The Role of Due Process

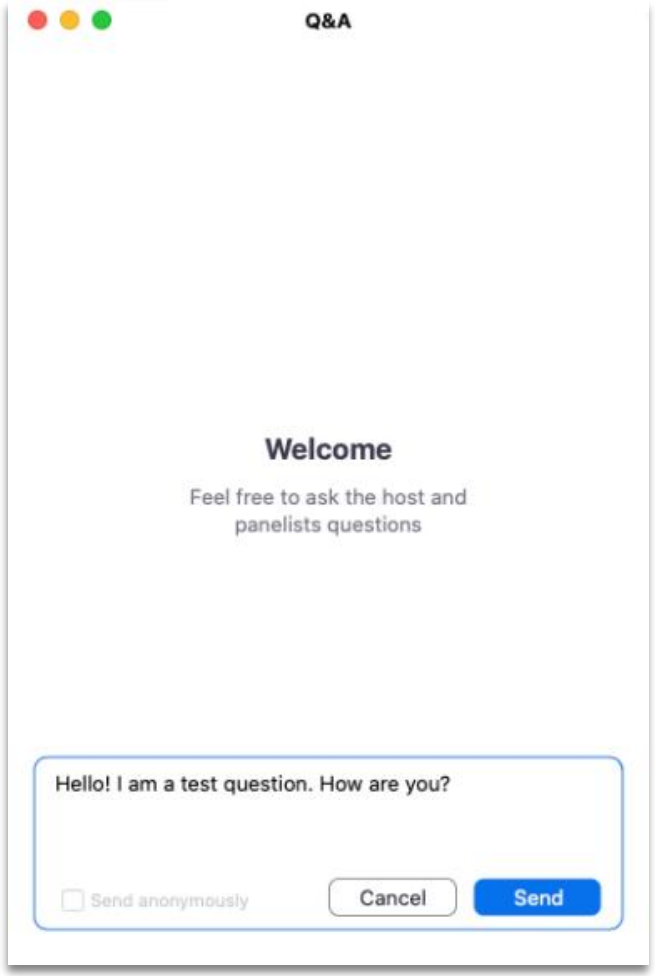
What We Know and What Happens Next: OBBBA and its Impact on Health Care Coverage

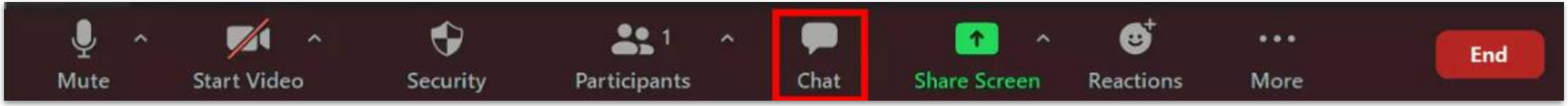
September 25, 2025

NATIONAL HEALTH LAW PROGRAM

Housekeeping – Q&A and Chat

- Please use the Q&A box for all **questions**.
  - Click on the Q&A box at the bottom of the screen
  - We will answer questions at the end
- This webinar is being recorded. Everyone who registered will receive a link to the recording and slides.
- If you have a **technical issue**, please use the chat function.





About the National Health Law Program

- National nonprofit committed to improving health care access, equity, and quality for low-income and underserved individuals and families
- Federal, state, and local partners in 50 states, D.C., and P.R.
  - Poverty and legal aid advocates
  - Health Law Partnerships
  - Disability rights and justice and sexual and reproductive health, rights, and justice advocates
- Strategy Areas: Federal Policy, California Policy, Enforcement & Litigation
- Practice Areas: Delivery System Reform, Disability, Eligibility & Enrollment, Services, Sexual & Reproductive Health
- Website: www.healthlaw.org
  - Follow us on Bluesky (https://bsky.app/profile/nhelp.bsky.social)
  - Like us on Facebook (@NHeLProgram)

NHeLP's Equity Stance

Health equity is achieved when a person's characteristics and circumstances – including race and ethnicity, sex, gender identity, sexual orientation, age, income, class, disability, health, immigration status, nationality, religious beliefs, language proficiency, or geographic location – do not predict their health outcomes.

Our goal is to continuously examine the health care system and to advocate for health laws and policies that counteract structural barriers, institutional power dynamics, and examples of overt discrimination and implicit bias that create health inequity.

https://healthlaw.org/equity-stance/

What We Know and What Happens Next

Upcoming webinars in this series:

- Access to Care: Cost Sharing, Premiums, and Retroactive Eligibility – October 9, 2025
- The Impact on People with Disabilities – October 23, 2025

Visit NHeLP's Medicaid Defense Hub:

Prepare. Enforce. Protect: Medicaid + ACA Defense

What We'll Cover

- What Is Due Process in Medicaid Eligibility & Access to Services?
- What Specific Procedural Protections Does Due Process Guarantee?
  - Notice
  - Right to Hearing
  - Ascertainable Standards
- What is the Role of Due Process in OBBBA Implementation?

What is Due Process?

