

Submitted electronically by email to 1115waivers@health.ny.gov

February 15, 2024

Department of Health
Office of Health Insurance Programs
Waiver Management Unit
99 Washington Avenue 8th fl. (Suite 826)
Albany, NY 12210

Re: 1115 Public Forum Comment - Continuous Eligibility for Children up to Age Six 1115 Amendment

Dear Deputy Commissioner Amir Bassiri:

We appreciate the opportunity to comment on the New York State Department of Health Office of Health Insurance Programs' proposed 1115 waiver amendment, Continuous Eligibility for Children up to Age Six.¹

We are a collection of advocacy organizations that work with and on behalf of low-income children and their families across New York State. We work to defend and advance the rights of children to live and thrive at home with their families, and thus take great interest in ensuring children maintain access to health insurance coverage without churn.

PROGRAM DESCRIPTION, GOALS AND OBJECTIVES

We support the proposed waiver amendment to authorize continuous enrollment for Children's Medicaid and Child Health Plus coverage for children during the first six years of their lives, without regard to whether a child's family income exceeds eligibility limits. Continuous enrollment for children until they turn six would advance many goals, including:

- Decrease churn for children, which occurs roughly 50% less in states with continuous eligibility for children than in states without continuous eligibility.²
- Decrease the burden of coverage gaps that falls disproportionately on children of color, who are more likely to experience churn after Medicaid renewals.³
- Promote health equity, as Black, Hispanic/Latinx, and Indigenous communities are more likely to live in poverty and experience income volatility than their white peers.⁴
- Ensure consistent coverage so children can access the sixteen preventive well-child visits recommended by the American Academy of Pediatrics for children before age 6.⁵

- Decrease unnecessary emergency room use, and decrease hospital admissions, thus decreasing average monthly Medicaid costs per enrollee.⁶
- Decrease the risk of significant medical debt faced by the uninsured.⁷
- Decrease churn, which is associated with a higher likelihood of switching doctors, skipping or stopping medications, delaying care, and receiving fair or poor-quality care.⁸
- Increase the use of medical care, and increase access to preventive and specialty care, for children with special health care needs.⁹
- Reduce the unnecessary administrative cost of churn per person, which was estimated to be between \$400 and \$600 to disenroll and reenroll just once back in 2005-2010; numbers that would likely be higher today.¹⁰
- Decrease Medicaid expenditures over time, as monthly Medicaid costs are lower for children who are enrolled for longer periods of times.¹¹

We offer the following recommendation to strengthen this section:

- The waiver amendment should specify that unless stated, no protections afforded to children enrolled in Medicaid or CHIP have been changed or modified by this waiver amendment.

ELIGIBILITY, BENEFITS AND COST-SHARING REQUIREMENTS

We urge New York to use the draft waiver amendment to do more to protect kids' access to EPSDT and Medicaid benefits, like Oregon does.

To strengthen this section, we recommend New York State create a universal benefit package that ensures access to all necessary care for children up to age six in Medicaid and Child Health Plus. We offer the following recommendations regarding a universal benefit package:

- The universal benefit package should include EPSDT benefits and services, such that the package is in alignment with the following sections of the Social Security Act: Section 1905(r), Section 1905(a), and Section 1902(a). Creating a universal benefit package in this waiver for all children in either program until they turn six years old would mirror Oregon's 1115 demonstration, through which Oregon included that "[a]ll beneficiaries receive the [Oregon Health Plan] Plus benefit ... which consists of ... for all children younger than 21 years old, and [Youth with Special Health Care Needs], all section 1905(a) services that are determined necessary to correct or ameliorate physical and mental illnesses and conditions, regardless of whether they are included in the state plan, in accordance with the EPSDT definition at section 1905(r) of the Act" ¹² In New York, creating a universal benefit package will remedy current discrepancies between the rights and services available to children in Medicaid and CHIP. New York State has a "Combination CHIP" program, such that children in Medicaid ($\leq 223\%$ FPL for children 0 - 1 year old, and $\leq 154\%$ FPL for children 1 - 5 years old) and children in the Medicaid Expansion CHIP Program (110% - 154% FPL for children 6 - 18 years old) are entitled to EPSDT benefits, while children in the Separate CHIP Program (224% - 405% FPL for children 0 - 1 year old, and 155% - 405% FPL for children 1 - 18 years old) are not.^{13 14} This discrepancy means that certain services are excluded for children in Child Health Plus, such as private duty nursing, home healthcare (except in limited circumstances), services in a skilled nursing facility, and Non-Emergency Medical Transportation.¹⁵

