

# Unwinding the Public Health Emergency: Strategies for Advocates to Protect Medicaid Beneficiaries

Gelila Selassie, Justice in Aging

Bethany Lilly, The Arc

May 19, 2022

# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

# About The Arc

The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclusion and participation in the community throughout their lifetimes.

We have almost 600 chapters across the United States and we bring that on-the-ground experience to our policy work here in DC.

# Objectives

- Review updated guidance from CMS on the unwinding of Medicaid flexibilities under the PHE
- Understand the impact of the PHE unwinding on aging and disabled Medicaid populations
- Identify best practices for advocates to ensure continued access to Appendix K flexibilities
- Identify best practices for advocates to reduce and prevent unnecessary terminations

# What is the PHE?

- President and HHS Secretary declared Public Health Emergency, authorizing HHS to use sections of the Social Security Act to modify or waive Medicaid and Medicare requirements
  - HHS first declared PHE in Jan 2020, must be renewed or expires after 90 days (renewed in April 2022)
  - PHE extended to July 15, 2022 and *likely* will be extended
  - HHS to provide at least 60 days notice prior to termination of PHE

# Emergency Waivers/Authorities

- Emergency authorities
  - Section 1135 waiver
    - Used by CMS to make significant modifications, even though statute by its terms applies more narrowly
  - 1915(c) Appendix K
    - Allows modifications to states' 1915(c) HCBS waivers
- Section 1115
  - Either modifying existing demonstrations, or initiating new demonstrations in response to COVID-19
- State Plan Amendment
  - Modifies procedures for state plan services, subject to existing statutory requirement



# Continuous Coverage Protections

- Continuous coverage eligibility protections from Family First Coronavirus Relief Act
  - Beneficiaries enrolled in Medicaid as of March 2020 “shall be treated as eligible for such benefits through the end of the month in which such emergency period ends”
    - Must remain enrolled even if no longer financially eligible– no retroactive adjustment if beneficiary becomes ineligible prior to end of the emergency
- Continuous coverage protections were extended under the American Rescue Plan Act (ARPA)
  - Provided states temporary 10% FMAP increase for HCBS

# Medicare Protections Under the PHE

- PHE termination revokes many Medicare flexibilities including:
  - Waiver of 3-day hospitalization prior to nursing home admission
  - No cost-sharing for at-home COVID-19 tests
  - Medicare Advantage plans requiring coverage for out-of-network facilities
  - Part D coverage of 90-day prescriptions upon request
  - Telehealth expansion including phone-only telehealth visits\*
    - \*NOTE: some telehealth provisions will continue for 151 days after the PHE under the Consolidated Appropriations Act

# Medicaid Flexibilities under the PHE

- PHE termination ends many flexibilities allowed by Appendix K authorities
  - Payments towards family caregivers/legally responsible persons
  - Telehealth and remote service (including case management)
  - Modifications to level of care evaluations or reevaluations
  - Retainer payments for emergency situations
  - Payment rate increases

# Obstacles to PHE Unwinding (1/2)

- Re-determination process
  - Incomes and assets have fluctuated over 2 years
  - People moved/can't be contacted for redeterminations
  - Language access issues
  - Confusion over redetermination process
  - Being able to complete renewal forms
  - Transitions/gaps in coverage
  - Issues with SSI-Medicaid
    - Closed field offices
    - Continued confusion and phone issues
    - Current case backlog
  - Massive influx to legal services and other assisters

# Obstacles to PHE Unwinding (2/2)

- Scope of protections and flexibilities that could be made permanently part of a state program
  - States must already be determining what authorities they can and want to extend permanently
    - States will need time to apply to add these flexibilities, when possible, to existing waivers or as a state plan amendment before the PHE ends
- Workforce shortages
  - County Medicaid offices and providers experiencing workforce shortage and high turnover
    - Delayed assessments, issues with processing re-determinations, etc.

# Strategies for Advocates: Partner with Medicaid Agency

- Work with state Medicaid agency to:
  - Improve systems and procedures for ex parte review
  - Improve redetermination systems and procedures
  - Clarify the role of Managed Care Organizations (MCOs)
  - Consider development of statewide toolkits and tracker to see how disenrollment are proceeding
  - Ensure materials are accessible for disability and LEP
  - Ensure emergency authorities are being extended as needed
    - See what emergency authorities can be made permanent – e.g. App Ks incorporated into 1915(c)

# Strategies for Advocates: Improving Re-Determinations

- De-prioritize older adults/People with Disabilities for re-determination
- Extend continuous coverage of Medicaid for older adults/PWD
- Establish express lane eligibility to streamline continued enrollment based on enrollment in other public benefits

# Strategies for Advocates: Messaging and Partnerships

- Early and frequent communication is crucial to let advocates be aware of changes
  - Provide accessible materials to beneficiaries and community partners
  - Partner with health plans (e.g. MCOs, Medicare Advantage plans serving dual eligibles)
  - Add routine reminders and assistance with Medicaid re-determination process
    - Consider including reminder of re-determination during intake
  - Remind beneficiaries of right to appeal improper denial



# Resources

- [CMS December 2020 SHO Letter](#)
- [CMS August 2021 SHO Letter](#)
- [March 2022 SHO Letter](#)
- [List of Existing Appendix K Flexibilities](#)
- [CMS Unwinding Communications Toolkit](#)
- [California Unwinding Outreach Toolkit](#)

# Building Capacity to Address Expected Issues

- Legal assistance, elder rights, & aging services providers can build capacity and expertise to address expected issues
- NCLER Trainings & Resources:
  - Medicaid Appeals: [Recording & Chapter Summary](#)
  - Medicare Administrative Law Judge Hearings: Advocacy Tips: [Recording & Chapter Summary](#)
  - An Advocate's Guide to Appealing Prescription Drug Denials: [Recording & Chapter Summary](#)

# Questions?

# Visit Our Website: [ncler.acl.gov](http://ncler.acl.gov)

NATIONAL  
CENTER ON  
**LAW &  
ELDER  
RIGHTS**

Search for resources

**Read practice tips**

Sign up for the email list

**Request a case consultation**

Learn about upcoming trainings

[ncler.acl.gov](http://ncler.acl.gov)



# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).