Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

September 19, 2023

SENT VIA EMAIL

Mr. Ben Carter — ben@kyequaljustice.org
Ms. Chloe Atwater — chloe@kyequaljustice.org
Kentucky Equal Justice Center
201 W Short Street, Suite 310
Lexington, KY 40507

Dear Mr. Carter and Ms. Atwater,

We are in receipt of your letter dated September 6, 2023 sharing concerns about disenrollments in Medicaid. You address three specific areas of concern. These issues were identified and discussed during the town hall on September 7 attended by representatives from your organization, Kentucky Voices for Health, kynectors, and various assistor groups, as well as stakeholders from other community based organizations who directly support members with renewals. The Cabinet received written questions from the town hall which are under review for response. There was also a commitment to hold monthly meetings with kynectors and to regularly share more information with stakeholders about the issues being identified and addressed. It is our hope the increased collaboration and communication will bring even more transparency into the renewal process required for unwinding the Public Health Emergency, and reduce unnecessary procedural terminations. In the meantime, please see responses below to the concerns outlined in your letter.

1. Supplemental Security Income

1.1 The Cabinet sends full Medicaid renewal packets and requests for information (RFIs) to people who currently receive SSI and subsequently terminates their coverage due to failure to respond or procedural disenrollments.

Response: Since the restart of renewals, the Cabinet was made aware of a few cases where a member with an active SSI record received a renewal packet in error but the members were never terminated or were immediately reinstated. Individuals with active SSI do not go through a renewal unless they are also in long term care or a 1915c waiver. It is important to distinguish active SSI cases from RSDI and SSDI, which go through a renewal including income

verification. RSDI and SSDI members would be sent a prepopulated renewal packet. The Cabinet is not aware of any additional active SSI cases without LTC or 1915c waiver receiving renewal packets. The Cabinet did not identify a systemic issue beyond those few cases. We request that you share information about any new cases that you may identify so we can perform additional reviews.

1.2 The Cabinet fails to assess individuals recently determined ineligible for SSI for other eligibility categories.

Response: The requirement that the state Medicaid agency must determine individuals eligible for other types of assistance does not apply to individuals with SSI categorical eligibility. Due to the fact that the member's eligibility is solely based on the U.S. Social Security Administration's determination of SSI eligibility, the Department for Medicaid Services does not have sufficient information on record to determine if the individual qualifies for another Medicaid type of assistance. This is the same for any member with categorical eligibility. For example, the department does not know how many members are in the household or the household income. Kentucky is compliant with Section 1634 by offering eligible individuals an ex parte period of coverage prior to termination. Individuals receive clear guidance in the notice they receive to file an application to determine whether they are eligible in other types of assistance. The notice also includes clear language that if the information relied on by the state is incorrect, the individual should contact DCBS.

1.3 People recently determined ineligible for SSI who lose Medicaid coverage are unable to apply for coverage through the state health benefit exchange (kynect) due to technical errors.

Response: While the Cabinet acknowledges that there is currently a system barrier for an SSI ineligible individual to submit an application through the Self Service Portal (SSP) in kynect prior to termination, the individual may submit an application to DCBS through various other ways identified in the notice. A change order has been submitted to remove the system SSP barrier, and the Cabinet is providing outreach and education to ensure the individual understands the other ways to submit an application. Very few individuals who lose categorical eligibility use the SSP for application submission.

2. Automatic Terminations

2.1 People who submit paperwork in a timely manner, either by uploading or mailing documents, receive termination notices if their files are not reviewed by their due dates. Such notices list "failure to submit documents" as the reason for termination.

Response: The Cabinet continues to review cases to determine any potential system issue related to terminating individuals who have documents pending review. Many of the cases provided as examples have multiple actions on the case record and are complex. The system also has been properly extending a large number of cases with pending documents each month making the identification of a specific system issue difficult. The Cabinet continues to request that these

cases be escalated for review, and individuals terminated with pending documents will be reinstated until a review is completed.

2.2 Front-line workers treat this issue as an application of policy rather than an explicit violation thereof, and tell callers (who have already provided documents) to reapply for Medicaid rather than submit documents (again) during the reconsideration period. This practice may lead to people ultimately undertaking financial costs to pay for care in the interim or foregoing needed care.

Response: The Cabinet is aware that the contact center and DCBS workers may be reverting back to pre-Public Health Emergency policy requiring terminated individuals to reapply. Plans are underway to provide retraining to ensure everyone is aware that the policy during unwinding is to permit individuals to respond to an RFI or renewal notice within 90 days of termination. However, it is important to note that if someone does reapply, that individual's information is prepopulated in the application and his or her coverage may be reinstated up to three months. The Cabinet continues to request that these cases be escalated to ensure a potentially eligible member does not experience a gap in coverage, and to afford additional opportunity to track the issue through the system to determine if any changes are warranted.

