What Happens When COVID-19 Emergency Declarations End? Implications for Coverage, Costs, and Access

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On Jan. 30, 2023, the Biden Administration announced its intent to end the national emergency and public health emergency declarations on May 11, 2023, related to the COVID-19 pandemic. These emergency declarations have been in place since early 2020, and gave the federal government flexibility to waive or modify certain requirements in a range of areas, including in the Medicare, Medicaid, and CHIP programs, and in private health insurance, as well as to allow for the authorization of medical countermeasures and to provide liability immunity to providers who administer services, among other things. In addition, Congress also enacted legislation—including the Families First Coronavirus Response Act (FFCRA), the Coronavirus Aid, Relief, and Economic Security (CARES) Act , the American Rescue Plan Act (ARPA), the Inflation Reduction Act (IRA), and the Consolidated Appropriations Act, 2023 (CAA)—that provided additional flexibilities tied to one or more of these emergency declarations, and as such they too are scheduled to expire when (or at a specified time after) the emergency period(s) expires.

This brief provides an overview of the major health-related COVID-19 federal emergency declarations that have been made, and summarizes the flexibilities triggered by each in the following areas:

-Coverage, costs, and payment for COVID-19 testing, treatments, and vaccines
-Medicaid coverage and federal match rates
-Telehealth
-Other Medicaid and CHIP flexibilities
-Other Medicare payment and coverage flexibilities
-Other private insurance coverage flexibilities
-Access to medical countermeasures (vaccines, tests, and treatments) through FDA emergency use authorization (EUA)
-Liability immunity to administer medical countermeasures

This is not meant to be an exhaustive list of all federal policy and regulatory provisions made in response to COVID-19 emergency declarations. For example, we do not cover the entire range of federal and state emergency authorities exercised under Medicaid Disaster Relief State Plan Amendments (SPAs), other Medicaid and CHIP SPAs, and other state-reported administrative actions; Section 1115 waivers; Section 1135 waivers; and 1915 (c) waiver Appendix K strategies. The Centers for Medicare & Medicaid Services maintains a more complete list of coronavirus waivers and flexibilities that have been exercised since early 2020; some state actions to respond to the emergency may have expiration dates that are not tied to the end of the

federal emergency declarations. This brief also does not include all congressional actions that have been made affecting access to COVID-19 vaccines, tests, and treatment that are not connected to emergency declarations, such as coverage of COVID-19 vaccines under Medicare and private insurance (see Commercialization of COVID-19 Vaccines, Treatments, and Tests: Implications for Access and Coverage for more discussion of these issues).

Overview of Major Health-Related COVID-19 Federal Emergency Declarations

The early days of the COVID-19 pandemic were marked by several emergency declarations made by the federal government, under several broad authorities, each of which has different requirements related to expiration.

A public health emergency (PHE) was initially declared by the Secretary of the Department of Health and Human Services (HHS) in late January 2020, pursuant to Section 319 of the Public Health Service Act. A PHE lasts for 90 days and must be renewed to continue; the PHE for COVID-19 has been renewed several times, most recently in February 2023, and is currently scheduled to expire on May 11, 2023.

A national emergency declaration was issued by former President Donald Trump in March of 2020, pursuant to Section 201 of the National Emergencies Act. A national emergency declaration is in effect unless terminated by the President, or through a joint resolution of Congress, or if the President does not issue a continuation notice annually. Such a notice was issued by President Trump to continue the emergency beyond March 1, 2021, and by President Biden to continue beyond March 1, 2022. As announced by the Biden Administration on Jan. 30, 2023, the administration plans to extend the national emergency to May 11, 2023, then end it on that date.

A separate emergency declaration pursuant to Section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act was issued by the Secretary of HHS in February 2020. Based on this determination, on March 27, 2020, the Secretary declared that circumstances existed to justify emergency use authorization (EUA) of medical countermeasures for COVID-19. An EUA is a mechanism to facilitate availability and use of medical countermeasures that are determined to be safe and effective but have not yet been formally approved. An emergency declaration issued pursuant to Section 564 of the FD&C Act remains in effect until terminated by the HHS Secretary. The timing to conclude the EUA is to be determined; it will not conclude on May 11, 2023, with the other declarations.

