certain exceptions as described in more detail throughout this letter.

Research has shown that children who are disenrolled for all or part of the year are more likely to have fair or poor health care status compared to children who have health coverage continuously throughout the year.³ Guaranteeing ongoing coverage ensures that children have continuous access to the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit, which includes comprehensive and preventive health care services for children under age 21 who are enrolled in Medicaid. Some states also offer EPSDT in their separate CHIP. EPSDT is key to ensuring that children and adolescents receive appropriate preventive, dental, mental health, developmental, and specialty services. Stable coverage enables health care professionals to provide EPSDT within a well-developed relationship with children and their parents, track their health and development, and avoid expensive emergency room visits.

In addition to improving short- and long-term health status, CE has been shown to reduce financial barriers to care for low-income families, promote health equity, and provide states with better tools to hold health plans accountable for quality care and improved health outcomes.⁴ Additionally, the literature shows that CE policies are cost-effective for both families and states by mitigating the impact of income volatility on enrollment, as children lose and then regain eligibility when their family's income fluctuates. When families maintain coverage year-round, it reduces the administrative burden on state agencies due to repeated eligibility reviews and re-enrollment after a gap in coverage.⁵

CE has been shown to reduce rates of churn, or the percentage of children who disenroll in Medicaid and re-enroll within the year. For example, one analysis found that the churn rate was lower in states with 12-month CE (2.9 percent) than in states without CE (5.3 percent).⁶

³ Brantley, E., & Ku, L. (2022). Continuous eligibility for Medicaid associated with improved child health outcomes. *Medical Care Research and Review*, 79(3), 404-413.

⁴ Park, E., Alker, J., & Corcoran, A. (2020). Jeopardizing a Sound Investment: Why Short-Term Cuts to Medicaid Coverage During Pregnancy and Childhood Could Result in Long-Term Harm. Retrieved from: <https://www.commonwealthfund.org/publications/issue-briefs/2020/dec/short-term-cuts-medicaid-long-term-harm>

⁵ Georgetown University. (2021). Advancing Health Equity for Children and Adults with a Critical Tool: Medicaid and Children's Health Insurance Program Continuous Coverage. Retrieved from <https://ccf.georgetown.edu/wp-content/uploads/2021/10/continuity-of-coverage-final.pdf>

⁶ Williams, E., Corallo, B., Tolbert, J., Burns, A., & Rudowitz, R. (2021). *Implications of Continuous Eligibility Policies for Children's Medicaid Enrollment Churn*. Retrieved from <https://www.kff.org/medicaid/issue-brief/implications-of-continuous-eligibility-policies-for-childrens-medicaid-enrollment-churn/>

Additionally, CE helps to address racial and ethnic disparities by reducing churn rates in groups disproportionately impacted by disenrollment.⁷

Many states elected to provide CE in Medicaid and/or CHIP before enactment of the CAA in December 2022. As of September 2023, 21 states had implemented CE for children in both Medicaid and CHIP. An additional 11 states had implemented CE in at least one program. During the COVID-19 public health emergency (PHE),⁸ CE protected families and children from experiencing gaps in coverage, and also demonstrated that CE improves access to care,⁹ continuity of coverage and lowers the uninsured rate for children.¹⁰

II. CE Requirements

A. Overview and Exceptions to CE

Current State Plan Option

Under section 1902(e)(12) of the Act, implemented at 42 CFR §435.926, states have long had the option to provide 12 months of CE to children under age 19 in Medicaid. A similar option exists in CHIP at 42 CFR § 457.342. States have had the flexibility to elect a younger age limit and/or a shorter CE period in both programs. Currently, children under the state-specified age who are determined eligible for Medicaid or CHIP at initial application or a regularly-scheduled annual renewal remain eligible for Medicaid or CHIP for the duration of the CE period regardless of most changes in circumstances (CIC) that may affect eligibility, such as:

- Changes in income or household composition,
- Loss of Supplemental Security Income (SSI) for children eligible for Medicaid based on their eligibility for SSI, or
- Obtaining other health insurance for children enrolled in CHIP.

⁷ Georgetown University. (2021). Advancing Health Equity for Children and Adults with a Critical Tool: Medicaid and Children's Health Insurance Program Continuous Coverage. Retrieved from <https://ccf.georgetown.edu/wp-content/uploads/2021/10/continuity-of-coverage-final.pdf>

⁸ See Section 6008 of the Families First Coronavirus Response Act (P.L. 116-127).

