COVID-19 PHE Flexibilities

February 9, 2023

Wynne Health Group (WHG) has compiled a series of charts that delineate a comprehensive set of emergency waivers and flexibilities permitted during the COVID-19 public health emergency (PHE). Under current PHE conditions, the U.S. Department of Health and Human Services (HHS) is authorized under section 1135 of the Social Security Act to waive a range of Medicare and Medicaid requirements as a means for responding to public health emergencies. During this current PHE, HHS has waived several requirements enabling the health care system to respond more swiftly to the evolving pandemic. The U.S. Department of Agriculture (USDA) and U.S. Department of Housing and Urban Development (HUD) have also provided flexibilities to mitigate food insecurity and housing instability, respectively, during the COVID-19 PHE. The expiration for many of these flexibilities, unless specifically addressed by Congress or a federal agency, is tied to the duration of the COVID-19 PHE, which is scheduled to end on May 11, 2023.[1]

In brief, the following charts detail the range of PHE flexibilities currently in place and their end dates, relative to May 11, 2023. We also note flexibilities that have been extended, made permanent, or decoupled from the COVID-19 PHE by the Consolidated Appropriations Act of 2021 (CAA, 2021), Inflation Reduction Act of 2022 (IRA), or the Consolidated Appropriations Act, 2023 (CAA, 2023), such as certain Medicare telehealth flexibilities and Medicaid continuous coverage requirements.[2,3,4] We also briefly indicate whether other flexibilities would require legislative or regulatory changes to be made permanent.

Contents

[1] https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf
[2] https://www.congress.gov/bill/116th-congress/house-bill/133
[3] https://www.congress.gov/bill/117th-congress/house-bill/5376
[4] https://www.congress.gov/bill/117th-congress/house-bill/2617

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Telehealth Flexibilities

The COVID-19 pandemic dramatically increased access to telehealth, especially for Medicare beneficiaries. Prior to the pandemic, Medicare covered telehealth only for beneficiaries living in rural regions and accessing care at certain designated sites (except for services used to treat certain conditions, such as substance use disorder). However, the Centers for Medicare and Medicaid Services (CMS) expanded access to telehealth services to virtually all Medicare beneficiaries, despite geographic location and site of care (including a beneficiary's home). As a result, telehealth utilization among Medicare beneficiaries has increased beyond pre-pandemic levels, though has tapered off from the levels seen during the height of the pandemic.[5] Policymakers also provided key telehealth-related changes for enrollees of other insurers, including those in both Medicaid and the commercial market.

[5] See slides 9 and 10 here.

Policymakers have since had to contend with which flexibilities they will allow to continue after the PHE ends. The CAA, 2023 extended many of the most impactful telehealth flexibilities under Medicare through December 31, 2024 to facilitate research on the effects of such policies, which will inform legislative efforts to potentially extend these flexibilities permanently. Flexibilities extended through the end of 2024 include:

- Allowing beneficiaries to access care regardless of geographic location or site of care;
- Authorizing a broader range of providers to furnish telehealth services;
- Expanding the list of Medicare telehealth services;
- Permitting the use of audio-only services; and
- Permitting federally qualified health centers and rural health centers to continue furnishing telehealth services.

In recent rulemaking, CMS also finalized provisions such that it would continue to pay for telehealth services at parity with those furnished in-person through the end of 2023 (though CMS could extend its decision to pay at parity for telehealth in its upcoming Medicare Physician Fee Schedule rule).[6]

Aside from this, other flexibilities at risk include the ability for health care providers to prescribe certain controlled substances via telehealth without first having an in-person visit. Legislators omitted to extend this flexibility in the fiscal year 2023 omnibus package, though the Drug Enforcement Administration (DEA) is in the process of promulgating regulations that would create a registration program to allow providers to bypass the in-person requirement.[7]

Medicare Flexibilities

Flexibility	Description	End Date	Notes
Originating and Geographic Site Restrictions	Waives the originating site and rural requirements allowing beneficiaries to receive telehealth services in their home.	December 31, 2024	Extended via CAA, 2023; legislative changes required to be made permanent.
Full Payment Parity (i.e., Inclusive of Facility Fee)	Continues to reimburse providers billing for telehealth according to the payments they would have received had they furnished the services in-person[8] but also ensures that the "facility fee" is paid when the originating site is a beneficiary's home (for which a facility fee is currently precluded)	December 31, 2023	Extended via CAA, 2023; legislative changes required to be made permanent.

[6] https://www.federalregister.gov/documents/2022/11/18/2022-23873/medicare-and-medicaid-programs-cy-2023-payment-policies-under-the-physician-fee-schedule-and-other

[7] https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1117-AB40

[8] Pursuant to section 1834(m)(2)(A) of the Social Security Act: https://www.ssa.gov/OP_Home/ssact/title18/1834.htm

Flexibility	Description	End Date	Notes
Eligible Practitioners	Waives the requirements that specify the types of practitioners that may bill for Medicare telehealth services from the distant site. This allows previously ineligible health care professionals to furnish and bill for Medicare telehealth services, including physical therapists, occupational therapists, and speech language pathologists.	December 31, 2024	Extended via CAA, 2023; legislative changes required to be made permanent.
Audio-only Technologies	Waives the video requirements of telehealth services to permit audio-only equipment to furnish services via audio-only technologies (i.e., telephones) for select services, including evaluation & management (E&M) services, and behavioral health counseling and educational services. Establishes a higher reimbursement rate for telephone E/M services based on crosswalks to the most analogous office/outpatient E/M codes.	December 31, 2024	Extended via CAA, 2023; legislative and regulatory changes required to be made permanent.
Newly Eligible Telehealth Services	Includes new codes to the list of eligible Medicare telehealth services, including codes for emergency department visits, observation services, nursing facility visits, home visits, inpatient neonatal and pediatric critical care, end-stage renal disease (ESRD) services, and more.	December 31, 2024	Extended via CAA, 2023; regulatory changes required to be made permanent.
Waiving In-Person Requirement for Medicare Tele-mental Health Services	Waives the in-person requirement under Medicare for mental health services furnished through telehealth.	December 31, 2024	Extended via CAA, 2023; legislative changes required to be made permanent. Effective January 1, 2025, a beneficiary must be seen in-person within six-months prior to the first time a provider furnishes a tele-mental health service (excluding treatment of a diagnosed SUD or co-occurring mental health disorder) and at some regular interval thereafter as determined by the Secretary (CMS previously proposed six months).

Flexibility	Description	End Date	Notes
Federally Qualified Health Centers and Rural Health Clinics	Allows FQHCs and RHCs to furnish telehealth services.	December 31, 2024	Extended via CAA, 2023; legislative changes required to be made permanent.
Process for Adding Telehealth Services	Establishes a sub-regulatory process to modify the services included on the Medicare telehealth list.	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.
Critical Access Hospital Waiver	Waives provisions related to telehealth, making it easier for telehealth services to be furnished to the hospital's patients through an agreement with an off-site hospital.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Medicare Advantage (MA) and Part D Plan Waiver	Allows MA plans to make changes to their benefit packages regarding telehealth services in real-time (i.e., before the bid submission deadline).	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Remote Patient Monitoring	Allows providers to use communication technology-based services (CTBS) – which are considered related to but separate from telehealth services – to both new and established patients. These include certain kinds of remote patient monitoring and remote interpretation of diagnostic tests.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Additional Flexibilities

Flexibility	Description	End Date	Notes
Telehealth-Based Prescribing of Controlled Substances	Allows authorized providers to prescribe controlled substances to patients via telehealth without having first had an in-person visit.	End of PHE (May 11, 2023)	Legislative or regulatory changes required to be made permanent.
Pre-Deductible Coverage of Telehealth Services	Allows health insurers to provide coverage of telehealth services without cost-sharing before enrollees reach their deductible.	December 31, 2024	Extended via CAA, 2023; legislative changes required to be made permanent.
Suspension of HIPAA requirements for telecommunications technologies	Allows health care providers to furnish telehealth services to patients via non-HIPAA compliant platforms such as FaceTime or Skype.	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.

