



All-State Medicaid & CHIP Call

June 30, 2020



Agenda

- Welcome and Introduction – Calder Lynch
- Key Dates for Termination of COVID-19 Flexibilities
- Retaining Temporary Authorities Elected in 1915 (c) Appendix K
- Discussion / Q&A on Retaining Temporary Authorities Elected in 1915 (c) Appendix K
- Overview of Batch 5 FAQs
- Discussion of Batch 5 FAQs and General Q&A
- Wrap-up

Introduction



Calder Lynch

**Deputy Administrator and Director
Center for Medicaid & CHIP Services**

COVID-19 Public Health Emergency

- The Secretary of HHS may, under section 319 of the Public Health Service (PHS) Act, determine that: a) a disease or disorder presents a public health emergency (PHE); or b) that a public health emergency, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists.
- PHE declarations last for the duration of the emergency or up to 90 days, at which time they must be renewed by the Secretary.
- The Secretary first declared a PHE related to COVID-19 effective January 27, 2020. On April 21, 2020 it was renewed with an effective date of April 26, 2020.
- Therefore, the current PHE would have to be renewed again before July 24, 2020, after which it would expire.
- Subsequent references and discussion are for this federal PHE unless specified.

Key Dates for Termination of COVID-19 Flexibilities

Authority / Provision	Effective Date	Termination Date
Medicaid Disaster SPA	March 1, 2020 or any later date elected by state	Expires at the end of PHE or any earlier approved date elected by state
CHIP Disaster SPA	Start of state or federally declared emergency	Expires at the end of PHE or at state discretion before end of PHE. ¹
Appendix K	Jan 27, 2020 or any later date elected by state	Expires one year from the effective date or any earlier approved date elected by the state. However, end dates cannot extend beyond one year from the last day of the month in which the President signed the proclamation of a national emergency (March 31, 2021).
Medicaid & CHIP 1135 Waiver	March 1, 2020	Expires at the end of PHE
1115 COVID Demo	March 1, 2020 or any later date elected by state	Expires no later than 60 days after end of PHE
Emergency IT Funding	Date of state's emergency IT funding request letter	There is no termination date for this authority, and it is not tied to PHE. Existing regulation further requires that the state submit an APD within 90 days of state's emergency IT request letter. The formal approval of scope, timeline and funding is accomplished through the APD process.
FMAP – 6.2% Enhancement	January 1, 2020	Expires the last day of the calendar quarter in which the PHE ends. (States must adhere to the 6008(b) of FFCRA).
Continuous Coverage Tied to 6.2% Enhanced FMAP	March 18, 2020	Expires the last day of the month in which the PHE ends
Optional COVID Testing Group	March 18, 2020	Expires at the end of PHE. No FMAP is available for testing or testing-related services provided for those in COVID-19 testing group after the PHE ends.

¹ States may extend through the end of a state-declared PHE.

Key Dates for Termination of Conditions for COVID-19 Enhanced FMAP

6.2 percentage point increase for FMAP is effective January 1, 2020 and expires the last day of the calendar quarter in which the PHE ends.

FFCRA 6008 (b) Conditions for 6.2 percentage point increase for FMAP	Termination Date
Maintenance of Effort (standards, methodologies, procedures) - 6008 (b)(1) of FFCRA	Expires the <u>last day of the calendar quarter</u> in which the PHE ends.
Premium Restrictions - 6008 (b)(2) of FFCRA	Expires the <u>last day of the calendar quarter</u> in which the PHE ends.
Continuous Coverage - 6008 (b)(3) of FFCRA	Expires the <u>last day of the month</u> in which the PHE ends.
Coverage of, and Cost sharing Exemption for, COVID-19-related Testing and Treatment - 6008 (b)(4) of FFCRA	Expires the <u>last day of the calendar quarter</u> in which the PHE ends.

1915 (c) Appendix K

Retaining Temporary Authorities Elected in 1915 (c) Appendix K

Appendix K Overview

- Standalone appendix that allows states to request temporary changes in their approved 1915(c) waivers in order to prepare for or respond to an emergency.
- May be applied retroactively by the state.
- Changes are time limited and tied specifically to individuals impacted by the emergency.
- States may consolidate multiple 1915(c) waivers into one Appendix K submission and may update their initial submissions to include additional changes as needed.
- Public notice requirements normally applicable under 1915(c) do not apply.
- The Appendix K cannot be used to exceed statutory or regulatory authority for 1915(c) waivers, so some activities may require the use of other authorities such as Section 1115 demonstrations or Section 1135 authorities.

Appendix K Overview (cont.)

