

**Kentucky Department for Medicaid Services
PHE Flexibilities and Unwinding Decisions**

Introduction

The following table outlines the various flexibilities that were leveraged during the Public Health Emergency (PHE) in Kentucky to ensure services could be provided to those in need. They are organized by federal authority and include information about the decisions made for unwinding the flexibilities or updating policy to implement them going forward.

Shading indicates pending CMS approval

Kentucky State Plan Amendment Flexibilities

Flexibility	Description	Decision	Impacts
SPA Transmittal Number 20-0010	Allowed pharmacies to provide COVID 19 testing.	This will continue beyond the PHE.	Pharmacies across the state will continue to be able to provide COVID testing.

CMS 1135 and Blanket Waiver Flexibilities

Flexibility	Description	Decision	Impacts
Expansion of Telehealth coverage	DMS promulgated telehealth regulation (907 KAR 3170) that will clarify and further expand telehealth to additional types of asynchronous telehealth, remote patient monitoring, and other types of telephonic and audio-only telehealth that weren't already included in the Medicaid program.	Service expansion will be permanently implemented. Platforms are designated by the Office of Civil Rights and will return when notified.	Use of non-HIPAA compliant platforms remain available through August 9, 2023 in accordance with this CMS notice released on April 11, 2023 .
SNF Eligibility and Coverage	CMS waived the requirement for a 3-day prior hospitalization for coverage of a Medicare SNF stay. It authorizes renewed SNF coverage for certain beneficiaries who recently exhausted their SNF benefits.	This will end with the PHE.	Medicare rule specific to SNF stays. Ensure flexibility is rolled back.
SNF Resident Assessment Requirements	CMS waived SNF resident assessment requirements to provide relief to SNFs on the timeframe for Minimum Data Set (MDS) assessments and transmission.	This will end with the PHE.	Medicare rule specific to SNF stays. Ensure flexibility is rolled back.
Critical Access Hospital (CAH) Limits	CMS waived requirements that CAHs limit the number of inpatient beds to 25, and that average length of stay not exceed 96 hours.	This will end with the PHE.	CMS rule. Ensure flexibility is rolled back.
Housing Patients in Hospital Excluded Distinct Part Units – Inpatient Rehabilitation and Psychiatric Services	CMS permitted acute care hospitals to house acute care inpatients in excluded distinct part units, billed under IPPS.	This will end with the PHE.	CMS rule. Ensure flexibility is rolled back.

Kentucky Department for Medicaid Services PHE Flexibilities and Unwinding Decisions

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Durable Medical Equipment Prosthetics, Orthotics, and Supplies (DMEPOS) Replacement Policies	Waived requirements for a face-to-face visit, a new physician's order, and new medical necessity documentation to replace DMEPOS.	No authority to extend outside of standard SPA change.	Initiated standard SPA and will update tracker upon submission.
Care for Excluded Inpatient Rehabilitation and Psychiatric Unit Patients in Acute Care Units of Hospitals	CMS allowed acute care hospitals with excluded distinct inpatient rehabilitation or psychiatric units to relocate inpatients from those excluded distinct units to an acute care unit under existing payment system.	This will end with the PHE – do not have capability/authority to extend.	Ensure flexibility is rolled back.
LTC Hospital and IRF Threshold Requirements	CMS waived specific threshold requirements for LTC hospitals and in-patient rehabilitation facilities (IRF).	This will end with the PHE – do not have capability/authority to extend.	Ensure flexibility is rolled back.
Home Health Agency Relief	CMS waived requirements related to timeframes for HHA patient assessment (OASIS) transmission. MACs will also be able to extend the auto-cancellation date of Requests for Anticipated Payment (RAPs).	This will end with the PHE.	CMS rule. Ensure flexibility is rolled back.
Provider State Licensure Requirements and Enrollment Flexibilities	Multiple initiatives and flexibilities for provider state licensure and enrollment requirements.	Licensure changes will end with the PHE.	Separate workgroup handling outreach to entities for validation/credentialing.
Medicare Appeals	Allowed extensions for appeals, waived timelines for requests for information, processing appeals streamlining efforts.	This will end with the PHE.	Ensure flexibility is rolled back.
Temporarily suspend Medicaid fee-for-service prior authorization requirements.	Kentucky indicated in its approved state plan specific requirements about prior authorization (PA) processes for benefits administered through the fee-for-service delivery system.	This will end with the PHE.	PAs have been reinstated already for most services. PAs for certain behavioral health services remain suspended and will be untied from PHE. Communication will be given at least 60 days prior if reinstated.
Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days	Allowed longer than 30 days to complete PASRR to screen resident with DD or MI. Allowed out-of-state providers (including NF/SNF) providers temporary enrollment and ability to be reimbursed by KY Medicaid. Allowed NF (and other providers) to place residents and be paid for services in unlicensed settings in cases of emergency.	This will end with the PHE.	Confirm procedures are rolled back.
State Fair Hearing Requests	Kentucky is requesting from CMS an extension of the provision that maintains the PHE flexibility to allow the timeframe for enrollees to exercise their appeal rights to allow 120 days to request a fair hearing.	Leveraged during the PHE and will be extended through the unwinding period.	Pending CMS approval. Once approved from CMS - Effective the day after the end of the PHE until July 1, 2024.