EUAs/Vaccines

The emergency use authorization (EUA) declaration is separate and distinct from the PHE declaration expiration. The Food and Drug Administration (FDA) details that products with EUAs will remain authorized until the EUA declaration is terminated.[9] The Secretary will issue a *Federal Register* notice providing advance notice that EUA declaration is being terminated. The agency asserts that this will allow for a sufficient period for transitions of products with EUAs either to full approval or removal from the market. The agency has also detailed that it will issue a notice regarding how the end of the PHE will impact COVID-19 related guidance, including which guidance will expire with the PHE and which will be extended for the duration of the EUA declaration.[10]

Flexibility	Description	End Date	Notes
EUA for COVID-19 vaccines	The FDA has granted Novavax and Janssen EUAs for vaccines to prevent against COVID-19 infection.[11]	When EUA declaration is terminated or specific EUAs are revoked	Pfizer and Moderna have received full approval for their COVID-19 vaccines. Other sponsors will likely pursue full approval.
EUA for COVID-19 therapeutics	The FDA has issued EUAs for fourteen drug and non-vaccine biological products for the treatment of COVID-19.[12]	When EUA declaration is terminated or specific EUAs are revoked	No transition planned has been outlined for COVID-19 therapeutics, but sponsors are likely to pursue full approval
EUAs for medical devices during the COVID-19 PHE, including diagnostics	The FDA authorized the emergency use of unapproved products or unapproved use of an approved product for certain emergency circumstances.	When EUA declaration is terminated	Sponsors have 180 days to seek full approval once the

[9] https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/faqs-what-happens-euas-when-public-health-emergency-ends
[10] https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/faqs-what-happens-euas-when-public-health-emergency-ends
[11] https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#vaccines
[12] https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#coviddrugs

Flexibility	Description	End Date	Notes
			EUA declaration is terminated.[13]
Medical devices that fall within enforcement policies issued during the PHE	The FDA issued a series of enforcements polices that allowed for the marketing of devices otherwise not cleared or approved by the agency, including face masks, surgical masks, respirators, gowns and gloves, sterilizers, disinfectant devices, air purifiers, ventilators, and other respiratory devices	180 days after PHE expires (November 7, 2023) or 180 days after the final guidance is issued if it is issued after the end of the PHE[14]	Sponsors may use the 180 days to come into compliance with regulatory requirements.

Provider Flexibilities

An array of administrative, payment, workforce, quality, and other waivers were implemented to help support providers and preserve Medicare beneficiary access to care throughout the COVID-19 PHE. Some of these flexibilities have been made permanent by CMS or extended by Congress, while others are being phased out as the PHE ends.

For example, Congress extended the Acute Care Hospital at Home individual waiver through 2024 as well as many of the telehealth flexibilities detailed above, while CMS has made some workforce and administrative flexibilities permanent through rulemaking. Provider flexibilities continued by CMS include adjustments to requirements for supervision and reduced documentation requirements for care provided by students, among others. However, most waivers, especially those affecting payment, are sunsetting with the PHE.

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[13] https://www.fda.gov/regulatory-information/search-fda-guidance-documents/transition-plan-medical-devices-issued-emergency-use-authorizations-euas-during-coronavirus-disease

[14] https://www.fda.gov/media/155038/download

The end of provider payment flexibilities further highlights the shift from a pandemic to endemic response. Expected payment changes after the PHE include:

- Termination of the 20 percent payment increase for COVID-19 inpatients;
- Removal of billing flexibilities for COVID-19 diagnostic testing;
- Cessation of the enhanced payment for certain inpatient cases using authorized or approved COVID-19 treatment; packaging of COVID-19 treatments and diagnostic services under the OPPS akin to services for most other conditions;
- Resumption of certain site-neutral payment rate provisions for LTCHs; no free over the counter tests; and
- Alignment of outpatient payment for COVID-19 vaccine administration with other Part B vaccines (effective January 1, 2024).

Medicare-Only Provisions

Flexibility	Description	End Date	Notes
Over the Counter COVID-19 Tests	Allows Medicare Part B beneficiaries to obtain up to eight over the counter COVID-19 tests each calendar month from a participating pharmacy or health care provider with no cost sharing.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Quality Measure Suppression/Quality Reporting Flexibilities	In response to COVID-19, CMS adopted a measure suppression policy for hospitals and post-acute care providers participating in Medicare value-based purchasing and quality reporting programs (QRPs) (e.g., the Readmissions Reduction Program (HRRP)). The policy applies to specific measures and/or reporting timeframes adversely impacted by COVID-19.[15] CMS granted exceptions from and extensions for reporting and data submission requirements for clinicians and providers participating in Medicare QRPs.[16] However, with some exceptions, most remaining COVID-19 PHE-related flexibilities (e.g., flexibilities related to Merit-based Incentive Payment	For hospitals and PAC providers, May 11, 2023 for suppression of certain quality measures adversely impacted by COVID-19 or as stipulated in regulation. For clinicians and physicians participating in Medicare QRPs, exceptions generally granted on an EUC	Regulatory changes required to be made permanent.

[15] https://www.cms.gov/newsroom/fact-sheets/fiscal-year-fy-2022-medicare-hospital-inpatient-prospective-payment-system-ipps-and-long-term-care-0
[16] https://qpp-cm-prod-content.s3.amazonaws.com/uploads/966/QPP%20COVID-19%20Response%20Fact%20Sheet.pdf

Flexibility	Description	End Date	Notes
	System (MIPS)) are primarily extended via CMS' Extreme and Uncontrollable Circumstances (EUC) Exceptions policy.[17]	basis (some automatic, some via application).	
COVID-19 Diagnostic Testing	Allows providers to bill for a level one E/M visit (CPT code 99211) for both new and established patients, which can ordinarily be billed only when clinical staff perform services incident to the billing practitioner for an established patient, when clinical staff assess a patient and collect a specimen for a COVID-19 diagnostic test.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Part B Drugs	Waives signature requirements for Part B drugs requiring proof of delivery and/or a patient signature.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Hospitals – Including Psychiatric Hospitals; Critical Access Hospitals (CAHs), Including Cancer Centers; and Long-Term Care Hospitals (LTCHs)

Flexibility	Description	End Date	Notes
Increased Payment for COVID-19 Inpatients	Applies a 20 percent increase in the Medicare payment rate for inpatients diagnosed with COVID-19 through the IPPS.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Acute Hospital Care at Home (AHCaH)	For approved applicants, waives certain regulatory requirements of hospitals and CAHs requiring nursing services be provided on premises 24 hours a day, 7 days a week and the immediate availability of a registered nurse for care of any patient.[18]	December 31, 2024	Extended via CAA, 2023; requires additional legislative action to be made permanent.
Hospitals Without Walls (Temporary Expansion Sites)	Waives certain regulatory physical environment requirements to allow for increased flexibilities for surge capacity and patient quarantine because of COVID-19 (e.g., permits facility and non-facility not normally used for patient care to be used for patient care or quarantine).	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

[17] https://qpp.cms.gov/mips/exception-applications
[18] https://qualitynet.cms.gov/acute-hospital-care-at-home