⁹ Vasani, A., Kenyon, C., Fiks, A. G., & Venkataramani, A. S. (June 2023). Continuous Eligibility and Coverage Policies Expanded Children's Medicaid Enrollment: Study examines state continuous eligibility and coverage policies and children's Medicaid enrollment during COVID-19. *Health Affairs*, 42(6), 753-758.

¹⁰ Alker, J., Osorio, A., Park, E., Guest, Brooks, T., & Schneider, A. (December 2022). *Number of uninsured children stabilized and improved slightly during the pandemic*. Center for Children and Families. Retrieved from <https://ccf.georgetown.edu/2022/12/07/number-of-uninsured-children-stabilized-and-improved-slightly-during-the-pandemic-2/>

Medicaid and CHIP regulations¹¹ establish limited exceptions to this general rule, and when a CIC can result in termination of eligibility during a CE period. A child's eligibility may not be terminated during a CE period unless one of the following exceptions applies:¹²

- (1) The child attains age 19 or a lower age specified by the state;
- (2) The child or child's representative requests a voluntary termination of eligibility;
- (3) The child ceases to be a resident of the state;
- (4) The agency determines that eligibility was erroneously granted at the most recent determination, redetermination, or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or
- (5) The child is deceased.

The CHIP regulation also provides two additional CHIP-specific exceptions:

- (6) The child becomes eligible for Medicaid; and
- (7) At state option, the family fails to pay premiums or enrollment fees.

Changes to CE under the CAA, 2023

Section 5112 of the CAA, 2023 amended section 1902(e)(12) and added a new paragraph (K) to section 2107(e)(1) of the Act to require one year of CE under the state plan or a waiver of the state plan for children under age 19 enrolled in Medicaid and CHIP, effective January 1, 2024. The amendments to section 1902(e)(12) of the Act explicitly provide for an exception to CE for children who:

- Reach age 19; or
- Cease to be state residents.

Section 2107(e)(1)(K) of the Act applies these exceptions through cross reference to section 1902(e)(12) of the Act. In the case of a child transferred from CHIP to Medicaid during a CE period, the state must maintain the child's enrollment in Medicaid for the remaining duration of their current CE period (unless the child experiences another exception to the provision of CE provided under the statute).

The following current regulatory exceptions, discussed above, are not explicitly identified in the CAA, 2023. However, states will be expected to take appropriate steps to terminate eligibility in the following situations, including providing required Medicaid and CHIP notice and appeals rights with sufficient advanced notice.^{13,14}

¹¹ §§ 435.926(d) and 457.342(b)

¹² For Medicaid, termination of coverage during a CE period must comply with notice and explanation of fair hearings process requirements at part 431 Subpart E. For separate CHIP, termination of coverage during a CE period must comply with the requirements for notice and explanation of rights to a review process at §§ 457.340(e) and 457.1180.

¹³ 42 CFR part 431, subpart E and §§ 457.340(e) and 457.1180

¹⁴ CMS is still assessing how non-payment of premiums intersects with CE under the CAA. We intend to issue separate guidance on this topic.

- The child or child’s representative requests a voluntary termination of eligibility (same as #2 above);
- The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative (same as #4 above); or
- The child is deceased (same as #5 above).

B. Populations Covered under CE

Section 1902(e)(12) of the Act, as amended by the CAA, 2023, applies to all children under age 19 who are enrolled under the state plan in a mandatory or optional Medicaid eligibility group described in section 1902(a)(10)(A) of the Act and implementing regulations at 42 CFR part 435 subparts B and C.¹⁵ Section 2107(e)(1)(K) of the Act, added by the CAA, 2023, applies to all targeted-low income children¹⁶ enrolled in a separate CHIP under the state plan. This includes targeted low-income children covered from-conception-to-end-of-pregnancy (FCEP) option. States also are required to provide CE to children enrolled in Medicaid or CHIP under a section 1115 demonstration.

States are *not* required to provide 12 months of CE to children who have *only* established eligibility through medically needy Medicaid coverage under section 1902(a)(10)(C) of the Act, or children who have been determined presumptively eligible for Medicaid or CHIP consistent with section 1920A of the Act, but who have not yet received a determination of eligibility based on a regular application. States also are not required to provide 12 months of CE to children who, upon a renewal, are determined to only be eligible for Medicaid based on transitional medical assistance (TMA) under section 1925 of the Act. (See discussion below on “Duration of CE Period.”)