Kentucky Department for Medicaid Services PHE Flexibilities and Unwinding Decisions

Flexibility	Description	Decision	Impacts
Provider Enrollment	Kentucky is authorized to provisionally, temporarily enroll providers who are enrolled with another SMA or Medicare for the duration of the public health emergency.	This will end with the PHE.	Provider enrollment to ensure this unwinding is smooth and process to move ahead is clear. Providers have 6 months to permanently enroll.
Provision of Services in Alternative Settings	Allow facilities, intermediate care facilities for individuals with intellectual and developmental disabilities (ICF/IDDs), psychiatric residential treatment facilities (PRTFs), and hospital NFs, to be fully reimbursed for services rendered to an unlicensed facility provided that KY makes a reasonable assessment that the facility meets minimum standards.	This will end with the PHE.	These entities came into compliance already.

1902(e)(14)(A) Flexibilities

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
Renewal for Individuals Based on SNAP Eligibility	Kentucky received temporary section 1902(e)(14) waiver authority to leverage SNAP eligibility determination for Medicaid eligibility.	Leveraged during PHE and will be leveraged through the unwinding period.	Renewal under 65 based on SNAP – broadened request on July 8 to those of any age per CMS (May 4, 2022 and August 8, 2022 approval letter – first day of month after the month the PHE ends effective for renewals through the end of the 12-month unwinding period)
Ex Parte Renewal for Individuals with No Income and No Data Returned	Kentucky received temporary section 1902(e)(14) waiver authority to complete ex parte renewals.	Leveraged during PHE and will be extended through the unwinding period.	Per CMS <i>if verified no earlier than 12 months prior to PHE or 2/18/19</i> (May 5, 2022 approval letter – first day of the month after the month the PHE ends effective for renewals through the end of the 12-month unwinding period)

**Kentucky Department for Medicaid Services
PHE Flexibilities and Unwinding Decisions**

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
Facilitating Renewal for Individuals with no Asset Verification System (AVS) Data Returned within a Reasonable Timeframe	Allowed to assume resources have not changed when the AVS does not return any information or when the AVS does not return information within a reasonable timeframe, and complete ex parte renewals of enrollees without requesting further documentation verification of assets.	Leveraged during PHE and will be extended through the unwinding period.	No Asset Verification System (AVS) Data Returned (May 4, 2022 approval letter – first day of month after the month the PHE ends effective for renewals through the end of the 12-month unwinding period))
Partner with managed care plans to update beneficiary contact information	Allowed states to treat in-state contact information from the National Change in Address or United States Postal Service returned mail databases as reliable without first sending a notice to the address on file.	Leveraged during PHE and will be extended through the unwinding period.	Pending system changes. (May 4, 2022 approval letter – 14 months after the end of the month in which the PHE ends.)
Extend auto re-assignment into MCO from 60 to 120 days	Expanded the time period for when an individual may be automatically re-enrolled in a managed care plan from two months up to 120 days.	Leveraged during PHE and will be extended through the unwinding period.	Auto re-assign into same MCO within 120 days. (May 5, 2022 approval letter - 17 months after the end of the month in which the PHE ends.)
Extend Timeframe to Take Final Administrative Action on Fair Hearing Requests	Modified the timeframe for state to take final administrative action on fair hearing requests. Excludes expedited requests and requires maintenance of benefits regardless if requested.	Leveraged during PHE and will be extended through the unwinding period.	Extend timeframe to take final administrative action (June 27, 2022 approval letter – end of the 23rd month after the end of the month in which the PHE ends))
Delaying the Resumption of Premiums Until a Full Redetermination is Completed (Premium Resumption Delay)	Not applicable to KY.	Not applicable to KY.	Not applicable to KY.
Use of the National Change of Address Database (NCOA) and United States Postal Service (USPS) Returned Mail to Update Beneficiary Contact Information (NCOA and/or USPS Contact Updates)	Use an information technology asset that will utilize a return mail bot (Optical Character Recognition) to read returned mail and perform an IEES address update. Kentucky will utilize the NCOA to ensure addresses are current based on the database information.	Implement. Efforts to maintain up to date beneficiary information will keep Kentucky compliant with CMS MOE requirements.	Change request for IT system modifications implemented.

