



All-State Medicaid and CHIP Call February 14, 2023



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Agenda

- MPOX Updates
- Preparing to Resume Normal Operations: End of PHE Impact on Medicaid and CHIP Flexibilities

Preparing to Resume Normal Operations: End of PHE Impact on Medicaid and CHIP Flexibilities



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COVID-19 Public Health Emergency Flexibilities

- On January 30, 2023, the Biden-Harris Administration announced its intent to end the national emergency and public health emergency (PHE) declarations related to the COVID-19 pandemic on May 11, 2023.
- Secretary Becerra sent a letter¹ to U.S. Governors on February 9, 2023 specifying the renewal of the PHE for an additional 90 days. Based on current trends regarding COVID-19, the U.S. Department of Health and Human Services is planning for this to be the final renewal and for the COVID-19 PHE to end on May 11, 2023.
- This allows for 90 days' notice before the COVID-19 PHE ends.

¹ Letter to U.S. Governors from Health and Human Services Secretary Xavier Becerra on renewing COVID-19 PHE: <https://www.hhs.gov/about/news/2023/02/09/letter-us-governors-hhs-secretary-xavier-becerra-renewing-covid-19-public-health-emergency.html>

Key Dates for Expiration of COVID-19 Flexibilities

Authority / Provision	Expiration Date
Medicaid Disaster State Plan Amendment (SPA)	Expires at the end of PHE or any earlier approved date elected by state
Children’s Health Insurance Program (CHIP) Disaster SPA	COVID-19 PHE SPA: Expires at the end of PHE Evergreen Disaster SPA: Expires the later of the state-declared emergency or the end of the PHE. Both SPA types may also expire at any earlier date, at state discretion.
Home and Community-Based Services (HCBS) Appendix K/ Attachment K	Expires no later than six months after the expiration of the PHE (November 11, 2023) ¹
Medicaid & CHIP 1135 Waiver	Expires at the end of PHE
Section 1115 COVID-19 Demonstration	Expires no later than 60 days after end of PHE unless otherwise noted in 1115 demonstration approval documents
Optional COVID-19 Group	Expires at the end of PHE. No federal financial participation is available for any state expenditures on services for this group, including coverage of COVID-19 vaccinations, testing and treatment after the PHE ends
Mandatory Medicaid & CHIP Coverage of COVID-19 Vaccination, Testing and Treatment Without Cost Sharing	Ends on the last day of the first quarter that begins one year after the last day of the COVID-19 PHE (September 30, 2024) ¹
Increased FMAP² and eFMAP for Medicaid & CHIP Coverage for COVID-19 Vaccine and Vaccine Administration	Ends on the last day of the first quarter that begins one year after the last day of the COVID-19 PHE (September 30, 2024) ¹

¹ Expiration dates based on May 11, 2023 expiration of the PHE

² Federal Medical Assistance Percentage

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Section 1135 Waiver Authority



Review: CMS recommends states review approved section 1135 waivers to determine actions needed for returning to routine operations at the end of the PHE.



Notify: States must provide 10-day advance notice to Medicaid beneficiaries when required under 42 CFR part 431, subpart E before ending certain section 1135 waivers.¹



Inform: States should inform providers of changes timely to minimize disruption.²



Update: States should evaluate necessary changes to systems and/or processes, financial reporting and managed care operations.² In addition, states should consider the program integrity risks created by the PHE and its unwinding and mitigate them to the extent practicable.³



NOTE: Per the December 2020 State Health Official Letter ([SHO](#)) #20-004, states have additional time to complete certain actions after the PHE ends. Examples include initial HCBS level of care determinations, provider screening requirements, and temporary provider enrollment.⁴

¹Per CMS guidance in the December 2020 SHO; APPENDIX B – Requirements for Ending Temporary Flexibilities

²Per CMS guidance in the December 2020 SHO; APPENDIX D – Operational Actions Needed to End Temporary Authorities

