



Medicaid Provisions in the Consolidated Appropriations Act of 2023

Among a number of other things, the Consolidated Appropriations Act of 2023 authorizes states to end the Medicaid continuous coverage requirements on March 31, 2023, before the end of the public health emergency. Redeterminations may be initiated as early as February 1, 2023, and disenrollments can begin on April 1, 2023 provided certain notice requirements are met. The 2023 Act also includes new state Medicaid obligations and options.

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Summary of Medicaid Provisions in the Consolidated Appropriations Act of 2023 Impacting States

The 2023 Act includes new state obligations, new options that states can choose to adopt and other provisions that impact states. Note that this list is not comprehensive and does not include provisions that affect territories or that merely extended existing programs, flexibilities or requirements. A more detailed, comprehensive summary of all the Medicaid and CHIP provisions in the 2023 Act is available [here](#).

New state obligations include:

- **End of Continuous Coverage Requirement, Tapered FMAP, New Conditions and Penalties:** Described in more detail below.
- **Continuous Coverage for Children:** Requires states to provide 12 months of continuous coverage to children in Medicaid and CHIP through the state plan, regardless of any change in circumstances that would otherwise impact the child's eligibility, effective January 1, 2024.
- **Medicaid Benefits for Incarcerated Foster Youth 30 Days Pre-Release:** Requires states to provide a limited set of screening, diagnostic, and targeted case management benefits to convicted and incarcerated foster care youth up to 30 days pre-release. The new benefit must be included in state plans effective January 1, 2026.
- **Searchable Provider Directories:** Requires states and Medicaid managed care organizations to maintain a searchable directory of Medicaid providers and provider information, updated at least quarterly, that includes the provider's cultural and linguistic capabilities, office accessibility for people with disabilities, whether the provider is accepting new patients and the provider's telehealth offerings.



New state options include:

- **Option to Provide 12-Month Postpartum Coverage Made Permanent:** Makes permanent the state option to provide pregnant women 12 months of continuous coverage during the postpartum period in Medicaid or CHIP. Previously, this option was only available to states between April 1, 2022 – March 31, 2027.
- **Option to Provide Medicaid Benefits to Foster Youth Awaiting Disposition of Charges:** States have the option to waive the Medicaid Inmate Exclusion Policy (at Box 1) and provide screening, diagnostic, and targeted case management benefits to foster care youth who are awaiting disposition of charges.

Other provisions that impact states include:

- **Guidance for States on Crisis Response:** Requires the Center for Medicare and Medicaid Services (CMS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) to jointly publish detailed recommendations, establish a technical assistance center, and maintain a compendium of best practices to help states establish, fund, implement and enhance operations of continuums for crisis response by July 1, 2025.

Background on Medicaid Continuous Coverage During the Public Health Emergency

The Medicaid program is a health insurance program jointly funded by states and the federal government and administered by states in accordance with federal program requirements set forth in Title XIX of the Social Security Act. The federal share of program expenditures is known as the federal medical assistance percentage (FMAP) or the federal matching rate. FMAP percentages vary by state and on the type of activity. While states are obligated to meet federal program requirements to receive federal matching funds, states can exercise significant flexibility through state plan design, waiver programs, and through programs that are funded solely with state dollars without federal matching funds.

In response to the public health emergency (PHE) created by the novel coronavirus, the Families First Coronavirus Response Act (FFCRA) (at pgs. 32-33) and subsequent federal regulations increased the state FMAP by 6.2% for the duration of the PHE. As an ongoing condition of receiving the enhanced FMAP, states have been required to provide Medicaid coverage for the duration of the PHE to individuals who validly enrolled in the Medicaid program during the PHE. This is known as the “continuous coverage” requirement and requires states to continue Medicaid



coverage even if the validly enrolled individual later becomes ineligible for benefits.

In order to continue to receive the enhanced FMAP states are also required to meet the following conditions in FFCRA:

- Maintain eligibility standards, methodologies, or procedures no more restrictive than those in effect in January 2020
- Maintain premium amounts in effect as of January 2020
- No cost-sharing for any COVID-19 testing or treatment

Under the continuous coverage requirement in FFCRA, states could not start disenrolling beneficiaries until the first day of the month after the end of the PHE without losing enhanced FMAP, except under limited circumstances (when enrollees die, voluntarily request to terminate benefits or are no longer residents of the state). Under FFCRA, the enhanced 6.2% FMAP would have also ended at the end of the month in which the PHE ended.

