

Ensuring Compliance with Federal Renewal Requirements

April 3, 2023

3:30 – 4:30 p.m. ET

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About State Health and Value Strategies

State Health and Value Strategies (SHVS) assists states in their efforts to transform health and healthcare by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's School of Public and International Affairs. The program connects states with experts and peers to undertake healthcare transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.shvs.org.

Questions? Email Heather Howard at heatherh@Princeton.edu.

Support for this working session was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.

About Manatt Health

Manatt Health, a division of Manatt, Phelps & Phillips, LLP, is an integrated legal and consulting practice with over 160 professionals in nine locations across the country. Manatt Health supports states, providers, and insurers with understanding and navigating the complex and rapidly evolving healthcare policy and regulatory landscape. Manatt Health brings deep subject matter expertise to its clients, helping them expand coverage, increase access, and create new ways of organizing, paying for, and delivering care. For more information, visit www.manatt.com/ManattHealth.aspx

Housekeeping Details

- Use the 'Q&A' function in Zoom to submit questions and comments to the meeting facilitators. **Note that you must select to submit a question anonymously.** The meeting facilitators will address questions and comments verbally in a manner that maintains the anonymity of the state.
- Use the 'raise hand' feature in Zoom if you would like to speak. The meeting facilitators will then unmute you.
- Because we are treating this convening as a safe space to problem solve and learn from one another, remember that "Vegas Rules" apply.
- The slide deck will be made available after the session.

Working Session Approach

Agenda

- **Context Setting**
- **Examples of Mitigations to Address Non-Compliance With Federal Renewal Requirements**
- **Discussion**



Objective: Review new resources for states to: (1) assess compliance with federal renewal requirements; and (2) implement mitigation strategies to correct non-compliance and promote continuity of coverage during unwinding.



Context Setting

Consolidated Appropriations Act, 2023 (CAA) Changes to Unwinding Parameters

Section 5131 of the CAA made key changes to the parameters for unwinding to support coverage retention for eligible individuals and facilitate transitions to other coverage programs for those ineligible.



Decouples the Medicaid continuous coverage requirement from the end of the COVID-19 public health emergency, and sets a new statutory end date of March 31, 2023, enabling states to initiate renewals as early as February 1, 2023 (though states may not terminate Medicaid enrollment until April 1, 2023).



Provides for extended enhanced Federal Medical Assistance Percentage (FMAP) to support unwinding during a nine-month phase-down from April 1, 2023, through December 31, 2023, and establishes conditions for claiming the enhanced FMAP.

★ **Today's Focus**







Institutes new Medicaid, Children's Health Insurance Program (CHIP), and marketplace reporting requirements to enable oversight of unwinding and improve transparency.



Gives the Centers for Medicare and Medicaid Services (CMS) targeted enforcement powers to reduce states' *regular* FMAP, require corrective action, suspend procedural terminations, and impose civil monetary penalties as a result of non-compliance with federal renewal and CAA reporting requirements.

Source: [CAA Section 5131](#); CMCS Informational Bulletin, [Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the CAA](#); and SHVS, [New CMS Guidance on Unwinding Provisions in the Consolidated Appropriations Act, 2023](#).

CAA Conditions, Requirements, and Implications

   CAA Conditions	eFMAP (\$)	Federal Enforcement Mechanisms	
	eFMAP Contingent Upon Meeting Condition?	Subject to Penalty for Not Meeting Condition?	Applicable CMS Penalty
★ Conduct eligibility redeterminations and renewals in compliance with federal requirements.	Yes <i>(However, CMS will allow for mitigations if states are unable to fully comply)</i>	Yes	For failure to comply with federal renewal requirements: <ul style="list-style-type: none"> • Corrective action plan (and potential suspension of procedural terminations and/or civil monetary penalties for failure to submit or implement).
Attempt to obtain up-to-date enrollee contact information prior to redetermining eligibility.	Yes	No	N/A
Contact enrollees using two modalities before terminating enrollment based on returned mail	Yes	No	N/A
 CAA Requirements	eFMAP (\$)	Federal Enforcement Mechanisms	
	eFMAP Contingent Upon Compliance?	Subject to Penalty for Noncompliance?	Applicable CMS Penalty
Report on a monthly basis to CMS Medicaid/CHIP, Marketplace, and Basic Health Plan (if applicable) data related to eligibility redeterminations.	No	Yes	For failure to report required information: <ul style="list-style-type: none"> • <i>Regular</i> FMAP reduction • Corrective action plan (and potential suspension of procedural terminations and/or civil monetary penalties for failure to submit or implement)

