

March 21, 2023

Governor Maura Healey  
Massachusetts State House  
Office of the Governor  
24 Beacon Street, Room 280  
Boston, MA 02133

Secretary Kate Walsh  
Executive Office of Health and Human Services  
One Ashburton Place, 11<sup>th</sup> Floor  
Boston, MA 02108

**RE: MassHealth Redetermination Process**

Dear Governor Healey and Secretary Walsh:

On behalf of our community partners, Lawyers for Civil Rights is writing to urge the Commonwealth of Massachusetts to proactively address serious problems with the impending MassHealth redetermination process, which will negatively affect many vulnerable families and children, if not rectified. Now that the federal public health emergency pause on annual eligibility checks has ended, many low-income people, despite their continued eligibility, risk losing their benefits during the redetermination process. This potential loss of benefits is deeply problematic – not only because of the interruption of life-saving medical care, but also because COVID-19 continues to disproportionately impact vulnerable communities. Continued access to COVID-related medical care and treatment remains vital.

MassHealth is mainly relying on a two-tiered approach to notify enrollees of the reinstated requirements: (1) tasking community-based organizations (CBOs) with notifying enrollees of the need to update any changes to their employment, address, income, pregnancy, and disability status; and (2) mailing renewal forms in blue envelopes to individuals whose coverage has not been automatically renewed.<sup>1</sup> While the use of CBOs to keep vulnerable populations informed about the redetermination process can be a powerful tool because of their strong community ties, it places an undue burden on these organizations' already limited staff and resources.

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<sup>1</sup> *The End of the Federal Continuous Coverage Requirement in MassHealth: Key Strategies for Reducing Coverage Loss*, The Blue Cross Blue Shield Foundation of Massachusetts (April 2022) (retrieved from <https://www.bluecrossmafoundation.org/publication/end-federal-continuous-coverage-requirement-masshealth-key-strategies-reducing-coverage>).

Moreover, mailing notices is insufficient to prevent enrollees classified as housing unstable from losing their benefits. Unless additional proactive steps are taken, individuals experiencing housing instability will be disproportionately affected by the loss of MassHealth coverage during the redetermination process because the blue envelopes may be mailed to an address that has changed or is no longer relevant/attached to the enrollee.<sup>2</sup> Prior to the pandemic, one in ten MassHealth enrollees self-identified as being housing unstable.<sup>3</sup> However, many more MassHealth enrollees likely now fit this definition, as the pandemic has caused many to experience changes in employment, income, and housing.<sup>4</sup> Additionally, the amount of time given (forty-five days) to reply to these important notices fails to consider the day-to-day challenges faced by low-income families. Not only are they required to receive and understand these notices, but they must also act upon them in a timely manner using resources that may not be readily available. For instance, the notice directs enrollees (aged sixty-five and younger) to update their information online when many low-income families do not have access to internet service at home,<sup>5</sup> and others are facing imminent housing instability.

Further, although MassHealth has stated that some outreach materials will be translated into other languages, our community partners are concerned that much more needs to be done to ensure that non-English speakers are not unfairly terminated from benefits. In particular, it is vital that each individual and household receive renewal notices that are fully translated into their primary language, or they will be unable to understand critical information in the renewal request letters and risk failing to respond within the required amount of time.<sup>6</sup> As noted above, mailing notices is generally a poor method of communication – but especially so for many members of immigrant communities – as on average, only ten to fifteen percent of MassHealth enrollees who are not automatically reenrolled respond to mailed renewal notices.<sup>7</sup> Thus, it is imperative that the Commonwealth ensure that the renewal notices are fully translated into different languages relevant to diverse communities, and sent to recipients in their primary language. We strongly urge that renewal notices at minimum be fully translated into the languages highlighted in MassHealth’s Language Access Plan.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Faces of MassHealth: Portrait of a Diverse Population*, The Blue Cross Blue Shield Foundation of Massachusetts (May 2019) (retrieved from [https://www.bluecrossmafoundation.org/sites/g/files/csphws2101/files/2020-09/BCBSF\\_FacesofMassHealth\\_ChartPack\\_Final.pdf](https://www.bluecrossmafoundation.org/sites/g/files/csphws2101/files/2020-09/BCBSF_FacesofMassHealth_ChartPack_Final.pdf)).

<sup>4</sup> See *The End of the Federal Continuous Coverage Requirements in MassHealth: Key Strategies for Reducing Coverage Loss*, *supra* n. 1.

<sup>5</sup> In Massachusetts, [34.2%](#) of households with an annual income of less than \$20,000 do not have an internet subscription, and [11.1%](#) of Massachusetts households do not have an internet subscription. Low-income urban communities are particularly affected, with areas like Springfield (31%), Lawrence (31%), Holyoke (29%), and Lowell (27%) demonstrating severe lack of internet access. Lawyers for Civil Rights (Sept. 15, 2021), <http://lawyersforcivilrights.org/wp-content/uploads/2021/09/DESE-Tech-Equity-Letter-Final.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> The highlighted languages include: Spanish, Portuguese, Haitian Creole, Arabic, Hindi, Chinese, Lao, Vietnamese and Khmer. *Language Access Plan*, Office of Medicaid (retrieved from <https://www.mass.gov/doc/masshealth-language-access-plan-2021-23-0/download>).

Ensuring adequate notice is not only necessary from a public health perspective, it is also legally required. The due process protections of the U.S. and Massachusetts Constitutions provide for meaningful notice and reasonable procedures that do not unlawfully deprive enrollees of their benefits. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950) (clarifying that Due Process affords the right to meaningful or “actual” notice); *Town of Andover v. State Financial Services, Inc.*, 736 N.E.2d 837, 839 (Mass. 2000) (“An elementary and fundamental requirement of due process...is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”). Particularly when benefits as important as ongoing health coverage are at issue, notices must also be fully translated. *See, e.g.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq (prohibiting discrimination in programs receiving federal funding); *Lau v. Nichols*, 414 U.S. 563 (1974) (failure to provide language access is prohibited national origin discrimination under Title VI); *Colwell v. Dep’t of Health and Human Services*, 558 F.3d 1112, 1116-17 (9<sup>th</sup> Cir. 2009) (same).<sup>9</sup>

Unless immediate measures are taken to rectify the MassHealth redetermination process, low-income families and children who are housing unstable, along with many members of the immigrant population, will receive inadequate renewal notice, causing them to improperly lose their benefits. This would violate well-established core due process protections.

In sum, MassHealth’s current redetermination process has serious flaws that must be addressed immediately to prevent vulnerable families and children from losing their benefits at a time when they are critical. Given these potentially dire and life-threatening consequences, we respectfully request an opportunity to meet with you to discuss our concerns in further detail and to actively explore solutions.

Sincerely,

Ivan Espinoza-Madrugal, Esq.  
Oren Sellstrom, Esq.  
Erika Richmond, Esq.

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<sup>9</sup> *See also* The United States Department of Justice, Overview of Title VI of the Civil Rights Act of 1964 (retrieved from <https://www.justice.gov/crt/fcs/TitleVI-Overview>).