**[Model Letter from State Advocate to State Medicaid Agency]**

February X, 2023

*By Electronic Delivery*

[State Medicaid Director Name and Address]

Dear Director [name]:

We write concerning the U.S. District Court of Connecticut’s January 31, 2023 decision in *Carr v. Becerra*, 2023 WL 1280172, which:

1. Certified a nationwide class of all individuals whose Medicaid was or will be terminated during the COVID-related continuous Medicaid coverage requirement because of their eligibility for a Medicare Savings Program (MSP).
2. Granted a preliminary injunction requiring Health and Human Services (HHS) Secretary Xavier Becerra to refrain from enforcing the part of its November 6, 2020 interim final rule that allowed states to terminate from Medicaid individuals who were eligible for an MSP and to reinstate previous guidance related to these individuals.

We understand HHS sent a letter to all state Medicaid agencies on the evening of February 6th regarding the *Carr* order (see attached version sent to one state). The letter advises that, as to the nationwide class and per the Court’s order, the portion of the November 6, 2020 Interim Final Rule (IFR) pertaining to Section 6008 of the Families First Coronavirus Response Act (FFCRA) is no longer in effect, and the Centers for Medicare & Medicaid Services (CMS) has “reinstate[d] its previous guidance with respect to these individuals.”

To comply with the reinstated guidance which specifies the requirements for states to continue to receive enhanced federal match, your agency must take the following steps:

1. Immediately cease terminating any class member from Medicaid — to wit, individuals currently on Medicaid who, prior to March 31, will no longer meet the eligibility requirements for Medicaid but are eligible for an MSP.
2. Promptly identify and reinstate on Medicaid anyone in the class as defined by the Court who was cut off of Medicaid since November 6, 2020 as a result of the issuance of the IFR without requiring such individuals to affirmatively ask to re-enroll. Thereafter, send them a timely notice stating they have been so reinstated, and that they can disenroll if they wish, and referencing the upcoming redetermination process.
3. If there is any additional group of individuals that it believes MAY include individuals in the class as defined by the Court whose eligibility was terminated because of the enjoined provisions of the IFR, but who cannot readily be identified, send a different notice inviting them to re-enroll by completing and submitting a simple form provided with the notice (and mentioning the upcoming redetermination process), and then prioritize the processing upon receipt of any such forms. Your agency should also accept re-enrollment by phone.
4. All reinstatements must be retroactive to the date of termination.

Because redeterminations and terminations are rapidly approaching, we urge that you complete all reinstatements and all notices no later than March 1, 2023.

We also encourage you to have the reinstated individuals redetermined toward the end of the unwinding process to minimize the disruption and confusion for these individuals who have already been inappropriately terminated due to HHS’s now-invalided rule.

Below we elaborate on the requirement that your agency cease terminating class members from Medicaid and reinstate class members who have already been terminated.

The HHS letter you received states that, per the Court’s order, “HHS will refrain from enforcing the challenged portion of the IFR with respect to the members of the certified class, through the close of business on March 31, 2023, *and HHS reinstates its previous guidance with respect to the class members*”(emphasis added).

The previous guidance referenced in the letter was issued by HHS in several rounds starting on March 24, 2020. The March 24, 2020 guidance included this Q and A, under the heading “Requirements for States to Receive Increased FMAP”:

**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*.**

CMS Guidance document issued March 24, 2020, Q and A #B.7, page 5 (emphasis added). CMS updated its guidance on April 20, 2020, reiterating, verbatim, the same requirements with respect to individuals terminated from Medicaid. See CMS, Families First Coronavirus Response Act – Increased FMAP FAQs Updated as of 4/13/2020, FAQ B.7, page 5.

Although this guidance document was deleted by HHS after issuance of the IFR, the *Carr* Court referenced the guidance in its ruling, *see* 2023 WL 1280172 \*2 (referencing “ECF No. 3-5 at 8,” which corresponds to page 5 of the March 24, 2020 guidance). The full March 24, 2020 guidance is available [here](http://disrightsct.org/s/Carr-ToubmanDecl-Exh1.pdf) and the relevant excerpt is attached for your convenience. In addition, the full set of guidance documents issued by CMS before the IFR was issued in November of 2020 is available [here](http://disrightsct.org/s/Carr-ToubmanDecl.pdf).

This pre-existing guidance explains why, when the Court issued an earlier injunction in November 2022 granting the same relief for the five named plaintiffs, the three states involved (Connecticut, Nebraska and Delaware) quickly reinstated all of these individuals and did so retroactively to the dates of their terminations.

We recognize that this new instruction is arriving as your agency is preparing for the unwinding process. [optional: “, *a process* *which we stand ready to help with in terms of your communications with all of the affected Medicaid enrollees”*]. We also recognize that a much larger group of people are protected by this new court order than the original preliminary injunction, and that there may be some difficulty in identifying some of the class members. However, to comply with the Court’s order, including the above incorporated requirement that, “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 [FFCRA] enactment,” and to end the ongoing harm to class members as recognized by the Court, the reinstatements must happen as soon as possible.

Please let us know if you have any questions. If you have any questions about the ruling itself, please contact class counsel, Sheldon Toubman, Litigation Attorney, Disability Rights Connecticut, sheldon.toubman@disrightsct.org or (475) 345-3169.

Thank you for taking these steps to expeditiously bring your agency into compliance with the current HHS policies mandated by the Court’s order.

 Respectfully,

 [state advocate or advocates]