



## The Maintenance of Effort Provision Protects Services

[Hannah Eichner](#), [Sarah Grusin](#), [Jennifer Lay](#),  
[David Machledt](#)

The [Families First Coronavirus Response Act](#) (§ 6008) includes an option for states to receive enhanced federal funding if they comply with four conditions identified in the “maintenance of effort” (MOE) provision. One of these conditions is that a state must treat anyone enrolled for Medicaid benefits as of March 18, 2020 or who enrolls during the [public health emergency](#) as “eligible for ***such benefits*** through the end of the month” in which the public health emergency ends (emphasis provided).<sup>1</sup> All states have taken this option.

MOE provisions have been included in previous legislation, including the [American Recovery and Reinvestment Act of 2009](#) (ARRA)--the legislative response to the Great Recession. The ARRA MOE was more narrowly tailored, prohibiting states from making their eligibility standards and methodologies more restrictive. The Families First MOE, in contrast, is much broader. It not only prohibits states from disenrolling individuals, but by referencing “benefits,” it also restricts states from reducing or altering the package of services and medical assistance.<sup>2</sup> A state may not reduce the amount, duration, and scope of Medicaid services that were available at the start of the public health emergency.

In practical terms, this means that states cannot:

- cut or reduce optional service categories, such as:
  - dental benefits;
  - mental health and substance use disorder services; and

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<sup>1</sup> The other three conditions are that states must 1) not implement eligibility standards, methodologies, or procedures” that are more restrictive than those the state had in effect on January 1, 2020; 2) cover – without cost-sharing – testing services and treatments for COVID-19 for Medicaid enrollees; and 3) not impose premiums higher than the state had in effect on January 1, 2020. For more information, see Hannah Eichner, Nat’l Health Law Prog., *Top Ten List: Maintenance of Effort Requirement Compliance* (June 15, 2020), <https://healthlaw.org/resource/top-ten-list-maintenance-of-effort-requirement-compliance-1-top-ten-list-maintenance-of-effort-requirement-compliance/>

<sup>2</sup>Although the term “benefits” is not explicitly defined, it is used throughout the Medicaid Act to refer to the package of medical assistance and services, including the amount, duration, and scope of those services that attach to a particular eligibility group.

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- home and community based waiver services;
  - change the level of care requirements for people with home and community based waiver services;
  - increase cost-sharing;
  - impose new requirements that would reduce access to services, such as prior authorization or caps on services like prescription drugs; or
  - change the parameters or structure of an assessment tool if the effect is to reduce hours.

In recent guidance, CMS explained that the MOE in Families First requires states to maintain enrollees in their current eligibility group if transitioning to a new eligibility group would result in a reduction of benefits. The guidance states: “[W]hat is critical for ensuring eligibility for the temporary FMAP increase is that the same amount, duration and scope of medical assistance be maintained.”<sup>3</sup>

Thus, the Families First MOE language protects much more than enrollment; it ensures that services available to enrollees at the start of the pandemic remain available to them as long as the state is receiving the enhanced match. At a time when many doctors’ offices are closed, access to case management is minimal, and enrollees are often left to navigate the health care system on their own, the MOE protects enrollees and ensures access to services by maintaining the “status quo.”

The pandemic has no doubt strained state budgets, but the MOE is not to blame. The number of individuals receiving benefits who would otherwise may have lost coverage is small, and the increased funding available more than offsets those costs.<sup>4</sup>

As the Senate negotiates the next COVID relief package, any proposals put forth to alter these protections must factor in not only the cost to the state of maintaining the MOE, but the potential harm to individuals and to providers those changes might entail if individuals lose access to critical services.

For additional resources from NHeLP on COVID-19, please see our [Coronavirus Resources](#) website.

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<sup>3</sup> *Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, Frequently Asked Questions (FAQs)*, 9 (Apr. 13, 2020), <https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf> (Question 27).

<sup>4</sup> Judith Solomon, Ctr. for Budget & Policy Priorities, *Continuous Coverage Protections in Families First Act Prevent Coverage Gaps by Reducing “Churn”* (Jul. 16, 2020), <https://www.cbpp.org/research/health/continuous-coverage-protections-in-families-first-act-prevent-coverage-gaps-by>.