- Due process = notice and opportunity to be heard

- Legal Authority
  - Constitution
    - Due Process Clause of the U.S. Constitution: 14th Amendment
    - *Goldberg v. Kelly*, 397 U.S. 254 (1970)
  - Medicaid statute and regulations
    - 42 U.S.C. §§ 1396a(a)(3), 1396u-2(b)(4)
    - 42 C.F.R. pts. 431 subpart E (state fair hearing), 438 subpart F (managed care)
    - Managed care contracts

- When are rights triggered?
  - Denial of application for benefits OR failure to act with reasonable promptness
  - For reduction, suspension, denial, or termination of services

What Procedural Protections Does Due Process Guarantee?

- Notice
  - Advance written notice detailing the reasons for the state's proposed action
  - Adequacy of Notice
    - Constitution: reasonably calculated to allow the recipient a meaningful opportunity to present their objections
    - Medicaid regulations: five key requirements (42 C.F.R. § 431.210)
  - Continued benefits (42 C.F.R. § § 431.230-.231)
  - Accessibility: notice must be written in plain language and accessible

- Right to a Hearing
  - Pre-termination hearing before an impartial hearing officer
  - Requests/discouragement
  - Applicable regulations including "mass change" exception: 42 C.F.R. § § 431.220-.224; .230-.224

- Ascertainable standards

Role of Due Process in OBBBA Implementation | Procedural Termination Errors

- Partial moratorium on eligibility & enrollment regulations
  - Less opportunity to streamline eligibility processes
  - Eliminates specificity about state's obligations regarding returned mail (former 42 C.F.R. § 435.919)

- Increased likelihood for procedural terminations
  - Increased eligibility checks for those in Medicaid expansion eligibility category
  - Increased checks for individuals who have moved ("PARIS matches")
  - Quarterly death master file matches
    - Advanced notice exception under 42 C.F.R. § 431.213(a)
    - Must reinstate benefits upon discovery of error

Due Process in OBBBA Implementation | Termination of Previously Eligible Immigrants

- Effective October 1, 2026
- Eliminates categories of lawfully present immigrants eligible for Medicaid
  - **Eligible**
    - Lawful permanent residents (green card holders) - 5 year ban still applies
    - Certain Cuban & Haitian nationals
    - COFA (Compact of Free Association) - migrants from Micronesia, Palau, or the Marshall Islands
  - **Newly *In*-Eligible**
    - Asylees/withhold of removal
    - Refugees
    - Survivors of domestic violence w/pending or approved application for lawful status under VAWA
    - Survivors of trafficking w/a pending or approved T-visa
    - People w/TPS or valid visa holders

Due Process in OBBBA Implementation | Reduction in RME Period

- Effective January 1, 2027
- Previously entitled to 3 months of "retroactive Medicaid eligibility" (RME) prior to application if otherwise eligible
- OBBBA reduces by 1 month for Medicaid expansion population; 2 months for all other beneficiaries
- "Mass change" exception applies: no right to hearing to challenge denial of 3 months of coverage
- *However*, with the loss of this eligibility period, more important than ever to appeal an erroneous termination and preserve the right to reinstatement from the initial application or termination

Due Process in OBBBA Implementation | Optional Benefit Reductions

- Eligibility terminations
  - The role of *ex parte* review

- Service terminations
  - *Olmstead* still applies

- "Mass change" exception for hearings/notice still required

Due Process in OBBBA Implementation | Work Requirements

- Effective January 1, 2027 (or earlier by state option): outreach must begin, at least, 3 months prior to implementation date
- "Look-back" period
  - Applicants: 1-3 consecutive months, at state option
  - Beneficiaries: 1-6 non-consecutive months, at state option
- Verifications must be attempted *ex parte*
- Notices of non-compliance
  - Specific content/deadlines outlined in statute (awaiting IFR & other CMS guidance)
  - Data sharing across agencies
- Notices of adverse action
  - Express right to an *ex parte* review & cont'd eligibility pending review
  - Must provide for fair hearing in accordance with 42 U.S.C. § 1396a(a)(3)

Due Process in OBBBA Implementation | Overall Increased Administrative Burden

- Increased burdens on eligibility systems, call centers, eligibility staff & hearings offices will likely result in increased risk of erroneous deprivation

- Clear explanations in notice become critical

- Changes to functionality of state eligibility systems & programming errors must be carefully considered, including user-testing

Resources

- NHeLP OBBBA damage mitigation resource hub: https://healthlaw.org/prepare/
- NHeLP Medicaid defense resource hub: https://healthlaw.org/medicaid-defense/
- Join our newsletter for action alerts and new resources: https://healthlaw.org/sign-up/

Questions?

Connect with National Health Law Program online:

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@NHeLProgram

@NHeLP.bsky.social

WASHINGTON, DC OFFICE
1444 I Street NW, Suite 1105
Washington, DC 20005
ph: (202) 289-7661

LOS ANGELES OFFICE
3701 Wilshire Blvd, Suite 315
Los Angeles, CA 90010
ph: (310) 204-6010

NORTH CAROLINA OFFICE
1512 E. Franklin St., Suite 110
Chapel Hill, NC 27514
ph: (919) 968-6308