Flexibility	Description	End Date	Notes
EMTALA	Waives certain hospital Emergency Medical Treatment & Labor Act (EMTALA) obligations. Allows hospitals, psychiatric hospitals, and CAHs to screen patients at a location offsite from the hospital's campus.	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.
Verbal Orders	Waives several regulatory requirements to provide flexibility related to verbal orders where readback verification is required but authentication may occur later than 48 hours.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Reporting Requirements	Waives the requirement that hospitals report patients in an intensive care unit (ICU) whose death is caused by their disease but who required soft wrist restraints (e.g., to prevent pulling tubes/IVs) no later than the close of business on the next business day. Hospitals must still report deaths where restraint may have contributed within the requisite period.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Patient Rights	Waives certain patient rights (e.g., timeframes for providing a copy of a medical record, patient visitation, etc.) only for hospitals considered to be impacted by a widespread COVID-19 outbreak.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Sterile Compounding	Waives regulatory requirements intended to conserve scarce mask supplies by allowing used face masks to be removed and retained in the compounding area and to be reused during the same work shift in the compounding area only.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Discharge Planning	Waives certain regulatory requirements of hospitals and CAHs to provide detailed discharge planning information to patients, their families, or their representatives. Also waives certain discharge planning regulatory requirements of hospitals related to post-acute care services.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Medical Staff	Waives certain regulatory requirements to alleviate workforce concerns regarding the physician credentialing and privileging process.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Medical Records	Waives certain regulatory requirements pertaining to medical record organization, staffing, and retention. Also affords flexibility in the completion of medical records within 30 days following hospital discharge.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Advance Directives	Waives certain regulatory requirements of hospitals and CAHs to provide information regarding advance directives to patients.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Flexibility	Description	End Date	Notes
Physician Services	Waives certain regulatory requirements stipulating that Medicare patients be under the care of a physician, i.e., allowing hospitals to leverage other practitioners, as necessary.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Anesthesia Services	Waives regulatory requirements pertaining to certified registered nurse anesthetist (CRNA) supervision requirements. Applies to hospitals, CAHs, and ASCs.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Utilization Review	Waives certain regulatory requirements pertaining to utilization review (UR) hospital conditions of participation (CoPs) – e.g., evaluating the medical necessity of the patient's admission, duration of stay, and services provided.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Written Policies and Procedures for Appraisal of Emergencies at Off-Campus Hospital Departments	Waives certain regulatory requirements for surge facilities only pertaining to written policies and procedures for staff to use when evaluating emergencies.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Emergency Preparedness Policies and Procedures	Waives certain regulatory requirements of hospitals and CAHs regarding the development and implementation of specified emergency preparedness policies and procedures.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Nursing Services	Waives requirement to develop and keep current a nursing care plan for each patient, as well as requirement to have policies and procedures in place establishing which OPDs are not required to have an RN present.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
QAPI Program	Waives certain regulatory requirements of hospitals and CAHs pertaining to the Quality Assurance and Performance Improvement (QAPI) program, while ensuring that hospitals and CAHs maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Food and Dietetic Services	Waives regulatory requirements of surge hospitals to maintain a current therapeutic diet manual approved by the dietician and medical staff and readily available to all medical, nursing, and food service personnel.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Respiratory Care Services	Waives regulatory requirements of hospitals to designate in writing the personnel qualified to perform specific respiratory care procedures and accompanying personnel supervision requirements.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Flexibility	Description	End Date	Notes
"Swing Bed" Providers	Waives regulatory requirements to allow hospitals to establish Skilled Nursing Facility (SNF) swing beds payable under the SNF prospective payment system (PPS) for patients who do not require acute care but are unable to find placement in a SNF provided certain criteria are met.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Temporary Expansion Locations	Waives certain regulatory requirements to allow hospitals (and ASCs pursuant to certain criteria) to establish and operate as part of the hospital any location meeting applicable hospital CoPs (i.e., those not waived during the PHE).	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Enhanced Payment for COVID-19 Therapies	Provides an enhanced payment for eligible inpatient cases that involve use of certain new products authorized or approved to treat COVID-19.	September 30, 2023	Regulatory changes required to be made permanent.
Separate Medicare Payment for New COVID-19 Treatments	Provides separate payment for FDA-authorized or approved drugs and biologicals used to treat COVID-19 in a HOPD when these treatments are billed on the same claim as a primary C-APC service, instead of packaging with the C-APC payment.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
COVID-19 Diagnostic Testing	Provides separate payment for COVID-19 symptom assessment and specimen collection and only conditionally packages payment when furnished with another payable service under the OPPS.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Housing Acute Care Patients in the IRF or IPF Excluded Distinct Part Units	Allows acute care hospitals to, due to a disaster or emergency, house acute care inpatients in excluded distinct part units, such as distinct part unit inpatient rehabilitation facilities (IRFs) or inpatient psychiatric facilities (IPFs).	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Housing IRF or IPF Excluded Distinct Part Unit Patients in the Acute Care Unit	Allows acute care hospitals with excluded distinct IPF and/or IRF units to relocate inpatients from the excluded distinct part unit to an acute care bed due to a disaster or emergency.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Care for Patients in Extended Neoplastic Disease Care Hospitals	Affords flexibility to neoplastic disease care hospitals to exclude inpatient stays where the hospital admits or discharges from the greater than 20-day average LOS requirement.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Teaching Hospitals	Permits teaching physicians to use audio/video real-time communications technology to interact with residents through virtual means to meet the requirement that they be present for the key portion of the service, including when furnishing Medicare Telehealth services. After the PHE, only teaching physicians in residency training sites located outside of a	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Flexibility	Description	End Date	Notes
	metropolitan statistical area will meet the requirement through audio/video real-time communications technology. Allows counting of resident time at alternate locations. When the PHE ends, a hospital may not count a resident for purposes of Medicare DGME payments or IME payments if the resident is performing activities in their own home, or a patient's home. Permits hospitals to continue to claim residents who are training in other hospitals in the IME and DGME FTE resident counts, if certain requirements are met. Allows IME payments to be held harmless for a temporary increase in beds due to the PHE.		
CAH-Specific Provisions	Delineates certain modifications to existing CAH requirements regarding personnel qualifications; staff licensure; status and location; and length of stay (LOS). For example, re: LOS, waives the requirements that CAHs limit the number of beds to 25 and that the LOS be limited to 96 hours. Also waives certain responsibilities of physicians in CAHs to allow the physician to perform direction and supervision responsibilities remotely, as appropriate.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
LTCH-Specific Provisions	Waives certain site-neutral payment rate provisions for LTCHs such that all LTCH cases admitted during the COVID-19 PHE are paid the relatively higher LTCH PPS standard federal rate; and provides flexibility regarding the 25-day average LOS requirement.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Post-Acute Care (PAC) Providers

Flexibility	Description	End Date	Notes
IRFs	Provides IRFs with flexibility to comply with the "60 percent rule" (relative to the threshold to receive payment as an IRF); and the requirement that IRF patients generally receive at least 15 hours therapy/week ("3-hour rule").	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Flexibility	Description	End Date	Notes
SNFs and NFs	Waives several regulatory requirements including requirements pertaining to the following: a 3-day prior hospitalization for coverage of a SNF stay; pre-admission screening and annual resident review (PASARR); and certain provider enrollment flexibilities.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
HHAs	Waives certain OASIS reporting flexibilities; modifications regarding the 12-hour annual in-service training requirement of home health aides; detailed information sharing for discharge planning; flexibility regarding the provision of a patient's clinical record within a stipulated timeframe; and narrows scope of QAPI to focus on infection control. Waives onsite visits for HHA aide supervision. All postponed onsite assessments must be completed no later than 60 days after the end of the PHE (i.e., July 10, 2023). *Note: CMS finalized changes to this requirement in the CY 2022 Home Health PPS Final Rule to allow for one virtual visit per 60-day episode per patient receiving skilled care in rare circumstances. For patients receiving non-skilled care, the RN must make an onsite, in-person visit every 60 days; semi-annually the nurse will make a supervisory direct observation visit for each patient.*[19] The flexibilities allowing Medicare-eligible home health patients to be under the care of a nurse practitioner, clinical nurse specialist, or a physician assistant, including ordering home health services; establishing and periodically reviewing a plan of care for home health services; and certifying and re-certifying eligibility, was made permanent beyond the PHE.[20] CMS codified the flexibility allowing occupational therapists (OTs), physical therapists (PTs), and speech language pathologists (SLPs) to	End of PHE (May 11, 2023), unless otherwise specified	Regulatory changes required to be made permanent.