Effective January 1, 2024, states will no longer have the option to limit CE in both Medicaid and CHIP to children under an age (up to age 19) specified by the state, or apply CE to a subset of children in CHIP.

C. Duration of CE Period

¹⁵ This includes children eligible under the mandatory group codified at § 435.121 for individuals age 65 or over or who have disabilities or blindness in section 209(b) states as well as children who are eligible under section 1902(e)(3) of the Act and § 435.225 (relating to individuals under age 19 who would be eligible for Medicaid if they were in a medical institution, commonly referred to as the “Katie Beckett” group). Section 1902(f) generally requires that individuals eligible in a 209(b) state’s mandatory eligibility group for individuals 65 years old or who have blindness or disabilities be considered eligible under section 1902(a)(10)(A) of the Act. Similarly, section 1902(e)(3) of the Act requires that Katie Beckett enrollees be treated as SSI beneficiaries.

¹⁶ Targeted low-income child is defined in Section 2110(b) of the Act and § 457.310.

Effective January 1, 2024, states that have adopted a period of less than 12 months under existing policy will need to extend the CE period for children to 12 months as this policy is no longer permissible under the CAA.

Beginning of CE Period for New Applicants

Current Medicaid regulations¹⁷ specify that the CE period for new applicants determined eligible for coverage begins on the effective date of the individual's eligibility – either the date of application or the first day of the month when the application is submitted, depending on the state's election.¹⁸ Current CHIP regulations¹⁹ specify that the CE period begins on the effective date of the child's eligibility.²⁰ States have the flexibility to determine the effective date of eligibility based on the date of application or another reasonable methodology that ensures coordinated transition of children between CHIP and other insurance affordability programs as family circumstances change to avoid gaps or overlaps in coverage.

Sections 1902(e)(12) and 2107(e)(1)(K) of the Act, as amended by the CAA, 2023, do not expressly address when a child's CE period begins. Therefore, the current Medicaid and CHIP regulations governing the beginning of the CE period for new applicants will continue to apply to children enrolled in Medicaid or CHIP on or after January 1, 2024, when the requirement to provide CE to children under age 19 in Medicaid and CHIP goes into effect.

Beginning of CE Period Following a Periodic Renewal of Eligibility

States must renew eligibility for Medicaid and CHIP beneficiaries whose financial eligibility is determined using Modified Adjusted Gross Income (MAGI)-based methodologies every 12 months and no more frequently than once every 12 months.²¹ States must renew eligibility for Medicaid beneficiaries excepted from MAGI-based financial methodologies at least once every 12 months, but may conduct regular renewals more frequently but no more frequently than every six months.²² We refer to the period between regular renewals as the “eligibility period.”

For children whose Medicaid or CHIP eligibility is being redetermined at a regular renewal, current regulations provide that the CE period begins on the effective date of the individual's renewal, which begins a new eligibility period.²³ Because almost all children have 12-month eligibility periods and the 12-month CE period begins on the effective date of the child's most recent determination or redetermination of eligibility, a child's CE period generally will align with their renewal cycle.²⁴

¹⁷ § 435.926

¹⁸ § 435.915

¹⁹ § 457.342

²⁰ §457.340(g)

²¹ §§ 435.916(a) and 457.343

²² §435.916(b)

²³ §§ 435.926 and 457.342

²⁴ The only exception would involve children enrolled in Medicaid whose eligibility is not based on MAGI if the state has elected a shorter renewal period permitted under § 435.916(b). For these individuals, states may only act on changes in circumstance that fall into one of the exceptions to the provision of CE discussed in section II.A of this SHO letter.

Current Enrollees Whose Eligibility Period Ends After January 1, 2024

Because the CE period is based on the effective date of the child's last eligibility determination (either at initial application or last renewal), for states newly implementing CE children under age 19 enrolled in Medicaid and CHIP will receive CE for the remainder of their eligibility period based on the date of their last determination. For example, Elijah is enrolled in a state that implements CE for the first time on January 1, 2024. Elijah's most recent determination of eligibility was completed in September 2023, and his current eligibility period began on October 1, 2023. Effective January 1, 2024, the state must provide Elijah with CE for the remainder of his 12-month eligibility period (through September 30, 2024), unless he experiences one of the exceptions to the provision of CE discussed in section II.A of this SHO letter. States that already implement CE for a 12-month period will continue to provide CE through a child's existing CE period. States that currently provide less than 12 months of CE will have to extend a child's CE period to 12 months.

