



The American College of
Obstetricians and Gynecologists
WOMEN'S HEALTH CARE PHYSICIANS

Chief Executive Officer
Maureen G. Phipps, MD, MPH, FACOG

March 18, 2021

Liz Richter
Acting Administrator
Centers for Medicare and Medicaid Services
Box 8016, Baltimore, MD 21244-8016

Dear Acting Administrator Richter:

The American College of Obstetricians and Gynecologists (ACOG), representing over 60,000 physicians and partners in women's health, thanks you for your ongoing commitment to women's health. As physicians dedicated to providing quality care to women, ACOG was pleased that last week President Biden signed the American Rescue Plan Act into law, securing critical COVID-19 relief for individuals, families, and communities across the country. Importantly, this new law also advances a critical priority in our nation's effort to combat preventable maternal mortality and morbidity: providing states with an additional, express pathway to extend continuous Medicaid coverage for pregnant people from 60 days to one year postpartum. This policy is widely recognized by the medical community, state maternal mortality review committees, and other public health experts as imperative for addressing the nation's maternal mortality crisis.

Extending postpartum Medicaid coverage is one of ACOG's top policy priorities and we are actively working at both the state and federal level to achieve this essential coverage. We write today with two requests and recommendations:

- **First, we continue to urge the Centers for Medicare and Medicaid Services (CMS) to approve pending Section 1115 demonstration waivers to extend postpartum coverage.**
- **Second, to ensure the new state plan option created by the American Rescue Plan Act has its intended impact on maternal health, ACOG urges CMS to issue timely and comprehensive guidance for states detailing the opportunity to take advantage of the new state plan flexibility.**

We provide additional information, as well as some further recommendations, below. ACOG welcomes the opportunity to meet with you or CMS staff to discuss our request in more detail. We also look forward to serving as a resource for and partner to the agency as it implements these important steps toward improving maternal health and reducing inequities in maternal health outcomes.

Background

The United States is experiencing a maternal health crisis. Each year, the United States loses 700 birthing people to pregnancy-related death—most of these deaths are preventable.^{1,2} This statistic does not include deaths that result from suicide or substance use disorder, leading causes of maternal death in a growing number of states. Moreover, for every individual who experiences a maternal death, it is estimated that 50 to 100 experience severe maternal morbidity.³ The stark racial inequities in maternal

health outcomes have been well documented. Due to myriad factors, including systemic and institutional racism and barriers to access, Black women are three times more likely and Indigenous women are more than twice as likely to die from a pregnancy-related complication than non-Hispanic White women.⁴ A significant and increasing number of maternal deaths occur in the postpartum period, between 43 and 365 days after the end of pregnancy.

Medicaid covers nearly half of all births in the United States. Importantly, half of all uninsured new mothers report losing Medicaid after the end of pregnancy as the reason they became uninsured.⁵ These coverage disruptions disproportionately affect marginalized communities, including women of color; nearly half of all non-Hispanic Black women had discontinuous insurance from pre-pregnancy to postpartum and half of Hispanic Spanish-speaking women became uninsured in the postpartum period.⁶

The lack of continuous coverage in the postpartum period and the impact that loss of coverage has on maternal health outcomes is widely recognized as one, among many, drivers of the maternal health crisis.⁷ The broad consensus of the medical community is that Medicaid coverage should be available to postpartum individuals through at least one year after the end of pregnancy.⁸ This is also a leading recommendation of state maternal mortality review committees, which are increasingly identifying eliminating the postpartum coverage gap as a principal recommendation.

ACOG agrees with the Department of Health and Human Services that “collaborative efforts to close coverage and care gaps for postpartum women can improve health outcomes and lead to cost savings by reducing preventable complications and delays of necessary care.”⁹ The American Rescue Plan Act takes an important step in this regard by providing states with a streamlined pathway—through a state option—to extend continuous coverage through the full one year postpartum period.

The creation of the state plan option comes at a fortuitous time. Interest among state and federal policymakers in extending postpartum coverage has grown exponentially since a version of this policy was first introduced in the Missouri state legislature in January 2018.^{10,11} Now, three years later, six states have submitted Section 1115 demonstration waivers to CMS seeking authority to extend postpartum coverage.¹² Several more are in the pipeline.