[19] https://www.federalregister.gov/documents/2021/11/09/2021-23993/medicare-and-medicaid-programs-cy-2022-home-health-prospective-payment-system-rate-update-home

[20] Codified in regulation at 42 CFR 409.43

Flexibility	Description	End Date	Notes
	perform the initial and comprehensive assessment for all patients in accordance with Division CC, section 115 of the CAA of 2021, in the CY 2022 Home Health PPS Final Rule.		
Hospice	Provides certain flexibilities to hospice providers including requirements regarding volunteer use; comprehensive assessments; non-core services; onsite visits for hospice aide supervision; hospice aide competency testing allowing use of pseudo patients; 12-hour annual in-service training requirement for hospice aides; other annual training requirements; and narrows scope of QAPI to focus on infection control.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Other Providers and Suppliers

Flexibility	Description	End Date	Notes
SCHs and MDHs	Waives certain eligibility requirements (e.g., number of beds) for hospitals classified as Sole Community Hospitals (SCHs) or Medicare-Dependent, Small Rural Hospitals (MDHs) prior to the COVID-19 PHE to meet the needs of their community, provide for increased capacity, etc.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
RHCs and FQHCs	Waives certain staffing, physician supervision of nurse practitioners (NP), and temporary expansion location requirements of rural health clinics (RHCs) and federally qualified health centers (FQHCs).	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
ESRD Facilities	Delineates several flexibilities extended to End-Stage Renal Dialysis (ESRD) facilities, including those pertaining to: transition period for initiation of care planning and monthly physician visits; dialysis home visits; home dialysis machine designation; transferability of physician credentialing; expanding availability of renal dialysis to ESRD patients; ability to delay some patient assessment; emergency preparedness training; and on-time periodic audits for operators of water/dialysate equipment.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
DMEPOS	Pauses the requirement to send a prior authorization (PA) request for certain DMEOS items and supplies and waives signature requirements for certain DMEPOS requiring proof of delivery and/or a patient signature.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Flexibility	Description	End Date	Notes
	Adjusts the fee schedule amounts for certain DMEPOS items and services furnished in non-rural, non-competitive bidding areas within the contiguous U.S., based on a 75/25 blend of adjusted and unadjusted rates.		
ASCs	Delineates various flexibilities for Ambulatory Surgical Centers (ASCs), including those pertaining to the reappraisal or review of medical staff privileges and scope of procedures performed; and the waiver of certain nursing services or ASCs enrolling as hospitals during the PHE as part of the Hospitals Without Walls Program.[21]	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
ICF/IIDs	Stipulates various flexibilities for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/ID), including staffing flexibilities; suspension of community outings; suspension of mandatory training requirements; and modification of adult training programs and active treatment.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
CMHCs	Stipulates various flexibilities for community mental health clinics (CMHCs), including those pertaining to waiver of QAPI requirements; provision of partial hospitalization services and other CMHC services in an individual's home; and the waiver of the requirement that CMHCs provide at least 40 percent of its items and services to individuals ineligible for Medicare benefits.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Ground Ambulance Services	Authorizes Medicare reimbursement for ground ambulance services furnished in response to a 911 call to patients who were not transported to Medicare-permitted destinations (e.g., local emergency department (ED)) due to community-wide emergency medical service protocol to preserve health system capacity during the PHE (i.e., Ambulance Treatment-in-Place (TIP)). Also modifies the data collection and reporting period for certain ground ambulance organizations.	End of PHE (May 11, 2023)	Legislative and regulatory changes required to be made permanent.

[21] https://www.cms.gov/newsroom/press-releases/cms-announces-comprehensive-strategy-enhance-hospital-capacity-amid-covid-19-surge

Provisions Impacting Multiple Providers and Suppliers

Flexibility	Description	End Date	Notes
Liability Immunity	Extends liability immunity to providers, including physicians, RNs, and LPNs whose licenses expired within the last 5 years, among others, to administer COVID-19 vaccines in any state.	End of PHE (May 11, 2023)	Flexibility ends when PREP Act declaration is no longer in effect. Legislative changes required to be made permanent.
COVID-19 Vaccination	Sets payment at $40 per dose for administering COVID-19 vaccines in outpatient settings for Medicare beneficiaries. Sets payment at $75 per dose to administer COVID-19 vaccines in the home for certain Medicare patients.	December 31, 2023	Effective January 1, 2024 the payment rate will align with other Part B preventive vaccines.
LSC	Waives and modifies Specific Life Safety Code (LSC) for hospitals, CAHs, inpatient hospice, ICF/IIDs, and SNFs/NFs, regarding alcohol-based hand-rub dispensers.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Stark Law	Provides certain flexibilities to financial relationships and referrals related to the COVID-19 emergency.	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.
Practitioner Locations	Waives requirements that out-of-state practitioners be licensed in the state where they are providing services when they are licensed in another state, when certain conditions are met.	Permanent	CMS says it implemented the waiver out of an abundance of caution, but regulations that existed before the PHE allow for a deferral to state law.
Provider Enrollment	Waives several requirements associated with provider enrollment, including expedited enrollment, opt-out enrollment, and reporting home address.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

Flexibility	Description	End Date	Notes
Student Documentation Flexibilities	Allows billing clinicians to review and verify rather than redocument.	Permanent	Permanently codified via regulation.[22]
Select LCDs and NCDs	Provides enforcement discretion for certain NCDs and LCDs that otherwise would have restricted coverage, including: • Clinical indications in LCDs for therapeutic continuous glucose monitors to permit more COVID-19 patients with diabetes to better monitor their glucose and adjust insulin doses from home; and • Procedural volume requirements contained in Percutaneous Left Atrial Appendage Closure, Transcatheter Aortic Valve Replacement, Transcatheter Mitral Valve Replacement and Ventricular Assist Devices NCDs for facilities and providers that, prior to the PHE, met volume requirements.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Locum Tenens	Modifies the 60-day limit to allow a physician or physical therapist to use the same substitute for the entire time they are unavailable to provide services during the PHE.	July 10, 2023	Legislative changes required to be made permanent.
Appeals	Allows Medicare Administrative Contractors (MACs) and Qualified Independent Contractors (QICs) in Medicare FFS, as well as MA and Part D Independent Review Entities (IREs), to allow an extension to file an appeal.	Permanent	CMS notes these flexibilities will continue to apply consistent with existing authority.

Medicaid

Though the end of the COVID-19 PHE no longer affects the Medicaid continuous coverage requirements, pursuant to CAA, 2023, it marks the expiration of various Medicaid flexibilities related to enrollment, eligibility, and benefits in response to the pandemic. Medicaid coverage for COVID-19 vaccines, tests, and treatment without cost sharing after the PHE will vary by eligibility pathway.