- The universal benefit package should include OPWDD services. Currently, OPWDD services are not covered in Child Health Plus.¹⁶ While most OPWDD services are Medicaid-funded services provided through the OPWDD Home and Community Based Services (HCBS) waiver, which uses “Family of One” budgeting that enables children to be Medicaid eligible without regard to their parents’ income, some OPWDD services are not provided through the OPWDD HCBS waiver. Examples of these non-waiver OPWDD services include the OPWDD Family Support Services (FSS) program¹⁷ and the “Limited Exception for Individuals Receiving Respite Services.”¹⁸ Children with intellectual and developmental disabilities from slightly higher income families need and should still have access to all OPWDD services if so desired.

Creating a universal benefit package would help children and health plans, alike. Below are a few examples of situations in which a universal benefit package for this 1115 waiver amendment would serve each stakeholder:

- **Child (example 1):** A 2-month-old medically fragile child who is technologically dependent and needs around-the-clock Private Duty Nursing, but whose family has not yet learned about or enrolled their child into the Children’s Waiver, would be impacted. When that child’s family makes 220% FPL, the child would be enrolled into Medicaid and would have access to the Private Duty Nursing they needed. However, if the child’s family income increased to 230% FPL, the child would be disenrolled from Medicaid and enrolled into Child Health Plus, and thus would lose access to the Private Duty Nursing they needed to live safely at home with their family.
- **Child (example 2):** A 4-year-old child with a speech impediment who needed Speech Therapy sessions three times a week, but whose family needed support transporting the kid to sessions, would be impacted. When that child’s family makes 150% FPL, the child would be enrolled into Medicaid and would have access to Non-Emergency Medical Transportation to get to and from the Speech Therapy sessions. However, if the child’s family income increased to 160%, the child would be disenrolled from Medicaid and enrolled into Child Health Plus, and thus would lose access to the Non-Emergency Medical Transportation they needed to access regular Speech Therapy services.
- **Health Plans:** Many health insurance companies (“health plans”) that offer Child Health Plus products also offer Medicaid Managed Care products. For example, in New York City, Affinity by Molina Healthcare, Anthem BCBS HealthPlus, Emblem, Fidelis Care, Healthfirst, MetroPlus Health Plan, United Healthcare Community Plan, and WellCare each offer both products for 2024.¹⁹ Creating a universal benefit package in Medicaid and Child Health Plus for children until they turn six will reduce the administrative burden that will otherwise fall on health plans when a child’s family income fluctuates, resulting in the child cycling between products and benefits packages.

In the event New York does not include a universal benefit package for children in this waiver until they turn age six, we recommend the following:

- Include explicit language that memorializes what we understand to be the Department of Health’s existing practice that children are entitled to the most favorable budgeting, per federal law;²⁰
- For children up to age six whose family income decreases such that they were once eligible for the Separate CHIP Program, but are now eligible for the Medicaid program, allow the families to select which program they would prefer for their child to be enrolled

into. Pair this selection choice with notices to families and consumer education materials regarding the differences in benefits packages, monthly premium responsibilities, and the effect of immigration status on eligibility between the programs;²¹

- For children up to age six whose family income increases such that they were once eligible for the Medicaid program, but are now eligible for the Separate CHIP Program, allow the families to select which program they would prefer for their child to be enrolled into. Pair this selection choice with notices to families and consumer education materials regarding the differences in benefits packages, monthly premium responsibilities, and the effect of immigration status on eligibility between the programs;
- Allow parents to choose a new plan each time their child disenrolls and reenrolls in a Medicaid or Child Health Plus product. We understand New York already allows all people to change Medicaid plans once a year.

IMPLEMENTATION TIMELINE

We support New York State's plan to implement continuous eligibility for children in Medicaid and Child Health Plus, from birth up to age six, by September 1, 2024.

To strengthen the implementation of this waiver amendment, we recommend the following:

- Create notices and consumer education materials that will be sent out to eligible families by mail, on ACCESS HRA, and on the New York State Of Health (NYSOH); and
- Provide a public comment period for all notices and consumer education materials regarding this waiver amendment.

CONCLUSION

We support the proposed 1115 waiver amendment, which will greatly advance the health and wellbeing of low-income children and their families in New York once approved.

We have included numerous citations to supporting research, including direct links to the research. We direct NYSDOH to each of the materials we have cited and made available through active links, and we request that the full text of each of the studies and articles cited, along with the full text of our comment, be considered part of the formal administrative record for purposes of the New York State Administrative Procedure Act. If NYSDOH is not planning to consider these materials part of the record as we have requested here, we ask that you notify us and provide us an opportunity to submit copies of the studies and articles into the record.

