

# All-State Medicaid and CHIP Call June 28, 2022

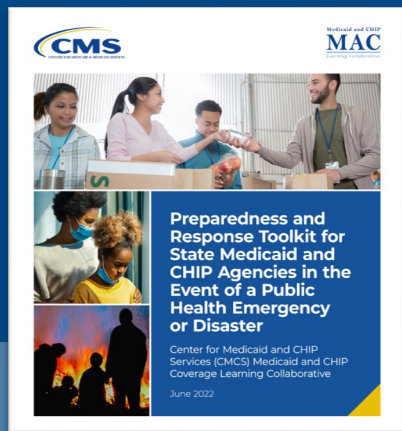


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# Agenda

- Updated Disaster Response Toolkit and 1135 Waiver Portal
- Formula Shortage and Medicaid Medical Formula and Medical Food Coverage Requirements
- Unwinding FAQs
- Open Mic Q and A

# Updated Preparedness and Response Toolkit for State Medicaid and CHIP Agencies in the Event of a Public Health Emergency or Disaster



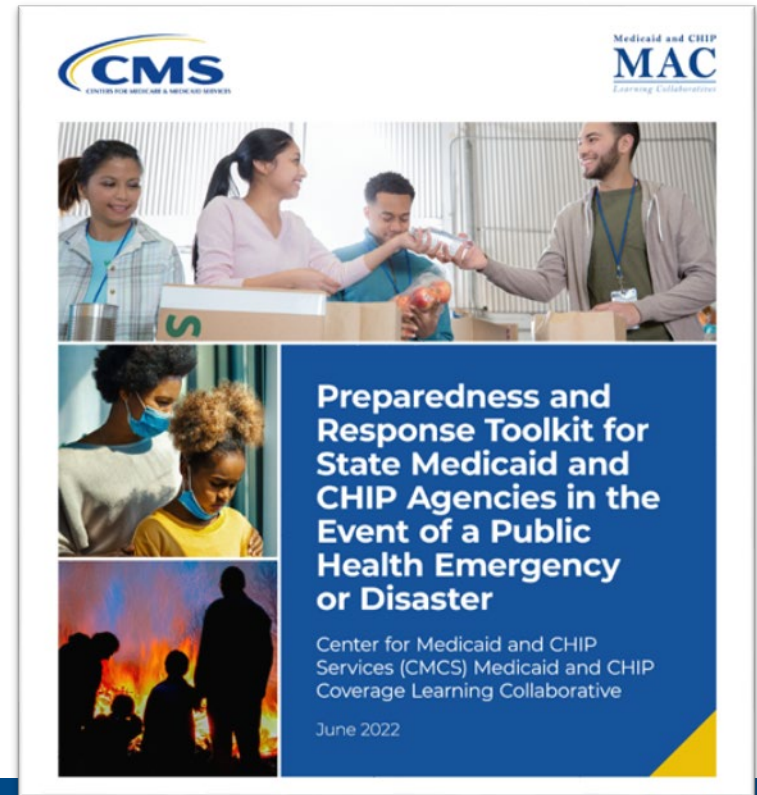
*Center for Medicaid and CHIP Services*  
*June 28, 2022*

# Background

- Following a natural disaster or public health emergency (PHE), State Medicaid and CHIP agencies may want to make program changes as part of their emergency response.
- There are existing flexibilities in the statute and regulation that can be supplemented with emergency authority to provide state Medicaid and CHIP agencies with additional flexibilities to operate their programs.
- Authorizing the use of these temporary flexibilities typically requires a state or territory to request the use of certain authorities from CMS and for CMS to approve their use.
- After the 2017 hurricanes, earthquakes, wildfires and floods, CMS identified a need to develop written guidance to assist states and territories with preparing and responding to disasters and PHEs.
- In 2018, a Disaster Relief Toolkit was developed that outlined the legal authorities available to effectuate various strategies and actions necessary to support Medicaid and CHIP operations and beneficiaries.

# Updated Preparedness and Response Toolkit

- As CMS gained experience during the COVID-19 PHE and past disasters, we identified many new flexibilities and strategies available to support states and territories. The Toolkit was updated to reflect the comprehensive guidance on the available flexibilities, and also include a new strategic framework for Medicaid and CHIP agencies as they prepare to respond to a disaster or PHE.
- The updated version is organized into **three modules** that serve as a comprehensive PHE and disaster preparedness response Toolkit for states and territories.



