



How Funding and Eligibility Cuts to Medicaid Harm Response Efforts to Public Health Crises (Updated May 2023)

[Michelle Yiu](#)

Introduction

If Congress enacts any funding or eligibility cuts to Medicaid, such as work requirements, block grants, and per capita caps, states will have fewer resources to respond to public health crises.¹ By imposing new budgetary pressures on states, such cuts would likely force states to cut benefits, putting beneficiaries at high risk of losing needed coverage and services.

Public health crises can cause states to incur significant and unexpected increases in medical costs for screenings and treatments. Medicaid is uniquely positioned to rapidly respond to public health crises due to its current financing structure. Medicaid's current matching rate structure guarantees open-ended federal funding to reimburse states for a percentage of its actual health care costs.² This built-in financial flexibility, coupled with options to pursue program waivers and make policy changes, allows state Medicaid programs to deploy emergency health care coverage and services without needing to wait for governmental help to pass legislatively through Congress.³ However, under funding or eligibility cuts to Medicaid, states would have to rely more on their own funds and likely shift resources from other beneficiaries and services to respond to a particular crisis. This would unnecessarily place individuals at risk of not receiving all the services they need during public health crises.

There is no need to look very far for examples of public health crises that would drastically harm people's health and wellbeing under any cuts to Medicaid. This issue brief explores Medicaid's critical role in responding to the recent public health crises of COVID-19, Mpox (formerly known as monkeypox), and Zika, and highlights how funding and eligibility cuts to Medicaid harm beneficiaries impacted by such crises.

Medicaid and COVID-19

In December 2019, COVID-19 was first detected in China. Rapidly spreading across the world with increasing numbers of infections and deaths, COVID-19 was declared a public health

emergency (PHE) by HHS on January 31, 2020 and a pandemic by the World Health Organization on March 11, 2020.⁴ As of March 2023, over 104 million cases of COVID-19 and 1.1 million deaths from COVID-19 have been identified in the U.S.⁵ From 2020 to 2022, COVID-19 ranked as the third leading cause of death in the U.S.⁶ Initially called “the great equalizer” by some, COVID-19 has actually magnified existing health inequities, disproportionately impacting Black, Indigenous, and communities of color; people with low incomes; people with disabilities, immunosuppression, and chronic conditions; and older adults.⁷

Most people who develop COVID-19 recover fully without needing any hospital treatment. However, older adults, individuals with immunosuppression and chronic conditions, and people who are unvaccinated are most at risk of severe COVID-19 that can result in death.⁸ Moreover, approximately ten to twenty percent of people infected with COVID-19 develop Long COVID, a wide range of long-term, physical and mental symptoms such as fatigue, breathlessness, and cognitive dysfunction.⁹ A 2022 Brookings Institution report found that up to four million working-age Americans are unable to work due to their Long COVID conditions.¹⁰ While Long COVID is recognized as a disability under the Americans with Disabilities Act if it substantially limits a person’s major life activity, there are often barriers to qualifying for federal disability benefits on the sole basis of Long COVID.¹¹ Still, people with Long COVID who can no longer work and obtain health coverage through employer-sponsored insurance can newly qualify for Medicaid if they meet income, categorical, or medical needy eligibility requirements.¹²

Medicaid has been crucial to COVID-19 response efforts for three primary reasons:

1. **Medicaid provides comprehensive health care for people with low incomes disproportionately impacted by the pandemic.**¹³ As the primary public health care program for people with low incomes, Medicaid has facilitated connections to COVID-19 testing, vaccines, and treatment for the nation’s most underserved. Medicaid has also provided states with the opportunity to expand coverage for telehealth services to provide care for individuals exposed to COVID-19 who have needed to quarantine or self-isolate.¹⁴
2. **Medicaid’s current financing structure guarantees that federal matching funds will automatically adjust for unexpected costs associated with public health crises.**¹⁵ This unique matching rate structure has ensured that adequate funding was available for increased demand, enrollment, and services during the pandemic, especially as people lost their employer-sponsored coverage due to the economic downturn.

- 3. Medicaid presents states with the flexibility to implement various waiver authorities and state plan amendments (SPAs) to facilitate health care coverage and access during the pandemic.**¹⁶ Many states have taken advantage of Medicaid flexibilities as part of their pandemic response, including Section 1135 emergency waivers, Section 1915(c) waiver Appendix K strategies, disaster relief and regular SPAs, Section 1115 demonstration waivers, and other state administrative actions.¹⁷ Such Medicaid options have allowed states to modify requirements for benefits, eligibility, cost-sharing, telehealth, provider qualifications, prior authorizations, appeals, payment methodologies, and more.¹⁸

Medicaid and Mpox

In May 2022, the most recent outbreak of Mpox began with cases reported in the U.S. and other countries outside of central and west Africa, where the disease is endemic.¹⁹ Becoming the largest-ever outbreak in the U.S. and worldwide, Mpox was declared a PHE in the U.S. on August 4, 2022.²⁰ As of March 2023, over 30,000 cases of Mpox and 40 deaths from Mpox have been identified in the country.²¹ Notably, over ninety percent of Mpox cases have been reported among Gay and Bisexual men, as well as other men who have sex with men.²² Mpox has also disproportionately affected Black and Latinx communities, people living with HIV and other sexually transmitted infections, and other members of the LGBTQ+ community, particularly transgender women and non-binary people.²³

Medicaid supported coverage for Mpox testing, vaccines, and therapies during the Mpox PHE for Medicaid beneficiaries. While Mpox testing was covered under the mandatory laboratory and X-ray services benefit, Mpox vaccines and therapies were optional benefits that states could provide through their Medicaid programs.²⁴ Available Medicaid flexibilities during the Mpox PHE were also similar to those available during the COVID-19 pandemic, albeit to a lesser degree. State Medicaid programs could implement existing flexibilities, such as Section 1115 demonstration waivers, Section 1915 waivers, and regular SPAs, but new Section 1135 emergency waivers and disaster relief SPAs were not available because a Presidential declaration of a national emergency did not occur.²⁵