With the passage of the American Rescue Plan Act, beginning April 1, 2022, states can elect to provide 12 months of coverage after the end of pregnancy to postpartum Medicaid beneficiaries, regardless of coverage pathway (i.e. traditional Medicaid, pregnancy-related Medicaid, or the new adult group). Importantly, the coverage that states provide through the full postpartum year must be comprehensive. States that take up the option and provide coverage to lower-income pregnant individuals through their state Children’s Health Insurance Program (CHIP) must also provide a full year of postpartum coverage to individuals covered under the CHIP pathway.¹³

ACOG Recommendation: Approve Pending Section 1115 Demonstration Waivers

Several states have submitted Section 1115 demonstration waivers to CMS seeking the authority to extend postpartum coverage. While we await the effective date of the state plan option, CMS has a unique opportunity to elevate maternal health among its Medicaid priorities by approving these state requests.* Although people covered by Medicaid are not generally at risk of losing coverage during the

* ACOG recognizes that not all state requests to extend postpartum coverage are the same. ACOG has concerns, expressed via past public comments to the agency, with certain proposals that would limit the scope of benefits or length of coverage, limit coverage to only individuals with certain health conditions, or violate federal Medicaid law. We welcome the opportunity to share those concerns in more detail with CMS staff, and appreciate your

COVID-19 public health emergency (PHE), approving these waivers will, at a minimum, signal to states and Congress that CMS supports efforts to extend postpartum coverage and also will provide coverage in any interim period between the end of the PHE and the effective date of the state plan option. Approval could also encourage uptake of the state option, further efforts under Section 1115 demonstration waivers, and garner future action in Congress to build upon the state plan option. As outlined in more detail below, we also encourage CMS to commit to a “no wrong door” policy in the event that a state with a pending Section 1115 demonstration waiver wants to pivot to the new state plan option.

ACOG Recommendation: Issue Timely and Comprehensive Guidance Regarding the State Plan Option Included in the American Rescue Plan Act

ACOG appreciates the timeliness of guidance and other resources provided by CMS to assist states with COVID-19-related adaptations to the Medicaid program. Timely and comprehensive guidance is of similar importance for the new state plan option to extend postpartum coverage. For example, in some states, legislation may be required prior to adoption of the state plan option. Guidance from CMS could help inform these state decisions. This is especially important given the COVID-19 pandemic and the maintenance of effort provisions enacted as part of the Families First Coronavirus Response Act on March 18, 2020, and the increasing interest from states in a postpartum coverage extension.

The last time Congress created a state plan option under Medicaid, guidance was not issued to the states until one month *after* the policy went into effect.¹⁴ In the context of postpartum Medicaid, this timing would be detrimental to the effort to secure coverage for postpartum individuals in the United States and could create unnecessary gaps in coverage after the end of the COVID-19 PHE.

ACOG recommends that CMS guidance be issued in advance in the form of a State Medicaid Director Letter accompanied by a toolkit or other roadmap for states to facilitate implementation of the state plan option *on the effective date* of April 1, 2022. The toolkit should include considerations around the need for state legislation, financing, and other topics outlined in numbered paragraphs below. ACOG welcomes the opportunity to discuss these or other issues and offers ourselves as a resource to the agency as it embarks on this work.

- I. **Clarify that the benefits package available under the state plan option must meet the definition of Minimum Essential Coverage (MEC).** The state option created under the American Rescue Plan Act requires that the benefits provided be comprehensive and meet the definition of MEC. Because there is currently no federal requirement for states to provide full Medicaid benefits for individuals covered through poverty-level pregnancy pathways, states have been permitted to limit benefits and services for pregnant individuals to only those related to pregnancy. According to the Medicaid and CHIP Payment and Access Commission, there are currently four states (Arkansas, New Mexico, North Carolina, and South Dakota) where Medicaid programs do not provide pregnant individuals with benefits that meet the definition of MEC.¹⁵ It is critical that CMS reiterate in its guidance to states that benefits provided under the new state plan option – including the benefits provided during pregnancy – must be comprehensive and meet the definition of MEC. CMS should work with Arkansas, New Mexico, North Carolina, and South Dakota to increase their benefit packages and bring them up to this national standard.

efforts to ensure that waivers to extend postpartum Medicaid coverage are sufficiently robust to help address our nation’s maternal health crisis.