Interaction of CE and Continuous Enrollment during the COVID-19 PHE Unwinding Period

Congress enacted the Families First Coronavirus Response Act (FFCRA) at the start of the COVID-19 Public Health Emergency (PHE) on March 18, 2020. Section 6008 of the FFCRA allowed states to claim a temporary 6.2 percentage point increase in Federal Medical Assistance Percentage (FMAP) if they met certain conditions, including a continuous enrollment condition to keep nearly all individuals, including children, continuously enrolled in Medicaid for most of the period while the COVID-19 PHE was in effect. The CAA, 2023 amended section 6008 of the FFCRA to end the continuous enrollment condition on March 31, 2023. While the continuous enrollment provision was not applicable to separate CHIPs, some states obtained authority through a CHIP disaster relief SPA to delay processing renewals or through a section 1115 demonstration to authorize continuous coverage in CHIP, which had the similar result of maintaining continuous enrollment of children in CHIP.

CMS recognizes that states will be in the process of unwinding when mandatory CE for children becomes effective. As a result, states likely will have some children whose eligibility was not renewed during the 12-month period preceding January 1, 2024.

For children who have not had a determination or renewal of eligibility within the 12 months preceding January 1, 2024, and whose renewal during the unwinding period is conducted on or after that date, states will begin a new CE period when the renewal during the state's unwinding occurs, provided that the child is determined to be eligible at that time. For example, Mia's last redetermination was August 1, 2021. The state initiates a renewal for Mia during its unwinding period in December 2023. The state typically takes three months to complete the renewal for a given cohort, such that Mia's coverage is expected to end or be renewed effective March 1, 2024. The state determines that she is still eligible for Medicaid. Mia's CE period will align with her new eligibility period, beginning March 1, 2024, and extending through February 28, 2025.

Conversely, if the state had determined Mia was ineligible when the state completed her renewal, Mia's coverage would end effective March 1, 2024. Mia no longer gets the benefit of CE

because her last redetermination was completed more than 12 months ago (August 1, 2021) and the state has determined that she no longer meets eligibility requirements.

D. Acting on Information from Electronic Data Sources During a CE Period

Changes in Circumstances Experienced Between Renewal Periods

As noted above, states must renew eligibility for CHIP and MAGI-based Medicaid beneficiaries once a year and may renew eligibility for MAGI-excepted Medicaid beneficiaries more frequently.²⁵ States also are expected to have procedures in place designed to ensure that beneficiaries make timely and accurate reports of any CICs that may affect their eligibility, and to redetermine eligibility when such changes are reported.²⁶ States also can elect to obtain information from reliable outside sources (e.g., through conducting periodic data matches (PDM) with electronic data sources) between regular renewals to detect CICs that may impact eligibility.

For children entitled to a 12-month CE period, states may not terminate eligibility based on CICs either reported by the family or detected through a PDM prior to the child's regularly scheduled renewal (which is conducted at the end of the child's eligibility period), unless the change relates to one of the exceptions to CE listed in section II.A of this letter.

Since children are protected from termination due to most CICs, but adults are not, states cannot delay acting on CICs that may impact eligibility for adults ages 19 or older that are also enrolled in Medicaid or CHIP. When both children and adults in a given household are enrolled in Medicaid or CHIP, states must ensure that, when acting on a CIC that impacts the eligibility of a household member age 19 or older, the eligibility of a child in a CE period is not impacted unless the change relates to one of the exceptions to CE in section II.A of this letter.

Post-Enrollment Verification

In processing applications, states have the option to enroll individuals based on self-attested information and conduct required verifications post-enrollment, consistent with the state's verification plan.²⁷ This process is commonly referred to as "post-enrollment verification." Children who have been determined eligible for Medicaid or CHIP based on attested information are entitled to a 12-month CE period. States may *not* terminate coverage for such children during a CE period if, in conducting post-enrollment verification, the state obtains information that indicates that the child does not meet all of the eligibility requirements unless the information indicates that one of the limited exceptions to CE discussed in section II.A of this letter applies (e.g., the child turns age 19 or ceases to be a state resident). Such information is considered a CIC, and the child's coverage may not be terminated. Rather, the child must remain eligible for coverage through the end of the 12-month period following the effective date of eligibility based

²⁵ As mentioned earlier, if states conduct renewals for MAGI-excepted beneficiaries more than once a year, states may only act on changes in circumstance that fall into one of the exceptions to the provision of CE discussed in section II.A of this SHO letter.