**Kentucky Department for Medicaid Services
PHE Flexibilities and Unwinding Decisions**

Appendix K for 1915c HCBS Waiver Flexibilities (End date is six months after PHE or November 11, 2023)

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
March 2020 Appendix K Approval			
Service Limits	Increase to service limits for: Personal Care/Personal Assistance, Companion, Respite, Home Delivered Meals, Participant Directed Services (PDS), Specialized Medical Equipment, Goods and Services, Behavior Supports, Consultative Clinical and Therapeutic Services, Counseling, Nursing Supports, Skilled Services by a Registered Nurse, Licensed Practical Nurse, or Registered Respiratory Therapist	Increased service limits may remain in place with updated 1915 waivers and regulations amendments, which are currently underway, and will need to be extended past 11/11/2023.	Service rates will be modified to update the service limits and rates going forward with the updated waiver and regulation authority that will be submitted for approval.
Overtime for PDS services	Allowed overtime for PDS services	This will end with the PHE.	Confirm this rolled back and communicated.
Case Management Units	Allow case managers to bill an extra unit of case management.	Increased service limits may remain in place with updated 1915 waivers and regulations, which are currently underway, and will need to be extended past 11/11/2023.	Service rates will be modified to update the service limits and rates going forward with the updated regulation authority for the waiver that will be submitted for approval.
Residential and Respite to Day Training or Adult Day Health Care Centers	Expanded settings for Residential and Respite to Day Training or Adult Day Health Care centers	This will end with the PHE.	Confirm this rolled back and communicated.
Adult Day Training and Adult Day Health	Expanded settings for Adult Day Training and Adult Day Health to be provided in-home.	This will end with the PHE. Providers are not providing this through telehealth to the extent that it needs to be continued.	Confirm this rolled back and communicated.
Adult Day Health Care Home Delivered Meals	Allow Adult Day Health Care to provide Home Delivered Meals and in-home nursing services	This will end with the PHE. If providers took this approach, they will need to enroll as a HDM provider.	Confirm this rolled back and communicated.
Home Delivered Meals	Allow any enrolled waiver provider to provider Home Delivered Meals	This will end with the PHE.	If providers took this approach, they will need to enroll as a HDM provider. Will emphasize in provider communications.

Kentucky Department for Medicaid Services PHE Flexibilities and Unwinding Decisions

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
Telehealth Services	DMS is evaluating use of telehealth and will determine permanent policy changes following the conclusion of the 1915(c) HCBS Waiver rate study, currently underway. Stakeholder feedback on telehealth has been positive.	Case management service definitions will be modified and the regulation will be updated to reflect this change.	Currently in the plan for modification of regulation.
First Aid and CPR training Requirement Flexibilities	Allowed first aid, CPR and training requirements to be delayed to allow quick onboarding of direct support professionals (DSP) or PDS employees.	This will end with the PHE.	Confirm this rolled back and communicated.
DSPs and PDS employees Pre-employment Background Screening Flexibilities	Allow DSPs and PDS employees to begin work while awaiting results of pre-employment background screening.	This will end with the PHE.	Confirm this rolled back and communicated.
Immediate Family Members as PDS Employees	Suspended approval process for immediate family members applying to be PDS employees.	This will end with the PHE.	Confirm this rolled back and communicated.
Licensure Flexibilities	Waived requirement for out of state providers to be licensed and located in Kentucky if they are actively licensed by another state Medicaid agency.	This will end with the PHE.	Confirm this rolled back and communicated.
Level of Care Evaluation and Re-evaluations Remotely	Allow level of care evaluations or re-evaluations to be conducted remotely by telephone or videoconference.	This will end with the PHE.	Confirm this rolled back and communicated.
Increase Residential Rates by 50%	The 50% rate increase for Residential became a permanent requirement in Kentucky’s legislature-approved 2022-2024 biennial budget.	Rates will be implemented permanently per the budget bill and waiver post-rate study.	Waivers and regulations will be updated.
Incident Reporting – Disruption of Services	Require incident reports for disruption of waiver-funded services due to COVID-19.	This will end with the PHE.	Already reverted to normal incident reporting guidelines.
Incident Reporting – COVID-19	Require incident reports for participants who test positive for COVID-19	This will end with the PHE.	Already reverted to normal incident reporting guidelines.
Retainer Payments	Discontinued in 2021.	Previously discontinued.	The last round of retainer payments will be issued Feb 2023.
March 2021 Appendix K Approval			
Family Home Provider or Adults Foster Care Residential Services	Allow participants accessing Residential services through a family home provider (FHP) or adult foster care (AFC) providers to receive Personal Assistance or Respite.	This will be continued partially. Personal assistance will be unwound but respite will be include in the waiver and regulation amendments.	All 6 waivers will be updated, the regulations will be changed somewhat – but this will all be done in a comprehensive policy update for the waivers and communicated effectively.