³Risk Assessment Tool for Evaluating COVID-19 Flexibilities and Waivers, Medicaid and CHIP Learning Collaborative July 15, 2021

⁴Per CMS guidance in the December 2020 SHO; APPENDIX C - Timeframes for Resolution of Section 1135 Waivers and Pending Eligibility and Enrollment Actions

Medicaid Disaster Relief SPAs

With respect to each approved Medicaid Disaster Relief SPA provision, states can determine whether they want to:

Let it Expire

- Allow the provisions to expire at the end of the PHE

Rescind

- End approved provisions before the end of the PHE

Temporarily Extend

- Extend the provisions beyond the end of the PHE through a streamlined SPA review process

Make Permanent

- Continue the provisions by submitting a SPA through the standard SPA review process

Rescinding Provisions of an Approved Medicaid Disaster Relief SPA

- As described in the Medicaid Disaster Relief SPA Template, states may not use the template to propose changes that restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers: <https://www.medicaid.gov/resources-forstates/disaster-response-toolkit/state-planflexibilities/index.html>.
- Removing a provision from a Disaster Relief SPA, or ending a provision earlier than originally approved, is considered a reduction.

Rescinding Provisions of an Approved Medicaid Disaster Relief SPA (cont.)

The following requirements apply to a SPA submitted to remove provisions from a Disaster Relief SPA, or to end approved Disaster Relief provisions earlier than originally approved:

- Rescissions must be submitted on a separate state plan page. CMS recommends creating a new subsection to follow the disaster relief provisions, entitled: ***7.4.A. Rescissions to the State's Disaster Relief Policies for the COVID-19 National Emergency.***
- The rescissions are subject to all federal requirements, including public notice, tribal consultation, and submission effective date, as applicable.

Extending Disaster Relief SPA Provisions Temporarily

States have three options for temporarily extending the Medicaid state plan provisions:

1. Approved Disaster Relief SPA provisions the state would like to temporarily extend without modifications.
2. Approved Disaster Relief SPA provisions the state would like to temporarily extend with modifications.
3. Additional provisions states would like to implement temporarily to aid in the return to routine operations (not previously approved in a Disaster Relief SPA).

Temporary Medicaid State Plan Provisions: Process and Requirements

CMS previously introduced new sub-sections within the General Provisions Section 7.4 of the Medicaid state plan for time-limited provisions to aid in the return to routine operations.

These SPAs are subject to SPA submission requirements, where applicable, including:

- ✓ *Effective date*
- ✓ *Public notice*
- ✓ *Tribal consultation*



Reminder: Section 1135 Waivers cannot be approved or extended after the end date of the PHE.

Public Notice Requirements

Public notice is required for any Medicaid state plan change that substantially modifies:

- Alternative benefit plans (ABP) (42 CFR § 440.386);
- Applicable premiums and cost sharing (42 CFR § 447.57); or
- Methods and standards for setting payment rates for services (42 CFR § 447.205)



States are required to conduct public notice according to requirements for each authority. In order to avoid any interruption in current policies, states should ensure public notice is completed timely.

Tribal Consultation Requirements

- In states where one or more Indian Health Programs or Urban Indian Organizations furnished health care services, the state must solicit advice from designees of those entities prior to certain SPA submissions.
- Soliciting advice is required for any Medicaid SPA change that is likely to have a direct effect, as defined in each state plan, on American Indians/Alaska Natives, Indian Health Programs or Urban Indian Organizations.
- Tribal consultation and/or solicitation of advice may be required for both positive and/or negative changes in accordance with each state's approved tribal consultation state plan pages.



Some states have specific tribal consultation timelines in their state plan (e.g. 60 days) which will need to be considered in advance.

Medicaid SPA for Temporarily Extending Disaster Relief SPA Provisions without Modifications

- States should establish a new Medicaid state plan sub-section:

Section 7.4.B., “Temporary Extension to the Disaster Relief Policies for the COVID-19 National Emergency”

- This sub-section will directly follow Disaster Relief SPAs in Section 7.4 and any Disaster Relief SPA Rescissions in Section 7.4.A.