A declaration under the Public Readiness and Emergency Preparedness (PREP) Act (pursuant to Section 319F-3 of the Public Health Service Act) was issued by the Secretary of HHS in March 2020. This declaration provides liability immunity for activities related to COVID-19 medical countermeasures. Since then, 10 amendments to the declaration have been issued to extend liability protections related to COVID-19 countermeasures. For a PREP Act emergency determination, the Secretary must specify an end date; in this case, it has been set as October 1, 2024, in most cases (although there are some exceptions).

Key Flexibilities Triggered by Major COVID-19 Federal Emergency Declarations

Description	Expiration
MEDICARE	
Beneficiaries in traditional Medicare and Medicare Advantage pay no cost sharing for COVID-19 at-home testing (up to eight tests per month), testing-related services, and certain treatments, including oral antiviral drugs (such as Paxlovid).	End of § 319 PHE, except coverage and costs for oral antivirals, where changes were made in the Consolidated Appropriations Act (CAA), 2023
MEDICAID AND CHIP	
Enrollees receive coverage of COVID-19 vaccines and vaccine administration without cost sharing.	No longer tied to § 319 PHE; provisions in the IRA require Medicaid and CHIP programs to cover all Advisory Committee on Immunization Practices (ACIP)-recommended vaccines for adults, including the COVID-19 vaccine, and vaccine administration without cost sharing as a mandatory Medicaid benefit (coverage of ACIP-recommended vaccines for children in Medicaid and CHIP was already required)
Enrollees receive coverage of coronavirus testing, including at-home, and COVID-19 treatment services without cost sharing.	Last day of the first calendar quarter beginning one year after end of § 319 PHE
New eligibility pathway to cover COVID-19 testing and testing-related, vaccinations, and treatment services for uninsured individuals; coverage group elected at state option with 100% federal matching funds.	End of § 319 PHE
PRIVATE HEALTH INSURANCE	
Group health plans and individual health insurance plans are required to cover COVID-19 tests and testing-related services without cost sharing or prior authorization or other medical management requirements. Beginning January 15, 2022, this requirement applies to over-the-counter (OTC) COVID-19 tests authorized, cleared, or approved by the FDA. Health plans must cover up to 8 free OTC at-home tests per covered individual per month, and no physician's order or prescription is required. Plans may limit	End of § 319 PHE

reimbursement to no less than the actual or negotiated price or $12 per test (whichever is lower). Plans can set up a network of providers, such as pharmacies or retailers, to provide OTC tests for free rather than having patients to pay up front and submit claims for reimbursement, but the coverage requirement applies whether or not consumers get tests from participating providers.	
Group health plans and individual health insurance (including grandfathered plans) must reimburse out-of-network providers for tests and related services.	End of § 319 PHE
Plans and issuers must cover COVID-19 vaccines without cost sharing even when provided by out-of-network providers and must reimburse out-of-network providers a reasonable amount for vaccine administration; federal regulations specify the Medicare reimbursement rate for vaccine administration is a reasonable amount.	End of § 319 PHE

Medicaid Coverage and Federal Match Rates

Description	Expiration
States receive a 6.2 percentage point increase in their regular federal matching rate (FMAP) if they meet the following conditions: Cover coronavirus testing and COVID-19 treatment services, including vaccines, specialized equipment, and therapies, without cost-sharing Continuous enrollment: states generally must provide continuous eligibility for individuals enrolled in Medicaid on or after 3/18/20; states may not transfer an enrollee to another coverage group that provides a more restrictive benefit package Maintenance of eligibility standards: states must not implement more restrictive	For continuous enrollment: the CAA delinks the continuous enrollment provision from the § 319 PHE and ends continuous enrollment on March 31, 2023. Previously, this provision was set to terminate on the last day of the month in which the § 319 PHE ended. The CAA also phases down the enhanced federal funding through December 31, 2023. Previously, the enhanced funding was set to expire on the last day of the calendar quarter in which the § 319 PHE ended. For other provisions: December 31, 2023 to continue to be eligible for enhanced federal matching funds. Previously, these provisions were set to expire on the last

eligibility standards, methodologies or procedures than those in effect on 1/1/20 No increases to premiums: states must not adopt higher premiums than those in effect on 1/1/20 Maintenance of political subdivisions' contributions to non-federal share of Medicaid costs: states must not increase political subdivisions' contributions to the non-federal share of Medicaid costs beyond what was required on 3/1/20	day of the calendar quarter in which the § 319 PHE ended.

