

February 10, 2023

Mike Levine, Acting Medicaid Director

By Email to: [mike.levine@state.ma.us](mailto:mike.levine@state.ma.us)

Sharon Boyle, General Counsel, EOHHS

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Dear Mike and Sharon,

We are writing to find out how MassHealth will comply with the January 31, 2023 decision of the U.S. District Court in *Carr v. Becerra*, 2023 WL 1280172. In that decision, the Court certified a nationwide class of individuals whose Medicaid benefits were reduced to a lower level of coverage and who were determined eligible for a Medicare Savings Program (MSP) based on the Nov. 6, 2020 interim final rule (IFR), enjoined the Secretary not to enforce that rule, and to reinstate the Secretary's previous guidance with respect to the class.

As you know MassHealth implemented this provision of the final rule from July 1, 2021 to [July 31, 2022](#). (MassHealth did not release written guidance about this change in the scope of continuous coverage until [Sept 2021](#), but MLRI had its first client on July 5, 2021). We don't know how many elderly and disabled people lost full MassHealth benefits during this time, but total MSP enrollment did increase by about 4700 between June 30, 2021 and July 31, 2022.

We understand HHS sent a letter to all state Medicaid agencies on the evening of February 6<sup>th</sup> regarding the *Carr* order that advises that, as to the nationwide class and per the Court's order, the portion of the IFR pertaining to Section 6008 is no longer in effect, and that CMS has "reinstate[d] its previous guidance with respect to these individuals."

The previous CMS guidance was in the form of a series of frequently asked questions issued first in March 2020 and most recently amended in January 2021 after publication of the IFR. With respect to what state Medicaid agencies are required to do in order to qualify for enhanced matching funds when they have

terminated coverage in violation of the continuous coverage requirements, the March 24, 2020 guidance stated:

**7. If a state has already terminated coverage for individuals enrolled as of March 18, 2020, what actions should the state take? Must those individuals have their coverage reinstated?**

To receive the increased FMAP, states may not terminate coverage for any beneficiary enrolled in Medicaid during the emergency period effective March 18, 2020, unless the beneficiary voluntarily requested to be disenrolled, or is no longer a resident of the state. States that want to qualify for the increased FMAP should make a good faith effort to identify and reinstate individuals whose coverage was terminated on or after the date of enactment for reasons other than a voluntary request for termination or ineligibility due to residency. At a minimum, states are expected to inform individuals whose coverage was terminated after March 18, 2020 of their continued eligibility and encourage them to contact the state to reenroll. 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. Coverage should be reinstated back to the date of termination.<sup>1</sup>

To comply with the court order and CMS's guidance we expect MassHealth to "make a good faith effort to identify and reinstate individuals whose coverage was terminated.... back to the date of termination." Because redeterminations and terminations are rapidly approaching, we urge that you complete all reinstatements and all notices as soon as possible.

We know that with the end of continuous coverage looming everyone at MassHealth is working non-stop as it is. We are too. But these elderly and disabled MassHealth members were wrongly terminated and may have incurred medical debt that can now be remedied by reinstating their prior coverage and (pursuant to the prior CMS guidance) retaining their MSP as well. Noticing would be next best if MassHealth really cannot identify these individuals.

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<sup>1</sup> We can supply you with the text of the March and April 2020 Guidance but Q 7 quoted above is also in [the Jan 2021 FAQ](#) if you disregard the note added with reference to the IFR on p. 44 of 161.

Please let us know what you will be doing to comply and what we can do to help.

Yours truly,

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