

The Nationwide Preliminary Injunction in *Carr v. Becerra* and What It Means for Medicaid Enrollees in Your State

Advocate Guide

On January 31, 2023, a federal judge in the U.S. District Court for the District of Connecticut issued a nationwide preliminary injunction (PI) in a pending case against the U.S. Department of Health and Human Services (HHS). Previously, the court issued injunctive relief just for the named plaintiffs in Connecticut, Delaware, and Nebraska. Now, however, HHS has been ordered to stop enforcing the Interim Final Rule (IFR) nationwide through March 31, 2023, **and** to reinstate its earlier interpretation of the Families First Coronavirus Response Act's (FFCRA) protections against involuntary termination of Medicaid. What immediate impact does this have for Medicaid enrollees?

What is the Interim Final Rule (IFR)?

- During the PHE states could receive increased federal funding if they kept persons who were enrolled in Medicaid as of March 18, 2020 continuously enrolled in Medicaid with the same level of benefits, with only two exceptions (the person moved out of state or voluntarily disenrolled). This is known as the “continuous coverage” requirement.
- On November 6, 2020, CMS promulgated an IFR that created several additional exceptions to the continuous coverage requirement not in the FFCRA and required states to shift Medicaid enrollees from full-scope Medicaid for which they were deemed no longer eligible to a Medicare Savings Program (MSP) if they became Medicare-eligible during the PHE.
- The plaintiffs in *Carr v. Becerra* challenged the IFR as unlawful.

Who is impacted by the nationwide Injunction?

- The preliminary injunction is in effect until March 31, 2023. It identifies the relevant class for the purposes of this injunction as:

All individuals who were enrolled in Medicaid in any state on March 18, 2020 or later and, as a result of the adoption of the IFR on November 6, 2020, either had or will have their Medicaid eligibility reduced to a lower level of benefits, and were/will be determined to be eligible for a Medicare Savings Program.
-

<p>How have state Medicaid agencies been directed to implement the PI?</p>	<ul style="list-style-type: none"> ● Attached is the letter CMS sent to all state Medicaid directors on Monday, February 6th. The key provision in the letter reads: “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).
<p>What does this mean in practical terms?</p>	<ul style="list-style-type: none"> ● The requirement for HHS to reinstate its earlier guidance includes the HHS guidance issued on March 24, 2020 stating that anyone who was wrongly terminated from Medicaid after March 18, 2020, including through a reduction of their Medicaid coverage, needs to be promptly reinstated on their original benefits and with the reinstatement retroactive to the date of termination. That guidance said that, if the affected individuals cannot be readily identified, a notice should be issued advising these individuals of the right to reenroll. ● The PI means that people erroneously cut off due to the IFR must similarly be timely reinstated, and this should be done as soon as possible and before the preliminary injunction ends on March 31, 2023.
<p>Examples of enrollees the PI impacts.</p>	<ul style="list-style-type: none"> ● Enrollee turns 65 on March 1, 2023 and becomes Medicare-eligible. PI means that her full-scope Medicaid cannot be terminated until the continuous coverage requirement ends on March 31, 2023 and the enrollee receives a redetermination sometime in the following year (or however long the state is taking to complete the unwinding process). ● Enrollee's full-scope Medicaid was terminated in July of 2021 when she became Medicare-eligible, and she was transitioned to an MSP. She incurred expenses in 2021 and 2022 that Medicare did not cover: vision exam, dentals services, etc. that she paid out of pocket. This person should now be reinstated retroactive to July 2021 and an advocate should direct her to re-submit expenses for Medicaid reimbursement. ● Although the injunction expires on March 31, an individual's restored full Medicaid eligibility will continue until the state's Medicaid program conducts a redetermination for that individual and provides advance notice of a change. For more information about the Unwinding see: <ul style="list-style-type: none"> ● 10 Issues for Advocates to Monitor During Unwinding ● Continuous Coverage Redeterminations Checklist

What can state advocates do to make sure class members in their state are reinstated on Medicaid promptly?

- The February 6th letter from HHS, while technically accurate, leaves out the critical information that the “previous guidance” includes: that individuals erroneously cut off from Medicaid should be immediately reinstated, and that this reinstatement should be retroactive. That guidance is no longer available online. By writing to your state agency now using the attached model letter and providing the earlier guidance, you can encourage your agency to promptly reinstate affected individuals.
 - You also can invite individuals to ask questions about their choices if they are in the class.
-

Contact Information

Questions about the PI or your state’s response to it: contact Sheldon Toubman, counsel in *Carr v. Becerra* at sheldon.toubman@disrightsct.org
