

Federal Declarations and Flexibilities Supporting Medicaid and CHIP COVID-19 Response Efforts

Authored by Manatt Health

Updated January 19, 2023

To help states respond to the ongoing COVID-19 pandemic, the White House, U.S. Department of Health and Human Services (HHS), and Centers for Medicare & Medicaid Services (CMS) have invoked their emergency powers to authorize temporary flexibilities in Medicaid and the Children’s Health Insurance Program (CHIP). Congress’ legislative relief packages have similarly provided temporary federal support for state Medicaid programs, subject to certain conditions. The timeframes for these emergency measures are summarized below, including the effective dates and expiration timelines dictated by law or agency guidance.

The duration for many of these federal flexibilities is linked to the federal public health emergency (PHE) that HHS declared in response to COVID-19, [effective January 27, 2020](#). Since that time, HHS has consistently renewed the PHE declaration in 90-day increments, the maximum period permitted under federal law.

- Currently, the PHE is in effect through April 10, 2023 (*per HHS’s [January 11 renewal notice](#), which extends the PHE for 90 days*).
- HHS may or may not renew the PHE past its current end date. HHS has reiterated its promise, first made in a [letter](#) sent to state governors on January 21, 2021, to “provide states with 60 days’ notice prior to termination” of the PHE. Thus, if HHS does not provide notice of an impending PHE termination by February 10 (60 days before the current expiration date of April 11), that silence would suggest that the PHE will be renewed at least once more.

Notably, the recently enacted [Consolidated Appropriations Act, 2023 \(CAA\)](#) decouples some key federal flexibilities from the COVID-19 PHE—mainly the Medicaid continuous coverage requirement (instead establishing a statutory end date of March 31, 2023) and the related enhanced Federal Medicaid Assistance Percentage (FMAP)—by amending the [Families First Coronavirus Response Act \(FFCRA\)](#) section 6008. As a result, states have entered the final phase of preparation for [unwinding](#), with the option to initiate renewals as early as February 2023, for terminations of Medicaid enrollment beginning no earlier than April 2023. While the CAA provides certainty on timing for the end of continuous coverage guarantee and stability of enhanced federal funding to support unwinding, it also requires additional action from states to ensure they are able to meet new guardrails. Many states are reevaluating their plans for unwinding, sequencing first the significant bolus of work related to addressing pending eligibility and enrollment actions (see Figure 1 below), and then directing their efforts to scaling back or sustaining temporary flexibilities (see Table 1 below).

This product also links to relevant CMS guidance advising states about the expected timelines for unwinding various flexibilities, including: “State Health Official” letters (SHOs) issued on December 22, 2020 ([SHO 20-004](#)), August 13, 2021 ([SHO 21-002](#)) March 3, 2022 ([SHO 22-001](#)); the January 5, 2023 [CMCS Informational Bulletin](#), and various other [transition tools, templates, and summaries](#). For additional discussion of eligibility and coverage issues during the unwinding period, see (State Health & Value Strategies’) SHVS’ [Resources for States on Unwinding the Medicaid Continuous Coverage Requirement](#).

Figure 1: CAA Timeline of Key Medicaid Unwinding Provisions Included in the CAA, 2023¹

