



# All-State Medicaid and CHIP Call September 19, 2023



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# Agenda

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- PREP Act Update
- Open Mic Q and A

# Continuing Requirements of the COVID-19 Public Readiness and Emergency Preparedness (PREP) Act

*Division of Benefits and  
Coverage  
Medicaid Benefits and Health  
Programs Group  
August 2023*



# COVID-19 PREP Act 11<sup>th</sup> Amendment

- On May 9, 2023, Secretary Becerra signed the 11th amendment to the declaration under the PREP Act for COVID-19 Medical Countermeasures.
- This amendment extended the time period of coverage for certain Covered Countermeasures and Covered Persons, clarified the time period of coverage for Covered Persons authorized under the Declaration, and extended the duration of the Declaration to December 31, 2024.
- The liability protections in the HHS COVID-19 PREP Act declaration, as outlined in previous presentations, do not affect or alter the services states must or could opt to cover under the federal Medicaid statute and regulations, but they do affect which health care providers are qualified to provide certain otherwise-covered services for purposes of the Medicaid free-choice-of-provider requirement at section 1902(a)(23)(A) of the Social Security Act.

# Continued PREP Act Requirements

- Currently, under statutory amendments made by section 9811 and 9821 of the American Rescue Plan Act of 2021 (ARP), state Medicaid and CHIP agencies are required to cover COVID-19 testing, vaccinations, and treatment for most beneficiaries until September 30, 2024.
- If a practitioner is not authorized or qualified to order and/or administer a COVID-19 test, vaccine, or countermeasure under state law, they might be authorized to do so under the HHS COVID-19 PREP Act declaration.
- If so, the conflicting state law is preempted, and the state must identify a pathway to paying for the Medicaid-covered COVID-19 test, vaccine, or countermeasure while liability protections related to ordering and/or administering COVID-19 vaccines, tests, and countermeasures in the HHS COVID-19 PREP Act declaration, currently authorized through December 31, 2024, are in effect.
- Also, states operating separate Children's Health Insurance Programs (CHIP) may not deny CHIP reimbursement to a CHIP provider for a covered COVID-19 test, vaccination, or countermeasure on the basis that the provider is not licensed or authorized under state law to provide a COVID-19 vaccination, if the PREP Act and HHS' COVID-19 PREP Act declaration and authorizations permit that provider to do so. However, the PREP Act does not require the state's separate CHIP to pay providers or provider types it would not otherwise pay under the state plan. This also applies through December 31, 2024.

# Qualified Providers Included in the PREP Act Declaration

- Under the declaration, licensed pharmacists are afforded liability protections for ordering and administering, and pharmacy interns and qualified pharmacy technicians are afforded liability protections for administering, COVID-19 tests, vaccinations, and countermeasures, provided that they meet the conditions in the declaration.
- Under HHS guidance incorporated into the HHS COVID-19 PREP Act declaration, a pharmacy is authorized to administer COVID-19 testing, vaccinations, and countermeasures when they are ordered and administered by staff pharmacists, or administered by staff pharmacy interns and pharmacy technicians, consistent with the declaration, even if state law would not otherwise permit this.
- To pay for COVID-19 vaccinations, testing, and other countermeasures ordered and/or administered by its staff practitioners, a state may need to enroll either the pharmacy or the pharmacy practitioners, or both, as Medicaid providers, depending on the circumstances.
  - States that do not currently provide a pathway to enrollment for individual pharmacists, pharmacy interns, or pharmacy technicians may pay a qualified and enrolled pharmacy as the furnishing or ordering provider.
- States can always explore updating their state laws to authorize pharmacists and other pharmacy practitioners to order and/or administer COVID-19 vaccinations, tests, and countermeasures.

# Medicaid PREP Act Requirements and Next Steps

- In summary, Medicaid pays for COVID-19 vaccines, tests, and countermeasures ordered and/or administered by pharmacists, or administered by pharmacy technicians or pharmacy interns if:
  - The practitioner is qualified to order and/or administer the service (as applicable) under the HHS COVID-19 Public Readiness and Emergency Preparedness (PREP) Act declaration or under state law that is not preempted by the HHS COVID-19 PREP Act declaration (for example, they are authorized to provide COVID-19 vaccinations, testing, or countermeasures under existing state licensure or scope of practice laws),
  - Either the practitioner, or the pharmacy they work for, or both, are enrolled as a Medicaid provider,
  - The service is covered by Medicaid, and
  - The service was provided to an eligible Medicaid beneficiary.
- States that want to adjust any COVID-19-related Medicaid payment methodologies to reflect the current December 31, 2024 end date for the PREP Act liability protections related to COVID-19 testing, vaccines, or treatment should review their approved state plans to determine if a state plan amendment (SPA) is necessary.



# Questions