Medicaid SPA for Temporarily Extending Disaster Relief SPA Provisions without Modifications (cont'd)

- CMS has developed a streamlined submission and review process for these SPAs
- Begin the section with the following language:

“Effective May 12, 2023 until XX/XX/XXXX, the agency temporarily extends the following election(s) in section 7.4 (approved on XX/XX/XXXX in SPA Number XX-XX-XXXX) of the state plan.”
- Cut and paste the approved Disaster Relief SPA provisions onto the blank page using the sample language above; and
- Include the proposed expiration date for each provision (or group of provisions).



If the state intends to have the provision(s) in place for longer than one year, CMS recommends submitting these changes in the applicable state plan sections.

Sample of Section 7.4.B

7.4.B. Temporary Extension to the Disaster Relief Policies for the COVID-19 National Emergency

Effective May 12, 2023 until XX/XX/XXXX, the agency temporarily extends the following election(s) of section 7.4 (approved on XX/XX/XXXX in SPA Number XX-XX-XXXX) of the state plan:

Sample:

Section 7.4.B Temporary Extension of Medicaid Disaster Relief SPA Provisions (Without Modifications)

Benefits:

The agency makes the following adjustments to benefits currently covered in the state plan:

[Cut and paste the approved Disaster Relief SPA provision]

Premium and Cost Sharing:

The agency suspends deductibles, copayments, coinsurance, and other cost sharing charges as follows:

Please describe whether the state suspends all cost sharing or suspends only specified deductibles, copayments, coinsurance, or other cost sharing charges for specified items and services or for specified eligibility groups consistent with 42 CFR 447.52(d) or for specified income levels consistent with 42 CFR 447.52(g).

[Cut and paste the approved Disaster Relief SPA provisions]

Streamlined Process for Temporarily Extending Medicaid Disaster Relief SPA Provisions without Modifications

CMS will rely on the policy review conducted as part of the initial approval and anticipates review of these SPAs will be handled in an expedited manner as the review will consist of:

- Confirming the language is exactly the same as the approved Disaster Relief SPA provision;
- Reviewing to ensure state included a sunset date for all provisions;
- Assuring compliance with state plan SPA submission requirements (submission date, public notice, and tribal consultation requirements); and
- Confirming for ABP alignment states that the SPA includes an assurance that the extension applies to the ABP as well (similar to the assurance in the Disaster Relief template).

Medicaid SPAs for Temporarily Extending Disaster Relief SPA Provisions with Modifications and/or Adding New Temporary Provisions

- States should establish another new Medicaid state plan sub-section:
Section 7.4.C., “Temporary Policies in effect following the COVID-19 National Emergency”
- This sub-section may include:
 - Modifications to provisions already in an approved Disaster Relief SPA
 - Additional changes not already approved in a Disaster Relief SPA
- These submissions will follow the same CMS review process as non-Disaster Relief/traditional SPA submissions.



If states wish to make more restrictive changes or changes that will be in place for more than 12 months, CMS recommends that this be done in the applicable section of the state plan.

Medicaid Section 7.4.C. – Modifications to Provisions Already in an Approved Disaster Relief SPA

- Use the following introductory language:

“Effective XX/XX/XXXX until XX/XX/XXXX, the agency temporarily extends the following election(s) of section 7.4 (approved on XX/XX/XXXX in SPA Number XX-XX-XXXX) of the state plan, with modifications.”
- Cut and paste the approved Disaster Relief SPA provisions, incorporating the requested modifications; and
- Include the proposed expiration date for each provision (or group of provisions).

