

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

Authored by Manatt Health

Updated February 7, 2023

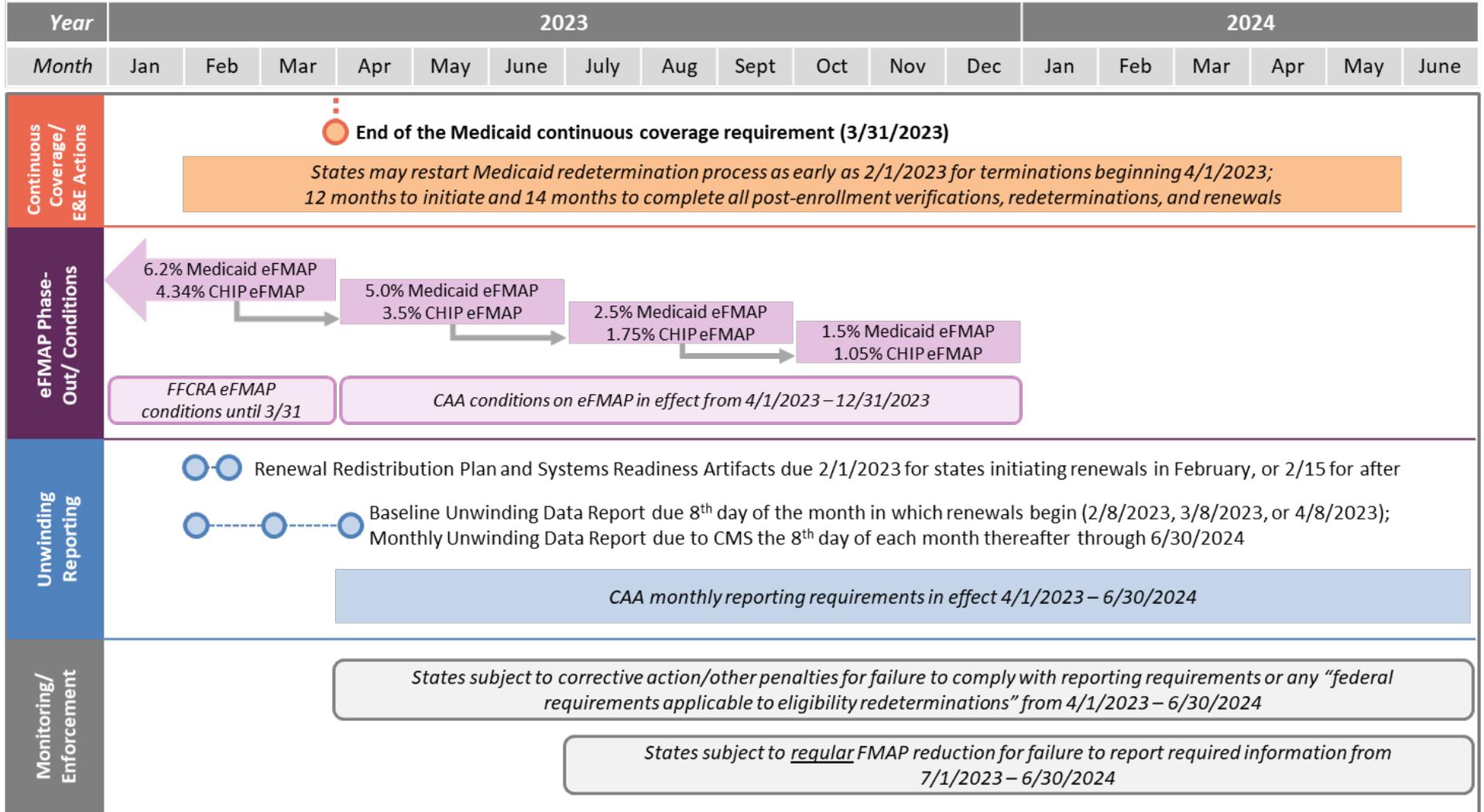
To help states respond to the ongoing COVID-19 pandemic, the White House, U.S. Department of Health and Human Services (HHS), and Centers for Medicare & Medicaid Services (CMS) have invoked their emergency powers to authorize temporary flexibilities in Medicaid and the Children’s Health Insurance Program (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. Most recently, HHS renewed the PHE through May 11, 2023 (per [HHS’s February 9 renewal notice](#)). HHS will not renew the PHE past that final day, as declared in a January 30 [Statement of Administration Policy](#). Per the White House statement, “This wind-down would align with the Administration’s previous commitments to give at least 60 days’ notice prior to termination of the PHE.” The Administration had repeatedly reiterated this promise, first made in a [letter](#) sent to state governors on January 21, 2021.