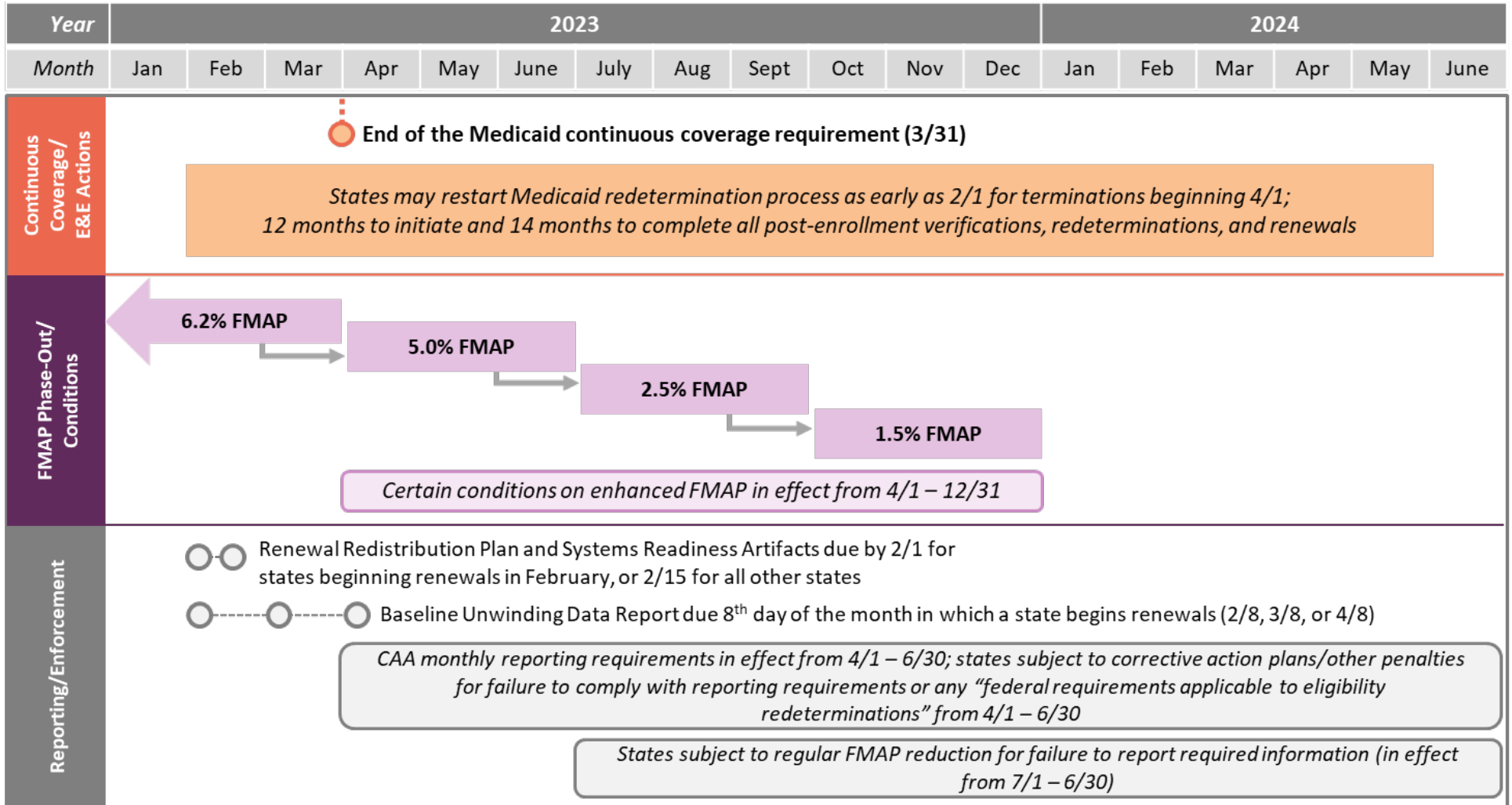


Figure 1 Notes

- The Medicaid continuous coverage requirement will end on March 31, 2023. States may restart the Medicaid redetermination process as early as February 1, 2023 for terminations beginning April 1, 2023; states have 12 months to initiate and 14 months to complete all post-enrollment verifications,

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redeterminations, and renewals. (See 42 CFR § 433.400, as added by CMS’s November 2, 2020 [Interim Final Rule](#) (IFR)², CMS [SHO 20-004](#), [SHO 21-002](#) & [SHO 22-001](#), and [CMCS Informational Bulletin](#).)

- Beginning April 1, 2023, the enhanced FMAP will decline quarterly over a nine-month period, with the increased FMAP expiring December 31, 2023.³ (See [CMS SHO 20-004](#) and [CMCS Informational Bulletin](#).)
- The maintenance of effort (MOE) requirement—including required coverage with no cost sharing of COVID-19 tests, treatments, and vaccines⁴—continues to apply until the enhanced FMAP expires on December 31, 2023. (See CMS [SHO 20-004](#), CMCS [Informational Bulletin](#), and CMS [November 2, 2020 IFR](#).)
- See this SHVS [expert perspective](#) for more information on the CAA conditions, reporting requirements, and federal enforcement mechanisms.

Table 1: Federal Declarations and Flexibilities Linked to the COVID-19 PHE⁵

Declaration/Flexibility	Effective Date	Expiration Timeline	Current End Date (as of publication)	Citations
Federal Emergency/Disaster Declarations				
The HHS PHE Declaration for COVID-19	January 27, 2020 (issued January 31, 2020) Last renewed: January 11, 2023	Expires after 90 days unless renewed by HHS; may be terminated at any time by HHS, although HHS has committed to providing states with at least 60 days’ notice	April 10, 2023 ; if HHS does not intend to renew the PHE past this date, states should receive notice by November 12	Public Health Service Act § 319(a) [42 USC § 247d(a)] Jan. 21, 2021 Letter from Acting HHS Secretary
The President’s National Emergency Declaration under the National Emergencies Act (NEA)	March 1, 2020 (issued March 13, 2020) Last renewed: March 1, 2022 (issued February 18)	Expires after one year unless renewed by the President; may be terminated at any time by the President or by joint resolution of Congress ⁶	March 1, 2023	NEA §§ 202(a) & (d) [50 U.S.C. §§ 1622(a) & (d)]
The President’s Stafford Act Declarations	Nationwide emergency declaration issued March 13, 2020 (no effective date specified) State “major disaster” declarations are generally effective January 20, 2020	The Federal Emergency Management Agency (FEMA) determines the start and end dates of the “incident period”	None specified in either the nationwide or state-by-state declarations	Stafford Act §§ 401 (major disaster) & 501 (emergency) [42 USC §§ 5170 & 5191] 44 CFR § 206.32(f)