- States are required to complete a template and submit to the State Plan Amendment (SPA) mailbox (similar to other SPA submissions). The completed template must be signed and dated by the State Medicaid Director or their designee.
- CMS created a COVID-19 version of the template to support the specific types of flexibilities that states are asking for during the public health emergency (PHE). This version has been pre-populated with commonly requested and relevant program changes.
- As of June 24, 2020, 47 states and Washington DC have received approval of one or more Appendix Ks in response to the COVID-19 pandemic.
- Appendix K templates and approved Appendix Ks can be found on the [Emergency Preparedness and Response for 1915\(c\) Waivers webpage](#).
- CMS notes that the information in this presentation is also applicable to the 1115 Attachment K

Termination of COVID-19 Appendix Ks

Timeline:

- Appendix Ks that address the COVID-19 pandemic expire one year from the effective date or any earlier approved date elected by the state.
- States can amend the end date in their Appendix K at any time if needed, however end dates **cannot** extend beyond one year from the last day of the month in which the President signed the proclamation of a national emergency (March 31, 2021).
- Any extensions of waiver requirements included in the Appendix K must be concluded prior to the Appendix K's end date, with the exception of level of care recertification extensions.
- All temporary changes must conclude and states must resume compliance with the language in their current, approved 1915(c) waiver upon termination of the Appendix K.

Public Notice:

- Formal public notice is not required when ending the temporary changes in Appendix Ks.

Retaining Options Beyond the Expiration of Appendix K

- States should routinely assess whether flexibilities will be needed beyond March 31, 2021 (or the end date in their Appendix K if earlier) and whether more permanent changes will be needed in their 1915(c) waivers.
- Appendix K changes that states would like to continue after March 31, 2021 must be submitted as an amendment to the state's 1915(c) waiver application via the Waiver Management System.
 - These can be submitted at any time.
- These amendments must adhere to all policies and procedures detailed in the Version 3.6 1915(c) waiver application and accompanying instructions, technical guide, and review criteria.
 - **Public Notice:** Required for substantive changes (e.g., changes in qualifications of service providers, changes in rate methodology, changes to the quality improvement system, adding services).
 - **Effective Dates:** Amendments with substantive changes require prospective effective dates. Otherwise, amendments may be retroactive to the first day of the waiver year (or another date after the first day of the waiver year).
- Not all changes approvable in Appendix Ks may be approved in the standard 1915(c) waiver application.

Options That **Can** Be Extended

Examples of common changes in Appendix Ks that **may** be approved in a standard 1915(c) waiver application include:

- Use of telehealth or other electronic methods of service delivery for:
 - Case management, personal care services that only require verbal cueing, in-home habilitation, and other services that may be facilitated by telehealth
 - Evaluations, assessments and service plan meetings (note: in these cases there is a need for the state to establish a process for electronic signatures)
- Home-delivered meals, assistive technology, and other services the state feels will be beneficial to their waiver population going forward*
- Rate increases for waiver services to enhance the provider pool*
- Retainer payments for personal care services and/or habilitation services that include personal care when a waiver participant is hospitalized or absent from his/her home

*Public notice and prospective effective dates required for amendments with substantive changes

Options That **Cannot** Be Extended

Examples of common changes in Appendix Ks that are **not** approvable in a standard 1915(c) waiver application include:

- Provision of waiver services in institutional settings (excluding respite and services provided in accordance with section 3715 of the CARES Act)
- Extension of timeframes for level of care re-evaluations
- Suspension of quality improvement system activities
- Enforcement discretion for non-compliance with the HCBS settings requirement at 42 C.F.R. §441.301(c)(4)(vi)(D) stating that individuals are able to have visitors of their choosing at any time, for settings added after March 17, 2014
- Authorization of case management entities to serve as the only willing and qualified provider under 42 C.F.R. §441.301(c)(1)(vi) due to the PHE (i.e., waiving conflict of interest requirements due to the PHE personnel crisis)
- Changes approved via the 1135 authority including, but not limited to, extensions of person-centered service plan (PCSP) recertifications, verbal signatures for PCSPs, and waiving settings requirements for settings added after March 17, 2014.

Other Considerations

- Although formal public notice is not required, states are strongly encouraged to keep 1915(c) waiver providers and participants up-to-date on changes that will be ending and the date those changes will end.
 - Especially critical for temporary services and service limit increases, changes to provider qualifications, and rate increases and retainer payments that are only available for the duration of the Appendix K.
 - Methods states can use to inform stakeholders of upcoming changes include communications from case managers, mailings of hardcopy materials, email blasts, and updates to State Medicaid Agency websites.
- 1915(c) quality review processes and cost estimates may be impacted by the changes states made in their Appendix K.
- CMS will follow-up with states that requested 372(S) and or evidentiary report extensions.

Appendix K Discussion

Questions & Answers

Overview of Batch 5 FAQs

Discussion of Batch 5 FAQs and General Questions & Answers