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 started or will soon begin [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 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).

The Figure and Table in this product link 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](#)), and January 27, 2023 ([SHO 23-002](#)); 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, 2023<sup>1</sup>



**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)<sup>2</sup>, CMS [SHO 20-004](#), [SHO 21-002](#), [SHO 22-001](#), [CMS SHO 23-002](#), 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.<sup>3</sup> (See [CMS SHO 20-004](#), [CMS SHO 23-002](#), and [CMCS Informational Bulletin](#).)
- The maintenance of effort (MOE) requirement—including required coverage with no cost sharing of COVID-19 tests, treatments, and vaccines<sup>4</sup>—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. Also see this SHVS [expert perspective](#) that reviews additional detail and operational expectations of states during unwinding as laid out in CMS guidance.

**Table 1: Federal Declarations and Flexibilities Linked to the COVID-19 PHE<sup>5</sup>**

Declaration/Flexibility	Effective Date	Expiration Timeline	Expected End Date	Citations
<b>Federal Emergency/Disaster Declarations</b>				
<b>The HHS PHE Declaration for COVID-19</b>	<b>January 27, 2020</b> <i>(issued <a href="#">January 31, 2020</a>)</i> Last renewed: <a href="#">February 9, 2023</a>	HHS will not renew the PHE past May 11, 2023 per the White House Statement of Administration Policy	<b>May 11, 2023</b>	Public Health Service Act § 319(a) <i>[42 USC § 247d(a)]</i> <a href="#">Jan. 21, 2021 Letter</a> from Acting HHS Secretary White House <a href="#">Statement of Administration Policy</a>
<b>The President’s National Emergency Declaration under the National Emergencies Act (NEA)</b>	<b>March 1, 2020</b> <i>(issued <a href="#">March 13, 2020</a>)</i> Last renewed: March 1, 2022 <i>(issued <a href="#">February 18</a>)</i>	The President will not renew the national emergency past May 11, 2023 per the White House Statement of Administration Policy, but it may be sooner terminated by joint resolution of Congress <sup>6</sup>	<b>May 11, 2023</b>	NEA §§ 202(a) & (d) <i>[50 U.S.C. §§ 1622(a) &amp; (d)]</i>
<b>The President’s Stafford Act Declarations</b>	Nationwide emergency declaration issued <a href="#">March 13, 2020</a> <i>(no effective date specified)</i>	The Federal Emergency Management Agency (FEMA) determines the start	<b>None specified</b> in either the nationwide or state-by-state declarations	Stafford Act §§ 401 (major disaster) & 501 (emergency) <i>[42 USC §§ 5170 &amp; 5191]</i> 44 CFR § 206.32(f)

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	State “major disaster” declarations are generally effective <a href="#">January 20, 2020</a>	and end dates of the “incident period”		
<b>Federal Executive Actions: Temporary Medicaid/CHIP Flexibilities for COVID-19 Response Efforts</b>				
<b>Section 1135 Waiver</b>	<b>March 1, 2020</b> (or a later date requested by the state and approved by CMS) <sup>7</sup>	Generally, end of the PHE, per CMS guidance <sup>8</sup> ; CMS may terminate any individual waiver at any time <sup>9</sup> For certain waivers, CMS has authorized grace periods following the end of the PHE <sup>10</sup>	<b>May 11, 2023</b> (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)] <a href="#">Nationwide (“Blanket”) 1135 Waivers</a> (additional blanket waivers listed <a href="#">here</a> ) <a href="#">State-Specific 1135 Waivers</a> <a href="#">CMS SHO 20-004</a> <a href="#">Feb. 15, 2022 All-State Call</a>
<b>Medicaid Disaster Relief State Plan Amendment (SPA)</b>	<b>March 1, 2020</b> (or a later date chosen by the state) <sup>11</sup>	End of PHE (or an earlier approved date chosen by the state)	<b>May 11, 2023</b> (or an earlier approved date chosen by the state)	<a href="#">Medicaid Disaster Relief SPA Template</a> <a href="#">CMS SHO 20-004</a> <a href="#">Feb. 15, 2022 All-State Call</a>
<b>CHIP Disaster Relief SPA</b>	Start of state or federally declared emergency (or a later date chosen by the state) <sup>12</sup>	End of the PHE or state-declared emergency (or an earlier date chosen by the state)	<b>May 11, 2023</b> (or an earlier date chosen by the state, or later if the state-declared disaster continues)	<a href="#">CHIP Disaster Relief SPA Example</a> <a href="#">CMS SHO 20-004</a> <a href="#">Feb. 15, 2022 All-State Call</a>
<b>Section 1915(c) Appendix K (for Medicaid home and community-based services (HCBS) programs)</b>	<b>January 27, 2020</b> (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	<b>November 11, 2023</b> , 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	<a href="#">Section 1915(c) Appendix K Template</a> <a href="#">CMS Medicaid/CHIP FAQ</a> <a href="#">CMS SHO 20-004</a> <a href="#">CMS SHO 23-002</a> <sup>13</sup>
<b>Emergency Section 1115 Waiver</b>	<b>March 1, 2020</b> (or a later date chosen by the state)	PHE + 60 days (or an earlier date approved in the	<b>July 10, 2023</b> (or an earlier date approved in the waiver’s STCs)	<a href="#">State Medicaid Director (SMD) Letter 20-002 &amp;</a>