Source: [CAA Section 5131](#); CMCS Informational Bulletin, [Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the CAA](#); and CMS, [SHO Letter # 23-002](#).

Ensuring Compliance With Federal Renewal Requirements: State Diagnostic Assessment Tool

On March 17, SHVS and Manatt Health released a diagnostic assessment tool to support states in their efforts to evaluate their compliance with federal regulatory renewal requirements (42 CFR § 435.916).

- Assessing compliance with the federal regulatory renewal requirements can help states:



Ensure receipt of sustained, enhanced FMAP.



Avoid corrective action imposed by CMS.



Promote continuity of coverage and care during unwinding.



Make long-term improvements to their eligibility and enrollment infrastructure—including achieving full compliance with federal renewal requirements within two years after unwinding.

- States that are not able to fully comply with federal regulatory renewal requirements may still access the enhanced FMAP and avoid corrective action by adopting CMS-approved mitigation strategies (see next slide).

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Federal Renewal Requirements: Diagnostic Assessment Tool

Federal Medicaid Regulatory Requirements at 42 CFR § 435.916 ^a	Applicable to ^b		
	MAGI	Non-MAGI	CHIP
General Renewal Processes			
When regular eligibility and enrollment operations resume, states must:			
<input type="checkbox"/> Renew eligibility only once every 12 months and no more frequently than once every 12 months	✓		✓
<input type="checkbox"/> Establish an eligibility period that extends from the effective date of the last determination of eligibility	✓	✓	✓
Ex Parte Renewals			
To begin the renewal/redetermination process, states are required to:			
<input type="checkbox"/> Attempt to renew and redetermine eligibility on an ex parte basis by using reliable information ^c available in a person's account or through electronic data sources and only request information/documentation when sufficient information is not available through electronic data sources ^d	✓	✓	✓
<input type="checkbox"/> Use a variety of income and other data to verify eligibility, including data that was already verified ^e (e.g., information from other human services programs)			✓
<input type="checkbox"/> Do not:			
<input type="checkbox"/> Require consent as a condition of conducting an ex parte determination			
<input type="checkbox"/> Exclude specific populations from ex parte (e.g., individuals who previously reported self-employment income)	✓	✓	✓
<input type="checkbox"/> Limit the number of consecutive ex parte renewals			
<input type="checkbox"/> Require all household members to return a renewal form because one member was not determined on an ex parte basis			
<input type="checkbox"/> Use the state's Asset Verification System to check financial assets prior to sending the renewal form (for non-Modified Adjusted Gross Income (MAGI) populations that have an asset test)		✓	
<input type="checkbox"/> Do not delay completion of an ex parte renewal for Medicaid pending provision of documentation or other requirements for the Supplemental Nutrition Assistance Program (SNAP) or other human services programs that are not needed for Medicaid	✓	✓	
<input type="checkbox"/> Provide notice to enrollees when the agency is able to renew eligibility on an ex parte basis, including:			
<input type="checkbox"/> or the eligibility determination and basis	✓		✓
<input type="checkbox"/> That the enrollee is not required to sign or return the notice if the information is accurate, but has an obligation to inform the state of any inaccuracies or subsequent changes	✓		✓
Renewal Form			
If information is sufficient to determine eligibility on an ex parte basis, states must:			
<input type="checkbox"/> Send a renewal form ^f and request from the enrollee only the information necessary to determine eligibility	✓	✓	✓
<input type="checkbox"/> Prepopulate the renewal form with the most recent, reliable, and relevant information ^g (State option to prepopulate for non-MAGI enrollees)	✓		✓

