

NOTICE OF AGENCY ACTION

SUBJECT: Notification of Expiration of Section 1135 Waivers and Disaster Relief State Plan Authorities

AGENCY: Massachusetts Executive Office of Health and Human Services

SUMMARY OF ACTION:

EOHHS put in place many flexibilities during the federal Public Health Emergency (PHE) relating to COVID-19. The Biden administration recently announced that the federal PHE will end on May 11, 2023. As a result, the authority for flexibilities granted under Section 1135 waivers and Disaster Relief State Plan Amendments (DR-SPAs) will end on that date.

This Notice of Agency Action serves as notification to providers of the end of Section 1135 waivers and DR-SPA authorities as required by federal guidance.

Note that this Notice of Agency Action does not address flexibilities related to Home and Community Based Services waivers under Appendix K authority as those authorities do not expire until November 11, 2023.

Flexibilities approved through Section 1135 waivers or DR-SPAs that are no longer in use

Flexibility	Authority Vehicle
Temporary suspension of fee-for-service prior authorization requirements and extension of preexisting fee-for-service prior authorizations	Section 1135 waiver
Temporary suspension of Preadmission Screening and Annual Resident Review (PASRR) Level I and Level II assessments	Section 1135 waiver
Waiver of certain provider enrollment requirements including application fees, criminal background checks associated with Fingerprint-based Criminal Background Checks, site visits, and in-state/territory licensure requirements	Section 1135 waiver
Temporarily cease provider revalidation	Section 1135 waiver
Extension of timelines for state fair hearing requests to allow an additional 120 days to request a fair hearing when the initial 120th day deadline for an enrollee occurred during the period of this section 1135 waiver	Section 1135 waiver MassHealth changed the timeframe to 60 days, effective April 1, 2023
Supplemental payments or quality incentive payments for the following provider types: Acute Inpatient Hospital, Chronic Disease and Rehabilitation Inpatient Hospital (including Boston Hope), Community Health Center/Federally Qualified Health Center, Nursing Facility (including for COVID-19 dedicated wings, signing bonuses, testing requirements, biweekly supplies, and surveillance testing requirements), Pediatric Chronic Disease and Rehabilitation Inpatient Hospital, Psychiatric Inpatient Hospital	DR-SPA

Flexibility	Authority Vehicle
<p>Temporary rate increases for the following provider types: Ambulance/Wheelchair, Acute Inpatient Hospital, Acute Outpatient Hospital, Adult Day Health, Adult Foster Care, Applied Behavioral Analysis, Certified Nurse-Midwife, Certified Pediatric and Family Nurse Practitioner, Children’s Behavioral Health Initiative, Day Habilitation, Durable Medical Equipment, including rates for non-sterile gloves, Early Intervention, Home Health, Home Health Aid, Nursing Facility, Other Midlevel Practitioner, Oxygen, and Respiratory Therapy Equipment, Personal Care Attendant (PCA), Physician, Private Duty Nursing (Continuous Skilled Nursing), Psychiatric Inpatient Hospital, Psychologist, Substance Use Disorder</p>	DR-SPA
<p>Add-on rates for Private Duty Nursing (Continuous Skilled Nursing), Nursing Facility, COVID-19 Facility</p>	DR-SPA
<p>Prior Authorization for medications is expanded by automatic renewal without clinical review, or time/quantity extensions.</p>	DR-SPA
<p>EOHHS will use Fiscal Year (FY) 2019 time-study results when calculating FY 2020 final cost reimbursement rates for the Department of Children and Families (DCF) and the Department of Mental Health (DMH) rehabilitation programs due to the COVID-19 pandemic.</p>	DR-SPA
<p>Updates to base year for CDRI Hospitals</p>	DR-SPA
<p>Coverage for COVID-19 mobile testing services provided by EMTs and on-site specimen collection as part of bundled payment</p>	DR-SPA
<p>Authority for Acute Outpatient Hospitals rendering Isolation and Recovery (I&R) services</p> <p>CHC/FQHC and Outpatient Hospital Isolation and Recovery Rates</p>	Disaster SPA
<p>The agency will temporarily reimburse at a contracted rate for certain physician services via Telehealth when rendered by a Telehealth Network Provider, supporting member triage related to COVID-19.</p>	DR-SPA
<p>New transportation code for wheelchair van providers transporting persons under investigation for or known to have COVID-19</p>	DR-SPA
<p>Allow continuous coverage for separate CHIP members who experience certain changes in circumstances</p>	Children’s Health Insurance Program (CHIP) DR-SPA
<p>At State discretion, premiums may be waived for CHIP applicants and/or beneficiaries who meet income and other eligibility requirements and who reside and/or work in a State or Federally declared disaster area and who request a hardship waiver.</p> <p>At state discretion, CHIP coverage is available regardless of whether the family has paid their premium for existing</p>	<p>CHIP DR-SPA</p> <p>MassHealth submitted notification to CMS to end this flexibility as of April 1, 2023, to coincide with the beginning of the eligibility unwinding period. MassHealth will provide notice to members and information about rights to appeal.</p>