[22] https://www.federalregister.gov/documents/2019/11/15/2019-24086/medicare-program-cy-2020-revisions-to-payment-policies-under-the-physician-fee-schedule-and-other

- **Medicaid Continuous Enrollment and FMAP Increase:** CAA, 2023 delinked the Medicaid continuous coverage requirements from the COVID-19 PHE, allowing states to begin the "unwinding period" as early as February 1, 2023 and no later than April 1, 2023. States must *initiate* renewals within 12 months of the beginning of the state's unwinding period and must *complete* renewals within 14 months of the beginning of the state's unwinding period. CAA, 2023 phases out the 6.2 percentage point FMAP increase over the year, beginning April 1, 2023. A Marketplace Special Enrollment Period (SEP) on HealthCare.gov is available for qualified individuals and their families who lose Medicaid or CHIP coverage due to the end of the continuous coverage requirements.[23] The temporary SEP will be available between March 31, 2023 and July 31, 2024. States that operate their own marketplaces are permitted to offer a temporary SEP.

- **Medicaid Flexibilities:** The end date of the Medicaid flexibility depends upon the authority used.

  1. *Disaster-Relief SPA:* Temporary changes to eligibility, enrollment, premiums, cost-sharing, or benefits. Authority expires at the end of PHE (May 11, 2023) or earlier depending on the state's choice.
  2. *Traditional SPA:* Changes to eligibility groups, benefits, provider reimbursement methodologies, and administration. The authority continues until the state amends or terminates it.
  3. *Section 1115 Demonstration Waivers:* Allows Medicaid programs to be run without compliance with statutory or regulatory requirements. The authority ends 60 days after the PHE ends (July 10, 2023) or earlier depending on the state agreement with CMS.
  4. *Section 1135 Waiver:* Flexibilities related to Medicaid, CHIP and Medicare to ensure access during the PHE. The authority ends at the end of the PHE (May 11, 2023) or earlier.
  5. *Section 1915(c) Appendix K Waiver:* Changes to HCBS eligibility or services in response to PHE. The authority ends 6 months after PHE ends (November 11, 2023).

- **Medicaid Coverage of COVID-19 Vaccines, Tests, and Treatment:** IRA delinked the COVID-19 vaccine coverage requirement from the PHE and made vaccine coverage a mandatory benefit under Medicaid and CHIP. Beginning October 1, 2023, Medicaid is required to cover all adult ACIP-recommended vaccines, including COVID-19 vaccine, and vaccine administration without cost sharing. In the meantime, states will continue to receive 100 percent FMAP for COVID-19 vaccine and their administration through September 30, 2024. After that, states will receive its regular FMAP. Medicaid coverage of COVID-19 tests and treatment without cost sharing will end on the last day of the first calendar quarter beginning one year after the PHE ends (September 30, 2024).

- **Optional COVID-19 Medicaid Eligibility Group:** The statutory authority established under Families First Coronavirus Response Act (FFCRA) for states to create a new optional COVID-19 Medicaid eligibility group expires at the end of the PHE (May 11, 2023). After this date, states may not claim 100 percent FMAP for COVID-19 vaccines and vaccine administration, COVID-19 testing and related services, and COVID-19 related

[23] https://www.cms.gov/technical-assistance-resources/temp-sep-unwinding-faq.pdf

treatment. States may, but are not required to, use state-only funds to continue to provide coverage for individuals who were enrolled in the optional COVID-19 group but are no longer eligible for Medicaid when the authority expires.

FMAP Increases

Flexibility	Description	End Date	Notes
COVID-19 Vaccine Administration	Requires coverage of COVID-19 vaccines and their administration, without cost-sharing, for all Medicaid and CHIP enrollees, 100 percent FMAP.[24]	No longer linked to PHE.	IRA requires coverage of all adult ACIP-recommended vaccines, including COVID-19 vaccine, and vaccine administration without cost sharing as a mandatory Medicaid and CHIP benefit, beginning October 1, 2023.[25] States will receive 100 percent FMAP through September 30, 2024 (last day of the first quarter that begins one year after the PHE ends). Coverage without cost-sharing will continue for all children, regardless of Medicaid expansion status, and adults in expansion states. After that, states will receive its regular FMAP. Since adult vaccine coverage will become mandatory, IRA phases out

[24] Sections 9811 and 9821 of American Rescue Plan Act (ARPA, P.L. 117-2), https://www.congress.gov/bill/117th-congress/house-bill/1319; CMS SHO# 21-004, https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-004.pdf

[25] Section 11405 of IRA

Flexibility	Description	End Date	Notes
			the 1 percentage point FMAP increase provided by the ACA for states that cover all adult ACIP-recommended vaccines without cost-sharing. This increase ends September 30, 2024 (8 fiscal quarters beginning on or after the effective date, August 16, 2022).
Medicaid Expansion Incentive	Provides an 8-quarter 5 percentage point FMAP increase to a state that expands Medicaid.[26]	Not linked to PHE, available for 8-quarter period.	Legislative changes required to be made permanent.
Continuous Medicaid Coverage + Maintenance of Effort	States receive 6.2 percentage point FMAP increase during the PHE if they meet five criteria related to continuous Medicaid coverage and maintenance of effort regarding Medicaid enrollment processes, premiums, and benefits. See details in the next section below.	No longer linked to PHE. Phase down of FMAP increase begins April 1, 2023.	CAA, 2023 delinked continuous coverage requirement from PHE and phases down the 6.2 percentage point FMAP increase during 2023.[27] • January 1–March 31, 2023: 6.2 percentage points • April 1–June 30, 2023: 5 percentage points • July 1–September 30, 2023: 2.5 percentage points • October 1–December 31, 2023: 1.5 percentage points

[26] Section 9814 of ARPA, P.L. 117-2, https://www.congress.gov/bill/117th-congress/house-bill/1319; CMS SHO# 21-004, https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-004.pdf

[27] CMS SHO# 23-002, https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf

Flexibility	Description	End Date	Notes
Additional Federal Funding for Urban Indian Organization (UIOs) and Native Hawaiian Health Care Systems (NHHCSs)	Provides 100 percent FMAP for medical assistance expenditures for services received through UIOs, Native Hawaiian Health Centers (NHHCs), and NHHCSs.[28]	Not linked to PHE, available through March 31, 2023.	Legislative changes required to be made permanent.

Medicaid Continuous Coverage/Redetermination

Flexibility	Description	End Date	Notes
Continuous Medicaid Coverage + Maintenance of Effort Requirements	FFRCA provides a 6.2 percentage point FMAP increase to states that provide continuous Medicaid coverage regardless of changes in circumstances for most Medicaid beneficiaries enrolled as of or after March 18, 2020. The continuous eligibility requirement does not apply to persons that are only presumptively eligible for Medicaid. To receive this, states must also meet Maintenance of Efforts (MOE) requirements including not implementing higher premiums or more restrictive eligibility standards or processes than were in place on January 1, 2020 and covering COVID testing and therapies without cost-sharing.	No longer linked to PHE. States can begin their unwinding period as early as February 1, 2023. States must begin their unwinding period no later than April 1, 2023.[29]	CAA, 2023 delinked continuous coverage requirement from PHE and modified the conditions for receipt of temporary FMAP increase (detailed above). States must *initiate* renewals within 12 months of the beginning of the state's unwinding period and must *complete* renewals within 14 months of the beginning of the state's unwinding period. Beginning April 1, 2023, states are required to submit

[28] Section 9815 of ARPA, https://www.congress.gov/bill/117th-congress/house-bill/1319; CMS SHO# 21-004, https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-004.pdf

[29] CMS SHO# 23-002, https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf

Flexibility	Description	End Date	Notes
			monthly reports during the unwinding period. CAA, 2023 also established new conditions for states to receive temporary FMAP increase, requiring states ensure they have up-to-date contact information before redetermination and contact beneficiaries using more than one modality prior to terminating enrollment on the basis of returned mail. Beginning April 1, 2023, states may increase the premium amount for an enrollee if the enrollee's income increased and still claim the temporary FMAP increase, as long as state meets certain conditions.