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Declaration/Flexibility	Effective Date	Expiration Timeline	Current End Date (as of publication)	Citations
Federal Executive Actions: Temporary Medicaid/CHIP Flexibilities for COVID-19 Response Efforts				
Section 1135 Waiver	March 1, 2020 (or a later date requested by the state and approved by CMS) ⁷	Generally, end of the PHE, per CMS guidance ⁸ ; CMS may terminate any individual waiver at any time ⁹ For certain waivers, CMS has authorized grace periods following the end of the PHE ¹⁰	April 10, 2023 (except for flexibilities for which CMS has authorized a grace period following the end of the PHE)	Social Security Act (SSA) § 1135(e) [42 USC § 1320b-5(e)] Nationwide (“Blanket”) 1135 Waivers (additional blanket waivers listed here) State-Specific 1135 Waivers CMS SHO 20-004 Feb. 15, 2022 All-State Call
Medicaid Disaster Relief State Plan Amendment (SPA)	March 1, 2020 (or a later date chosen by the state) ¹¹	End of PHE (or an earlier approved date chosen by the state)	April 10, 2023 (or an earlier approved date chosen by the state)	Medicaid Disaster Relief SPA Template CMS SHO 20-004 Feb. 15, 2022 All-State Call
CHIP Disaster Relief SPA	Start of state or federally declared emergency (or a later date chosen by the state) ¹²	End of the PHE or state-declared emergency (or an earlier date chosen by the state)	April 10, 2023 (or an earlier date chosen by the state, or later if the state-declared disaster continues)	CHIP Disaster Relief SPA Example CMS SHO 20-004 Feb. 15, 2022 All-State Call
Section 1915(c) Appendix K (for Medicaid home and community-based services (HCBS) programs)	January 27, 2020 (or a later date chosen by the state)	Six months following the end of the PHE, if the state requested and received CMS approval for this timeline. For states that did not request this extended timeline, Appendix K flexibilities generally expired in the first quarter of 2021.	October 10, 2023 , if a state received CMS approval for this extended timeline. For states that did not request this extended timeline, Appendix K flexibilities generally expired in the first quarter of 2021.	Section 1915(c) Appendix K Template CMS Medicaid/CHIP FAQ CMS SHO 20-004
Emergency Section 1115 Waiver	March 1, 2020 (or a later date chosen by the state)	PHE + 60 days (or an earlier date approved in the waiver’s Special Terms & Conditions (STCs))	June 9, 2023 (or an earlier date approved in the waiver’s STCs)	SMD 20-002 & COVID-19 Section 1115 Template CMS SHO 20-004

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FFCRA, P.L. 116-127 and American Rescue Plan Act of 2021 (ARP, P.L. 117-2): Key COVID-Related Provisions Affecting Medicaid and CHIP¹³				
Coverage for the Optional COVID-19 Eligibility Group	March 18, 2020 (or a later date chosen by the state)	End of the PHE	April 10, 2023	SSA §§ 1902(a)(10)(A)(ii) & (ss) [42 USC §§ 1396a(a)(10) & (ss)], as added/amended by FFCRA § 6004(a)(3), CARES § 3716, and ARP § 9811 (see below) CMS Guidance on the Optional COVID-19 Group CMS SHO 20-004 CMS Resource on Ending Coverage in the Optional COVID-19 Group
COVID-19 Vaccine: Required Coverage (With No Cost Sharing) for All Populations Covered by Medicaid and CHIP; 100% FMAP for COVID Vaccines	March 11, 2021	End of the first calendar quarter that begins at least one year after the end of the PHE ¹⁴	September 30, 2024	ARP §§ 9811 & 9821 CMCS Info Bulletin SHO 21-004
COVID-19 Testing and Treatments: Required Coverage (With No Cost Sharing) for... <ul style="list-style-type: none"> • Most “Full Benefit” Medicaid and CHIP Populations; and • Optional Medicaid COVID-19 Testing Group 	March 11, 2021	End of the first calendar quarter that begins at least one year after the end of the PHE	September 30, 2024	ARP §§ 9811 & 9821 CMS SHO 21-006

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¹ See SHVS' [Omnibus Unwinding Provisions and Implications for States](#) expert perspective and webinar.