²⁶ § 435.916(c) and (d), and § 457.343

²⁷ Per §§ 435.945(j) and 457.380(j), states are required develop, and update as needed, a verification plan that describes the verification policies and procedures.

on the initial determination. As long as the attested information indicates that the child is eligible, the state is not considered to have made an erroneous determination, even if there is an inconsistency between the attested information and information subsequently obtained from electronic data sources after enrollment.²⁸

III. Considerations for Specific Populations

A. Summary of Existing Medicaid Incarceration Policies

Medicaid: Eligibility for Children who Become Incarcerated

Federal law provides that incarceration status does not preclude eligibility for Medicaid. Individuals who are incarcerated are eligible for Medicaid if they otherwise meet all eligibility requirements under the state plan. However, the provision of federal financial participation (FFP) for inmates of a public institution under Medicaid, including children, is limited to inpatient services that are furnished to the individual while admitted to a medical institution for at least a 24-hour inpatient stay.²⁹ This policy does not apply to children who have attested to being a U.S. citizen or in a satisfactory immigration status,³⁰ and who are receiving benefits during a reasonable opportunity period (ROP),³¹ if the state is unable to verify the child's status during the ROP.

To comply with the FFP limitation, states historically have either terminated or suspended coverage for Medicaid beneficiaries who become incarcerated. However, the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) prohibits the termination of “eligible juveniles” who are incarcerated and instead requires states to suspend their Medicaid coverage for the duration of

²⁸ Children whose citizenship or satisfactory immigration status is not verified have not been determined eligible for Medicaid or CHIP. If a state is unable to verify a child's status prior to the end of the ROP, the state must take action within 30 days, to terminate benefits in accordance with §§ 435.956(b)(3) and 457.380(b)(1)(ii).

²⁹ For additional information on when individuals are considered an inmate of a public institution see § 435.1010 and State Health Official Letter # 16-007 available at <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/sho16007.pdf>. Subdivision (A) of the matter following section 1905(a)(30) of the Act limits the provision of FFP to inpatient services provided to individuals who are incarcerated. For purposes of this payment exclusion, “medical institutions” include hospitals, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, and to facilities pursuant to the inpatient psychiatric services available for individuals under age 21 through the EPSDT benefit, including psychiatric residential treatment facilities. To qualify for the medical institution exception, services must be covered under the state's Medicaid plan, delivered in a prescribed setting in a way that is consistent with other terms of the state's Medicaid plan, and provided by a certified or enrolled provider that maintains compliance with federal requirements.

³⁰ Applicable regulations are at §§ 435.406(a) and 457.320(d),

³¹ Applicable reasonable opportunity period regulations are at §§ 435.956(b) and 457.380(b)(1)(ii).

their incarceration.^{32,33} To comply with these requirements, states can elect to either suspend benefits or eligibility when a child in Medicaid is incarcerated:³⁴

- Under a benefits suspension, individuals who become incarcerated continue to be eligible for Medicaid, but coverage is limited only to inpatient services. When benefits are suspended, the state must complete regular annual renewals and redetermine eligibility when the incarcerated individual experiences a CIC that may impact their eligibility for the duration of the individual’s incarceration.
- Under an eligibility suspension, the individual’s Medicaid eligibility is not terminated, but is effectively paused. Eligibility can be reinstated if the individual needs covered inpatient services. Depending on when the individual’s last full determination was conducted (i.e., at application or most recent regular renewal), the state may need to conduct a renewal prior to reinstating eligibility. When eligibility is suspended, a state may, but is not required to, conduct regular annual renewals. We also note that states electing to suspend eligibility will need to conduct a redetermination prior to release³⁵ for individuals who were determined eligible more than 12 months prior to the date of release, if the state has not redetermined eligibility within the 12-month period preceding release.

Medicaid: CE for Children who Become Incarcerated

Current Medicaid regulations³⁶ do not include incarceration as a permissible reason to end a child’s CE period in Medicaid if a state has elected to provide CE. The CAA, 2023 does not change the current policy. Therefore, if a child becomes incarcerated during their CE period, the child remains eligible for the remainder of the CE period while incarcerated.