Medicaid HCBS Waivers

Flexibility	Description	End Date	Notes
HCBS Flexibilities	Expanded LTSS eligibility and benefits such as coverage for LTSS services provided by telehealth. States can pursue these flexibilities utilizing a Section 1915(c) Appendix K waiver.[30,31,32]	Depends upon state agreement with CMS. November 11, 2023 (6 months after PHE ends) if state requested CMS approval for that timeline. Otherwise, one year from the Appendix K effective date, or earlier depending upon date chosen by the state.[33]	Regulatory or legislative changes required to be made permanent.
Increased FMAP for HCBS	ARPA created a 10 percent FMAP increase for HCBS from April 1, 2021-March 31, 2022 for states that opt into it and maintain at least the spending level they had as of April 1, 2021.[34] The funding could be used to "enhance, expand, or strengthen" Medicaid HCBS services such as expanding covered services, providing access to the COVID vaccine,	States can spend enhanced funds until March 31, 2025.	Legislative changes required to be made permanent. CMS extended the deadline (originally March 31, 2024) and updated states'

[30] https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/home-community-based-services-public-health-emergencies/emergency-preparedness-and-response-for-home-and-community-based-hcbs-1915c-waivers/index.html
[31] https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf
[32] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf
[33] https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/home-community-based-services-public-health-emergencies/emergency-preparedness-and-response-for-home-and-community-based-hcbs-1915c-waivers/index.html
[34] Section 9817 of ARPA

Flexibility	Description	End Date	Notes
	conducting COVID outreach and education, paying for direct staffing or increasing wages, recruiting HCBS staff, and more.[35]		reporting requirements to reduce state reporting burden.[36]

Medicaid LTSS Flexibilities

Flexibility	Description	End Date	Notes
Expanded LTSS Eligibility	Expanded Medicaid eligibility criteria for LTSS for seniors and persons with disabilities including expanded functional or financial eligibility. Select states also increased the total number of HCBS waiver enrollees served.	Depends upon the authority utilized by the state to expand LTSS. See below. Additional details regarding state approaches and timelines available here.[37]	Regulatory or legislative changes required to be made permanent.
Streamlined Enrollment	Streamlined enrollment processes for Medicaid LTSS.		
Reduced LTSS Premiums and/or Cost-Sharing	Reduced premiums and/or cost-sharing for Medicaid LTSS benefits.		
New LTSS Benefits; Relaxed Benefit Utilization Requirements	States added new LTSS Medicaid benefits, increased service utilization limits and/or relaxed prior authorization requirements.		
Provider Payments	Increased provider payment rates for LTSS, including adopt of retainer payments and/or increased institutional payment rates.		
Modified Provider Qualifications	Modified provider qualifications to increase access to care.		

[35] https://www.medicaid.gov/medicaid/home-community-based-services/guidance/strengthening-and-investing-home-and-community-based-services-for-medicaid-beneficiaries-american-rescue-plan-act-of-2021-section-9817/index.html
[36] CMS SMD# 22-002, https://www.medicaid.gov/federal-policy-guidance/downloads/smd22002.pdf
[37] https://www.kff.org/medicaid/issue-brief/state-actions-to-sustain-medicaid-long-term-services-and-supports-during-covid-19/

Medicaid Reimbursement Increases

Flexibility	Description	End Date	Notes
Advance and Interim Payments	Allows states to make periodic interim or advance payments to providers for services furnished, subject to final reconciliation, under state plan authority. CMS will consider such SPAs on an expedited basis.[38]	End of PHE for disaster relief SPAs (May 11, 2023)	Regulatory changes required to be made permanent.
Upper Payment Limit (UPL) Adjustments	Allows states to submit UPL demonstration adjustments to include additional costs or payments related to the COVID-19 pandemic.[39]	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Payment Rates and Methodology	Allows states to use the disaster relief SPA to adjust payment methodologies and increase payments. This can include, but is not limited to, increasing payments for providers with an influx of Medicaid patients, accounting for decreases in service utilization but increases in cost per unit.[40]	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Directed Payment Through MCOs	States can direct managed care plans to temporarily enhance provider payments under the contract to assist with the state's response to COVID-19. COVID-19-specific flexibilities include: payments may be directed at specific providers such as FQHCs, dental, or behavioral health providers; payments must be developed and implemented with a 2-sided risk mitigation strategy; and states are allowed to apply directed payments retrospectively to the start of the contract rating period.[41]	Ability to direct payments not tied to PHE. COVID-19 flexibilities will end at end of PHE (May 11, 2023).	Regulatory changes required to continue flexibilities related to COVID-19.
Retainer Payments	Allows states to make retainer payments to certain habilitation and personal care providers. Payments are not tied to the provision of services and allow providers to continue to be paid for certain services when circumstances such as social distancing measures prevent enrollees from receiving services. States may also direct managed care plans to provide retainer payments.	Retainer payments authorized through section 1915(c) waivers not tied to PHE.	Regulatory change required to be made permanent.

[38] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf
[39] https://www.medicaid.gov/state-resource-center/downloads/medicaid-disaster-relief-spa-instructions.pdf
[40] https://www.medicaid.gov/state-resource-center/downloads/medicaid-disaster-relief-spa-instructions.pdf
[41] https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/cib051420.pdf

Flexibility	Description	End Date	Notes
		Retainer payments authorized through section 1115 waivers will end at end of PHE (May 11, 2023).[42]	

Other Medicaid Flexibilities

Flexibility	Description	End Date	Notes
Streamlined Medicaid application and enrollment processes; **Modified eligibility rules;** **Medicaid premiums eliminated or waived.**	CMS provided and approved an array of flexibilities related to enrollment, eligibility, and benefits in response to the pandemic. States used 5 types of Medicaid emergency authorities to make these changes.[43,44] The end date of the change depends upon the authority used. 1. *Disaster-Relief SPA:* Temporary changes to eligibility, enrollment, premiums, cost-sharing, or benefits. 2. *Traditional SPA:* Changes to eligibility groups, benefits, provider reimbursement methodologies, and administration. 3. *Section 1115 Demonstration Waivers:* Allows Medicaid programs to be run without compliance with statutory or regulatory requirements. 4. *Section 1135 Waiver:* Flexibilities related to Medicaid, CHIP and Medicare to ensure access during the PHE.	Disaster-Relief SPA: End of PHE (May 11, 2023) or earlier depending on the state's choice Traditional SPA: Continues until the state amends or terminates it Section 1115 Demonstration Waivers: 60 days after the PHE	Whether legislative or regulatory changes are needed to make the policy permanent depends upon the mechanism used (SPA, Section 1115 waiver, etc.).