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		<i>waiver's Special Terms &amp; Conditions (STCs)</i>		<a href="#">COVID-19 Section 1115 Template</a> <a href="#">CMS SHO 20-004</a>
<b>FFCRA, <a href="#">P.L. 116-127</a> and American Rescue Plan Act of 2021 (ARP, <a href="#">P.L. 117-2</a>): Key COVID-Related Provisions Affecting Medicaid and CHIP</b>				
<b>Coverage for the Optional COVID-19 Eligibility Group</b>	<b>March 18, 2020</b> ( <i>or a later date chosen by the state</i> )	End of the PHE ( <i>though states can end coverage earlier by submitting a SPA</i> )	<b>May 11, 2023</b>	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) <a href="#">CMS Guidance on the Optional COVID-19 Group</a> <a href="#">CMS SHO 20-004</a> <a href="#">CMS SHO 23-002</a> <a href="#">CMS Resource on Ending Coverage in the Optional COVID-19 Group</a>
<b>COVID-19 Vaccine: Required Coverage (With No Cost Sharing) for All Populations Covered by Medicaid and CHIP; 100% FMAP for COVID Vaccines</b>	<b>March 11, 2021</b>	End of the first calendar quarter that begins at least one year after the end of the PHE	<b>September 30, 2024</b>	ARP §§ 9811 & 9821 <a href="#">CMCS Info Bulletin SHO 21-004</a>
<b>COVID-19 Testing and Treatments: Required Coverage (With No Cost Sharing) for...</b> <ul style="list-style-type: none"> <li>• <i>Most "Full Benefit" Medicaid and CHIP Populations; and</i></li> <li>• <i>Optional Medicaid COVID-19 Testing Group</i></li> </ul>	<b>March 11, 2021</b>	End of the first calendar quarter that begins at least one year after the end of the PHE	<b>September 30, 2024</b>	ARP §§ 9811 & 9821 <a href="#">CMS SHO 21-006</a>

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<sup>1</sup> See SHVS' [Omnibus Unwinding Provisions and Implications for States](#) expert perspective and webinar and SHVS' [New CMS Guidance on Medicaid Continuous Coverage Unwinding Provisions in the CAA](#) webinar.

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

<sup>3</sup> 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). The FFCRA increase in the [CHIP matching rate](#) is also declining.

<sup>4</sup> [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](#).

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

<sup>6</sup> 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." Most recently, on February 1, 2023, House Republicans passed a resolution to terminate President Biden's declaration regarding COVID-19 ([H.J.Res.7](#)). The resolution has not yet come to a vote in the Senate, however.

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

<sup>8</sup> [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.

<sup>9</sup> 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.

<sup>10</sup> 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](#).

<sup>11</sup> 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).

<sup>12</sup> 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.

<sup>13</sup> Section 9817 provided a 10 percentage point FMAP increase for state Medicaid expenditures for home and community-based services (HCBS) between April 1, 2021 and March 31, 2022. CMS SHO 23-002 directs states to retain temporary changes to HCBS eligibility, services, and payment rates in accordance with the relevant authorities without risk of penalty by CMS.