Medicaid and Zika

In 2015, the most recent outbreak of Zika virus was first identified in Brazil.²⁶ While originally thought of as geographically limited, Zika quickly spread and became prevalent in parts of the U.S. such as Florida, Texas, Puerto Rico, and the U.S. Virgin Islands.²⁷ Disproportionately affecting women of reproductive age, pregnant people, and their families, particularly those with low incomes or who work outdoors, Zika can be transmitted during sexual activities from

individuals who have the virus to their partners and from pregnant people to their fetuses.²⁸ A pregnant person who is not experiencing symptoms of Zika can still pass the virus to their developing fetus.²⁹

In the U.S. and its territories, about five percent of pregnancies with Zika infections resulted in infants born with Zika-related complications such as microcephaly, a condition that is linked to brain underdevelopment, seizures, hearing and vision problems, and developmental delays.³⁰ Treatment, care, and services for one infant born with microcephaly may cost over \$4 million dollars and may reach as much as \$10 million over the infant's lifetime.³¹ During the 2015-2017 Zika outbreaks throughout the U.S. and its territories, 315 infants were reported to be born with Zika-related complications.³² Many of these children likely are eligible for Medicaid on the basis of disability because of the effects of microcephaly or other Zika-related complications.

In addition to the challenges and higher costs of caring for individuals born with Zika-related complications, states have spent additional federal funding to screen individuals, particularly pregnant people, for the disease.³³ In 2016, the Center for Medicaid and CHIP Services (CMCS) released additional guidance to State Medicaid directors highlighting that Zika screening services can be made available to adults through the optional diagnostic services benefit, optional screening services benefit, other preventive services benefit, and other laboratory and x-ray services benefit.³⁴ Moreover, Medicaid must cover all medically necessary diagnostic services related to a Zika infection, including the diagnosis of microcephaly and other Zika-related complications, without limit to children under age twenty-one through the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit.³⁵ Pregnant people who are infected are often monitored closely during pregnancy, adding to the costs of their prenatal care.³⁶ Since Medicaid pays for nearly half of all births in the U.S., many of those requiring additional prenatal care will likely be enrolled in Medicaid.³⁷ Medicaid also provides immediate coverage for infants born to Medicaid beneficiaries and maintains their eligibility until the infant's first birthday, further ensuring that the majority of Zika-related care for pregnant people and infants are covered.³⁸

The Harm of Funding and Eligibility Cuts in Public Health Crises

Any funding or eligibility cuts to Medicaid would constrain the ability of states to respond effectively to public health crises, leaving individuals and families without the resources necessary to protect themselves during public health crises. Medicaid covers many services, including preventive measures, for beneficiaries. These services include the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit for children and adolescents; family planning services and supplies; HIV care; hospital care; long-term care; pregnancy care;

prescription drugs; telehealth; testing, diagnostics, and laboratory services; and vaccines and immunizations—all of which are particularly important for individuals impacted by COVID-19, Mpox, and Zika. For more information on these services, see the [Appendix](#).

With less Medicaid funds, states would have reduced capacity to monitor, diagnose, and treat individuals during public health crises and pursue proactive measures to prevent outbreaks in their communities. The financing structure for Puerto Rico’s Medicaid program highlights how cuts to Medicaid would severely restrict states’ ability to rapidly respond to public health crises. Unlike the fifty states and DC, Puerto Rico is subject to a block grant that statutorily caps its federal Medicaid dollars.³⁹ Once these dollars are exhausted, Puerto Rico does not receive any additional federal financial support for its Medicaid program during the fiscal year and must rely on territory funds.⁴⁰ Approximately half of Puerto Ricans receive health care coverage through Medicaid.⁴¹ However, due to its block grant financing structure and low regular federal medical assistance rate (FMAP) set at fifty-five percent, Puerto Rico’s Medicaid program cannot afford to cover certain services and beneficiaries that are currently covered in the fifty states and DC.⁴² While the Consolidated Appropriations Act of 2023 temporarily ensures fiscal stability for Puerto Rico’s Medicaid program by providing adequate federal block grant funding and extending Puerto Rico’s FMAP to seventy-six percent through the end of fiscal year 2027, these concerns remain if cuts to Medicaid are implemented.⁴³

Under funding or eligibility cuts to Medicaid, any public health crisis that requires additional budgetary resources to mount response efforts would pose a harrowing dilemma for states. States would be forced to take undesirable courses of action, such as cutting other Medicaid services to shuffle funding towards needed screenings and treatments, waiting powerlessly for congressional approval of emergency funding, or, in the worst case, failing to adequately address the crisis due to the lack of funding.⁴⁴ In addition, cuts to Medicaid would not provide states with the flexibility to implement effective responses that account for scientific developments supporting the surveillance, prevention, and treatment of future outbreaks. Clearly, cuts to Medicaid would only exacerbate any budgetary pressures states might face when treatments in ongoing public health crises are commercialized and new crises emerge, especially if the federal government does not proactively and sufficiently appropriate dollars for public health emergency planning and preparedness.⁴⁵

Funding and eligibility cuts to Medicaid would also create a patchwork system of how states respond to public health crises. Consequently, states with historically lower levels of spending on Medicaid would likely have less flexibility and federal funding to respond to new viruses.⁴⁶ These states may have to rely on raising their own revenues by making cuts to other Medicaid services and health and social programs to redirect resources towards necessary emergency response efforts. This would result in the creation or exacerbation of inequities in access to

health care, as individuals and families in these states would likely not get the care they need just because of their zip code.