² On September 23, 2022, CMS [reopened](#) the comment period for this rule and solicited comment on whether the rule should be repealed.

³ The enhanced FMAP schedule is as follows: 6.2% (start of the PHE through 3/31/23); 5.0% (4/1/23 through 6/30/23); 2.5% (7/1/23 through 9/30/23); 1.5% (10/1/23 – 12/31/23).

⁴ [CMS's Medicaid/CHIP FAQ](#) clarifies that this coverage requirement applies to COVID-19 tests, treatments, and vaccines that receive an FDA Emergency Use Authorization (EUA), as well as those will full FDA approval. For additional discussion of these coverage requirements, see SHVS' [Medicaid and CHIP Coverage of COVID-19 Vaccine and Treatment: A Roadmap for State Action During and After the Public Health Emergency](#).

⁵ See SHVS' [Unwinding of the Public Health Emergency: What's Next for States](#) webinar.

⁶ After the President declares a national emergency, NEA section 202(b) requires that, every six months, "each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated." There has been no formal legislative action along these lines, except for Senate Republicans' passage of resolutions to terminate President Biden's declaration regarding COVID-19, first in March 3, 2022 ([S.J.Res.38](#)) and again on November 15, 2022 ([S.J.Res.63](#)). Neither resolution came to a vote in the House, however.

⁷ HHS invoked the 1135 waiver authority on [March 13, 2020](#), with an effective date of March 1, 2020. Thus, all the 1135 waivers that have since been issued by HHS and CMS have retroactive effect to March 1, 2020 unless otherwise specified.

⁸ [CMS's Medicaid/CHIP FAQ](#) states that 1135 waivers last until the end of the PHE. That guidance appears inconsistent with the text of section 1135(e) in two respects, however. First, section 1135(e) provides that emergency waivers can generally be extended up until the termination of either the PHE or the presidential emergency declaration (whichever comes first). Applicable presidential emergency declarations can be made under the NEA or the Stafford Act; currently, both types of declarations are in effect nationwide. Section 1135(e) also requires that HHS renew the 1135 waiver authority at least every 60 days. To date, HHS has not issued any express renewal of the 1135 waiver authority.

⁹ For example, CMS has terminated several 1135 waivers pertaining to long-term care facilities, as described an April 7, 2022 [memorandum](#) and the latest version of CMS's [1135 Blanket Waivers](#) document.

¹⁰ For example, many states received 1135 waivers related to provider enrollment in Medicaid, including waivers allowing for delays in provider revalidation and permitting provisional enrollment of providers who were already enrolled with Medicare or with another state's Medicaid program. CMS has authorized a six-month grace period for these flexibilities following the end of the PHE, as described in [SHO 20-004](#).

¹¹ Typically, Medicaid SPAs may be effective no earlier than the first day of the quarter in which the SPA was submitted. With respect to Medicaid disaster relief SPAs, CMS will grant 1135 waivers that allow Medicaid SPAs to take effect before the start of the quarter in which the SPA was submitted (but no earlier than the start of the PHE).

¹² According to CMS's CHIP disaster relief [SPA example](#), states may activate their disaster relief scenarios in response to a disaster declared by the "Governor or FEMA." [CMS's Medicaid/CHIP FAQ](#) states that CHIP disaster relief SPAs may also be activated in response to the COVID-19 PHE. In general, CHIP SPAs may have retroactive effect as far back as the beginning of the fiscal year in which the SPA was submitted, including SPAs that modify the state's disaster relief scenarios. For that reason, [CMS's Medicaid/CHIP FAQ](#) indicates that section 1135 authority is not needed to modify the submission date for SPAs that are submitted by the end of the fiscal year; presumably, however, CMS could grant an 1135 waiver to extend the retroactive date of a CHIP SPA into the prior fiscal year if needed, similar to CMS's use of 1135 waivers to permit Medicaid SPAs to have a retroactive effective date in a previous quarter.

¹³ This chart summarizes ARP's temporary measures related to the COVID-19 pandemic, but does not address the many other temporary ARP provisions that affect Medicaid and CHIP (e.g., the optional extension of postpartum coverage or the enhanced funding for home and community-based services). For an overview of ARP's key provisions, see SHVS's [Timeline of Key Provisions in the American Rescue Plan Act of 2021](#).

¹⁴ For example, if the PHE were to end on April 10, 2023, then this ARP provision would expire September 30, 2024 (the last day of the calendar quarter that begins *after* April 10, 2024, the one-year anniversary of the PHE end date).