

CHIME Cheat Sheet – March 17, 2023 Resources Regarding the End of the COVID-19 PHE

The White House and Department of Health and Human Services (HHS) Secretary Xavier Becerra [signaled](#) that the COVID-19 Public Health Emergency (PHE) will end on May 11, 2023. Several temporary authorities will expire, continuous enrollment requirements will end, and states' additional federal medical assistance percentage (FMAP) will revert to normal. This Cheat Sheet includes an outline of administrative and congressional PHE authorities, as well as a list of specific PHE-related waiver and flexibility updates and resources – as well as “Quick Links”.

- **Background.** The global COVID-19 pandemic necessitated the implementation of a broad variety of flexibilities in the U.S. health care system. Under U.S. law and regulation, many of these flexibilities were made possible by: (1) the Trump and subsequent Biden administration's declaration of an emergency under the National Emergencies Act (NEA); (2) the presidents' declaration of emergency under the Stafford Act; and (3) the HHS Secretary's declaration of a PHE under the Public Health Service Act (PHSA). These declarations permit agencies to take certain extraordinary actions or to allow specified actions by payers and providers that would typically be prohibited. In particular, the combination of an emergency declaration and a PHE enable the use of section 1135 of the Social Security Act (SSA), which allows for the waiver of broad sections of the SSA with regard to Medicare, Medicaid, and the Children's Health Insurance Program (CHIP).

In addition to the emergency powers already available to the HHS and other agencies, Congress created, in a series of emergency response bills, a range of policies intended to address the pandemic. This included wide latitude to provide, and be reimbursed for, telehealth services during the pandemic. It also included: (1) the waiver of requirements related to medical records; (2) an add-on payment for hospitals treating patients with COVID-19; (3) a requirement for payers to cover COVID-19 tests without cost sharing; and (4) provider relief funding during the period of the PHE. These powers are largely tied to the existence of a PHE, and health-related agencies have engaged in emergency rulemaking, granting waivers to states, and invoking enforcement discretion that are also largely tied to the PHE.

- **Context.** The Secretary of HHS has the authority — under certain conditions — to declare a PHE, which can be issued for up to 90 days and has been historically renewed in 90 days intervals. Congress and other agencies must be notified of the PHE declaration within 48 hours. The Secretary can declare a PHE if they determine that a disease, outbreak, or disorder has occurred, and while the Secretary is encouraged to consult with public health officials, it is not required. Former HHS Secretary Alex Azar issued the first [PHE declaration](#) related to the COVID-19 pandemic on January 27, 2020.

Notably, a federal PHE declaration enables states to submit section 1135 waiver requests that, if approved by HHS, allow states to execute additional flexibilities over their respective Medicaid and CHIP programs. Requirements eligible for section 1135 waivers include: (1) certain conditions of participation for Medicaid and CHIP programs; (2) state licensure requirements for health care providers; (3) sanctions and penalties related to the Health Insurance Portability and Accountability Act (HIPAA) and Emergency Medical Treatment and Labor Act (EMTALA)

requirements; (4) performance deadlines; and (5) payments for Medicare Advantage (MA) out-of-network (OON) services.

Legislative Changes to Flexibilities

While the 2023 Consolidated Appropriations Act (CAA) ([PL 117-328](#)) decoupled the Medicaid continuous coverage requirements from the PHE, states could begin the Medicaid redetermination process last month. The continuous coverage requirement will end on March 31, at which point states can begin unenrolling beneficiaries who are no longer eligible for coverage. In addition to making policy changes to the Medicaid unwinding process, the 2023 CAA also extended funding for a myriad of funding priorities, as well as several tweaks to policies that address COVID-19 policies and regulations. Notably, the bill extends flexibilities related to durable medical equipment (DME) payment rates, telehealth regulations, and the Hospital at Home Program. Certain policies in the Inflation Reduction Act ([IRA](#)) impact COVID-19 regulations as well, specifically related to vaccine coverage under Medicare Part D and under Medicaid and CHIP.

Importantly, this federal legislation has also expanded and extended telehealth services for rural health, behavioral health, and telehealth access options, including from the home and audio-only for Medicare beneficiaries through December 31, 2024. In other words, many of the telehealth flexibility waivers are extended, including geographic and originating site restrictions so that Medicare patients can continue to use telehealth services from their home and allowing audio-only telehealth services through 2024. Additionally, the list of providers eligible to deliver telehealth services is expanded so that Medicare beneficiaries can continue to receive physical therapy, occupational therapy, and speech language sessions via telehealth during this time period. Commercial payer coverage and reimbursement for telehealth continue to evolve; while many private insurers have expanded coverage for virtual health care services – there is no requirement for them to provide telehealth services after May 11.

*PLEASE NOTE: Each state may have implemented additional COVID-19 PHE orders and actions designed to safeguard residents during the pandemic. This Cheat Sheet does not cover the entire range of state emergency authorities that may have been exercised under Medicaid Disaster Relief State Plan Amendments (SPAs), various Medicaid and CHIP SPAs, and other state-reported administrative actions; section 1115 waivers; section 1135 waivers; and 1915(c) waiver strategies. You should visit your state's/states Department of Health website/s for additional information and resources.

Federal Agency Resources on Waivers & Flexibilities

HHS Resources & Quick Links

HHS and other health-related agencies will be releasing a series of guidance documents pertaining to off-ramping PHE policies in the coming weeks leading up to May 11. Notably, the anticipated proposed regulations from the Drug Enforcement Agency (DEA) related to the agency's policies around telehealth prescribing of controlled substances were released on February 24.