Under any cuts to Medicaid, states would be forced to make painstaking decisions regarding who gets care, what type of care is provided, and how much care beneficiaries can receive, pitting underserved communities against each other. For instance, due to the costs of care for a child with microcephaly, a child born with this disability may not get the long-term care they need, or they may receive limited services that would severely impact their health and quality of life. Without the full range of services readily available, individuals and families with low incomes would be forced to shoulder the additional responsibilities of accessing and paying for any services that cannot be provided through their state's Medicaid program. For many people with low incomes, this would be impossible. Undoubtedly, Medicaid funding or eligibility cuts combined with the stresses caused by public health crises would overburden individuals and families with low incomes and overwhelm states' safety-net health care systems.

Conclusion

COVID-19, Mpox, and Zika are recent examples of public health crises that demanded rapid response efforts to protect the public's health and wellbeing. Under its current financial structure, Medicaid has been key to preventing the spread of new viruses and infectious diseases, responding to the needs of individuals who may need screenings and treatments, and addressing the unplanned costs of public health crises. Imposing any cuts to Medicaid would only leave states with fewer resources and less flexibility to grapple with the negative health and economic consequences of COVID-19, Mpox, Zika, and future public health crises. Under funding or eligibility cuts to Medicaid, many individuals and families would lose access to the resources and treatments necessary to protect their health and wellbeing amidst the burdens of such crises.

See NHeLP's [What Makes Medicaid, Medicaid](#) series for more information on the unique and important ways that Medicaid meets the health care needs of individuals and families who are low-income and underserved. Also, see NHeLP's [Protect Medicaid Funding](#) series of short fact sheets for more information on particular services, issues, and populations.

Appendix: Related Medicaid Services

This appendix details Medicaid services that may be particularly relevant for individuals impacted by COVID-19, Mpox, and Zika. As the principal source of health care coverage for individuals with low incomes, Medicaid provides comprehensive health care services for 91.8 million people. Services discussed include:

- Early and Periodic Screening, Diagnostic, and treatment (EPSDT) benefit for children and adolescents;
- Family planning services and supplies;
- HIV care;
- Hospital care;
- Long-term care;
- Pregnancy care;
- Prescription drugs;
- Telehealth;
- Testing, diagnostics, and laboratory services; and
- Vaccines and immunizations.

Early and Periodic Screening, Diagnostic, and Treatment (EPSDT). Children under the age of twenty-one who are enrolled in Medicaid receive a comprehensive set of health benefits under EPSDT.⁴⁷ The goal of EPSDT is to ensure that children receive age-appropriate screenings and preventive treatment services that are necessary to “correct or ameliorate” health problems regardless of whether these services are available for adults in a state’s Medicaid program.⁴⁸ These services are critical for children with Long COVID, children born with microcephaly as a result of Zika infections during pregnancy, and children who may show signs of other Zika-related conditions as they develop.

Family Planning Services and Supplies. Medicaid is the single largest source of public funding for family planning services and supplies.⁴⁹ States are required to cover family planning services for all Medicaid enrollees of reproductive age.⁵⁰ Twenty-six states have extended their Medicaid family planning programs to individuals who would otherwise not be eligible for Medicaid.⁵¹ The 2016 CMCS guidance to State Medicaid directors also highlights that family planning services and supplies, including for pregnant people, are important services that prevent further Zika infections and are covered by Medicaid.⁵²

HIV Care. Covering forty percent of adults with HIV, Medicaid is the largest source of health insurance coverage for people living with HIV.⁵³ Medicaid covers comprehensive services that people with HIV need, including access to HIV testing, preventive services (such as pre-

exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP)), and treatments (such as antiretroviral therapy).⁵⁴ Because people living with HIV were disproportionately represented among Mpox cases generally and more severe cases that required hospitalization, Medicaid's coverage of services for people living with HIV was critical in the 2022 Mpox outbreak.⁵⁵

Hospital Care. States are required to cover inpatient and outpatient hospital services as a mandatory benefit in Medicaid.⁵⁶ From the beginning of the COVID-19 pandemic to now, the share of people infected by COVID-19 who developed severe illness and required hospitalization has decreased from fifteen percent to three percent.⁵⁷ Because hospitalization is only necessary for severe cases of illness, hospital care coverage in Medicaid is critical to protecting individuals' health and wellbeing when they are at their most vulnerable.

Long-Term Care. Medicaid pays for over half of the country's long-term services and supports (LTSS), including nursing home care, as a mandatory benefit.⁵⁸ Notably, Medicare and most other insurance do not cover LTSS. Within LTSS, Medicaid also covers home and community-based services (HCBS), a mixture of mandatory home health services and optional services like personal care, that allow individuals to receive care in non-institutional settings.⁵⁹ During the COVID-19 pandemic, nursing homes faced financial, resource, and capacity challenges in providing adequate care to residents, resulting in higher COVID-19 transmission.⁶⁰ Medicaid became the vehicle for states to direct increased funding to support nursing homes and bolster HCBS largely through various waiver flexibilities such as Section 1135, Section 1915(c) Appendix K, and Section 1115.⁶¹

Pregnancy Care. Medicaid covers nearly half of all births in the U.S., including more than half of births in six states.⁶² Under Medicaid, states must provide coverage for "services that are necessary for the health of the pregnant woman and fetus" and services for illnesses and conditions that "threaten the carrying of the fetus to full term or the safe delivery of the fetus."⁶³ These would include services recommended by the Centers for Disease Control and Prevention for pregnant people who have been possibly exposed to Zika, such as ultrasounds and amniocentesis.⁶⁴

Prescription Drugs. Although prescription drugs are an optional benefit in Medicaid, all states cover them.⁶⁵ States that offer the benefit in Medicaid must cover all FDA-approved drugs offered by manufacturers subject to rebate agreements and ensure that covered drugs are provided in "sufficient amount, duration, and scope."⁶⁶ State Medicaid programs have substantial discretion to control access to covered drugs, including determining whether drugs may be provided via home delivery or mail-order service and the quantity of drugs and number of refills allowed.⁶⁷ During the COVID-19 pandemic, some states chose to relax

quantity and refill limits to make it easier for Medicaid beneficiaries to obtain needed prescription medications.⁶⁸

