

The End of PHE Flexibilities – How to Navigate Upcoming Changes in Healthcare

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On January 30, 2022, President Biden announced that the Covid-19 Public Health Emergency (PHE) will finally end on May 11, 2023.[1] Since the PHE was declared on January 31, 2020, emergency declarations and waivers were implemented that granted flexibilities to state Medicaid operations and most healthcare providers, from hospitals to skilled nursing facilities to behavioral health providers. The use of telehealth services also expanded significantly during the COVID-19 pandemic as a result of the PHE waivers. This article explores some of the effects on the healthcare system when the PHE ends and guidance for moving forward.

Millions will Lose Medicaid Coverage Due to Medicaid Disenrollment

Medicaid enrollment increased over 19.8 million during the pandemic.[2] One reason for this increase was the “continuous enrollment provision” that was part of the PHE declaration in which states received additional federal funding for not taking away Medicaid coverage from enrolled beneficiaries while the PHE was in effect.[3]

As part of the Consolidated Appropriations Act (CAA) enacted on December 29, 2022, the continuous enrollment provision will end on March 31, 2023.[4] The CAA requires states to have a plan to return to normal operations and to begin their “unwinding” period no later than April 1, 2023 and eligibility terminations may begin on or after April 1, 2023.[5]

The CAA also requires states to issue renewals (Medicaid redeterminations or recertifications) for all individuals in Medicaid, Children’s Health Insurance Program (CHIP) or Basic Health Program (BHP) within 12 months of the beginning of the state’s unwinding period and to complete renewals within 14 months of the beginning of the state’s unwinding period.[6] As a result of this unwinding process, between 5 million and 14 million current Medicaid beneficiaries may

lose their current Medicaid health coverage.[7]

CMS Announced Special Enrollment Period for Individuals No Longer Eligible for Medicaid Coverage

To mitigate the effects of the Medicaid unwinding process, on January 30, 2023, CMS announced that there will be a Special Enrollment Period (SEP) on the Affordable Care Act (ACA) marketplace to assist individuals who are losing their Medicaid, CHIP or BHP coverage due to the public health emergency unwinding.[8] The SEP will be from March 31, 2023 to July 31, 2024. Once consumers apply for Affordable Care Act marketplace coverage, they have a 60-day window to pick a plan. They can enroll before their Medicaid or CHIP healthcare coverage ends. After they select a plan, their coverage will begin the first day of the next month.

Blanket Waivers Will End May 11 Unless Made Permanent

Another flexibility initiated by CMS at the beginning of the PHE was 1135 blanket waivers implemented to assist healthcare providers in containing the spread of COVID-19. These waivers were effective from March 1, 2020 until the end of the pandemic, and were aimed at numerous provider types, including hospitals, long-term care facilities and hospices/home health agencies.[9]

CMS has already terminated some waivers, and without further administrative or regulatory action, the remaining waivers will be terminated effective May 11, 2023. The anticipated impact on several affected provider types affected is discussed below.

Home Health

During the PHE, in addition to many other flexibilities, home health agencies did not have to abide by face-to-face certification requirements for many home health services, and training and supervision requirements for home health aides was lessened or eliminated.[10] While the home health waiver allowing telehealth to be used as a replacement for certain face-to-face requirements was extended through 2024, the majority of home health waivers will expire on May 11, 2023.[11] Due to the transient nature of the home health workforce, this is problematic as many home health aides and nurses have known nothing other than the PHE rules for the past three years.[12] Home health providers will need to act quickly to train their staff on and implement the proper protocols before the end of the PHE.

Skilled Nursing Facilities

The majority of waivers in place for skilled nursing facilities (SNFs) have been terminated[13], and temporary nurse aide training waivers cannot be extended past May 11, 2023.[14] There are two major waivers applicable to SNFs that will also end on May 11: the 3-Day Prior Hospitalization and the Spell of Illness Waivers that have allowed SNFs to provide services without a qualifying hospital stay or to obtain an additional 100-day benefit without a 60-day break in spell of illness.[15] SNFs need to be prepared to operate without these two waivers by May 11, 2023. Current residents and their families will need to be informed that they will no longer be eligible to remain at the SNF at the end of a 100-day stay.

Numerous Medicare Telehealth Policies Have Been Made Permanent/Extended

The CAA contained some good news for providers when it extended many of the Medicare telehealth flexibilities through December 24, 2024.[16] These telehealth flexibilities include:

- Federally Qualified Health Center (FQHC)/Rural Health Clinic (RHC) can serve as a distant site provider for non-behavioral/mental telehealth services.
- Medicare patients can receive telehealth services authorized in the Calendar Year 2023 Medicare Physician Fee Schedule in their home.
- There are no geographic restrictions for originating site for non-behavioral/mental telehealth services.
- Some non-behavioral/mental telehealth services can be delivered using audio-only communication platforms.
- An in-person visit within six months of an initial behavioral/mental telehealth service, and annually thereafter, is not required.
- Telehealth services can be provided by a physical therapist, occupational therapist, speech language pathologist, or audiologist.

The above extended telehealth waivers are in addition to many telehealth waivers that have been made permanent, mainly regarding behavioral/mental health services.[17]

All healthcare providers currently using or contemplating using telehealth services will need to understand what telehealth waivers will end May 11, 2023, what telehealth waivers are temporarily extended and what telehealth waivers are now permanent. The rules can also be different for Medicare beneficiaries and state Medicaid beneficiaries.[18]

If you need assistance with navigating the end of the flexibilities that will occur on May 11, 2023, or understanding the status of the various flexibilities, please reach out to us for assistance.

Please refer to our other article on this topic with issues specific to the state of South Carolina - **South Carolina Medicaid to Restart Member Eligibility Reviews – Details and Action Steps for Providers and Their Medicaid Patient-Members.**

[1] <https://apnews.com/article/biden-united-states-government-district-of-columbia-covid-public-health-2a80b547f6d55706a6986debc343b9fe>

[2] <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-the-unwinding-of-the-medicare-continuous-enrollment-provision/>

[3] <https://www.healthcarediver.com/news/covid-19-public-health-emergency-to-end-may/641609/>

[4] <https://www.medicare.gov/federal-policy-guidance/downloads/sho23002.pdf>

[5] See *id.*

[6] See *id.*

[7] <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-the-unwinding-of-the-medicare-continuous-enrollment-provision/>

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



[9] <https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf>

[10] See *id.*

[11] <https://homehealthcarenews.com/2023/01/the-covid-19-public-health-emergency-is-officially-coming-to-an-end/>

[12] See *id.*

[13] <https://leadingage.org/cms-terminates-most-1135-waivers-nursing-homes/>

[14] <https://medicareadvocacy.org/cms-authorizes-new-waivers-of-nurse-aide-training-requirements-for-nursing-facilities/>

[15] <https://www.ahcancal.org/Survey-Regulatory-Legal/Emergency-Preparedness/Documents/COVID19/3-Day%20Waiver%20FAQ.pdf>

[16] <https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency/policy-changes-after-the-covid-19-public-health-emergency/>

[17] <https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency/policy-changes-after-the-covid-19-public-health-emergency/#permanent-medicare-changes>

[18] https://www.scdhhs.gov/press-release/update-telehealth-flexibilities-issued-during-covid-19-public-health-emergency?utm_campaign=&utm_medium=email&utm_source=govdelivery