- [Fact Sheet: COVID-19 Public Health Emergency Transition Roadmap](#)
- [Telehealth policy changes after the COVID-19 public health emergency](#)
- [Waivers or Modifications to Section 1135 of the Social Security Act](#)
- [DEA Press Release](#) on Proposals Related to Telehealth Prescribing of Controlled Substances
 - Proposed Rule – [Expansion of Induction of Buprenorphine via Telemedicine Encounter](#)
 - Proposed Rule – [Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation](#)
 - [DEA Summary of Proposed Rules](#)

HHS's Office of Inspector General (HHS-OIG) has provided information describing Policy Statements and FAQs instituted during the PHE – as well as a notice reminding healthcare stakeholders that OIG flexibilities end on May 11.

- [OIG's COVID-19 Public Health Emergency Flexibilities](#)

Centers for Medicare and Medicaid Services (CMS) Resources & Quick Links

CMS has stated that they will be updating supporting resources and providing updates as soon as possible. In addition, CMS will be hosting stakeholder calls and office hours in the coming weeks to provide additional information. The best place to find updates regarding the PHE sunseting guidance is the [CMS Emergencies Page](#). This [fact sheet](#) (“What Do I Need to Know?”) from CMS is also a great resource offering an overview of existing waivers and flexibilities – including Medicare, Medicaid, Children’s Health Insurance Program (CHIP), and private payer coverage of COVID-19 vaccines, testing, and treatments, flexibilities for health care professionals, Scope of Practice waivers, health and safety requirements, access to telehealth services, and more.

- [CMS Emergencies Website](#)
- [What Do I Need to Know? CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency](#)
- [CMS COVID-19 PHE Waivers Website](#) – includes provider-specific fact sheets
 - [Hospitals and CAHs \(including Swing Beds, DPUs\), ASCs and CMHCs: CMS Flexibilities to Fight COVID-19](#)
 - [Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19](#)
 - [Teaching Hospitals, Teaching Physicians and Medical Residents: CMS Flexibilities to Fight COVID-19](#)
 - [Rural Health Clinics \(RHCs\) and Federally Qualified Health Centers \(FQHCs\): CMS Flexibilities to Fight COVID-19](#)
 - [Long Term Care Facilities \(Skilled Nursing Facilities and/or Nursing Facilities\): CMS Flexibilities to Fight COVID-19](#)
 - [Home Health Agencies: CMS Flexibilities to Fight COVID-19](#)
- [CMS Health Care System Resiliency Fact Sheet](#) (strategy for PHE unwinding and future)
- Administration for Strategic Preparedness & Response (ASPR) – [COVID-19 Therapeutics: Resources for Health Care Professionals and Public Health Officials](#)

To support states facing significant operational issues with income and eligibility determination systems and to protect eligible beneficiaries from inappropriate coverage losses during the unwinding period following the end of the PHE, CMS is providing states the option to request authority under section 1902(e)(14)(A) of the Social Security Act in limited circumstances and subject to CMS approval.

- Medicaid.gov – [Unwinding Guidance & Resources](#)
- Medicaid.gov – [Unwinding and Returning to Regular Operations after COVID-19](#)
- Medicaid.gov – [Anticipated 2023 State Timelines for Initiating Unwinding-Related Renewals As of February 24, 2023](#) (Posted 3/2/2023)
- [Table Outlining Section 1902 \(e\)\(14\)\(A\) Waivers Approved for States to Support the Unwinding Period](#)

The Food and Drug Administration (FDA) Resources & Quick Links

The FDA recently issued a [notice](#) addressing the agency’s COVID-19-related [guidance documents](#). This notice includes which guidance documents will no longer be in effect after the expiration of the COVID-19 PHE and which of those guidance documents the FDA is revising to temporarily continue in effect.

During the PHE, the FDA provided tools and flexibilities to manufacturers, healthcare facilities, providers, patients, and other stakeholders. Critically – the ending of the PHE will not impact the FDA’s ability to authorize devices (including tests), treatments or vaccines for emergency use. Existing emergency use authorizations (EUAs) for products will remain in effect and the agency may continue to issue new EUAs going forward when criteria for issuance are met. The Agency “remains committed to providing notice and information to all impacted stakeholders to ensure a smooth transition.”

- [FDA Notice](#)
- [FDA Guidance Documents](#)

For healthcare providers and other stakeholders seeking information on acquiring assets from the Strategic National Stockpile (SNS), refer to [Requesting SNS Assets](#). Contact Regional Emergency Coordinators (RECs) for assistance to request personal protective equipment (PPE), ventilators, medical countermeasures, and federal medical station needs. For additional resources, see [Supplies of Medical Devices for COVID-19: Frequently Asked Questions](#).

- [Requesting SNS Assets](#)
- [Contact Regional Emergency Coordinators \(RECs\)](#)
- [Supplies of Medical Devices for COVID-19: Frequently Asked Questions](#)
- [Medical Device Shortages During the COVID-19 Public Health Emergency](#) (Updated March 16, 2023)

What’s Next?

The administration, states, and private insurance plans will continue to provide guidance in the coming weeks and months. CHIME’s Public Policy Team will continue to provide any updates or announcements regarding the end of the COVID-19 PHE that will impact our members. The administration’s continued response is not entirely dependent on the COVID-19 PHE; there are significant flexibilities and actions that will not be affected as they transition from the current phase of their response.

Lawmakers on Capitol Hill may consider sponsoring legislation to make telehealth flexibilities permanent during the 118th Congress, though the extension until the end of 2024 may put this issue on the back burner until next year. We will continue to monitor Congressional legislative efforts related to telehealth closely.

If you have any questions, please email policy@chimecentral.org.