ENSURING COMPLIANCE WITH FEDERAL RENEWAL REQUIREMENTS: STATE DIAGNOSTIC ASSESSMENT TOOL 4

Available here: <https://www.shvs.org/resource/ensuring-compliance-with-federal-renewal-requirements-state-diagnostic-assessment-tool/>

State Mitigation Strategies Template to Support Compliance with Section 5131 of the CAA

In February, the National Association of Medicaid Directors (NAMD) released a template for states to select from a menu of mitigations and propose selected strategies to CMS to correct compliance issues.

- Mitigations are intended to address every aspect of the federally required Medicaid renewal process, including conducting *ex parte* renewals, the renewal form, the reconsideration period, and determining eligibility on all bases.
- CMS is requiring many states to:
 - Hold procedural denials until mitigations are implemented.
 - Implement multiple strategies to come into compliance and mitigate deficiencies.
- Leveraging the CMS-37 form to draw down the enhanced FMAP is contingent upon compliance with all CAA conditions (or receiving CMS approval of the mitigation strategies plan and complying with the two other CAA conditions related to obtaining up-to-date contact information prior to redetermination and conducting multiple modality outreach based on returned mail prior to termination).
- CMS will monitor data and implementation of mitigations and may require states to adopt additional strategies or impose corrective action.



In addition to addressing the unprecedented volume of pending eligibility and enrollment actions, non-compliant states looking to secure the enhanced FMAP and avoid corrective action must quickly implement mitigations and plan for long-term changes to come into full compliance with the federal regulatory renewal requirements within two years after the end of a state's unwinding period (e.g., May 2024).

State Mitigation Strategies Template Preview

States may obtain this template by requesting it from NAMD; it is not publicly available at this time.


Proposed State Mitigation Strategies to Support Compliance with Provisions in Section 5131 of the Consolidated Appropriations Act (CAA), 2023

State: _____
 Medicaid Director: _____
 Date of submission: _____
 State point of contact for mitigation plan: _____

Medicaid Renewal Requirement	Deficiency (select all that apply)	State-Proposed Mitigation Strategies	Implementation Timeline	Comments/Additional Information
A. Ex Parte Renewals States must first attempt to conduct an <i>ex parte</i> renewal for all beneficiaries. ¹	<input type="checkbox"/> Lack of <i>ex parte</i> functionality for MAGI populations (select and describe, as needed): 	1. Maximize number of MAGI-based individuals renewed without requesting additional information <input type="checkbox"/> a. Renew MAGI eligibility based on findings from other program(s) <input type="checkbox"/> SNAP <input type="checkbox"/> TANF <input type="checkbox"/> Other Means-Tested Program: _____ <input type="checkbox"/> b. Implement the Facilitated Enrollment SPA Option ⁱ <input type="checkbox"/> SNAP <input type="checkbox"/> TANF <input type="checkbox"/> Other Means-Tested Program: _____ <input type="checkbox"/> c. Implement Express Lane Eligibility for children ⁱⁱ 2. Simplify requirements to complete the renewal form & provide documentation, when required <input type="checkbox"/> a. Use a simplified renewal form (asking only if individual's income and, if applicable, assets remain below the eligibility standard) <input type="checkbox"/> b. Add language to the renewal form or include envelope "stuffer"/insert with the renewal form instructing individuals to only respond with specific information that is necessary to complete the renewal <input type="checkbox"/> c. Streamline verification processes (e.g., accept reasonable explanations, eliminate the requirement to provide documentation of residency at renewal unless information indicates ineligibility)		

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Also see this CMS document providing a list of available guidance, tools, and resources for states as they implement renewal mitigation strategies: <https://www.medicaid.gov/resources-for-states/downloads/support-resources-state-imp-rms.pdf>



Examples of Mitigations to Address Non-Compliance With Federal Renewal Requirements




Example 1: Assessing Compliance with *Ex Parte* Renewal Requirements

As a first step, states can use the SHVS diagnostic tool to review the federal *ex parte* renewal requirements and identify potential areas of noncompliance.