Telehealth

Description	Expiration
MEDICARE	
Among the major changes to Medicare coverage of telehealth during the PHE: Medicare beneficiaries in any geographic area can receive telehealth services, rather than beneficiaries living in rural areas only Beneficiaries can remain in their homes for telehealth visits reimbursed by Medicare, rather than needing to travel to a health care facility Telehealth visits can be delivered via smartphone in lieu of equipment with both audio and video capability An expanded list of Medicare-covered services can be provided via telehealth	The Consolidated Appropriations Act, 2023 extended these flexibilities through December 31, 2024, regardless of the status of the § 319 PHE; previously these flexibilities were set to expire after 151 days after the end of the § 319 PHE
Federally qualified health centers and rural health clinics can provide telehealth services to Medicare beneficiaries (i.e., can be distant site providers), rather than limited to being an originating site provider for telehealth (i.e., where the beneficiary is located)	The Consolidated Appropriations Act, 2023 extended these flexibilities through December 31, 2024, regardless of the status of the § 319 PHE; previously these flexibilities were set to expire after 151 days after the end of the § 319 PHE
MEDICAID AND CHIP	
All 50 states and DC expanded coverage and/or access to telehealth services in Medicaid. States have broad authority to cover telehealth in Medicaid and CHIP without federal approval, including flexibilities for allowable populations, services and payment rates, providers,	Various; may be tied to federal and/or state public health emergencies. Most states have made, or plan to make, some Medicaid telehealth flexibilities permanent.

technology, and managed care requirements.	
CROSS PAYER	
All states and D.C. temporarily waived some aspects of state licensure requirements, so that providers with equivalent licenses in other states could practice via telehealth.	Various; in some states; these waivers are still active and tied to the end of § 319 PHE, in others they have expired. Some states have made allowances for long-term or permanent interstate telemedicine.
HHS waived potential penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies during the COVID-19 nationwide public health emergency, which allows for widely accessible services like FaceTime or Skype to be used for telemedicine purposes, even if the service is not related to COVID-19.	End of § 319 PHE
DEA-registered providers can use telemedicine to issue prescriptions for controlled substances to patients without an in-person evaluation, if they meet certain conditions.	End of § 319 PHE, unless DEA specifies an earlier date

Other Medicaid and CHIP Flexibilities

Description	Expiration
Disaster-Relief State Plan Amendments (SPAs) allow HHS to approve state requests to make temporary changes to address eligibility, enrollment, premiums, cost-sharing, benefits, payments, and other policies differing from their approved state plan during the COVID-19 emergency. States may not make changes that restrict or limit payment, services, or eligibility or otherwise burden beneficiaries and providers. Approved Disaster-Relief SPAs as of July 1, 2021 are listed in KFF's Medicaid Emergency Authority Tracker	End of § 319 PHE or earlier date selected by state
COVID-19 Section 1115 demonstration waivers allow HHS to approve state requests to operate Medicaid programs without regard to specific statutory or regulatory provisions to furnish medical	60 days after § 319 PHE ends or earlier date approved by CMS

assistance in a manner intended to protect, to the greatest extent possible, the health, safety, and welfare of individuals and providers who may be affected by COVID-19. Approved COVID-19 Section 1115 waivers as of July 1, 2021 are listed in KFF's Medicaid Emergency Authority Tracker	
Section 1135 waivers allow HHS to approve state requests to 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 served by these programs in affected areas. Approved Section 1135 waivers for Medicaid as of July 1, 2021 are listed in KFF's Medicaid Emergency Authority Tracker	No later than the end of § 319 PHE
Section 1915(c) Appendix K waivers allow HHS to approve state requests to amend Section 1915(c) or Section 1115 HCBS waivers to respond to an emergency. For example, states can modify or expand HCBS eligibility or services, modify or suspend service planning and delivery requirements, and adopt policies to support providers. Approved Section 1915(c) Appendix K waivers as of July 1, 2021 are listed in KFF's Medicaid Emergency Authority Tracker	No later than six months after § 319 PHE ends