Telehealth. Because federal Medicaid statutes and regulations mostly do not specifically address telehealth, states have broad flexibility in designing and implementing telehealth options in their Medicaid programs as long as the provided services continue to meet federal requirements.⁶⁹ While states have had the option to adopt telehealth services in Medicaid before, the COVID-19 pandemic particularly accelerated the expansion of Medicaid coverage for telehealth.⁷⁰ No federal approval is needed for states to adopt telehealth services if they implement provider payment parity and pay for telehealth services at the same rate as for in-person services.⁷¹ A state plan amendment (SPA) is only necessary to describe what type of telehealth services are covered or to implement a different payment methodology.⁷² During the pandemic, telehealth was key for providing care and services for individuals who were quarantined or self-isolated due to COVID-19 exposure.

Testing, Diagnostics, and Laboratory Services. Medicaid covers laboratory and X-ray services as a mandatory benefit.⁷³ Other testing, diagnostic, and screening services are optional benefits, meaning coverage can vary by state, but they are commonly covered in state Medicaid programs.⁷⁴ Due to the EPSDT benefit, children are eligible to receive all testing, diagnostic, screening, and laboratory services that are medically necessary, regardless of whether a state provides this coverage for adults in Medicaid.⁷⁵ Under the American Rescue Plan Act of 2021, Medicaid is required to cover COVID-19 testing, vaccines, and treatment without cost-sharing for Medicaid beneficiaries until the end of the first quarter after the end of the PHE on May 11, 2023.⁷⁶

Vaccines and Immunizations. For children, Medicaid covers all recommended vaccines without cost-sharing within the EPSDT benefit.⁷⁷ Previously for adults, state Medicaid programs were only required to cover vaccines without cost-sharing for the Medicaid Expansion population and could choose whether to provide vaccine coverage for adults enrolled under other eligibility categories.⁷⁸ This led to a patchwork system of vaccine coverage, with two in five adult Medicaid beneficiaries having varying access to vaccines, often with cost-sharing.⁷⁹ The COVID-19 pandemic especially highlighted this coverage gap in vaccines for adults in Medicaid. However, under the Inflation Reduction Act of 2022, state Medicaid programs must cover all vaccines recommended by the Advisory Committee on Immunization Practices without cost-sharing for adult Medicaid beneficiaries beginning in fall 2023.⁸⁰

ENDNOTES

¹ In this issue brief, the term “public health crises” refers to significant viral and infectious disease outbreaks that threaten the health of the public at-large. This brief explores the COVID-19 pandemic, Mpox (formerly known as monkeypox), and Zika virus as examples of public health crises in which Medicaid played a critical role in response efforts.

² Mara Youdelman, Nat’l Health Law Prog., *Evaluating Medicaid Block Grant & Per Capita Cap Proposals: More Questions than Answers* (Mar. 16, 2023), <https://healthlaw.org/resource/evaluating-medicaid-block-grants-per-capita-caps-updated-2023/>; see Medicaid & CHIP Payment & Access Comm’n (MACPAC), Matching Rates, <https://www.macpac.gov/subtopic/matching-rates/> (last visited Apr. 26, 2023) (The federal matching rate in Medicaid is determined by the state’s Federal Medical Assistance Percentage (FMAP), which is based on its per capita income—states with lower per capita incomes receive more federal funds).

³ Jocelyn Gruyer & David Rosales, Manatt Health, *Medicaid’s Role in Public Emergencies and Health Crises* (Apr. 2017), <https://www.manatt.com/insights/white-papers/2017/medicaids-role-in-public-emergencies-and-health-c> (Medicaid has played and continues to play an essential role in emergencies and public health crises, such as the HIV/AIDS epidemic; the 2001 World Trade Center attacks; Hurricane Katrina; the Flint, Michigan lead contamination crisis; and the national opioid epidemic); see MACPAC, Waivers, <https://www.macpac.gov/medicaid-101/waivers/> (last visited Apr. 26, 2023) (Medicaid waivers allow states to waive some statutory requirements to pilot new approaches to service delivery and change program rules, including deploying emergency health care coverage and services to respond to public health crises).

⁴ Ctrs. for Disease Control & Prevention (CDC), CDC Museum COVID-19 Timeline, <https://www.cdc.gov/museum/timeline/covid19.html> (last visited Apr. 26, 2023) (HHS has declared that the COVID-19 PHE will end on May 11, 2023).

⁵ CDC, COVID Data Tracker, <https://covid.cdc.gov/covid-data-tracker/> (last visited Apr. 26, 2023).

⁶ Jared Ortaliza et al., Peterson-KFF Health System Tracker, *COVID-19 Leading Cause of Death Ranking* (Nov. 10, 2022), <https://www.healthsystemtracker.org/brief/covid-19-leading-cause-of-death-ranking/>.

⁷ Stephen A Mein, *COVID-19 and Health Disparities: the Reality of “the Great Equalizer,”* 35 JOURNAL OF GEN. INTERNAL MED. 8, 2439-2440 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7224347/>; Max Fisher & Emma Bubola, *As Coronavirus Deepens Inequality, Inequality Worsens Its Spread*, THE NEW YORK TIMES (Mar. 16, 2020), <https://www.nytimes.com/2020/03/15/world/europe/coronavirus-inequality.html>; Admin. for Cmty. Living, *Impact of the COVID-19 Pandemic on People with Disabilities* (Apr.