Federal Medicaid Regulatory Requirements at 42 CFR § 435.916 ⁴	Applicable to ⁵		
	MAGI	Non-MAGI	CHIP
To begin the renewal/redetermination process, states are required to:			
<input type="checkbox"/> Attempt to renew and redetermine eligibility on an <i>ex parte</i> basis by using reliable information ⁶ available in a person's account or through electronic data sources and only request information/documentation when sufficient information is not available through electronic data sources ⁷	✓	✓	✓
<input type="checkbox"/> Use a variety of income and other data to verify eligibility, including data that was already verified ⁸ (e.g., information from other human service programs)	✓	✓	✓
<input type="checkbox"/> Do not:			
<input type="checkbox"/> Require consent as a condition of conducting an <i>ex parte</i> determination			
<input type="checkbox"/> Exclude specific populations from <i>ex parte</i> (e.g., individuals who previously reported self-employment income)	✓	✓	✓
<input type="checkbox"/> Limit the number of consecutive <i>ex parte</i> renewals			
<input type="checkbox"/> Require all household members to return a renewal form because one member was not determined on an <i>ex parte</i> basis			
<input type="checkbox"/> Use the state's Asset Verification System to check financial assets prior to sending the renewal form [for non-Modified Adjusted Gross Income (MAGI) populations that have an asset test]		✓	
<input type="checkbox"/> Do not delay completion of an <i>ex parte</i> renewal for Medicaid pending provision of documentation or other requirements for the Supplemental Nutrition Assistance Program (SNAP) or other human services programs that are not needed for Medicaid	✓	✓	
<input type="checkbox"/> Provide notice to enrollees when the agency is able to renew eligibility on an <i>ex parte</i> basis, including:			
<input type="checkbox"/> Of the eligibility determination and basis	✓	✓	✓
<input type="checkbox"/> That the enrollee is not required to sign or return the notice if the information is accurate, but has an obligation to inform the state of any inaccuracies or subsequent changes			

- To the extent possible, states should seek to rectify identified issues/gaps by taking steps to comply with the federal renewal requirements (summarized here).
- In instances when states are unable to do so timely (e.g., by April 1st to continue receiving the enhanced FMAP), they may instead propose alternative mitigations commensurate with identified deficiencies.
- States with approved mitigation plans have 90 days to develop a plan and timeline for achieving full compliance with federal renewal requirements no later than two years after the end of the state's unwinding period.

Example 1: Adopting Mitigations for Lack of *Ex Parte* Functionality

CMS Requirement	Example Mitigation Strategies	State Examples
<p>States are required to attempt the <i>ex parte</i> process for all Medicaid enrollees, including Modified Adjusted Gross Income (MAGI) enrollees and non-MAGI enrollees with asset tests.</p> <div data-bbox="48 821 334 1100" style="background-color: #e6e6fa; padding: 10px; margin-top: 10px;"> <p><i>States may institutionalize on a permanent basis certain mitigations denoted with an asterisk.</i></p> </div>	<p>For MAGI and Non-MAGI Enrollees:</p> <ul style="list-style-type: none"> ▪ Renew eligibility based on findings from other program(s) [e.g., via Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF)]. [Express Lane Eligibility or targeted SNAP State Plan Amendment (SPA) authority required to implement on a permanent basis with more stringent parameters.*] ▪ Pend procedural terminations until mitigation strategies are in place. ▪ Use a simplified form to help enrollees provide renewal information and provide documentation. ▪ Enhance outreach and support for enrollees completing and submitting renewal forms/documentation (e.g., provide lists of enrollees due for renewal each month to managed care plans, send earlier advance notice, provide additional time to respond to notices).* <p>For Non-MAGI Enrollees Only:</p> <ul style="list-style-type: none"> ▪ Waive the asset test during unwinding or disregard increases in assets over the asset standard only during unwinding (or waive the asset test on a permanent basis, requiring 1902(r)(2) authority*). ▪ Renew eligibility: (1) based on continued eligibility for SSI*; and/or (2) without requesting income or resource information from enrollees who are in deemed SSI categories, only had stable income such as Title II income, or had no assets at application or their most recent redetermination. 	<div data-bbox="1400 392 1487 471" style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p>33 states are providing managed care organizations (MCOs) with advance lists of members up for renewal.</p> </div> </div> <hr/> <div data-bbox="1400 606 1487 685" style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p>One state is planning to eliminate the asset limit for non-MAGI enrollees for the duration of the unwinding period through the end of 2024.</p> </div> </div> <hr/> <div data-bbox="1400 863 1487 942" style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p>Another state is requesting authority to renew eligibility for non-MAGI enrollees without requesting income information for those who only had stable income sources (e.g., Social Security Income (SSI), Title II, Railroad Income) at application or their most recent redetermination.</p> </div> </div>