Thank you for your attention to these comments. If you have further questions, please contact Rachel Holtzman at rholtzman@nylag.org.

Sincerely,

Medicaid Matters New York
New York Legal Assistance Group
American Academy of Pediatrics–New York State Chapter
Schuyler Center for Analysis and Advocacy
The Children's Agenda

¹ NEW YORK STATE DEPARTMENT OF HEALTH OFFICE OF HEALTH INSURANCE PROGRAMS, NEW YORK STATE MEDICAID REDESIGN TEAM (MRT) WAIVER: CONTINUOUS ELIGIBILITY WAIVER AMENDMENT (Jan. 16, 2024), https://www.health.ny.gov/health_care/medicaid/redesign/med_waiver_1115/docs/draft_amend_request.pdf.

² Elizabeth Williams et al., *Implications of Continuous Eligibility Policies for Children's Medicaid Enrollment Churn*, KAISER FAMILY FOUNDATION (Dec. 21, 2022), <https://www.kff.org/medicaid/issue-brief/implications-of-continuous-eligibility-policies-for-childrens-medicaid-enrollment-churn/>.

³ In Washington State's 1115 waiver amendment for 0-6 continuous coverage, it noted that in Washington, "white Hispanic Medicaid enrollees ages 0-6 experienced 46 months of disruption every five years per 100 children. This is significantly lower than the same aged Black Hispanic Medicaid enrollees who experienced 63 months of disruption every five years per 100 children." STATE OF WASHINGTON: REQUEST FOR RENEWAL OF SECTION 1115 MEDICAID DEMONSTRATION WAIVER, MEDICAID TRANSFORMATION PROJECT (MTP) (June 29, 2022 and July 1, 2022), https://www.medicaid.gov/sites/default/files/2022-08/wa-medicaid-transformation-pa5_0.pdf. While New York State has not released data regarding months of coverage disruption for children of various races, similar trends likely exist in New York, as New Yorkers of color are more likely to be uninsured than their white counterparts. See: NEW YORK STATE COMPTROLLER THOMAS P. DINAPOLI: HEALTH INSURANCE COVERAGE IN NEW YORK STATE (Aug. 2023), <https://www.osc.ny.gov/files/reports/pdf/health-insurance-coverage-in-new-york-state.pdf>. Further, nationwide studies have found that Black and Hispanic children are more likely to experience churn following a Medicaid renewal than their white counterparts. See ELIZABETH WILLIAMS ET AL., *supra* note 2.

⁴ Tricia Brooks & Alexa Gardner, *Continuous Coverage in Medicaid and CHIP*, GEORGETOWN UNIVERSITY HEALTH POLICY INSTITUTE CENTER FOR CHILDREN AND FAMILIES (July 2021), <https://ccf.georgetown.edu/wp-content/uploads/2012/03/CE-program-snapshot.pdf> ("losing coverage, even temporarily, compounds other challenges these families encounter as a result of structural racism in the health care system").

⁵ *Recommendations for Preventive Pediatric Health Care*, BRIGHT FUTURES/ AMERICAN ACADEMY OF PEDIATRICS (Apr. 2023), https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf.

⁶ See, e.g., Leighton Ku & Isabel Platt, *Duration and Continuity of Medicaid Enrollment Before the COVID-19 Pandemic*, 3 JAMA HEALTH FORUM (published online) (Dec. 16, 2022) <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2799532>; see also Leighton Ku & Erika Steinmetz, *Bridging the Gap: Continuity and Quality of Coverage in Medicaid*, GEORGE WASHINGTON SCHOOL OF PUBLIC HEALTH AND HEALTH SERVICES (Sept. 10, 2013), Figure 2, p. 6, <http://www.communityplans.net/Portals/0/Policy/Medicaid/GW%20Continuity%20Report%20%209-10-13.pdf>; see also Ritesh Banerjee et al., *Impact of discontinuity in health insurance on resource utilization*, 10 BMC Health Services Research (published online) (July 6, 2010), <http://www.biomedcentral.com/1472-6963/10/195>.

⁷ OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION: THE VALUE OF HEALTH INSURANCE: FEW OF THE UNINSURED HAVE ADEQUATE RESOURCES TO PAY POTENTIAL HOSPITAL BILLS (May 9, 2011), <http://aspe.hhs.gov/health/reports/2011/ValueofInsurance/rb.pdf>.

