



All-State Medicaid and CHIP Call

February 15, 2022



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Agenda

- Returning to Routine Operations at the End of the Public Health Emergency
- Medicaid State Plan Amendment Options
- Open Mic Q and A

Returning to Routine Operations at the End of the Public Health Emergency



***Sunsetting
Medicaid and CHIP
Disaster Relief SPAs
and Section 1135
Waivers***

February 15, 2022

Agenda

1. Review [December 2020 State Health Officials \(SHO\) Letter #20-004](#) guidance on ending temporary authorities when the COVID-19 public health emergency (PHE) ends
 - Section 1135 Waivers
 - Disaster Relief State Plan Amendments (SPA)
2. Actions that states should conduct before the PHE ends
3. Examples of Disaster Relief provisions states should consider more closely as they plan for returning to routine operations.

The [August 2021 SHO Letter #21-002](#) provides updated guidance on addressing pending eligibility and enrollment actions once the PHE ends; we plan to issue additional guidance on that topic soon.

*While this presentation includes some references to CHIP, CMS will provide greater detail about CHIP unwinding in a separate presentation.

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Temporary Authorities Adopted During COVID-19 Public Health Emergency

Authority	Termination Date
Medicaid & CHIP 1135 Waivers	Expire at the end of the PHE ¹
Medicaid and CHIP Disaster Relief SPAs	Expire at the end of PHE, or an earlier date elected by the state

- States should review their Disaster Relief SPAs and section 1135 waivers approved during the PHE in order to plan appropriately.
- States must comply with relevant regulatory and statutory requirements when transitioning back to routine operations.



¹Per CMS guidance in the December 2020 SHO, there are several flexibilities where states will have a longer period of time to come into compliance with regulatory timeframes.

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Section 1135 Waiver Authority



Review: In advance of the end of the PHE, 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 SHO Letter #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

Disaster Relief SPA Authority

As states are reviewing the flexibilities granted during the PHE, CMS recommends that states review their approved Medicaid Disaster Relief SPA provisions to determine, with respect to each provision, whether they want to:

1. **Let it Expire** – allow the provision to expire at the end of the PHE;
2. **Temporarily Extend** – extend the provision after the PHE expires through a streamlined SPA approval process; or
3. **Continue Indefinitely** - continue the change through a non-disaster amendment to the state plan that does not include a specific end date (where permissible).



Disaster Relief SPA Authority

Let it EXPIRE: For Disaster Relief SPA provisions that states allow to sunset, states should begin preparing beneficiaries, providers and managed care plans.

Examples of Disaster Relief SPA provisions that require special attention as states return to routine operations:

- Modifications to benefits (including prior authorization and service limits), eligibility, cost-sharing
- Changes in provider payments
- Potential continuity of care/provider network adequacy issues in the event certain providers are no longer permitted to deliver services post-PHE

State Actions When Sunsetting Disaster Relief SPA Provisions



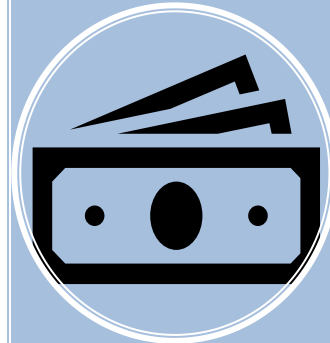
Provide at Least a 10-day Advance Notice to Beneficiaries



Inform Providers Timely



Update Systems and/or Processes



Ensure Accurate Financial Reporting



Assess Managed Care Implications

States should apply these actions as appropriate.
Refer to December 2020 SHO Letter #20-004 and July 2021 Risk Assessment Tool for Evaluating COVID-19 Flexibilities and Waivers for additional guidance.

Returning to Routine Operations Relative to Telehealth: Example

During the COVID-19 PHE, many states expanded or changed coverage of, or payment for, services delivered via telehealth through a Disaster Relief SPA or through policy/operational changes, including to make a service more accessible to beneficiaries and safer for beneficiaries and providers.

- States had the flexibility to cover services provided via telehealth prior to the COVID-19 PHE and will continue to have that flexibility going forward. However, because changes made to telehealth policies via Disaster Relief SPAs will automatically sunset at the end of the PHE (if not before) states will need to plan accordingly.
- Ending the availability of telehealth as an option for delivering a covered service does not require advance notice or fair hearing rights if there is still coverage when the service is provided face-to-face. However, CMS recommends states provide clear and timely communication of telehealth policy changes to beneficiaries who may need to secure alternate provider or transportation arrangements.
- Additionally, providers require notice of adjustments in state payment policies.

State Medicaid & CHIP Telehealth Toolkit

Policy Considerations for States Expanding Use of Telehealth

- ✓ Toolkit: <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf>
- ✓ Supplement #1: <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit-supplement1.pdf>

Return to Routine Operations Best Practices

States should consider adopting a number of best practices in preparation for the termination of the PHE, including:

Consider extending COVID modifications that were effective

States should evaluate the effect of any temporary changes made to the Medicaid and CHIP programs during the PHE that proved effective and they want to continue.

Updating IT systems and internal processes

States will need to communicate policy changes internally to staff through updated materials and staff trainings and may need to communicate new processes externally, such as through website changes.

Leveraging the use of streamlined notices

States may issue a combined notice describing all changes occurring at the close of the PHE, including changes to eligibility, benefits, premiums and cost sharing, and other programmatic changes that will impact Medicaid stakeholders.