2022), https://acl.gov/sites/default/files/COVID19/ACL_Research_ImpactC19-PWD.pdf; Latoya Hill & Samantha Artiga, Kaiser Fam. Found., *COVID-19 Cases and Deaths by Race/Ethnicity: Current Data and Changes Over Time* (Aug. 22, 2022), <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-cases-and-deaths-by-race-ethnicity-current-data-and-changes-over-time/>; see Zamir M. Brown, Nat'l Health Law Prog., *Can Coronavirus (COVID-19) be the Tipping Point for Health Equity?* (Apr. 30, 2020), <https://healthlaw.org/can-coronavirus-covid-19-be-the-tipping-point-for-health-equity/>.

⁸ World Health Org., Coronavirus Disease (COVID-19): Q&A, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19> (last visited Apr. 26, 2023).

⁹ *Id.*; David Putrino, *Long COVID: Incidence, Impacts, and Implications*, HEALTH AFFAIRS FOREFRONT (Mar. 29, 2023), <https://www.healthaffairs.org/content/forefront/long-covid-incidence-impacts-and-implications>; CDC, *Nearly One in Five American Adults Who Have Had COVID-19 Still Have "Long COVID"* (Jun. 22, 2022) https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20220622.htm.

¹⁰ Katie Bach, Brookings Inst., *New Data Shows Long COVID is Keeping as Many as 4 Million People Out of Work* (Aug. 24, 2022), <https://www.brookings.edu/research/new-data-shows-long-covid-is-keeping-as-many-as-4-million-people-out-of-work/>.

¹¹ HHS Office for Civil Rights, *Guidance on "Long COVID" as a Disability Under the ADA, Section 504, and Section 1557* (Jul. 26, 2021), <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>; Alice Burns, Kaiser Fam. Found., *What are the Implications of Long COVID for Employment and Health Coverage?* (Aug. 1, 2022), <https://www.kff.org/policy-watch/what-are-the-implications-of-long-covid-for-employment-and-health-coverage/>; Lydia Wheeler, *Long COVID's Catch-22: Too Sick to Work, Yet Not Quite Disabled*, BLOOMBERG LAW (Nov. 18, 2021), <https://news.bloomberglaw.com/health-law-and-business/long-covids-catch-22-too-sick-to-work-yet-not-quite-disabled>.

¹² Burns, *supra* note 11.

¹³ Robin Rudowitz et al., Kaiser Fam. Found., *10 Things to Know About Medicaid: Setting the Facts Straight* (Mar. 6, 2019), <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-setting-the-facts-straight/>; Hannah Katch, Ctr. for Budget & Pol'y Priorities, *Medicaid Works: Millions Benefit from Medicaid's Effective, Efficient Coverage* (Jun. 2, 2017), <https://www.cbpp.org/research/health/medicaid-works-millions-benefit-from-medicaid-effective-efficient-coverage>; Samantha Artiga et al., Kaiser Fam. Found., *How Can Medicaid Enhance State Capacity to Respond to COVID-19?* (Mar. 17, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/how-can-medicaid-enhance-state-capacity-to-respond-to-covid-19/>.

¹⁴ Ctrs. for Medicare & Medicaid Servs. (CMS), *State Medicaid & CHIP Telehealth Toolkit: Policy Considerations for States Expanding Use of Telehealth, COVID-19 Version* (Apr. 23, 2020), <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf>.

¹⁵ Artiga et al., *supra* note 13.

¹⁶ Leonardo Cuello, Nat'l Health Law Prog., *Overview on Using Medicaid to Respond to COVID-19* (Mar. 19, 2020), <https://healthlaw.org/resource/overview-on-using-medicaid-to-respond-to-covid-19/>; Kaiser Fam. Found., *Medicaid Emergency Authority Tracker: Approved State Actions to Address COVID-19* (Jul. 1, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/>; Artiga et al., *supra* note 13; *see* CMS, *Coronavirus Waivers & Flexibilities*, <https://www.cms.gov/coronavirus-waivers> (last visited Apr. 26, 2023).

¹⁷ Elizabeth Edwards et al., *Retaining Medicaid COVID-19 Changes to Support Community Living*, 14 ST. LOUIS U. JOURNAL OF HEALTH LAW & POL'Y 391, 403-04 (2021), <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1265&context=jhlp>; Cuello, *supra* note 16; *see* CMS, *supra* note 16.

¹⁸ Kaiser Fam. Found., *supra* note 16.

¹⁹ World Health Org., *Mpox (Monkeypox) Outbreak 2022*, <https://www.who.int/emergencies/situations/monkeypox-oubreak-2022>.

²⁰ Lindsey Dawson et al., Kaiser Fam. Found., *Key Questions About the Current U.S. Monkeypox Outbreak* (Jul. 27, 2022), <https://www.kff.org/other/issue-brief/key-questions-about-the-current-u-s-monkeypox-outbreak/>; HHS Admin. for Strategic Preparedness & Response, *Determination that a Public Health Emergency Exists* (Aug. 4, 2022), <https://aspr.hhs.gov/legal/PHE/Pages/monkeypox-4Aug22.aspx> (HHS ended the Mpox PHE on January 31, 2023).

²¹ CDC, *Mpox: 2022 Outbreak Cases and Data*, <https://www.cdc.gov/poxvirus/mpox/response/2022/index.html> (last visited Apr. 26, 2023).

²² *Id.* (Note that any individual can spread or contract Mpox through direct skin-to-skin contact, regardless of sexual orientation or gender identity); GLAAD, *Factsheet for the LGBTQ Community on Mpox*, <https://www.glaad.org/mpv>; David Philpott et al., *Epidemiologic and Clinical Characteristics of Monkeypox Cases—United States, May 17-July 22, 2022*, 71 MORBIDITY & MORTALITY WEEKLY REPORT 32, 1018-1022 (2022), <https://www.cdc.gov/mmwr/volumes/71/wr/mm7132e3.htm>; Dawn Blackburn et al., *Epidemiologic and Clinical Features of Mpox in Transgender and Gender-Diverse Adults—United States, May-November 2022*, 71 MORBIDITY & MORTALITY WEEKLY REPORT 5152, 1605-1609 (2022), <https://www.cdc.gov/mmwr/volumes/71/wr/mm715152a1.htm>.