[42] https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html
[43] https://www.kff.org/coronavirus-covid-19/issue-brief/state-actions-to-facilitate-access-to-medicaid-and-chip-coverage-in-response-to-covid-19/
[44] https://www.kff.org/medicaid/issue-brief/how-have-states-used-medicaid-emergency-authorities-during-covid-19-and-what-can-we-learn/

Flexibility	Description	End Date	Notes
	5. *Section 1915(c) Appendix K Waiver:* Changes to HCBS eligibility or services in response to PHE.	ends (July 10, 2023) or earlier depending per state agreement with CMS Section 1135 Waiver: End of the PHE (May 11, 2023) or earlier Section 1915(c) Appendix K Waiver: 6 months after PHE ends (November 11, 2023)	
Prior Authorization Suspension	Provides the option for states to suspend Medicaid FFS prior authorization requirements through a Section 1135 waiver.[45]	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.
Pre-Existing Prior Authorization Extension	Provides the option for states to require Medicaid FFS providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through a Section 1135 waiver.	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.
Provider Enrollment	Provides the option for states to waive several requirements associated with provider enrollment, including the application fee, criminal background checks, site visits, revalidation actions, and others through a Section 1135 waiver.[46]	Six months after end of PHE (November 11, 2023)	Legislative changes required to be made permanent.
Expedited Fair Hearings	Provides the option for states to allow managed care enrollees to bypass health plan appeal and proceed to a state fair hearing.[47]	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.

[45] https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf
[46] https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf
[47] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf

Flexibility	Description	End Date	Notes
Fair Hearing Request Extended Deadline	Provides the option for states to permit extensions of the deadline (up to 90 days) for filing appeals to request a state fair hearing through a Section 1135 waiver.	End of PHE (May 11, 2023)	Legislative changes required to be made permanent.
Premiums and Cost Sharing	Allows states to suspend premiums and other cost-sharing such as copayments, deductibles, coinsurance, and enrollment fees in Medicaid and CHIP through a Section 1115 demonstration.[48]	60 days after PHE ends (July 10, 2023)	Regulatory changes required to be made permanent.
Expansion of Presumptive Eligibility Parameters	Presumptive eligibility (PE) extended to additional eligibility groups including to non-MAGI eligible groups for hospital PE; increased number of allowable PE periods within each 12-month period; state Medicaid agency permitted to determine PE for MAGI-based groups; additional entities allowed to determine PE for certain populations.[49]	End of PHE for states that utilized a Disaster Relief SPA (May 11, 2023); otherwise based on state agreement with CMS	Regulatory changes, legislative changes, or state SPA required to be made permanent.
Extend redetermination period or delay eligibility changes based on changes in circumstances for CHIP	Altered CHIP eligibility to allow for longer redetermination periods or continued eligibility despite change in circumstances	End of PHE for states that utilized a Disaster Relief SPA (May 11, 2023)	Regulatory changes, legislative changes, or state SPA required to be made permanent.
Self-attestation accepted for all eligibility criteria except citizenship or immigration status	Permits states to accept self-attestation as proof of all eligibility criteria except for citizenship and immigration status when electronic sources or documentation are otherwise unavailable.[50]	Depends on mechanism used by state (Disaster-relief SPA, etc.)	Regulatory or legislative change required to be made permanent.

[48] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf
[49] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf
[50] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf

Flexibility	Description	End Date	Notes
Extension of the period to verify immigration status	Extends the "reasonable opportunity period" for verifying immigration status as part of Medicaid applications. [51]	End of PHE for states that utilized a Disaster Relief SPA (May 11, 2023); otherwise based on state agreement with CMS	Regulatory changes, legislative changes, or potentially state choice with SPA approval required to be made permanent.
Residency requirements altered for persons temporarily out of state due to the emergency	Allows states to expand the definition of temporary absence for individuals out of state due to the emergency. Also allows for temporary coverage of non-resident individuals in the state.[52]	End of the PHE (May 11. 2023) or as agreed between state and CMS in Disaster Relief SPA; otherwise based on state agreement with CMS	Regulatory changes, legislative changes, or potentially state choice with SPA approval required to be made permanent.
Altered timeframes for families to complete CHIP renewals	State opportunity to extend or delay the timeframes families have to completing CHIP renewals.[53]	End of the PHE (May 11, 2023) or as agreed between state and CMS in Disaster Relief SPA	Regulatory or legislative changes required to be made permanent.

[51] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf
[52] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf
[53] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf

Flexibility	Description	End Date	Notes
Waive requirements for timely processing of Medicaid applications and / or renewals	Timeliness requirements for processing Medicaid applications and renewals waived or altered.[54]	End of the PHE (May 11, 2023) or as agreed between state and CMS in Disaster Relief SPA	Regulatory or legislative changes required to be made permanent.
Modified Medicaid benefits	Allows adjustments existing benefits such as by waiving prior authorization requirements	End of the PHE (May 11, 2023) or as agreed between state and CMS in Disaster Relief SPA; otherwise based on state agreement with CMS	Regulatory changes, legislative changes, or potentially state choice with SPA approval required to be made permanent.
COVID Tests, Treatments and Vaccines Without Cost-Sharing	Requires coverage without cost sharing for COVID-19 tests, treatments, and vaccines for Medicaid enrollees	COVID-19 vaccine coverage no longer tied to PHE (see above). Coverage for COVID-19 tests and treatments without cost sharing end on the last day of the first calendar quarter beginning one year after the	Regulatory, legislative, or state choice with SPA approval requirement to be made permanent.

[54] https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf

Flexibility	Description	End Date	Notes
		PHE ends (September 30, 2024).	
Modified prescription drug coverage	Altered prescription drug coverage by increasing the maximum supply allowed, allowing for early refills, making exceptions or modifications to the preferred drug list, waiving, or altering prior authorization requirements or other flexibilities.	End of the PHE (May 11, 2023) or as agreed between state and CMS in Disaster Relief SPA; otherwise based on state agreement with CMS	Regulatory changes, legislative changes, or potentially state choice with SPA approval required to be made permanent.
Medicaid Coverage for Optional COVID-19 Group	States can opt to extend Medicaid eligibility to uninsured persons on a limited basis exclusively for COVID vaccines, tests, and treatment. Expenses are covered by 100 percent FMAP.[55]	End of PHE (May 11, 2023)	Regulatory changes, legislative changes, or potentially state choice with SPA approval required to be made permanent.
Extended Deadline for Updates to Access Monitoring Review Plans (AMRPs)	States are required under 42 CFR 447.203(b)(5) to update AMRPs every three years. The next deadline is October 1, 2022. CMS is exercising enforcement discretion to delay the deadline to October 1, 2024.[56]	Delayed to October 1, 2024	Regulatory changes required to be made permanent.

Medicare Advantage and Part D

The flexibilities provided to Medicare Advantage (MA) and Part D plans are set to expire at the end of the PHE. The flexibilities had provided MA beneficiaries access to out-of-network providers and telehealth services, as well as relaxed requirements around prior authorization and prescription drug supply and delivery.

[55] https://www.medicaid.gov/resources-for-states/downloads/ending-covrg-optnl-covid-grp-guidance.pdf
[56] https://www.medicaid.gov/federal-policy-guidance/downloads/cib03312022.pdf

Flexibility	Description	End Date	Notes
Payment for Vaccines, Tests, and Treatments	MA plans are required to pay for COVID-19 vaccines, and the administration, without cost sharing, beginning January 1, 2022.[57] Additionally, MA plans are prohibited from imposing cost sharing for COVID-19 treatments and testing.	Cost sharing for COVID-19 treatments and some tests will resume post-PHE (May 11, 2023).	Cost sharing for vaccines will continue to be prohibited, pursuant to the CARES Act.
Out-of-Network Coverage and Cost-Sharing	Requires MA plans to provide coverage of services at out-of-network facilities that participate in Medicare and charge no more than the in-network rate.	End 30 days after the PHE (June 10, 2023), pursuant to the contract year (CY) 2023 MA policy and technical changes.[58]	Regulatory changes required to be made permanent.
MA and Part D Plan Telehealth Waiver	Allows MA plans to make changes to their benefit packages regarding telehealth services in real-time (i.e., before the bid submission deadline).	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
Prior Authorization for Part D Drugs	Part D sponsors are permitted to waive prior authorization requirement for Part D drugs used to treat or prevent COVID-19 and can waiver or relax prior authorization requirements for other formulary drugs to facilitate access.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.
90-Day Part D Drug Supply and Home or Mail Delivery	Requires MA prescription drug plans (MA-PDs) and standalone prescription drug plans (PDPs) to provide up to a 90-day supply for covered Part D drugs. Part D sponsors can also relax any plan-imposed polices that may discourage certain methods of Part D drug delivery, including mail or home deliver, for retail pharmacies.	End of PHE (May 11, 2023)	Regulatory changes required to be made permanent.