Kentucky Department for Medicaid Services PHE Flexibilities and Unwinding Decisions

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
Community Mental Health Centers PDS Case Management and Financial Management	Allow Community Mental Health Centers to provide PDS case management and financial management in the HCB waiver.	This will be continued, included with the waiver updates outlined above. Expanding this in the regulation and the waiver post-rate study.	All 6 waivers will be updated, the regulations will be changed. Will be done in a comprehensive policy update for the waivers and communicated effectively.
Waiver Services in Acute Hospital Settings	Allow limited waiver services to be provided in acute hospital settings if the hospital cannot meet immediate health, safety or welfare needs.	Will be permanently implemented.	This is already approved in 2 waiver updates and in process for approval in additional waivers.
March 2022 Appendix K Approval			
Expansion of Case Manager Qualifications	Expanded case management provider qualifications to allow for Licensed Practical Nurses to be hired as case managers in all waivers as well as individuals with an Associate’s degree or individuals without a degree who have relevant experience.	Will be permanently implemented. Will allow for case manager retention and increasing the case management provider pool.	This is included in waiver renewals that are being processed.
Age Requirements	Reduced age requirement for Respite, Personal Assistance, Attendant Care and Residential staff.	Will be permanently implemented with additional training requirements through future waivers.	This is included in waiver renewals that are being processed.
ABI Waiver and ABI LTC Waiver Residential Requirements	Expanded Residential in Acquired Brain Injury (ABI) waiver and ABI Long-Term Care waiver to allow up to five participants per house.	DMS will continue this flexibility with additional supports for ABI and ABI LTC waivers through future waivers.	This is included in waiver renewals that are being processed.
Increase Service Rates by 50%	Temporarily increased rates by 50% for the following traditional services – providers must pass through 85% to DSPs – Attendant Care, Case Management (HCB and MPW only), Community Access, Community Guide, Community Living Supports, Community Transition, Companion, Homemaker, Non-Specialized Respite, PDS Coordination, Personal Assistance, Personal Care, Respite, Skilled Services by an RN or LPN, Specialized Respite	This is being continued with the regulation changes – the amount will be dependent on approvals.	This is included in waiver renewals that are being processed.
Retainer Payments	Offer application for retainer payments to ADHC and ADT providers.	This will end with the PHE.	Confirm this rolled back and communicated.

**Kentucky Department for Medicaid Services
PHE Flexibilities and Unwinding Decisions**

Other Authority Flexibilities

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
Behavioral Health Expansions	Expanded peer support services, intensive outpatient program services, group outpatient therapy, service planning, partial hospitalization, targeting case management, mobile crisis services, comprehensive community support services, therapeutic rehabilitation programs, and day treatment.	907 KAR 3:170 (DMS telehealth reg) amendment permanently implemented expansions.	Confirm authorities and communicated.
MCO Telehealth Coding	Require MCOs to more closely follow DMS policy relating to telehealth codes and modifiers.	Not applicable	There will be no unwinding impact associated with this.
Telehealth Licensure Expansion	Expanding telehealth usage to the maximum allowed by the relevant licensure board	907 KAR 3:170 (DMS telehealth reg) amendment permanently implemented expansions.	Confirm authorities and communicated.
DocuSign and Electronic Signature Programs	Allowing DocuSign and other electronic signature programs for all needed document approvals.	Confirmed – implemented.	Current state statutes are flexible enough for expanded electronic signature usage.
Teledentistry and Vision Services	Stating which codes are allowable via teledentistry and vision services providers.	Informational service only.	There will be no unwinding impact associated with this.
Proof of Delivery Requirements	Suspending and modifying proof of delivery requirements for pharmacy and DME.	Will not continue beyond the PHE.	Confirm this rolled back and communicated.
Staff Supervision	Allowing face-to-face supervision of staff requirements to be conducted via other telecommunication methods.	Specific providers and services requirements have been confirmed to be in place following the PHE.	Confirm authorities with licensing bodies and communicated.
EPSDT Services	Extending current authorizations for provision of certain EPSDT services.	Will not continue beyond the PHE.	Confirm this rolled back and communicated.
Telehealth PASRR	Allowing the PASRR (Level II) process to be conducted via telehealth.	907 KAR 3:170 (DMS telehealth reg) amendment permanently implemented expansions.	Confirm authorities and communicated.
Telehealth Drug Counseling	Allowing certified alcohol and drug counselors to provide telehealth services when supervised.	907 KAR 3:170 (DMS telehealth reg) amendment permanently implemented expansions.	Confirm authorities with licensing bodies and communicated.
Telehealth Psychological Testing	Expanding and implementing some psychological testing via telehealth under certain strict requirements.	907 KAR 3:170 (DMS telehealth reg) amendment permanently implemented expansions due to it being within scope of licensing board to authorize.	Confirm authorities with licensing bodies and communicated.