²³ CDC, *Mpox Cases by Age and Gender and Race and Ethnicity*, <https://www.cdc.gov/poxvirus/mpox/response/2022/demographics.html> (last visited Apr. 26,

2023) (Among Black and Latinx people, 30.9 percent and 29.2 percent of Mpox cases were reported respectively); Kathryn G. Curran et al., *HIV and Sexually Transmitted Infections Among Persons with Monkeypox—Eight U.S. Jurisdictions, May 17-July 22, 2022*, 71 MORBIDITY & MORTALITY WEEKLY REPORT 36, 1141-1147 (2022), <https://www.cdc.gov/mmwr/volumes/71/wr/mm7136a1.htm>; Blackburn et al., *supra* note 22 (While transgender and gender-diverse adults are estimated to make up 0.5 percent of U.S. adults, 1.7 percent of Mpox cases were reported among this population group); Jennifer Kates et al., Kaiser Fam. Found., *National Data Shows Continuing Disparities in Monkeypox (MPX) Cases and Vaccinations Among Black and Hispanic People* (Oct. 5, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/national-data-show-continuing-disparities-in-mpx-monkeypox-cases-and-vaccinations-among-black-and-hispanic-people/>.

²⁴ CMS, *All-State Medicaid and CHIP Call: Medicaid & CHIP Coverage of Monkeypox Services* (Sept. 13, 2022), <https://www.medicaid.gov/resources-for-states/downloads/covid19allstatecall09132022.pdf> (While there is no FDA-approved treatment specifically for Mpox, antiviral drugs that have been developed to protect against smallpox may be beneficial in treating Mpox).

²⁵ *Id.*

²⁶ World Health Org., *Zika Virus*, <https://www.who.int/news-room/fact-sheets/detail/zika-virus> (last visited Apr. 26, 2023).

²⁷ CDC, *Zika Cases in the United States*, <https://www.cdc.gov/zika/reporting/index.html> (last visited Apr. 26, 2023).

²⁸ CDC, *Zika: The Basics of the Virus and How to Protect Yourself*, <https://www.cdc.gov/zika/pdfs/fs-zika-basics.pdf> (last visited Apr. 26, 2023).

²⁹ CDC, *Zika Virus: Pregnancy*, <https://www.cdc.gov/zika/pregnancy/index.html> (last visited Apr. 26, 2023).

³⁰ *Id.*; CDC, *Data and Statistics on Zika and Pregnancy*, <https://www.cdc.gov/pregnancy/zika/data/index.html> (last visited Apr. 26, 2023); Nicole M. Roth et al., *Zika-Associated Birth Defects Reported in Pregnancies with Laboratory Evidence of Confirmed or Possible Zika Virus Infection—U.S. Zika Pregnancy and Infant Registry, December 1, 2015-March 31, 2018*, 71 MORBIDITY & MORTALITY WEEKLY REPORT 3, 73-79 (2022), <https://www.cdc.gov/mmwr/volumes/71/wr/mm7103a1.htm>; CDC, *Facts about Microcephaly*, <https://www.cdc.gov/ncbddd/birthdefects/microcephaly.html> (last visited Apr. 26, 2023).

³¹ CDC, *Transcript for CDC Telebriefing: Zika Summit Press Conference* (Apr. 1, 2016), <https://www.cdc.gov/media/releases/2016/t0404-zika-summit.html>; Daniel Chang, *One in 10 Pregnant Women with Zika had Fetus or Baby with Birth Defects, CDC Says*, MIAMI HERALD (Apr. 4, 2017), <https://www.miamiherald.com/news/health-care/article142594664.html>.

³² Roth et al., *supra* note 30 (Between December 1, 2015 and March 31, 2018, 315 infants

were born with Zika-related complications from pregnancies with confirmed or possible Zika virus infection. 124 cases occurred in the U.S. states and DC, while 191 cases occurred in the U.S. territories and freely associated states).

³³ Katie Worth, *As Zika Season Nears, States Brace for an End to CDC Funding*, FRONTLINE (Apr. 21, 2017), <https://www.pbs.org/wgbh/frontline/article/as-zika-season-nears-states-brace-for-an-end-to-cdc-funding/>.

³⁴ Ctr. for Medicaid & CHIP Servs. (CMCS), *Medicaid Benefits Available for the Prevention, Detection, and Response to the Zika Virus* (Jun. 1, 2016), <https://www.medicaid.gov/federal-policy-guidance/downloads/cib060116.pdf>.

³⁵ *Id.*

³⁶ See Titilope Oduyebo et al., *Update: Interim Guidance for Health Care Providers Caring for Pregnant Women with Possible Zika Virus Exposure—United States (Including U.S. Territories)*, July 2017, 66 MORBIDITY & MORTALITY WEEKLY REPORT 29, 781-793 (2017), https://www.cdc.gov/mmwr/volumes/66/wr/mm6629e1.htm?s_cid=mm6629e1_w.

³⁷ MACPAC, *Medicaid's Role in Financing Maternity Care* (Jan. 2020), <https://www.macpac.gov/wp-content/uploads/2020/01/Medicaid%E2%80%99s-Role-in-Financing-Maternity-Care.pdf>; Kaiser Fam. Found., *Births Financed by Medicaid*, <https://www.kff.org/medicaid/state-indicator/births-financed-by-medicaid/> (last visited Apr. 26, 2023); see also Amy Chen & Michelle Yiu, Nat'l Health Law Prog., *Protect Medicaid Funding Issue #8: Pregnant People (Updated March 2023)* (Mar. 15, 2023), <https://healthlaw.org/wp-content/uploads/2023/03/PMF-Issue-8-Pregnant-People.pdf>.