During a CE period, states that implement a *benefits suspension* for children in Medicaid who become incarcerated may not act on CICs that occur, unless the CIC triggers one of the exceptions to CE listed in section II.A of this SHO letter. This means that the child would be eligible for any necessary inpatient services under Medicaid until the end of their CE period. The state would complete an annual renewal at the end of a child’s CE period.

During a CE period, states that implement an *eligibility suspension* would not take CICs into account if a child in Medicaid needed inpatient services while incarcerated prior to their annual renewal. Under an *eligibility suspension*, if a child in a carceral setting needed inpatient services, the state only would consider whether the child’s last eligibility determination was within the

³² Section 1001 of the SUPPORT Act, Public Law 115-271, enacted October 24, 2018, added section 1902(a)(84) of the Act.

³³ An “eligible juvenile” is defined as an individual who is under 21 years of age or an individual eligible under the mandatory eligibility group for former foster care children who was determined eligible for Medicaid prior to becoming or while an inmate of a public institution.

³⁴ See SMDL #21-002 “Implementation of At-Risk Youth Medicaid Protections for Inmates of a Public Institution (Section 1001 of the SUPPORT Act)” (available at <https://www.medicaid.gov/sites/default/files/2021-12/smd21002.pdf>) for additional information regarding suspension strategies available under Medicaid.

³⁵ States are required to redetermine eligibility for eligible juveniles prior to their release from a carceral facility consistent with section 1902(a)(84)(B) of the Act. See SMDL #21-002 for more information.

³⁶ § 435.926

previous 12 months, such that the child is still in their CE period. If it has been more than 12 months since the child’s last eligibility determination, the child’s CE period would have expired, and the state would need to redetermine their eligibility prior to providing inpatient services.

B. Summary of CHIP Incarceration Policies

CHIP: Eligibility for Children who Become Incarcerated

Unlike in Medicaid, incarceration status *is* a factor of eligibility in CHIP. A child who is an inmate of a public institution is excluded from the statutory definition of a targeted low-income child and therefore, without CE, a child who is in a carceral setting is ineligible for a separate CHIP.³⁷

CHIP: CE for Children who Become Incarcerated

Under current CHIP regulations,³⁸ incarceration is not an exception to CE. Thus, in the case of a child currently enrolled in CHIP, incarceration is not a permissible reason to terminate coverage during a CE period. This means that children determined eligible for CHIP at initial application or renewal who later become incarcerated during a CE period, remain eligible. In addition, these children continue to receive services that are covered under the CHIP state plan through the end of their CE period, if the services are not otherwise provided by the carceral setting. However, if a child remains incarcerated at the end of their CE period, the state must terminate the child’s CHIP coverage because they no longer meet the definition of a targeted low-income child.

CHIP: Modifications under the CAA, 2023 to CHIP Eligibility for Children who Become Incarcerated

The CAA, 2023 amendments to sections 1902(e)(12) and 2107(e)(1)(K) of the Act do not explicitly change the incarceration policy for CHIP enrollees in a CE period. However, another provision in the CAA, 2023, has led us to reconsider the policy for operationalizing CE for children enrolled in a separate CHIP who become incarcerated. Specifically, section 5121 of the CAA, 2023 added a new section 2102(d) of the Act to require, effective January 1, 2025, that “[s]tate[s] shall not terminate eligibility for child health assistance under the State child health plan for a targeted low-income child because the child is an inmate of a public institution, but may suspend coverage during the period the child is such an inmate.”

The language added at section 2102(d) of the Act is virtually identical to the existing Medicaid requirements at section 1902(a)(84) of the Act, which require states to suspend coverage rather than terminate individuals because they are an inmate of a public institution. Due to the similarity of the language, we look to the current interpretation of section 1902(a)(84) of the Act and its interaction with CE for children enrolled in Medicaid in considering the appropriate CE policy for children who become incarcerated while enrolled in CHIP.

³⁷ Section 2110(b)(2)(A) of the Act and regulations at § 457.310 define targeted low-income child.

³⁸ § 457.342

States may continue to utilize a suspension option for children who are incarcerated before or after the January 1, 2025 effective date of section 5121 of the CAA. Prior to January 1, 2024, only states with CE may elect this suspension option, but after January 1, 2024, all states may elect suspension when CE becomes mandatory. States may revise their state plans at any time to demonstrate that they suspend CHIP coverage. States electing to suspend CHIP coverage may choose one of the suspension options discussed in detail under the subheading above entitled “Medicaid: Eligibility for Children who Become Incarcerated.” States will also retain the option to continue to provide all CHIP-covered services to incarcerated youth not otherwise paid for by the carceral setting through the end of their CE period.