Source: Kaiser Family Foundation, Medicaid and CHIP Eligibility, Enrollment, and Renewal Policies as States Prepare for the Unwinding of the Pandemic-Era Continuous Enrollment Provision.

Example 2: Assessing Requirements Related to Submitting the Renewal Form

States can also leverage the diagnostic tool to assess compliance with federal requirements related to the renewal form and take steps to comply or adopt mitigation strategies to meet the CAA conditions and achieving full compliance within two years of the end of unwinding.

Federal Medicaid Regulatory Requirements at 42 CFR § 435.916 ⁴	Applicable to ⁵		
	MAGI	Non-MAGI	CHIP
States are required to:			
<input type="checkbox"/> Ensure enrollees can return the signed renewal form through all available modalities: <ul style="list-style-type: none"> <input type="checkbox"/> Online <input type="checkbox"/> Telephone <input type="checkbox"/> Mail <input type="checkbox"/> In-person 	✓	✓	✓
<input type="checkbox"/> Accept signatures that are: <ul style="list-style-type: none"> <input type="checkbox"/> Handwritten <input type="checkbox"/> Electronic <input type="checkbox"/> Telephonic 	✓	✓	✓
<input type="checkbox"/> Ensure renewal forms and notices are accessible to individuals with limited English proficiency and disabilities	✓	✓	✓

Example 2: Adopting Mitigations When Renewal Form Cannot be Submitted Through All Modalities

CMS Requirement	Example Mitigation Strategies	State Examples
<p>States are required to ensure that all enrollees (MAGI, non-MAGI, and CHIP) can return the signed renewal form through all available modalities:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Online <input type="checkbox"/> Telephone <input type="checkbox"/> Mail <input type="checkbox"/> In-person 	<ul style="list-style-type: none"> ▪ Accept images of completed paper renewal forms/documentation/signatures via secure email or other online upload mechanism.* ▪ Extend call center hours/capacity to accept more phone renewals—must include enhanced promotion of telephone option and state must ensure sufficient call center capacity for timely response to requests for telephone renewals.* ▪ Prominently display information on available local assistance to complete renewals online, via social media, and through other mechanisms (e.g., interactive voice response).* ▪ Permit individuals/organizations providing assistance by phone to serve as authorized representatives based on a verbal signature. ▪ Deploy eligibility workers to additional outstation locations to provide assistance with completing renewals.* ▪ Provide additional time for all enrollees to submit a renewal form.* 	<div data-bbox="1348 396 1435 482"></div> <p data-bbox="1445 401 1866 551">One state is establishing an email account to enable submission/acceptance of the renewal form via email.</p> <hr/> <div data-bbox="1348 572 1435 658"></div> <p data-bbox="1445 576 1866 851">Another state is pursuing section 1902(e)(14) authority to permit individuals/organizations providing assistance by phone to serve as authorized representatives based on a verbal signature.</p> <hr/> <div data-bbox="1348 865 1435 951"></div> <p data-bbox="1445 869 1866 1143">Over half of the states now have online portals that allow community partners and assisters to submit applications and assist applicants and enrollees with enrollment and renewal.</p>

States may institutionalize on a permanent basis certain mitigations denoted with an asterisk.