Kentucky Department for Medicaid Services PHE Flexibilities and Unwinding Decisions

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
2020's SB 150	Relax scope of practice requirements and allow broader supervision of providers.	Will be addressed by licensing body decisions.	Confirm authorities with licensing bodies and communicated.
2020's SB 150	Extend most telehealth modalities to new patients, not only established patients.	907 KAR 3:170 (DMS telehealth reg) amendment permanently implemented expansions.	Confirm authorities with licensing bodies and communicated.
Presumptive Eligibility Designee	CHFS as designated qualified health entity for PE	Will not continue.	Confirm this rolled back on July 1, 2022.
Cost reporting process extension	Flexibility applied to cost reporting.	This will not continue beyond the PHE. Already reverted back to previous process.	Confirm this rolled back and communicated.
Hospital DRG 20% add-on for COVID-19 diagnosis	Inpatient Prospective Payment System (IPPS) Hospitals - Section 3710 of the CARES Act directs the Secretary to increase the weighting factor of the assigned Diagnosis-Related Group (DRG) by 20 percent for an individual diagnosed with COVID-19 discharged during the COVID-19 Public Health Emergency (PHE) period.	Will not continue beyond the PHE.	Confirm this rolled back on July 1, 2022.
Nurse Aide Applicants Requirements	Proposed as a regulation change in State Plan to allow nurse aide applicants to use Federal I-9 process as alternative to submitting Social Security Card.	Permanently implemented.	Confirmed authorities and communicated.
Nursing Facility Payments	Nursing facilities - \$29 per day add-on for PHE.	Included in HB 1 to be extended.	SPA 22-004 approved.
Nursing Facility Applications	Streamlined application process.	Will not continue beyond the PHE.	Confirm this rolled back and communicated. Already conducting communication that this is reverting back to initial requirements – PASRR done with initial application.
Nursing Facility Per Diem Add-on	Will pay nursing facilities a per diem add on of \$270 for COVID-19 positive residents. The extra \$270 are available for each day a person cared for by the facility has an active COVID-19 diagnosis.	Will not continue beyond the PHE.	Confirm this rolled back and communicated.
Nursing Facility 30-day Bed Hold	Kentucky is requesting from CMS, an extension to maintain the 30-day bed hold policy through the PHE unwinding period.	Leveraged during the PHE and will be extended through the unwinding period.	Pending CMS approval. Once approved - Effective the day after the end of the PHE until July 1, 2024.

**Kentucky Department for Medicaid Services
PHE Flexibilities and Unwinding Decisions**

Flexibility	Future Plans/Decision Points	Decision Confirmation	Impacts
Nursing Facility Bed Reserve Reimbursement	Kentucky is requesting from CMS, an extension to maintain the 75% bed reserve reimbursement to nursing facilities through the PHE unwinding period.	Leveraged during the PHE and will be extended through the unwinding period.	Pending CMS approval. Once approved - Effective the day after the end of the PHE until July 1, 2024.
Pharmacy Refills Requirements	Allowed pharmacy early refills of 30, 60, and 90 day supplies.	Will not continue beyond the PHE.	Confirm this rolled back and communicated.
Presumptive Eligibility (PE) Second Period in Calendar Year	Presumptive Eligibility (PE) Second Period in Calendar Year	Will not continue beyond the PHE.	Confirm this rolled back on July 1, 2022 and communicated.
Recoupments	Recoupments starting back in some areas already and will resume fully after PHE.	Will not continue beyond the PHE.	Confirm this rolled back already and will be fully unwound.
Residential AODEs	Allowed services provided in unlicensed facilities by residential AODEs.	DMS communicated regularly with Office of Inspector General (OIG), as SUD residential providers were expected to obtain approval from OIG before providing services at an alternative, unlicensed location. With the low volume of SUD residential providers who provided services in an alternative location during the PHE, DMS communicated directly with these providers via email correspondence.	This only applied to PT 03, BHSO Tier 3 Residential providers.