³⁸ 42 U.S.C. § 1396a(e)(4); 42 C.F.R. § 435.117.

³⁹ Edwin Park, The Commonwealth Fund, *How States Would Fare Under Medicaid Block Grants or Per Capita Caps: Lessons from Puerto Rico* (Jan. 6, 2021), <https://www.commonwealthfund.org/publications/issue-briefs/2021/jan/how-states-fare-medicaid-block-grants-per-capita-caps-puerto-rico>; Kaiser Fam. Found., *Puerto Rico: Medicaid, Fiscal Issues, and the Zika Challenge* (Sept. 2016), <https://files.kff.org/attachment/Fact-Sheet-Puerto-Rico-Medicaid-Fiscal-Issues-and-the-Zika-Challenge>.

⁴⁰ MACPAC, *Medicaid and CHIP in Puerto Rico* (Feb. 2021), <https://www.macpac.gov/wp-content/uploads/2020/08/Medicaid-and-CHIP-in-Puerto-Rico.pdf>.

⁴¹ Medicaid.gov, *Quality of Care in Puerto Rico*, <https://www.medicaid.gov/state-overviews/puerto-rico.html>.

⁴² Letter from Eduardo Bhatia to Donald Sundquist, Chairman, Medicaid Commission (Aug. 17, 2005), https://aspe.hhs.gov/sites/default/files/private/pdf/255386/Puerto_Rico_081705.pdf; Park, *supra* note 39; see also Kaiser Fam. Found., *supra* note 39.

⁴³ Edwin Park, Georgetown Univ. Ctr. for Children & Families, *End of the Year Appropriations Bill Would Avert Medicaid Fiscal Cliff for Puerto Rico and the Territories* (Dec. 20, 2022),

<https://ccf.georgetown.edu/2022/12/20/end-of-the-year-appropriations-bill-would-avert-medicaid-fiscal-cliff-for-puerto-rico-and-the-territories/>; see also Edwin Park et al., Georgetown Univ. Ctr. for Children & Families, *Consolidated Appropriations Act, 2023: Medicaid and CHIP Provisions Explained* (Jan. 5, 2023), <https://ccf.georgetown.edu/2023/01/05/consolidated-appropriations-act-2023-medicaid-and-chip-provisions-explained/>.

⁴⁴ Mara Youdelman, Nat'l Health Law Prog., *Fact Sheet: What is a Per Capita Cap?* (Mar. 16, 2023), <https://healthlaw.org/resource/fact-sheet-what-is-a-per-capita-cap-updated-2023/>; Gruyer & Rosales, *supra* note 3.

⁴⁵ See Jennifer Kates et al., Kaiser Fam. Found., *Commercialization of COVID-19 Vaccines, Treatments, and Tests: Implications for Access and Coverage* (Feb. 13, 2023), <https://www.kff.org/coronavirus-covid-19/issue-brief/commercialization-of-covid-19-vaccines-treatments-and-tests-implications-for-access-and-coverage/>; Ariel Cohen, *Pandemic Fatigue Threatens COVID-19, Monkeypox Funding Requests*, ROLL CALL (Sept. 14, 2022), <https://rollcall.com/2022/09/14/pandemic-fatigue-threatens-covid-19-monkeypox-funding-requests/>; Worth, *supra* note 33.

⁴⁶ See Kaiser Fam. Found., *Federal and State Share of Medicaid Spending*, <https://www.kff.org/medicaid/state-indicator/federalstate-share-of-spending/> (last visited Apr. 26, 2023); Kaiser Fam. Found., *Medicaid Spending per Enrollee (Full or Partial Benefit)*, <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/> (last visited Apr. 26, 2023).

⁴⁷ 42 U.S.C. §§ 1396a(a)(10)(A), a(43), 1396d(a)(4)(B), 1396(r); see Wayne Turner & Emma Parker-Newton, Nat'l Health Law Prog., *Protect Medicaid Funding Issue #5: Children's Health (Updated March 2023)* (Mar. 15, 2023), <https://healthlaw.org/wp-content/uploads/2023/03/PMF-Issue-5-Childrens-Health.pdf>.

⁴⁸ 42 U.S.C. §§ 1396a(a)(43)(C), 1396d(r)(5); 42 C.F.R. §§ 441.50-441.62.

⁴⁹ Usha Ranji et al., Kaiser Fam. Found., *Medicaid Coverage of Family Planning Benefits: Findings from a 2021 State Survey* (Feb. 17, 2022), <https://www.kff.org/womens-health-policy/report/medicaid-coverage-of-family-planning-benefits-findings-from-a-2021-state-survey/>; Kaiser Fam. Found., *Women's Health Insurance Coverage*, <https://www.kff.org/womens-health-policy/fact-sheet/womens-health-insurance-coverage/> (last visited Apr. 26, 2023) (Medicaid accounts for seventy-five percent of all publicly funded family planning services).

⁵⁰ 42 U.S.C. § 1396d(a)(4)(C); 42 C.F.R. § 441.20.

⁵¹ Guttmacher Inst., *Medicaid Family Planning Eligibility Expansions*, <https://www.guttmacher.org/state-policy/explore/medicaid-family-planning-eligibility-expansions> (last visited Apr. 26, 2023).

⁵² CMCS, *supra* note 34.

⁵³ Lindsey Dawson et al., Kaiser Fam. Found., *Medicaid and People with HIV* (Mar. 27, 2023), <https://www.kff.org/hiv/aids/issue-brief/medicaid-and-people-with-hiv/>.

⁵⁴ *Id*; see Catherine McKee et al., Nat'l Health Law Prog., *Protect Medicaid Funding Issue #9: People Living with HIV (Updated March 2023)* (Mar. 15, 2023), <https://healthlaw.org/wp-content/uploads/2023/03/PMF-Issue-9-People-Living-With-HIV.pdf>.