Source: Kaiser Family Foundation, [Medicaid and CHIP Eligibility, Enrollment, and Renewal Policies as States Prepare for the Unwinding of the Pandemic-Era Continuous Enrollment Provision](#).

Discussion

The slides are available at www.shvs.org. For more information, see SHVS' PHE unwinding page, [Resources for States on Unwinding the Medicaid Continuous Coverage Requirement](#).

Thank You

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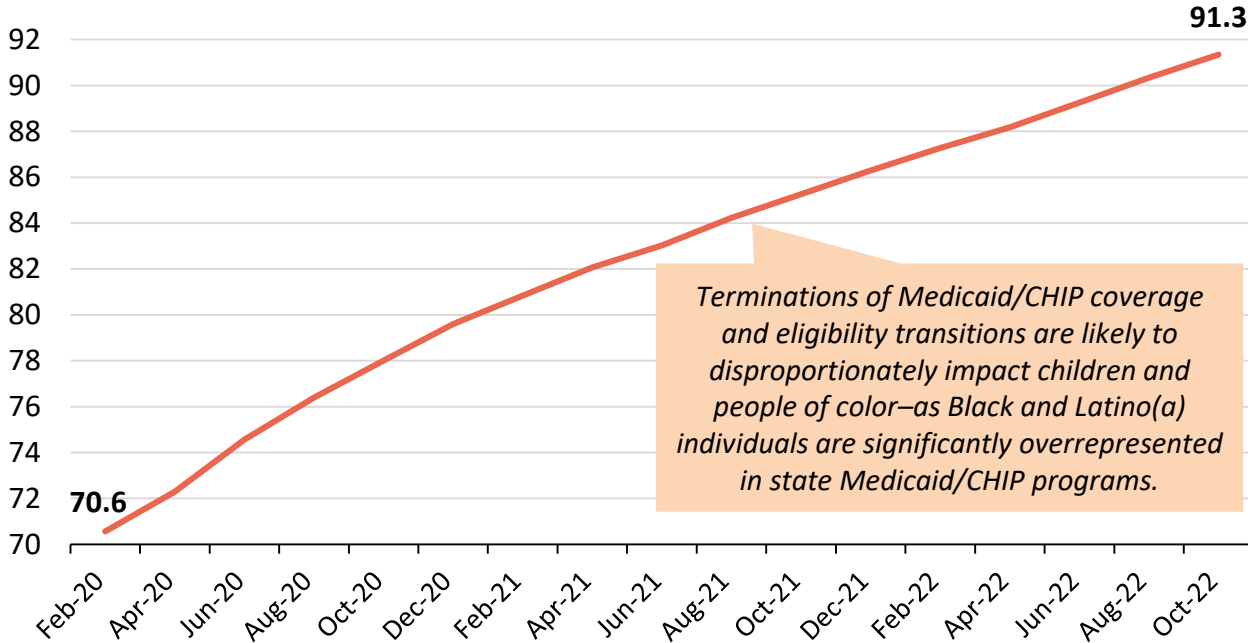
Appendix

Largest Health Coverage Event Since Implementation of the Affordable Care Act

After three years, states are now beginning to redetermine eligibility for nearly all 91 million Medicaid/CHIP enrollees—threatening historic gains in coverage resulting from continuous coverage.