# Module 1

**MODULE 1** provides a high-level overview of available legal authorities and the types of Medicaid and CHIP strategies that can be deployed by states and territories, including:

- Regulatory exceptions
- Disaster Relief Verification Plan Addendum,
- Medicaid State Plan Amendment,
- CHIP Disaster Relief State Plan Amendment,
- 1915(c) HCBS Waiver Program Appendix K/ Attachment K
- Section 1135 Waiver authority
- Section 1115 Demonstration authority

## II. Public Health Emergency and Disaster-Related Legal Authorities and Regulatory Exceptions

State Medicaid and CHIP agencies respond to a PHE, disaster, or other emergency authority to provide services through their programs. Authorizing the use of a certain authority from CMS.

If the President declares a state of emergency and the Secretary of Health and Human Services is empowered to temporarily modify the program, the Secretary may determine necessary by the agency under section 1135, the Secretary may amend the State Medicaid, CHIP, and Medicare.

State Medicaid and CHIP programs are authorized by the following primary authorities:

- **Regulatory Exceptions:** The federal requirements due to a PHE, disaster, or other emergency, a state or territory is unable to meet the requirements, the Secretary may act on changes in circumstances. Similarly, in a PHE, disaster, or other emergency, a state or territory may have

- **Disaster Relief Verification Plan Addendum:** States or territories wishing to temporarily change their Medicaid and CHIP verification processes in response to a PHE, disaster, or other emergency must document those changes to the state's approved verification plan under 42 CFR § 435.945(j), and may do so through a Medicaid and CHIP Disaster Relief MAGI-Based Verification Plan Addendum. These provisions would go into effect immediately. States or territories must submit the addendum (or updated MAGI-Based Verification Plan Template) to CMS but prior CMS approval is not required. States and territories must also document non-MAGI-based changes but are not required to submit these changes to CMS for review.

- **Medicaid State Plan Amendment:** In response to a PHE or disaster, states or territories may wish to revise Medicaid eligibility, enrollment, benefit, payment methodology and other requirements in their state plans. The state plan must be amended to reflect material changes to the State Medicaid program via submission of a proposed state plan amendment (SPA); SPAs must be approved by CMS. In general, Medicaid SPAs can be retroactive to the first day of the quarter in which an approvable amendment was submitted to CMS. However, during a declared emergency or disaster under the National Emergencies Act or Stafford Act and a Public Health Emergency Declaration under Section 319 of the Public Health Service Act, section 1135 waiver authority may be used to permit state plan changes in response to the PHE or disaster to take effect earlier than the first day of the quarter in which the SPA was submitted (see below section on section 1135 waivers for more detail).

- **1915(c) HCBS Waiver Program Appendix K:** States and territories may submit an Appendix K amendment to the 1915(c) HCBS waiver program before or during PHEs or disasters to document necessary changes to waiver operations to address unique circumstances, service needs and supports experienced during and/or in the aftermath of the PHE or disaster. The Appendix K includes actions that states and territories can take under the existing section 1915(c) authority to temporarily amend the waiver to respond to a PHE or disaster. The provisions of an Appendix K amendment are effective on a temporary basis, can be approved retroactive to the start of the PHE or disaster and are typically effective for up to one year from the start date. The Appendix K template and instructions can be accessed from the [Emergency Preparedness and Response for Home and Community Based \(HCBS\) 1915\(c\) Waivers](#) page.

- **Section 1135 Waiver:** Under section 1135 of the Act, the Secretary has the authority to temporarily waive or modify certain Medicare, Medicaid, and CHIP requirements to ensure that sufficient health care items and services are available to meet the needs of enrollees in an area affected by a federally-declared PHE. The Secretary may invoke section 1135 waiver authority when a declaration of emergency or disaster under the National Emergencies Act or Stafford Act and a Public Health Emergency Declaration under Section 319 of the Public Health Service Act have been made. Section 1135 authority enables providers to furnish needed items and services in good faith during times of

These are some circumstances where a state or territory may have flexibilities already permissible health is one such example. They pay for services provided to change the current state

respond to particular needs. For example, to address the needs of states and territories can submit SPAs under the Disaster Relief SPA plan authority changes that are needed in response to COVID-19 PHE. States and territories may also request programmatic changes,