⁵⁵ Curran et al., *supra* note 23 (Eight percent of people with HIV who developed Mpox were hospitalized, compared with three percent of people without HIV who developed Mpox).

⁵⁶ 42 U.S.C. §§ 1396d(a)(1), (a)(2)(A); 42 C.F.R. §§ 440.2(a), 440.10, 440.20(a), 456.50-456.145.

⁵⁷ World Health Org., *supra* note 8.

⁵⁸ 42 U.S.C. §§ 1396d(a)(4)(A), 1396d(f), 1396r; Priya Chidambaram & Alice Burns, Kaiser Fam. Found., *10 Things About Long-Term Services and Supports (LTSS)* (Sept. 15, 2022), <https://www.kff.org/medicaid/issue-brief/10-thingsabout-long-term-services-and-supports-ltss/>; see also Dania Douglas et al., Nat'l Health Law Prog., *Protect Medicaid Funding Issue #6: Older Adults and People with Disabilities (Updated March 2023)* (Mar. 15, 2023), <https://healthlaw.org/wp-content/uploads/2023/03/PMF-Issue-6-Older-Adults-People-With-Disabilities.pdf>.

⁵⁹ 42 U.S.C. § 1396d(a)(7); 42 C.F.R. §§ 440.70, 441.15, 484.36; Chidambaram & Burns, *supra* note 58.

⁶⁰ Leading Age, *States Leverage Medicaid to Provide Nursing Homes a Lifeline through COVID-19* (Jun. 12, 2020), <https://leadingage.org/states-leverage-medicaid-to-provide-nursing-homes-a-lifeline-through-covid-19/>; Gov't Accountability Office, *COVID-19 in Nursing Homes: Most Homes Had Multiple Outbreaks and Weeks of Sustained Transmission from May 2020 through January 2021* (May 19, 2021), <https://www.gao.gov/products/gao-21-367>; see Miriam Delaney Heard, Nat'l Health Law Prog., *COVID-19 Crisis: Unspoken Impacts on Older Adults and Persons with Disabilities* (May 12, 2020), <https://healthlaw.org/covid-19-crisis-unspoken-impacts-on-older-adults-and-persons-with-disabilities/>.

⁶¹ Leading Age, *supra* note 60; Delaney Heard, *supra* note 60; Cuello, *supra* note 16; see CMS, *supra* note 16.

⁶² MACPAC, *supra* note 37.

⁶³ 42 C.F.R. § 440.210(a)(2)(i)-(ii).

⁶⁴ See Oduyebo et al., *supra* note 36.

⁶⁵ 42 U.S.C. § 1396d(a)(12); 42 C.F.R. §§ 440.120(a); Abbi Coursolle, Nat'l Health Law Prog., *Fact Sheet: Utilization Controls for Medicaid Prescription Drugs* (Dec. 1, 2016), <https://healthlaw.org/resource/fact-sheet-utilization-controls-for-medicaid-prescription-drugs/>.

⁶⁶ 42 U.S.C. § 1396r-8(k)(2)(i); 42 C.F.R. § 440.230(b), (d).

⁶⁷ 42 C.F.R. § 440.230(d); Coursolle, *supra* note 65; Wayne Turner & Abigail Coursolle, Nat'l

Health Law Prog., *Ensuring People Have Access to Prescription Drugs During the COVID-19 Pandemic* (Mar. 18, 2020), <https://healthlaw.org/ensuring-people-have-access-to-prescription-drugs-during-the-covid-19-pandemic/>.

⁶⁸ Turner & Coursolle, *supra* note 67.

⁶⁹ CMS, Telehealth, <https://www.medicaid.gov/medicaid/benefits/telehealth/index.html> (last visited Apr. 26, 2023).

⁷⁰ See Justin Lo et al., Kaiser Fam. Found., *Telehealth Has Played an Outsized Role Meeting Mental Health Need During the COVID-19 Pandemic* (Mar. 15, 2022), <https://www.kff.org/coronavirus-covid-19/issue-brief/telehealth-has-played-an-outsized-role-meeting-mental-health-needs-during-the-covid-19-pandemic/>.

⁷¹ CMS, *supra* note 14.

⁷² *Id.*

⁷³ 42 U.S.C. § 1396(a)(3); 42 C.F.R. § 440.40.

⁷⁴ 42 U.S.C. § 1396d(a)(13); 42 C.F.R. § 440.130.

⁷⁵ 42 U.S.C. §§ 1396a(a)(43)(C), 1396(r)(5); 42 C.F.R. §§ 441.50-441.62.

⁷⁶ Mara Youdelman, Nat'l Health Law Prog., *The American Rescue Plan Act: What's it do for Health?* (Mar. 12, 2021), <https://healthlaw.org/the-american-rescue-plan-act-whats-it-do-for-health/>; Jennifer Kates et al., *supra* note 45.

⁷⁷ 42 U.S.C. §§ 1396a(a)(43)(B), 1396d(r)(1)-(4).

⁷⁸ 42 U.S.C. § 300gg-13; Wayne Turner, Nat'l Health Law Prog., *Little Noticed Provision of Inflation Reduction Act Will Have a Big Impact on Medicaid, Improving Health Outcomes for Enrollees* (Aug. 23, 2022), <https://healthlaw.org/little-noticed-provision-of-inflation-reduction-act-will-have-a-big-impact-on-medicaid-improving-health-outcomes-for-enrollees/>.

⁷⁹ MACPAC, *Vaccine Access for Adults Enrolled in Medicaid* (Mar. 2022), <https://www.macpac.gov/publication/vaccine-access-for-adults-enrolled-in-medicaid/>; Turner, *supra* note 78.

⁸⁰ 42 U.S.C. § 1396d(a)(13); Turner, *supra* note 78.