Flexibility	Authority Vehicle
<p>beneficiaries who reside and/or work in a State or Federally declared disaster area.</p> <p>At state discretion, the state may waive premium balance to reactivate coverage following a termination due to non-payment of premiums for those who request a hardship waiver.</p>	

Flexibilities approved through Section 1135 waivers or DR-SPAs that will end at the end of the federal PHE (May 11, 2023)

Flexibility	Federal Authority Vehicle
Waiver of provider conditions to allow for provision of services in alternative settings	Section 1135 waiver
Waive requirement for a face-to-face encounter with an authorized practitioner within the six months before the order is written for DME or oxygen and respiratory equipment.	<p>Section 1135 (modifies the timeframe)</p> <p>Note that the use of telehealth for this encounter can extend beyond the PHE.</p>
Modification of the deadline for conducting annual monitoring and follow-up activities for targeted case management	Section 1135 waiver
Waiver of public notice for state plan amendments (SPAs) related to COVID-19	Section 1135 waiver
Waiver to shorten the tribal consultation timeframe for SPAs related to COVID-19	Section 1135 waiver
Waiver of the requirement to obtain beneficiary and provider written consent of new or amended HCBS person-centered service plan	<p>Section 1135 waiver</p> <p>On 2/21/23 MassHealth submitted a request to CMS to temporarily extend this waiver beyond May 11, 23, but CMS denied the request.</p>
Allow two Hospital Presumptive Eligibility periods within a 12-month period	DR-SPA and CHIP DR-SPA
The agency makes exceptions to their published Preferred Drug List if drug shortages occur. This would include options for covering a brand name drug product that is a multisource drug if a generic drug option is not available.	DR-SPA
Supplemental Payments to: Acute Inpatient Hospital, Acute Outpatient Hospital, Chronic Disease and Rehabilitation Inpatient Hospital, Psychiatric Inpatient Hospital, Substance Abuse Treatment Hospital	DR-SPA
CHC/FQHC [pending with CMS]	
On-site specimen collection and separate rates for specimen collection	Disaster SPA
Waive signature requirements for dispensing of drugs since the beginning of the public health emergency.	DR-SPA (pending)

Flexibility	Federal Authority Vehicle
Nursing Facility Supplemental Payments	DR-SPA (pending)
The state will use the regulatory timeliness exception for timely processing of CHIP renewals under 42 CFR 457.340(d)(1) and follow CMS-issued guidance regarding resuming the timely processing of renewals.	CHIP DR-SPA

Flexibilities approved through DR-SPAs that are due to end on May 11, 2023, and which MassHealth will request to extend on a temporary basis