New Timeline, FMAP, Conditions and Penalties in the 2023 Act

Section 5131 of the Consolidated Appropriations Act, 2023 (the “2023 Act”) changed the timeline when states could start disenrolling beneficiaries, tapers FMAP during the transition period, imposes new conditions on states and creates new penalties for state noncompliance.

First, the 2023 Act de-linked the continuous coverage requirement from the end of the PHE and authorizes states to begin redeterminations on April 1, 2023. Consistent with prior guidance, states will have twelve months to initiate all redeterminations and fourteen months to complete all redeterminations. The 2023 Act also tapers off the enhanced FMAP between April and December 2023 as follows:



| Transition Period | FMAP Enhancement |
|---|--|
| Beginning of the PHE through March 31, 2023 | 6.2 percentage points (as under FFCRA) |
| April 1, 2023 through June 30, 2023 | 5.0 percentage points |
| July 1, 2023 through September 30, 2023 | 2.5 percentage points |
| October 1, 2023 through December 31, 2023 | 1.5 percentage points |
| January 1, 2024 | FFCRA FMAP bump expires |

Source: State Health and Value Strategies, Unwinding Provisions in the 2023 Consolidated Appropriations Act (December 23, 2022).

As a condition of receiving enhanced FMAP between April and December 2023, states must also meet new conditions in addition to those already required under FFCRA:

- States are required to conduct renewals in accordance with federal requirements
- States must make good faith efforts to locate enrollees for whom mail has been returned
- States must meet data reporting requirements specific to the unwinding process between July 2023 and June 2024

Additionally, the 2023 Act includes new enforcement authority for CMS and financial penalties for states for noncompliance, including:

- Reduction in the state’s overall FMAP percentage by .25 percentage points for each quarter in which the state fails to satisfy the new data reporting requirements up to a maximum of one percentage point
- CMS can stop the state’s procedural disenrollment activity if state fails to submit or implement a corrective action plan after receiving notice from CMS of noncompliance
- Civil money penalties of up to \$100,000 per day if the state fails to submit or implement a corrective action plan after receiving notice from CMS of noncompliance

State Strategies to Facilitate Unwinding from PHE

States and state Medicaid agencies will face challenges associated with unwinding from the PHE, including unprecedented volume of renewals and redeterminations at the same time that Medicaid agencies are facing significant increases in workload and high staff turnover. National



and state-specific estimates of coverage losses are included in an [Urban Institute](#) report (Appendix B, at pg. 24).

To assist states in efforts to unwind from the PHE, CMS has [authorized](#) (at pg. 24) states to seek time-limited Section 1902(e)(14)(A) waivers to ease administrative requirements. States can use these waivers to address backlogs, application processing delays, challenges with eligibility systems and other challenges arising from the unwinding process. CMS maintains a [50-state chart](#) of approved Section 1902(e)(14)(A) waivers and requested flexibilities. States are taking advantage of these flexibilities. For example, [Alabama](#), [Kentucky](#) and [Rhode Island](#) are leveraging flexibilities to increase automated processes (sometimes called *ex parte* renewals) to streamline renewals and transition individuals from Medicaid to Marketplace coverage.

States are also [required](#) to develop operational plans for unwinding, which must describe how the state will prioritize renewals, how long the state plans to take to complete renewals and the state's processes and strategies to reduce inappropriate coverage losses. These plans are not required to be approved or made publicly available and the steps taken by states to plan for unwinding [vary widely](#).

Additional Resources

NCSL resources on unwinding:

- [NCSL, Medicaid: Unwinding From the Public Health Emergency](#)
- [NCSL, Our American States Podcast Episode 172, Post-Pandemic Medicaid Changes Pose a Challenge for States](#)

Third party resources that track or aggregate state strategies to unwind from the PHE:

- [Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023](#)
- [CMS, Medicaid and CHIP Unwinding Planning Efforts](#)
- [State Health and Value Strategies, Resources for States on Unwinding the Medicaid Continuous Coverage Requirement](#)
- [Georgetown University, Center for Children and Families, 50-State Unwinding Tracker](#)
- [Kaiser Family Foundation, States Are Planning for the End of the Continuous Enrollment Requirement in Medicaid After the COVID-19 Public Health Emergency Expires, But Many](#)



Have Not Made Key Decisions

- Georgetown University, Center for Children and Families, Unwinding from the Public Health Emergency

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