Regardless of whether the state elects to suspend coverage or to provide benefits during a CE period, states must maintain children in CHIP who become incarcerated for the duration of their CE period, unless they experience an exception to CE. If a targeted low-income child is released from the carceral setting before the CE period ends, the state would be required to reinstate coverage and benefits without conducting a redetermination of eligibility. However, if a child remains incarcerated when their CE period ends, states must redetermine eligibility and terminate the child’s CHIP eligibility. This policy will change on January 1, 2025, the effective date of section 5121 of the CAA, 2023. At that time, states will no longer be permitted to terminate eligibility of an incarcerated child at the end of the CE period, but they may suspend coverage.

Additional guidance related to section 2102(d) of the Act and section 5121 of the CAA, 2023 will be forthcoming.

C. From-Conception-to-End-of-Pregnancy Option

Under § 457.10, states have the option to provide coverage in order to provide prenatal care and other pregnancy-related benefits from conception to end of pregnancy to pregnant individuals, if they are not eligible for Medicaid or CHIP.³⁹

Under section 2107(e)(1)(K) of the Act, states must provide CE to those eligible under the FCEP option in the same manner as CE for targeted low-income children. The duration of the CE period, however, will depend on how states pay for labor and delivery services.

Currently, states generally must enroll the pregnant individual, if eligible, for coverage of services necessary to treat an emergency medical condition, which includes labor and delivery (“Emergency Medicaid”). The only exception to this general rule is if the pregnant individual is ineligible for Emergency Medicaid or the state uses a bundled or global payment⁴⁰ to cover prenatal, labor and delivery, and postpartum care in CHIP.

The duration of CE depends on whether a state enrolls the pregnant individual into Medicaid for coverage of labor and delivery or pays for the delivery under CHIP, as follows:

³⁹ See the October 2, 2002 final rule at <https://www.federalregister.gov/documents/2002/10/02/02-24856/state-childrens-health-insurance-program-eligibility-for-prenatal-care-and-other-health-services-for>

⁴⁰ See CMS SHO #02-004; available at https://healthlaw.org/wp-content/uploads/2018/09/cms_release_on_prenatal_care_for_fetuses.pdf

- *Emergency Medicaid pays for labor and delivery.* Under the Medicaid deemed newborn requirement, the newborn will be deemed eligible for Medicaid at birth (regardless of family income), so the child is automatically eligible for continuous coverage in Medicaid until their first birthday.⁴¹ Because the newborn is eligible for Medicaid, the CHIP CE period that began on the effective date of coverage under the FCEP option ends at birth.
- *CHIP pays for labor and delivery.* Many newborns will be eligible for Medicaid, if their family's income is at or below the Medicaid income standard for infants, even though labor and delivery was covered by CHIP. Therefore, the state must screen the newborn for potential eligibility for Medicaid at birth. Such screening must be based on information available to the state without contacting the individual, unless additional information is needed to verify the specific change in circumstances.⁴² Depending on the result of this screen, the state must take a different action:
 - a. *The screening identifies potential eligibility for Medicaid.* The state must transition the newborn to Medicaid for the remainder of their 12-month CE period (beginning on the effective date of coverage under the FCEP option) consistent with section 2107(e)(1)(K) of the Act. Alternatively, the state may choose to provide a new 12-month CE period in Medicaid from the date of the determination if the state has enough information available to it to determine eligibility with respect to all eligibility criteria without requiring additional information or documentation from the family.⁴³
 - b. *The screening does not indicate potential eligibility for Medicaid.* The state must maintain the newborn's coverage in CHIP for the duration of the 12-month CE period (beginning on the effective date of coverage under the FCEP option).⁴⁴ If the screening indicates the child remains eligible for CHIP, the state may begin a new 12-month CE period if it has enough information available to redetermine CHIP eligibility with respect to all eligibility criteria without requiring additional information or documentation from the family.⁴⁵

We note that, while states may continue using bundled payments to provide postpartum care to those eligible under the FCEP option, states can also provide postpartum care through a health services initiative (HSI).⁴⁶ Covering labor and delivery under Medicaid and postpartum care for

⁴¹ Requirements for deemed newborns are at § 435.117. When the deemed newborn reaches their first birthday, the state must conduct a renewal of eligibility in accordance with § 435.916.