State Actions in Preparation for the end of PHE: Summary

STATE ACTIONS

ASSESS

Review CMS Guidance: December SHO-Letter #20-004

Conduct State Assessment:

- Review 1135 waivers to plan for smooth transition to routine operations.
- Review approved Disaster Relief SPAs and decide: whether to allow to expire, extend temporarily, or continue indefinitely.

Determine Timing for Key Actions

PREPARE

Prepare for authorities that will expire

- Draft provider communications, beneficiary notices and plan for system and payment changes.

For SPAs or waivers that will be effective post-PHE

- Conduct public notice and tribal consultation for SPA authorities states want to continue past PHE-end
- Submit SPAs to temporarily or indefinitely extend PHE flexibilities

Prior to the end of the PHE, submit SPAs to reflect COVID-19 Vaccines, Testing and Treatment requirements under sections 9811 and 9821 of the American Rescue Plan

FINALIZE

Complete all PHE activities where CMS allows additional transition time, e.g., complete initial level of care (LOC) assessments, finalize provider enrollment and end temporary Appendix K flexibilities.

PHE Ends

LOC Assessments - 90 days
Provider Enrollment and Appendix K - 6 months after PHE ends

Medicaid State Plan Amendment Options



*Temporary State
Plan Provisions
Post-Public Health
Emergency*

February 15, 2022

Temporary State Plan Provisions Post-Public Health Emergency (PHE)

- Temporary authorities in Disaster Relief State Plan Amendments (SPAs) are scheduled to automatically sunset upon termination of the COVID-19 Public Health Emergency (PHE) if not before.*
- States may want to continue some of the approved Disaster Relief SPA provisions once the PHE ends, either temporarily or indefinitely.
- States may identify *additional* provisions necessary to help transition to routine operations, such as time-limited eligibility and enrollment state plan changes.
- Advance planning is necessary in order to avoid effective date gaps between the provisions expiring at the end of the PHE, and temporary or indefinite state plan changes.
- CMS recognizes states' need for a streamlined process to temporarily extend disaster relief provisions.

**CHIP Disaster Relief SPAs may have a different end date depending on the flexibilities elected by the state. Different processes will apply when considering CHIP options.*

Options for Disaster Relief SPA Provisions

As states plan for the end of the PHE, states should determine if:

Disaster Relief SPA provisions are no longer needed post-PHE and will sunset.

Disaster Relief SPA provisions are needed post-PHE for a limited amount of time and the state wishes to extend temporarily.

Disaster Relief SPA provisions are needed post-PHE and the state wishes to extend them indefinitely.

Medicaid Provisions Expiring at the End of the PHE

- Disaster Relief SPAs will automatically sunset at the end of the PHE, therefore no SPA submissions are required for provisions that will terminate at the end of the PHE.
- However, states should identify other actions that may be necessary for expiring Disaster Relief SPAs.



The December 22, 2020 SHO, [Planning for the Resumption of Normal State Medicaid, CHIP and BHP Operations Upon Conclusion of the COVID-19 PHE](#), provides detailed guidance on the regulatory requirements and operations implications for states as they transition to regular operations.

Medicaid Disaster Relief SPAs

Extending Medicaid Flexibilities Beyond the End of the PHE – Temporarily or Indefinitely

Extending Disaster Relief SPA Provisions Temporarily

States have three options for temporarily extending Medicaid state plan provisions post-PHE:

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 is introducing new sub-sections within the General Provisions Section 7.4 of the Medicaid state plan for time-limited provisions that will extend beyond the end date of the PHE.

SPAs extending PHE flexibilities are subject to SPA submission requirements, where applicable, including:

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



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); or
- Applicable cost sharing (42 CFR § 447.57).

Public notice is also required for any significant proposed change to 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 complete prior to the end of the PHE.

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 as part of the state's overall planning efforts.

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

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

“Effective the day after the end of the PHE until _____, 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.

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

Effective the day after the end of the PHE 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:

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]

Sample:

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

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 post-PHE 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 the day after the end of the PHE until _____, 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 the day after the end of the PHE until _____, the agency temporarily implements the following changes to the state plan:”

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

Sample:

Section 7.4.C

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

Effective the day after the end of the PHE 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 the day after the end of the PHE 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

Indefinitely Extend Provisions Approved in a Disaster Relief SPA

States may submit a regular SPA before the end date of the PHE is known for making Disaster Relief SPA provisions part of the state plan indefinitely:

- The state should submit the SPA with a requested effective date of “the day after the PHE ends”. (MACPro requires a specific effective date, so CMS will work with the state to establish a workaround if needed.)
- CMS will review the SPA following all the normal processes and timelines.
- Once the SPA is ready for approval, CMS will issue the approval package with the effective date identified as “the day after the PHE ends” (or using a workaround if MACPro is used).
- The approval letter will contain language indicating the SPA is not effective until the day after the PHE expires.
- Once the end date of the PHE is known, all SPAs approved in this manner will be reissued with a technical correction adding the specific effective date of the day after the PHE ends. This will be a CMS administrative action with no action required by the state.



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

Resources

[State Health Official Letter \(SHO\) 20-004 \(December 22, 2020\)](#): 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

[SHO 21-002 \(August 13, 2021\)](#): Updated Guidance Related to 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

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

Program Integrity Considerations for Restoring State Medicaid and Children's Health Insurance Program Operations Upon Conclusion of the COVID-19 Public Health Emergency

- [Risk Assessment Template - Word Version](#)
- [Risk Assessment Template - Excel Version](#)
- [Risk Assessment Tool Webinar](#)

Questions