2.3 People subject to these automatic terminations receive notices and outreach telling them they are eligible for Qualified Health Plans (QHPs) despite not having been assessed for Medicaid coverage first. This is confusing, and will foreseeably result in people forgoing health coverage due to cost or signing up for coverage that comes with cost sharing despite being eligible for Medicaid.

Response: If someone's income is over the Medicaid limit based on a trusted data source during passive renewal but eligible for Advanced Premium Tax Credit, the person does receive a notice to sign up for a Qualified Health Plan. The notice also informs the person to contact the department if the information, such as the income, is incorrect. If the person's income based on the trusted data source during passive renewal does not qualify for APTC, then the person is sent a renewal packet to ensure an opportunity to submit documents. Because Kentucky does have an integrated system, if the person reports an income for the QHP that is Medicaid eligible, the person will be transferred to Medicaid.

3. Case-Level Renewal Method Determinations

The Cabinet informed KEJC and its advocacy partners yesterday morning of its previous decision to choose renewal methods at the case level rather than the recipient level. As a result many people who the Cabinet should have passively renewed were subject to active renewal and possible automatic terminations as described above. While CMS requires the Cabinet to change this practice moving forward, it is our understanding that the fix will not be in place until October notices for December renewals and that the Cabinet does not currently have a plan in place to restore coverage to affected people.

Response: The Cabinet continues to review systems and operations after receiving the August 30, 2023 letter from CMS sent to all states about the new guidance on ex parte renewals. The Cabinet recently completed the review and determined that the CMS certified system is substantially compliant. However, some system changes are being made to ensure it is fully aligned with the new guidance.

The Cabinet does have a plan in place until the system change is implemented in October. Kentucky will be performing a retroactive determination for any cases identified from May to September. If a member is able to be determined eligible apart from other members of the household, the eligible member will receive a notice and be reinstated back to the termination date. For October renewals, any case that was issued a renewal packet on September 1 with a member who is able to be determined eligible apart from other members of the household, the eligible member will receive a notice and be reinstated back to the termination date, i.e., part of the retroactive process; any case that is receiving a renewal packet on September 12 with a member who is able to be determined eligible apart from other members of the household will be extended until January 2024. November renewal cases identified will be extended until January 2024. Since the system change goes into effect in October, starting with December renewals, the system will ensure no cases are impacted going forward.

It is our understanding the most pressing concern from CMS about ex parte is around renewals for children. As you know, Kentucky moved cases with children to later in the unwinding period to implement continuous coverage for children. As a result, only 18 children have been terminated. Kentucky has reviewed those terminations. Of the children terminated, ten have been reinstated or were covered on other cases and six were determined no longer eligible. The remaining two cases have not responded to repeated contacts.

As you noted, Kentucky has made great strides in expanding coverage. We have been focused on keeping Medicaid eligible individuals covered during the restart of renewals as well as providing support for ineligible members to find coverage on the exchange. Kentucky has elected 19 of the 23 strategies contained in CMS' *Available State Strategies to Minimize Terminations for Procedural Reasons During the COVID-19 Unwinding Period* issued in June 2023. Two the proposed strategies are not applicable to Kentucky. We anticipate sending a request to CMS in the near future for concurrence to expand one current strategy and for approval to elect another strategy. Kentucky is also planning to elect one additional strategy that does not need concurrence or approval, thereby electing 100% of the strategies applicable to Kentucky.

We also have concerns about procedural terminations and are taking every necessary step and implementing every possible strategy to keep Medicaid eligible individuals covered. Our actions include various aspects of those requested in your letter. Procedural terminations are reviewed each month to identify trends based on reason, and it important to note that many aren't responding because they were sent an RFI after being identified ineligible during the ex parte process. We are also monitoring whether someone who was terminated has credible coverage on their record, an indication they likely have employer sponsored or other commercial insurance. On average about 30% of those being terminated have other coverage. We acknowledge there

may still be individuals who fall through the gaps, but that is why we have partnered with numerous stakeholders like you to provide support for Medicaid members during the renewal process.

The Cabinet appreciates the work of KEJC and other advocates to assist Medicaid members during these unprecedented times. It is important that we continue to work together through these issues.

Sincerely,

Eric Friedlander, Secretary
Cabinet for Health and Family Services

Lisa D. Lee, Commissioner
Department for Medicaid Services