⁴² See § 457.350(b) for CHIP screening and enrolling procedures. § 457.350(b) cites to § 457.343, which incorporates Medicaid regulations about changes in circumstances by cross referencing § 435.916(d)(1).

⁴³ § 435.916(d)(1)(ii)

⁴⁴ If the newborn continues to appear eligible for CHIP, states may move the child from the FCEP eligibility category to another CHIP eligibility category for the remainder of their 12-month CE period as long as the change does not result in a loss of benefits or an increase in cost sharing. States may not contact the child's family for additional information in order to move the newborn to a new CHIP eligibility category.

⁴⁵ § 457.343, which incorporates by cross reference § 435.916(d)(1)(ii)

⁴⁶ January 12, 2017 Health Services Initiatives FAQs (<https://www.medicaid.gov/federal-policy-guidance/downloads/faq11217.pdf>) for more information.

the parent through an HSI may be beneficial for both the parent and child. Infants whose birth is not paid for as part of a bundled payment that are deemed eligible for Medicaid⁴⁷ are entitled to Medicaid eligibility for one year and receive the mandatory EPSDT benefit in Medicaid, which is an optional benefit in CHIP. States also generally impose lower premiums and cost sharing charges under Medicaid compared to CHIP. Additionally, by using an HSI for postpartum care, states can provide the same comprehensive postpartum coverage to all pregnant individuals across Medicaid and CHIP for up to 12 months, not just the postpartum services covered through a bundled payment.

IV. State Plan Amendments (SPAs)

All states that must newly adopt CE for children in Medicaid and/or CHIP will need to submit a Medicaid and/or CHIP SPA.

In addition, states that currently have CE will need to submit a Medicaid and/or CHIP SPA to come into compliance with new sections 1902(e)(12) and 2107(e)(1)(K) of the Act, if the state imposes CE restrictions that are no longer permissible effective January 1, 2024 – that is, if, under the state’s current CE policy:

- CE only applies to a subset of children under age 19, such as targeting a specific age range; or
- The CE period is shorter than 12 months.

States that currently provide CE in a manner that is consistent with sections 1902(e)(12) and 2107(e)(1)(K) of the Act, as amended by the CAA, 2023, will not be required to submit a SPA. States whose Medicaid CE SPA was approved prior to MACPro (i.e., the state submitted a paper-based SPA), will need to attest to being in compliance in MACPro.

States must submit CE-related SPAs for Medicaid through MACPro and CHIP SPAs through the Medicaid Model Data Lab (MMDL).

For Medicaid, to have an effective date of January 1, 2024, states will need to submit their SPA no later than March 31, 2024, in accordance with Medicaid regulations.⁴⁸ For CHIP, to have an effective date of January 1, 2024, states must submit their SPA no later than the end of the state fiscal year in which January 1, 2024 falls.⁴⁹

V. Section 1115 Demonstration Authority

States may also request CE for children for more than a 12-month period, or multi-year CE, through section 1115 demonstration authority. CMS has approved demonstration authority in a

⁴⁷ § 435.117

⁴⁸ §§ 430.12 and 430.20

⁴⁹ §§ 457.60 and 457.65

few states to provide CE for longer than 12 months, including CE for children determined eligible until they reach age six, and a two-year CE period for children ages six and older. We recognize that CE for adults also supports consistent coverage and continuity of care by keeping adults and children enrolled for a longer period of time regardless of income fluctuations or most other changes that otherwise would affect eligibility. These types of demonstrations are expected to minimize coverage gaps and to help maintain continuity of access to program benefits, and thereby help improve health outcomes of beneficiaries. CE is also an important aspect of reducing the rate of uninsured and underinsured adults. For more information about the section 1115 demonstration application process, states may contact their CMS Section 1115 Project Officer or refer to the “1115 Application Process” webpage on Medicaid.gov at <https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html>

VI. Closing

CMS looks forward to its continued work with states on the implementation of CE in all states and ensuring that all children enrolled in Medicaid and CHIP have continuous access to the coverage they need and to which they are entitled. States should consult with CMS if they have questions related to the guidance in this letter. We also encourage you to reach out to your Medicaid state lead or CHIP project officer with any questions related to SPA submission. If you have additional questions about the policies described in this letter, you may contact Meg Barry, Director of the Division of State Coverage Programs at 410-786-1536 or meg.barry@cms.hhs.gov.