# Module 2

**MODULE 2** lists the various strategies available to states and territories and the action(s) needed to effectuate them, including tables outlining the following categories of flexibilities, each with specific state examples:

- A. General Administrative Flexibilities
- B. Eligibility and Enrollment
- C. Beneficiary Cost Sharing and Premiums
- D. Benefits
- E. Adverse Actions and Fair Hearings
- F. Managed Care
- G. Provider Enrollment and Participation
- H. Telehealth
- I. Medicaid Finance and Reimbursement
- J. Reporting and Oversight
- K. HIPAA Compliance
- L. EMTALA Requirements
- M. Emergency IT Systems Funding
- N. Section 1115 Demonstrations

**Table A: General Administrative Flexibilities**

| Available flexibilities and exceptions   | Relevant authorities and sources  | Notes on implementation and necessary state action  | Select state examples  |
|--|---|---|--|
| <b>A1. State Plan Amendment Effective Date</b>   |   |   |  |
| Modification of requirement that a SPA must be submitted by the last day of a quarter in order to take effect in that quarter; if modification is approved, this permits states to have an earlier SPA effective date than would otherwise be permitted under CMS regulations. | 42 CFR § 430.20<br>section 1135 waiver  | Submit section 1135 waiver request.<br>During the COVID-19 PHE, submit section 1135 waiver request together with Disaster Relief SPA.<br>Should only be requested for SPAs that do <b>not</b> restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers.                   | <a href="#">Colorado COVID-19 Section 1135 Waiver Approval Letter (3/26/20)</a>  |
| <b>A2. Public Notice (CHIP included where relevant)</b>  |   |   |  |
| Waive or modify public notice requirements associated with submission of certain SPAs.   | 42 CFR § 440.386 (Alternative Benefit Plan SPAs)<br>42 CFR § 447.57(c) (premiums and cost sharing)<br>42 CFR § 447.205 (methods and standards for setting rates)<br>section 1135 waiver | Submit section 1135 waiver request.<br>During the COVID-19 PHE, submit section 1135 request together with Disaster Relief SPA.<br>Should only be requested for SPAs that do <b>not</b> restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers.                          | <a href="#">Connecticut COVID-19 Section 1135 Waiver Approval Letter (3/27/20)</a><br><a href="#">Arizona COVID-19 Disaster Relief SPA TN-20-001 approved 4/1/20 (effective 3/1/20)</a>      |
| <b>A3. Tribal Consultation</b>   |   |   |  |
| Modify tribal consultation timelines specified in state plan.  | section 1135 waiver<br>SSA § 1902(a)(73)  | Submit section 1135 waiver request.<br>During the COVID-19 PHE, submit section 1135 request together with Disaster Relief SPA/CHIP Disaster Relief SPA.<br>Should only be requested for SPAs that do <b>not</b> restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers. | <a href="#">West Virginia COVID-19 Section 1135 Waiver Approval Letter (3/30/20)</a><br><a href="#">Kansas COVID-19 Disaster Relief SPA KS-20-0012 approved 5/11/20 (effective 3/1/2020)</a> |

# Module 3

**MODULE 3** is a step-by step guide intended to help states and territories assess the situation, set priorities and design comprehensive disaster and PHE response efforts most appropriate for the specific emergency at hand. The steps include:

**Step 1:** Activate or Establish Leadership Team and Conduct a Situational Analysis

**Step 2:** Assess State Agency Operations

**Step 3:** Assess the Impact on Applicants and Beneficiaries

**Step 4:** Assess the Impact on the Health Care Delivery System

**Step 5:** Establish Communication Strategies

## Module 3: Strategic Planning Framework to Respond to a Disaster or Public Health Emergency

### I. Introduction

Medicaid and the Children's Health Insurance Program (CHIP) have played a critical role in helping states and territories respond to public health emergencies (PHEs) (e.g., Flint, Michigan lead contamination, H1N1 and the 2019 Novel Coronavirus (COVID-19) outbreak), human-made disasters, and natural disasters such as hurricanes (e.g., Hurricanes Katrina, Maria, Harvey and Irma), wildfires (e.g., California wildfires), and flooding (e.g., Hurricane Harvey floods in Texas). The Centers for Medicare & Medicaid Services (CMS) Medicaid and CHIP Coverage Learning Collaborative developed this strategic framework to serve as a step-by-step guide for Medicaid and CHIP agencies as they prepare to respond to a disaster or PHE. This strategic framework is intended to help states assess the situation, set priorities and design comprehensive disaster and PHE response efforts.