[57] https://www.kff.org/coronavirus-covid-19/issue-brief/faqs-on-medicare-coverage-and-costs-related-to-covid-19-testing-and-treatment/
[58] https://www.federalregister.gov/documents/2022/05/09/2022-09375/medicare-program-contract-year-2023-policy-and-technical-changes-to-the-medicare-advantage-and#h-16

Private Health Insurance

Group health plans and individual health insurance issuers are required to cover all COVID-19 test and vaccines without cost sharing throughout the PHE. Beneficiaries are likely to face cost sharing once the PHE is terminated. Additionally, COBRA flexibilities around continuation coverage and premium assistance end 60 days after the PHE.

Flexibility	Description	End Date	Notes
Coverage of COVID-19 Tests and Vaccines	Group health plans and individual health insurance plans were required to cover COVID-19 tests and testing-related services without cost-sharing or prior authorization. This included coverage of up to 8 free over-the-counter tests per individual per month, without a physician order or prescription.[59] Plans and issuers were also required to cover COVID-19 vaccines without cost sharing, even when provided by out-of-network providers and reimburse at a reasonable amount for vaccine administration.[60]	End of PHE (May 11, 2023)	Coverage policies will vary by plan, but beneficiaries are likely to face cost-sharing for COVID-19 tests. Individuals enrolled in non-grandfathered health plans will continue to receive COVID-19 vaccines without cost sharing, pursuant to the ACA preventive services coverage requirements.[61]
Extension of COBRA Dates	Plans subject to ERISA were required to disregard the "Outbreak Period" (starting Mach 1, 2020) in determining the following periods and dates: 1) the 60-day election period for COBRA continuation; 2) the date for making COBRA premium payments; 3) the deadline for employers to provide individuals with their COBRA continuation rights; 4) the 30-day Special Election period; 4) timeframes for filing claims under the plans	Ends 60 days after the end of PHE (July 10, 2023).	Legislative changes to COBRA requirements would be needed.

[59] https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-52.pdf
[60] https://www.kff.org/coronavirus-covid-19/issue-brief/what-happens-when-covid-19-emergency-declarations-end-implications-for-coverage-costs-and-access/#coverage-costs-and-payment
[61] https://www.kff.org/coronavirus-covid-19/issue-brief/commercialization-of-covid-19-vaccines-treatments-and-tests-implications-for-access-and-coverage/#table1

	claims-processing procedures; 5) the deadline for requesting internal and external appeals.[62]		

Nutrition

Nutrition-related flexibilities will end when or shortly after the PHE ends on May 11, 2023.[63] Notably, SNAP Emergency Allotment or "max allotment" is also ending and SNAP households that have been receiving extra SNAP food benefits since March 2020 will no longer receive the higher level of assistance as of March 2023.[64] All households will see at least a $95 per month reduction. On average, they will receive $$90 less per month per person, which equates to a $360 decrease each month for a family of four. An elderly couple, for example, will drop from receiving $281 per month to just $23. This change, coupled with the end of the flexibilities outlined below, has the potential to drastically increase the incidence of hunger in our nation. Advocates are vocal about their concern regarding the impending hunger cliff.

Flexibility	Description	End Date	Notes
Pandemic Electronic Benefit Transfer (P-EBT)	Pandemic EBT makes EBT funds available to children to ensure they have access to nutrition when schools where they are otherwise eligible for free or reduced-price lunch or other subsidized meals are closed due to COVID-19.[65] The program also provides benefits to younger children who are enrolled both in SNAP and in a covered child care facility. In the 2022-2023 school year, schools must be closed or operating at reduced attendance or hours for 5 consecutive days for a student to receive P-EBT benefits. Once a school meets the minimum 5 consecutive day threshold during SY 2022-2023, then that school does not need to meet that threshold again for the duration of the current federal PHE.	Children's eligibility for P-EBT school year benefits ends when the PHE ends. Children remain entitled to all benefits accrued on P-EBT eligible days prior to the end of the PHE. States that did	Legislative changes required to be made permanent. Flexibilities are effective during an active public health emergency.

[62] https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01
[6363] https://www.fns.usda.gov/programs/fns-disaster-assistance/fns-responds-covid-19/snap-covid-19-waivers
[64] https://www.fns.usda.gov/snap/covid-19-emergency-allotments-guidance
[65] https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt

	After the threshold is met, free or reduced-price eligible children may receive P-EBT benefits on days that they do not attend school in person and do not have access to a meal service at the school due to COVID-19. If the school is offering virtual instruction as an option for students to opt into for COVID-related reasons, students are eligible for P-EBT on days they attend virtually for COVID reasons. States are also allowed to issue a fixed P-EBT amount across months to children receiving 100% virtual instruction. For the 2022-2023 school year, in addition to planning for P-EBT during school wide closures, states were required to include an option for families of eligible children affected by isolated COVID-related absences and virtual learning days to establish their eligibility and claim P-EBT benefits even when the wider school was not impacted.	not have approved plans in place prior to the end of the PHE are allowed to submit plans to USDA in order to issue accrued benefits.	
Seamless Summer Option (SSO) and Summer Food Service Operations (SFSO)	Allowed schools to operate under the Summer Food Service Program (SFSP) or National School Lunch Program Seamless Summer Option (SSO). Schools operating under SSO can provide meals to all children free of charge (universal school meals).[66]	Ended June 30, 2022	Legislative changes required to be made permanent.
Time Limit for Able-Bodied Adults Without Dependents (ABAWDs)	Suspended the time limit for ABAWD beneficiaries participating in SNAP. Prior to the pandemic, ABAWDs were limited to no more than 3 months of benefits over a 3-year period if they did not work (unless exempt).	Expires at the end of the month after the month during which the PHE ends.	Legislative changes required to be made permanent; potentially via state waiver with USDA

[66] https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-85

Housing

Housing instability for many individuals and families continues across the nation. The U.S. Supreme Court struck down the eviction moratorium in August 2021. COVID-19 related funds for rental assistance have enabled communities to provide families and individuals with key supports. Those funds are available until September 30, 2027 but many communities have expended them.

Flexibility	Description	End Date	Notes
Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19	Prevented renters in communities experiencing a substantial or high level of community transmission of COVID-19 from being evicted for nonpayment of rent.	The Supreme court struck down the eviction moratorium on August 26, 2021.	Legislative changes required to be made permanent, per U.S. Supreme Court decision.
Emergency Rental Assistance	States can use the funding to provide assistance to eligible households through rental assistance programs. $25 billion was included in the Consolidated Appropriations Act of 2021 (CAA), and an additional $21.5 billion was included in the American Rescue Plan (ARP).	Funds from the CAA were available through December 31, 2021. However, beginning September 30, 2021, HHS was directed to funds and reallocate them to grantees that had obligated at least 65 percent of their original funding. The ARP funding is available until September 30, 2027.	Legislative changes required to be made permanent.