Flexibility	Authority Vehicle	Extension Request
Extend the use of Hospital-Determined Presumptive Eligibility to non-MAGI individuals	DR-SPA	MassHealth will request a temporary extension through the eligibility unwinding period (until March 31, 2024)
Disregard Holyoke Soldier's Home settlement payments when determining eligibility	DR-SPA (pending)	MassHealth will request a temporary extension through the eligibility unwinding period (until March 31, 2024)
Disregard countable assets accumulated since March 18, 2020, for PETI (Post Eligibility Treatment of Income)	DR-SPA (pending)	MassHealth will request a temporary extension through the eligibility unwinding period (until March 31, 2024)
Disregard ARPA and other COVID-19 related payments when determining eligibility and calculating Patient Paid Amounts	DR-SPA	MassHealth will request a temporary extension through the eligibility unwinding period (until March 31, 2024)
Suspend all pharmacy copays for eligibility groups consistent with 42 CFR 435 Subparts B, C, and D, effective May 1, 2023	DR-SPA (pending)	MassHealth will request a temporary extension through the eligibility unwinding period (until March 31, 2024)
Update the payment methodology for adult foster care and continuous skilled nursing services	DR-SPA (pending)	MassHealth will request a temporary extension through the eligibility unwinding period (until June 30, 2023)

Flexibilities approved through Section 1135 waivers or Disaster SPAs that will extend beyond May 11, 2023

Flexibility	Authority Vehicle	End date, if any
Confirming coverage of COVID-19 vaccines, testing, and treatment	DR-SPA (pending)	September 30, 2024
Allowing PDN services to be directed by a nurse practitioner, clinical nurse specialist, and/or physician assistant	Section 1135	Collaborative practice arrangements between the non-physician practitioner and the physician will allow this to continue permanently.

Flexibility	Authority Vehicle	End date, if any
Supplemental and quality incentive payments to CDRI Hospitals	DR-SPA [various]	MassHealth has requested permanent authority through a regular State Plan Amendment (currently pending).
Eliminate copayments for individuals with income less than 50% of the Federal Poverty Limit on preventive services and certain Substance Use Disorder services	DR-SPA	Permanently approved through a regular State Plan Amendment, effective July 1, 2021
Rates for clinical lab services, including COVID-19 antibody and PCR testing, COVID-19 specimen collection, and related services in various settings	DR-SPA	Permanently approved through a regular State Plan Amendment, effective January 1, 2021
Rate increases to Adult Day Health and Day Habilitation	DR-SPA	Permanently approved through regular State Plan Amendments. One continues the Adult Day Health rates effective October 1, 2022; one continues the Day Habilitation Rates effective November 17, 2022.
Acute Outpatient Hospitals (AOH) rendering behavioral health crisis evaluation services (a.k.a. Emergency Service Program (ESP) services), a type of AOH service, to members presenting to AOH emergency departments during behavioral health crises.	DR-SPA	MassHealth has requested permanent authority through a regular State Plan Amendment, effective January 1, 2023 (currently pending).
Expansion of medical practitioners that may order home health services and establish a member's plan of care under 42 CFR 440.70, so that MassHealth members may be under the care of a nurse practitioner, clinical nurse specialist, or a physician assistant who is working within their scope of practice in accordance with state law.	DR-SPA	MassHealth received permanent authority through a regular State Plan Amendment, effective August 8, 2021.
Coverage of Remote Patient Monitoring	DR-SPA	MassHealth will request permanent authority through a

Flexibility	Authority Vehicle	End date, if any
		regular State Plan Amendment, effective May 12, 2023.
Adjustment of professional dispensing fees when medications are delivered	DR-SPA	MassHealth will request permanent authority through a regular State Plan Amendment, effective May 12, 2023.
Coverage for COVID-19 vaccination services provided by EMTs, pharmacists, pharmacy interns, pharmacy technicians, dentists, public health dental hygienists, dental hygienists, mental health centers, and substance use disorder treatment clinics	DR-SPA	MassHealth will request permanent authority through a regular State Plan Amendment, if necessary, effective May 12, 2023.
Permitting the state and clinic to temporarily designate a clinic practitioner's location as part of the clinic facility so that clinic services may be provided via telehealth when neither the patient nor practitioner is physically on-site at the clinic	Section 1135 waiver	MassHealth has requested permanent authority through a (currently pending) regular State Plan Amendment, effective 1/1/23
Waiver of the community-based settings requirements for Home and Community Based Services waivers	Section 1135 waiver	For this flexibility, MassHealth is using Appendix K authority, which does not expire until November 11, 2023.