- II. Identify best practices for implementation to guarantee continuous coverage is extended to all who are eligible.** CMS should anticipate administrative challenges the states may face to implementing the new state plan option. For example, recent research documents that most states show a gap between the number of infants counted as eligible for “deemed newborn” coverage and the number continuously enrolled in that coverage.¹⁶ The variation in data across states suggest that these gaps are the result of state administrative practices related to the enrollment process or data reporting.¹⁷ CMS should anticipate these and other administrative challenges, and also provide guidance to states on patient education around the new state plan option.
- III. Clarify that the state plan option applies to all individuals who rely on Medicaid during pregnancy, regardless of the outcome of the pregnancy.** ACOG has received questions from obstetrician-gynecologists caring for patients in states eager to extend postpartum coverage on whether a coverage extension would apply to individuals who experience miscarriage or stillbirth. CMS should clarify to the states that the 12-month continuous coverage provision applies to otherwise eligible beneficiaries, regardless of pregnancy outcome.
- IV. Clarify that the creation of a state plan option to extend postpartum coverage does not preclude states from submitting Section 1115 demonstration waivers to implement similar policies.** Given the economic and political challenges states are facing, a Section 1115 demonstration waiver may be the preferred pathway to a postpartum coverage extension in certain states. CMS should clarify to states that the availability of the state plan option does not preclude states from submitting Section 1115 demonstration waivers for similar policies.
- V. Institute a “no wrong door” policy and commit to working with states that are in the process of developing Section 1115 demonstration waivers to take advantage of the appropriate flexibilities to extend coverage.** As mentioned, several states have Section 1115 demonstration waivers to extend postpartum coverage under review at CMS. ACOG is aware of at least three other states that are actively developing waiver proposals to submit in 2021. CMS should commit to a “no wrong door” policy and work with interested states to take advantage of the appropriate authorities to extend postpartum coverage. In some of these states, a Section 1115 waiver may be preferable to the state plan option. In others, CMS should commit to working with them to pivot to the state plan option.
- VI. Anticipate questions from the states regarding the unwinding of the COVID-19 PHE continuous coverage provision.** As part of the Families First Coronavirus Response Act, states are prohibited from disenrolling individuals from the Medicaid program at 60 days postpartum. Instead, people whose pregnancies are covered by Medicaid (on or after March 18, 2020) can receive continuous coverage through the end of the month in which the PHE ends.¹⁸ CMS has started providing guidance to the states about unwinding the continuous coverage provision at the end of the PHE, however, none of this guidance to date has addressed appropriately transitioning postpartum individuals.¹⁹ The April 1, 2022 effective date of the state plan option to extend postpartum coverage should be discussed in any forthcoming guidance from CMS regarding the unwinding of the continuous coverage provision.
- VII. Give states the flexibility to maintain coverage for postpartum individuals beyond the length of the PHE to fill gaps in coverage before the effective date of the state plan option.** In addition to anticipating questions from states around the end of the PHE, CMS should (to the extent permitted under federal law) give states the flexibility to prioritize maintaining coverage for postpartum individuals beyond the length of the PHE. According to CMS guidance released

December 22, 2020, states will be expected to meet timeliness standards for Medicaid applications in four months and be current on all other COVID-related Medicaid eligibility changes within six months after the end of the PHE.²⁰ Forthcoming guidance should provide states the flexibility to keep postpartum beneficiaries enrolled until the effective date of the state plan option in order to avoid unnecessary gaps in coverage.

VIII. Commit to using every authority available under federal law to work with states that implement the state plan option to continue providing this coverage after the five-year sunset. Barring additional action from Congress, the state plan option to extend postpartum coverage will sunset after five years. ACOG urges CMS to assure states that other flexibilities – like Section 1115 demonstration waivers – do exist that could be deployed to sustain this policy into the future and remind states of the technical assistance available from CMS to assist with these decisions.

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Thank you for your consideration of our comments. This policy could be the difference between life and death for individuals who rely on Medicaid for care during pregnancy—and we know that effective implementation will go a long way in improving maternal health outcomes. ACOG welcomes the opportunity to meet with CMS staff to discuss these recommendations in more detail and to be a resource to the agency in any way necessary. To facilitate a virtual meeting, please contact Emily Eckert, Manager, Health Policy, at eeckert@acog.org.

Sincerely,



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Chief Executive Officer

¹ Petersen EE, Davis NL, Goodman D, et al. Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017. *MMWR Morb Mortal Wkly Rep* 2019;68:423–429.