Each step below includes a cross reference to relevant sections in Module 2: Toolkit Inventory for more detailed information on the available flexibilities and necessary legal authorities. This framework is designed to help states identify the specific flexibilities and authorities needed to prepare their disaster/PHE response plan.

### II. Step-by-Step Guidance to Prepare a Disaster/PHE Response Plan

#### Step 1: Activate or Establish Leadership Team and Conduct a Situational Analysis

At the onset of any disaster or PHE, establishing a leadership team, or leveraging an existing team, is critical to operationalizing and coordinating the state's response. The leadership team will need to develop processes for decision making, coordinating, and tracking the Agency's response. The team will need to assess the nature and scope of the disaster or PHE to shape the Agency's response and identify the impact of the emergency on the people, infrastructure, and systems. Consider the following:

- A. **Activate or establish leadership team.** Does the emergency warrant the creation of centralized structure at the Agency or Governor's Cabinet level to coordinate the response across state agencies, if one does not already exist? Is a "SWAT team" approach more appropriate for a regional/geographic emergency? Will the leadership team develop the full staffing plan, including equipment and other needed resources, or delegate to individual components?
- B. **Establish mechanisms for decision making and coordination.** Has a department or team been appointed to take the lead for each component of the response effort? What component or team will coordinate with the federal government? What component or team will develop and deploy communication strategies? What is the plan for establishing standing meetings and developing expedited processes for decision making? What is the plan and timeline for submitting actions to CMS (e.g., section 1135 waiver requests, state plan amendments, 1915(c) waiver requests, Appendix K submissions, emergency IT funding requests, etc.)?
- C. **Establish mechanisms for tracking and monitoring.** Is there a process in place to monitor



# Resources

- For resources see <https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/index.html> which includes links to:
  - Updated Preparedness and Response Toolkit for State Medicaid and CHIP Agencies in the Event of a Public Health Emergency or Disaster
  - Inventory of Medicaid and CHIP Flexibilities and Authorities in the Event of a Public Health Emergency or Disaster
  - Section 1135 Waiver Flexibilities
  - State Plan Flexibilities
  - Using Section 1115 Demonstrations for Disaster Response
  - Home & Community-Based Services in Public Health Emergencies
  - Federal Disaster Resources
- In the event of a PHE or disaster, state Medicaid and CHIP agencies should continue to reach out to their state leads who will serve as the points of contact for CMCS for shepherding all requests for flexibilities across CMS' divisions.

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# Section 1135 Waiver Portal

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## **Formula Shortage and Medicaid Medical Formula and Medical Food Coverage Requirements**

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# State Unwinding Q&As

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- 1. Telephone Consumer Protection Act (TCPA):** Does CMS have any new information regarding the request to the Federal Communications Commission (FCC) to clarify its understanding of how the Telephone Consumer Protection Act (TCPA) relates to Medicaid and CHIP and their contractors?

# State Unwinding Q&As (cont'd)

## Requirements and Section 1902(e)(14) Flexibilities Around Medicaid and CHIP Premiums in the Unwinding Period:

- 2. Resumption of Premiums:** Are states that suspended Medicaid and/or CHIP premiums through a disaster SPA during the PHE required to resume charging premiums after the end of the PHE?
- 3. New Determination of Income:** Are states required to make a new determination of income prior to imposing premiums after the PHE ends?
- 4. Extending Suspension of Premiums:** Can states extend their suspension of premiums beyond the end of the PHE?

# State Unwinding Q&As (cont'd)

## Requirements and Section 1902(e)(14) Flexibilities Around Medicaid and CHIP Premiums in the Unwinding Period (cont'd):

- 5. Option to Delay Resumption of Premiums:** May states delay resumption of Medicaid and CHIP premiums only for beneficiaries enrolled in coverage at the end of the PHE until a full renewal of eligibility has been completed?
- 6. Beneficiary Notice Requirements:** Are states required to provide beneficiaries with notice before starting to charge premiums again?
- 7. Public Notice Prior to Resumption:** Is public notice required prior to resumption of Medicaid and CHIP premiums after the end of the PHE?

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# Questions

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