



## MEMORANDUM

May 31, 2022

To: Tribal Health Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *All Tribes Webinar on Sunsetting Medicaid and CHIP Disaster Relief SPAs and Section 1135 Waivers at the End of the COVID-19 Public Health Emergency*

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On May 26, 2022, the Centers for Medicare & Medicaid Services (CMS) held an All Tribes Webinar on the topic of returning to routine operations at the end of the COVID-19 Public Health Emergency (PHE) as it relates to Medicaid and Children's Health Insurance Program (CHIP) Disaster Relief State Plan Amendments (SPAs) and Section 1135 Waivers.

Beverly Lofton, Senior Policy Advisor in the CMS Division of Tribal Affairs, introduced the session, while Cynthia Gillaspie from the CMS Division of Program Operations delivered the presentation.

The presentation summarized what states will need to plan for and do when the PHE comes to an end. States have employed Medicaid and CHIP Disaster Relief SPAs and Section 1135 Waivers during the PHE to expand coverage, and they will be reviewing these flexibilities to determine whether to allow them to lapse or to continue them on a temporary or permanent basis. States must comply with regulatory and statutory requirements during this process as they transition back to routine operations, and these requirements may vary on a state-by-state basis.

As of this report, **there has been no notice issued indicating when the PHE declaration will end.** The Biden-Harris Administration has committed to providing states 60 days of notice before any planned expiration of the PHE.

### *Sunseting or Extending COVID-19 Flexibilities*

Though the details will differ on a case-by-case basis, the essential steps states must take in assessing Disaster Relief SPAs and Section 1135 Waivers are the same. Generally, states must: provide 10-day notice to beneficiaries prior to any change in services; timely inform providers of any changes; ensure accurate financial reporting; and assess managed care implications. For more detailed guidance, refer to CMS's December 22, 2020, State Health Official Letter (SHO #20-004), available [here](#). It has since been supplemented by SHO #21-002, available [here](#).

States have some options to extend Disaster Relief SPAs, depending on applicable regulatory and statutory requirements. For each SPA provision, states must determine whether to (a) let it expire at the end of the PHE; (b) temporarily extend it through a streamlined SPA approval process; or, where permissible, (c) continue it indefinitely through a non-disaster amendment to a state plan that does not include a specific end date. One flexibility states may be particularly interested in extending on some basis, for example, is the availability or allowability of telehealth services. Depending on the regulatory and statutory context, some flexibilities (including telehealth) may not require a state plan amendment at all.

### *Tribal Consultation Requirements*

Additionally, the webinar briefly covered Tribal consultation requirements associated with the end of the PHE and these specific programs. They are summarized as follows, grouped into two categories—when state action means consultation *may* be required and when it *must* occur.

#### May:

- Any option *other* than allowing a program to sunset may require Tribal consultation.
- Both positive and/or negative changes to the programs, in accordance with each state's approved Tribal consultation state plan pages.

#### Must:

- State-specific Tribal consultation timelines (e.g., 60 days) must be considered in advance as part of the state's overall planning efforts.
- Where one or more Indian Health Programs or Urban Indian Organizations furnished health care services in a state, the state must solicit advice from designees of those entities prior to certain SPA submissions.
- Any Medicaid SPA change that is likely to have a direct effect, as defined in each state plan, on American Indians/Alaska Natives, Indian Health Programs, or Urban Indian Organizations.

The webinar advised Tribal representatives to reach out to their respective states well in advance to identify any provisions especially important for Tribal consultation. Further inquiries were directed to the CMS website, in particular the Division of Tribal Affairs page, available [here](#).

### *Conclusion*

If you have any questions or would like additional information on any of the issues raised in this report, please do not hesitate to contact Elliott Milhollin ([emilhollin@hobbsstrauss.com](mailto:emilhollin@hobbsstrauss.com) or 202-822-8282) or Geoff Strommer ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745).