Other Medicare Payment and Coverage Flexibilities

Description	Expiration
For the treatment of patients diagnosed with COVID-19, hospitals receive a 20% increase in the Medicare payment rate through the hospital inpatient prospective payment system.	End of § 319 PHE
The 3-day prior hospitalization requirement is waived for skilled nursing facility (SNF) stays for those Medicare beneficiaries who need to be transferred because of the effect of a disaster or	No later than the end of § 319 PHE

emergency. Beneficiaries who may have recently exhausted their SNF benefits can have renewed SNF coverage without first having to start a new benefit period.	
Medicare Advantage plans are required to cover services at out-of-network facilities that participate in Medicare, and charge enrollees who are affected by the emergency and who receive care at out-of-network facilities no more than they would face if they had received care at an in-network facility.	Per new Medicare rules finalized by CMS in 2022, ends 30 days after the latest applicable end date of § 319 PHE, § 564 national emergency, or state disaster declaration (when multiple declarations apply to the same geographic area), i.e., ends when all sources that declared a disaster or emergency that include the service area have declared an end; or there is no longer a disruption to access of health care
Medicare Part D plans (both stand-alone drug plans and Medicare Advantage drug plans) must provide up to a 90-day (3 month) supply of covered Part D drugs to enrollees who request it.	End of § 319 PHE
Section 1135 waivers allow the Secretary of the Department of Health and Human Services to waive certain program requirements and conditions of participation to ensure that Medicare beneficiaries can obtain access to benefits and services. CMS has issued many blanket waivers and flexibilities for health care providers that are in effect during the COVID-19 PHE to prevent gaps in access to care for beneficiaries impacted by the emergency.	No later than the end of § 319 PHE

Other Private Insurance Coverage Flexibilities

Description	Expiration
Extension of election and notice deadlines for COBRA, other group health plan provisions: group health plans subject to ERISA or the Internal Revenue Code must disregard “the Outbreak Period” (defined as the period beginning March 1, 2020 and ending 60 days after the end of the COVID-19 National Emergency, or such other end date announced) in	60 days after the end of the § 201 national emergency

determining the following periods and dates: the 60-day election period for COBRA continuation coverage the date for making COBRA premium payments the deadline for employers to provide individuals with notice of their COBRA continuation rights the 30-day (or 60-day in some cases) Special Election Period (SEP) to request enrollment in a group health plan the timeframes for filing claims under the plans claims-processing procedures the deadlines for requesting internal and external appeals for adverse benefit determinations	

Access to Medical Countermeasures Through FDA Emergency Use Authorization

Description	Expiration
The FDA has issued EUAs for hundreds of COVID-19 tests, numerous COVID-19 treatments, including antiviral agents and monoclonal antibodies, and three COVID-19 vaccines (Pfizer, Moderna, and Johnson & Johnson). EUAs allow medical countermeasures to be available to the public before formal FDA approval.	End of § 564 emergency declaration (to be determined by the Secretary)

Liability Immunity to Administer Medical Countermeasures

Description	Expiration
Liability immunity has been extended to providers based on the PREP Act emergency declaration to allow for greater delivery of and access to medical countermeasures. For example, liability immunity has been extended to: pharmacists and pharmacy interns to administer COVID-19 vaccines (and other immunizations) to children between the ages of 3 and 18, pre-empting any state law that had age limits	End of PREP Act declaration specified duration: October 1, 2024 (with some exceptions, e.g., manufacturers have an additional 12 months to dispose of covered countermeasures and for others to cease administration and use)

healthcare providers licensed in one state to vaccinate against COVID-19 in any state physicians, registered nurses, and practical nurses whose licenses expired within the past five years to administer COVID-19 vaccines in any state	