Medicaid Section 7.4.C. – Additional Post-PHE Changes Not Already Approved in a Disaster Relief SPA

- For clarity, CMS recommends this option only be used for provisions states want to temporarily add that meet the following criteria:
 - ✓ Provisions are directly related to the state’s COVID-19 PHE unwinding efforts; and
 - ✓ Provisions differ from what is currently approved in a Disaster Relief SPA.
- Use the following introductory language: “Effective XX/XX/XXXX until XX/XX/XXXX, the agency temporarily implements the following changes to the state plan:”

Sample of Section 7.4.C

7.4.C Temporary Policies in Effect Following the COVID-19 National Emergency

Sample:

Effective XX/XX/XXXX until XX/XX/XXXX, the agency temporarily extends the following election(s) of section 7.4 (approved on XX/XX/XXXX in SPA Number XX-XX-XXXX) of the state plan, with modifications:

Payment:

The agency increases payment rates for the following services:

a. Payments are increased through:

i. An Increase to rates as described below:

1. By the following factors:

[Cut and paste the approved Disaster Relief SPA provisions with modification]

Effective XX/XX/XXXX until XX/XX/XXXX, the agency temporarily implements the following change to the state plan:

Post-Eligibility Treatment of Income:

The state elects to modify the basic personal needs allowance for institutionalized individuals. The basic personal needs allowance is equal to one of the following amounts:

The individual's total income

Section 7.4.C

- Temporary Extension of Medicaid SPA Disaster Relief Provisions (with modifications)
- New Medicaid Unwinding Provisions

Make Provisions Approved in a Disaster Relief SPA Permanent

States may submit a regular SPA making Disaster Relief SPA provisions part of the state plan indefinitely:

- The state should submit the SPA with a requested effective date of May 12, 2023
- CMS will review the SPA following all the standard processes and timelines.



As required in 42 CFR § 441.745(a)(2)(v), HCBS 1915(i) SPAs establishing a new benefit or proposing substantive changes to an existing benefit must be approved with a prospective effective date.

Unwinding Medicaid SPA Scenarios and State Actions

State Actions	SPA Options Section 7.4.A Rescission SPA	SPA Options Section 7.4.B Temporary Extension Without Modification	SPA Options Section 7.4.C Temporary Extension with Modification or New Temporary Change	Operational Actions Compliance with SPA Submission Requirements (Public Notice, Tribal Consultation, Effective Date)	Operational Actions Beneficiary Advance Notice Requirements and Informing Providers, as Appropriate ¹
1. State elects to allow an approved Disaster Relief SPA provision to expire at the end of the PHE	N/A	N/A	N/A	N/A	YES
2. State elects to end an approved Disaster Relief SPA provision before the end of the PHE	YES	N/A	N/A	YES	YES
3. State elects to temporarily extend the Disaster Relief SPA provision without modifications effective the day after the PHE ends	N/A	YES	N/A	YES	N/A
4. State elects to temporarily extend the Disaster Relief SPA provision with modifications effective the day after the PHE ends	N/A	N/A	YES	YES	YES
5. State elects to modify an existing Disaster Relief SPA provision before the end of the PHE and also extend temporarily post-PHE	YES	N/A	YES	YES	YES
6. State elects to add a new temporary state plan provision before the end of the PHE and also extend temporarily post-PHE	N/A	N/A	YES	YES	N/A

¹ Refer to State Health Official Letter #20-004 for further guidance: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf>

Resources

[State Health Official letter #20-004](#), December 22, 2020

[May 11, 2021 All-State Call Presentation](#): Information on rescinding or ending early provisions of an approved Disaster Relief SPA and options for Making provisions approved in a Disaster Relief SPA indefinite

[June 16, 2020 All-State Call Presentation](#): Additional information on federal requirements for retaining Medicaid state plan flexibilities

[February 15, 2022 All-State Call Presentation](#): Original presentation on extending Medicaid flexibilities beyond the end of the PHE – Temporarily or Indefinitely

[May 31, 2022 All-State Call Presentation](#): Abbreviated presentation on extending Medicaid flexibilities beyond the end of the PHE – Temporarily or Indefinitely

January 5, 2023 CMCS Informational Bulletin, [Medicaid Continuous Enrollment Requirement Provisions in the Consolidated Appropriations Act, 2023](#)

January 27, 2023 State Health Official Letter, [Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023](#)

Questions