⁸ Benjamin D. Sommers et al., *Insurance Churning Rates For Low-Income Adults Under Health Reform: Lower Than Expected But Still Harmful For Many*, 35 HEALTH AFFAIRS (published online) (Oct. 2016), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0455>.

⁹ Erin Brantley et al., *Continuous Eligibility for Medicaid Associated With Improved Child Health Outcomes*, 79 MEDICAL CARE RESEARCH AND REVIEW (published online) (Sept. 16, 2021), <https://journals.sagepub.com/doi/abs/10.1177/10775587211021172?journalCode=mcrd>.

¹⁰ Katherine Swartz et al., *Reducing Medicaid Churning: Extending Eligibility for Twelve Months or to End of Calendar Year is Most Effective*, 34 HEALTH AFFAIRS (published online) (July 1, 2015), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.1204>.

¹¹ Leighton Ku et al., *Continuity of Medicaid Coverage in an Era of Transition: A Working Paper*, GEORGE WASHINGTON UNIVERSITY MILKEN INSTITUTE SCHOOL OF PUBLIC HEALTH (Nov. 1, 2015), http://www.communityplans.net/Portals/0/Policy/Medicaid/GW_ContinuityInAnEraOfTransition_11-01-15.pdf.

¹² CENTERS FOR MEDICARE & MEDICAID SERVICES STATE DEMONSTRATION GROUP, TECHNICAL CORRECTIONS TO OREGON’S SECTION 1115(A) DEMONSTRATION: “OREGON HEALTH PLAN (OHP)” (Jan. 13, 2022), Section 4.2(c): Summary of OHP Benefit Structure, p. 15, <https://www.medicaid.gov/sites/default/files/2023-02/or-health-plan-ca-10282022.pdf> (note that Oregon has a “Combination CHIP” program).

¹³ *Medicaid and CHIP Income Eligibility Limits for Children as a Percent of the Federal Poverty Level*, KAISER FAMILY FOUNDATION (Jan. 1, 2023), <https://www.kff.org/affordable-care-act/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-as-a-percent-of-the-federal-poverty-level/> (scroll down or filter for “New York”).

¹⁴ Note that in New York, the Medicaid Expansion CHIP Program is sometimes referred to as “Child Health Plus A” while the Separate CHIP Program is sometimes referred to as “Child Health Plus B.” However, for the sake of simplicity in these comments, both Medicaid and the Medicaid Expansion CHIP Program are referred to as “Medicaid” while the Separate CHIP Program is referred to as “Child Health Plus.”

¹⁵ NEW YORK CHILD HEALTH PLAN FOR THE CHILDREN’S HEALTH INSURANCE PROGRAM, (Mar. 6, 2023), Appendix I: New York State Child Health Plus Benefits Package - Child Health Plus Benefits Package Exclusions, p. 45, https://www.health.ny.gov/regulations/state_plans/chp/amendments/docs/2023-03-06_spa_23-35.pdf.

¹⁶ *Benefit Development Resource Toolkit: Medicaid*, OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, <https://opwdd.ny.gov/providers/benefit-development-resource-toolkit-medicaid#child-health-plus> (last visited Feb. 9, 2024).

¹⁷ *Family Support Services (FSS) Overview*, OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES (2022), https://opwdd.ny.gov/system/files/documents/2022/05/017_family_support_services_4202022.pdf.

¹⁸ Information About the Limited Exception for Individuals Receiving Respite Services, OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES (July 2020), <https://opwdd.ny.gov/system/files/documents/2023/05/opwdd-liability-notice-10-english.pdf>.

¹⁹ *Plans by County*, NEW YORK STATE OF HEALTH, <https://info.nystateofhealth.ny.gov/plans-by-county> (filter by “New York” for County, “Child Health Plus” or “Medicaid” for Program, and “2024” for Year).

²⁰ 42 C.F.R. § 436.404.

²¹ Note that notices and consumer education materials for this scenario (families who have lost income) will be especially important for children who are not U.S. citizens. While all children can qualify for Child Health Plus regardless of immigration status, only certain children who are immigrants (qualified immigrants and those with PRUCOL) can qualify for Medicaid and the Medicaid Expansion CHIP Program. See NEW YORK STATE DEPARTMENT OF HEALTH: DOCUMENTATION GUIDE – IMMIGRANT ELIGIBILITY FOR HEALTH COVERAGE IN NEW YORK STATE, GIS 04 MA/003 Attachment 1 (Feb. 2004), https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/04ma003att1.pdf.