² Building U.S. Capacity to Review and Prevent Maternal Deaths. (2018). Report from nine maternal mortality review committees. Available at: https://reviewtoaction.org/Report_from_Nine_MMRCs

³ Chen J, Cox S, Kuklina EV, Ferre C, Barfield W, Li R. Assessment of Incidence and Factors Associated with Severe Maternal Morbidity After Delivery Discharge Among Women in the U.S. *JAMA* 2021;4(2): e2036148.

⁴ Petersen EE, Davis NL, Goodman D, et al. Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016. *MMWR Morb Mortal Wkly Rep* 2019;68:762–765. DOI: <http://dx.doi.org/10.15585/mmwr.mm6835a3>

⁵ Urban Institute. Uninsured New Mothers' Health and Health Care Challenges Highlight the Benefits of Increasing Postpartum Medicaid Coverage. May 28, 2020. Available at: <https://www.urban.org/research/publication/uninsured-new-mothers-health-and-health-care-challenges-highlight-benefits-increasing-postpartum-medicaid-coverage>

⁶ Daw JR, Kolenic GE, Dalton VK, Zivin K, Winkelmann T, Kozhimannil KB, Admon LK. Racial and Ethnic Disparities in Perinatal Insurance Coverage. *Obstet Gynecol* 2020;135(4):917-924.

⁷ Urban Institute. Closing Postpartum Coverage Gaps and Improving Continuity and Affordability of Care through a Postpartum Medicaid/CHIP Extension. January 2021. Available at: <https://www.urban.org/research/publication/closing-postpartum-coverage-gaps-and-improving-continuity-and-affordability-care-through-postpartum-medicaidchip-extension>

⁸ American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians, American Osteopathic Association, American Psychiatric Association. Helping Ensure Healthy Mothers and Healthy Babies: Eliminating Preventable Maternal Mortality and

Morbidity. September 2019. Available at:

<https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/women/ST-G6-MaternalMortality-091619.pdf>

⁹ U.S. Department of Health and Human Services. Action Plan to Improve Maternal Health in America. December 3, 2020. Available at: https://aspe.hhs.gov/system/files/aspe-files/264076/healthy-women-healthy-pregnancies-healthy-future-action-plan_0.pdf

¹⁰ Daw JR, Eckert E, Allen HL, Underhill K. Extending Postpartum Medicaid: State and Federal Policy Options during and after COVID-19. *J Health Polit Policy Law* 2021. DOI: 10.1215/03616878-8893585

¹¹ House Bill 2280. Introduced January 25, 2018 in the Missouri state legislature. More information available at: <https://www.house.mo.gov/Bill.aspx?bill=HB2280&year=2018&code=R>

¹² American College of Obstetricians and Gynecologists. Extend Postpartum Medicaid Coverage. Available at: <https://www.acog.org/advocacy/policy-priorities/extend-postpartum-medicaid-coverage>

¹³ There are currently six states that cover pregnant individuals under CHIP: Colorado, Missouri, New Jersey, Rhode Island, Virginia and West Virginia.

¹⁴ The state plan option to cover certain individuals who are patients in institutions for mental disease (IMDs) was passed as part of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act on October 24, 2018. The option had an effective date of October 1, 2019. CMS guidance on this policy was released in the form of a State Medicaid Director Letter (SMDL: 19-0003) on November 6, 2019. More information is available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19003.pdf>

¹⁵ Medicaid and CHIP Payment and Access Commission. Considerations in Extending Postpartum Coverage. October 30, 2020. Available at: <https://www.macpac.gov/wp-content/uploads/2020/10/Considerations-in-Extending-Postpartum-Coverage.pdf>

¹⁶ Johnson K. Missing Babies: Best Practices for Ensuring Continuous Enrollment in Medicaid and Access to EPSDT. Johnson Group Consulting, Inc. January 2021. Available at: https://ccf.georgetown.edu/wp-content/uploads/2021/03/missing_babies_EPSDT_Medicaid_finalJan2021_Johnson.pdf

¹⁷ Ibid.

¹⁸ Kaiser Family Foundation. Medicaid Maintenance of Eligibility Requirements: Issues to Watch. December 17, 2020. Available at: <https://www.kff.org/medicaid/issue-brief/medicaid-maintenance-of-eligibility-moe-requirements-issues-to-watch/>

¹⁹ Centers for Medicare and Medicaid Services. SHO #20-004. Planning for the Resumption of Normal State Medicaid, Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Operations Upon Conclusion of the COVID-19 Public Health Emergency. December 22, 2020. Available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf>

²⁰ Ibid.