Medicaid and CHIP Enrollment, February 2020 to October 2022

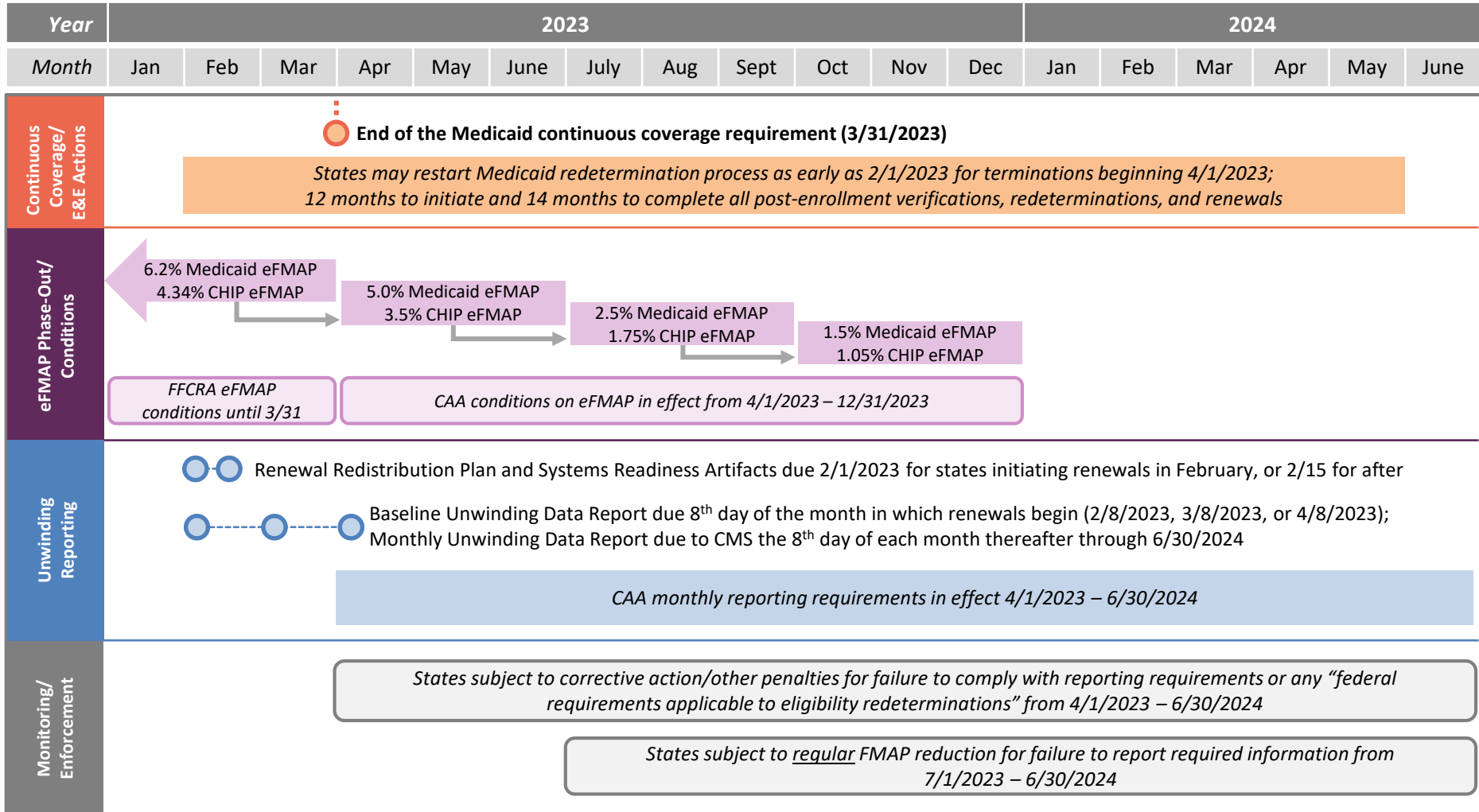
Millions of People



- Since February 2020, Medicaid/CHIP enrollment has increased by more than 20 million individuals (29%).
- A projected 15 million people could be disenrolled from Medicaid/CHIP.
- 6.8 million people are projected to lose coverage despite still being eligible.
- Almost 1/3 of those losing coverage could be eligible for subsidized Marketplace coverage.

Source: CMS, [October 2022 Enrollment Trend Snapshot](#); Assistant Secretary for Planning and Evaluation, [Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches](#); and SHVS/Manatt Health, [The End of the COVID Public Health Emergency: Potential Health Equity Implications of Ending Medicaid Continuous Coverage](#).

Medicaid Continuous Coverage Timeline



Source: SHVS, [Unwinding Provisions in the 2023 Consolidated Appropriations Act](#); and CMCS Informational Bulletin, [Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the CAA](#).