



8421 Wayzata Blvd | Suite 110 | Golden Valley, MN 55426

---

November 7, 2022

The Honorable Xavier Becerra  
Secretary  
Department of Health and Human Services  
Attention: CMS-2421-P  
PO Box 8016  
Baltimore, MD 21244-8016

*Submitted via [www.federalregister.gov](http://www.federalregister.gov)*

**RE: [CMS-2421-P] Streamlining the Medicaid, Children’s Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes**

Dear Secretary Becerra:

Thank you for the opportunity to provide comments on the proposals included in the “Streamlining the Medicaid, Children’s Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes” proposed rule. As a state-based public policy organization in Minnesota, Center of the American Experiment has a particular interest in how this rule will impact a state’s flexibility to administer the Medicaid program to promote several important goals. These goals include both ensuring program integrity and promoting pathways to independence. We generally oppose the proposals in this rule because they would limit state flexibility.

The rule includes several proposals to make it “easier” for people to gain, renew, and retain eligibility for Medicaid, the Children’s Health Insurance Program (CHIP), and the Basic Health Program. Unfortunately, proposals to make these processes easier all too often involve weakening or removing program integrity protections. This ultimately results in allowing people to be enrolled who are otherwise ineligible, which increases the cost of these programs for states. This both imposes a higher tax burden on state residents and keeps people dependent on federal health care programs when they should be on a path to private coverage.

States are in the best position to set eligibility, renewal, and retention requirements for two important reasons. First, states have a stronger financial incentive than the federal government for getting enrollment determinations correct because nearly every state must balance their

budgets. That means more spending on Medicaid will mean less spending on other priorities or higher taxes on residents. The federal government has no balanced budget requirement and can freely fund easier enrollment determinations through deficit spending.

Second, states are in a better position to weigh how the enrollment determination process impacts individual beneficiaries. These public health care programs must balance how to ensure people gain public health coverage when they need it without trapping them in dependency on public health coverage and making it harder for people to make a better life for themselves and their children. State officials are closer to these people than federal officials, which puts them in a far better position to know their needs and aspirations. This puts them in a far better position to judge how easy it should be to enroll and remain enrolled in public health programs.

Because states are best positioned to set eligibility, renewal, and retention requirements for these public health coverage programs, we oppose the proposals in this rule that weaken or remove state flexibility to administer enrollment determinations. This includes changes to the frequency of redeterminations, timeliness standards for state agency actions, standards for following up on returned mail, how to transition people from Medicaid to CHIP, alignment between MAGI and non-MAGI eligibility processes, Medicaid “spenddown” rules for non-institutionalized populations, CHIP waiting periods, annual or lifetime caps on CHIP benefits, lock-out periods for failure to pay premiums, and the time for beneficiaries to provide documentation to retain enrollment.

We are also concerned with the legal authority to make many of these regulatory changes. In particular, the proposed rule admits one change would violate the plain meaning of the statute and cites to caselaw to support departing from this plain meaning.<sup>1</sup> This admission to not follow the plain meaning begs further legal scrutiny regarding every other proposal in this rule.

The regulatory impact analysis estimates this rule will add over \$39 billion in state Medicaid and CHIP spending over five years. Assuming this additional spending for each state is proportional to current spending, this would add \$818 million to Minnesota’s Medicaid spending over 5 years.<sup>2</sup> That level of additional spending will impose a serious impact on the state’s budget. As a financial partner in paying for the Medicaid program and because the state must balance its budget, Minnesota should be the primary decision maker when authorizing changes to the Medicaid program. Therefore, we oppose all changes in this rule that impose an additional burden on the state’s budget with the state’s approval.

Minnesota began a periodic data matching program to identify beneficiaries who may no longer qualify for their program based on available electronic data. The most recent report published prior to the program being paused due to COVID found that 9 percent of the Medicaid enrollees selected for data matching had discrepancies.<sup>3</sup> Of that 9 percent, 40 percent were determined to be no longer eligible. That’s a substantial portion which reveals too many people are staying

---

<sup>1</sup> 87 FR 54760, at 54773-74.

<sup>2</sup> Centers for Medicare and Medicaid Services, “Annual Medicaid & CHIP Expenditures,” at <https://www.medicaid.gov/state-overviews/scorecard/annual-medicaid-chip-expenditures/index.html>.

<sup>3</sup> Minnesota Department of Human Services, Periodic Data Match Annual Report: Health Care Eligibility and Access, September 1, 2020, available at [https://mn.gov/dhs/assets/2020-09-pdm-annual-report\\_tcm1053-445463.pdf](https://mn.gov/dhs/assets/2020-09-pdm-annual-report_tcm1053-445463.pdf)

enrolled in the state's Medicaid program who are not eligible. Therefore, Minnesota should be prioritizing efforts to strengthen Medicaid program integrity. This proposed rule moves in the opposite direction.

To protect the financial integrity of the Medicaid program and to ensure people who are able to move beyond Medicaid get the best help to create a better life, we urge you to not adopt the proposals in this rule that weaken or remove state flexibility.

Sincerely,

/s/

Peter J. Nelson  
Senior Policy Fellow