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Medicaid Benefits and the Public Health Emergency

COVID-19 Public Health Emergency (PHE) Timeline

As of 1/27/2020, the Secretary of Health and Human Services (HHS) has determined that a national Public Health Emergency (PHE) is in effect. PHE can be renewed at 90-day intervals, and will remain in effect until the earlier of two events: (i) HHS declares that the emergency no longer exists, which declaration can occur at any time; or (ii) a 90-day interval expires without renewal. In its Letter to Governors dated 1/22/2021, HHS pledged to provide states with a 60-day notice prior to terminating PHE. The current 90-day interval would expire on 4/14/2022. If a 60-day notice is not provided by 2/13/2022, renewal can be expected. (To check on PHE status, visit phe.gov.)

Medicaid Maintenance of Eligibility Requirements During the PHE

The Families First Coronavirus Response Act (FFCRA) provides states with a temporary 6.2% point FMAP increase during the COVID-19 PHE, through the end of the quarter in which PHE ends. To receive (and keep) increased funding in a PHE quarter, states must also meet the Maintenance of Eligibility (MOE) requirements listed in FFCRA section 6008(b), including:

States must maintain Medicaid eligibility standards, methodologies, and procedures no more restrictive than were in effect on 1/1/2020.

FFCRA 6008(b)(1) applies through the end of the quarter in which PHE ends.

States may not increase Medicaid premiums (imposed per SSA 1916 or 1916A) in excess of those in effect on 1/1/2020.

- The CARES Act (sec. 3720) gave states a grace period to comply (3/18/2020 - 4/17/2020).
- States must reimburse individuals who were charged higher premiums after 1/1/2020.
- States also cannot disenroll Medicaid beneficiaries for failure to pay premiums through the end of the *month* in which PHE ends. 42 CFR 447.55(b)(2) then applies. The PHE period cannot be included in the 60-day nonpayment period.

FFCRA 6008(b)(2) applies through the end of the quarter in which PHE ends.

1/1/2020 - 11/1/2020: States must maintain continuous Medicaid enrollment for beneficiaries enrolled as of (or after) 3/18/2020, at the amount, duration, and scope of the beneficiary's current benefits. (Including no cost-sharing or PETI updates.) Limited exceptions apply per FFCRA 6008(b)(3): requested termination of benefits, change in state residency, or death. The 12/1/2020 CMS All State Call clarified that asset transfer rules still apply (state implementation varies).

11/2/2020 on: Pursuant to 42 CFR 433.400 and CMS-9912-IFC (IFR), continuous enrollment remains required - but with nuances (see page 2). States can now also recalculate PETI and increase cost-sharing and patient liability. 'Work requirements' & 'premium authorities' cannot be implemented at this time.

Note: 433.400(c)(2)&(3) are effective 11/6/2020.

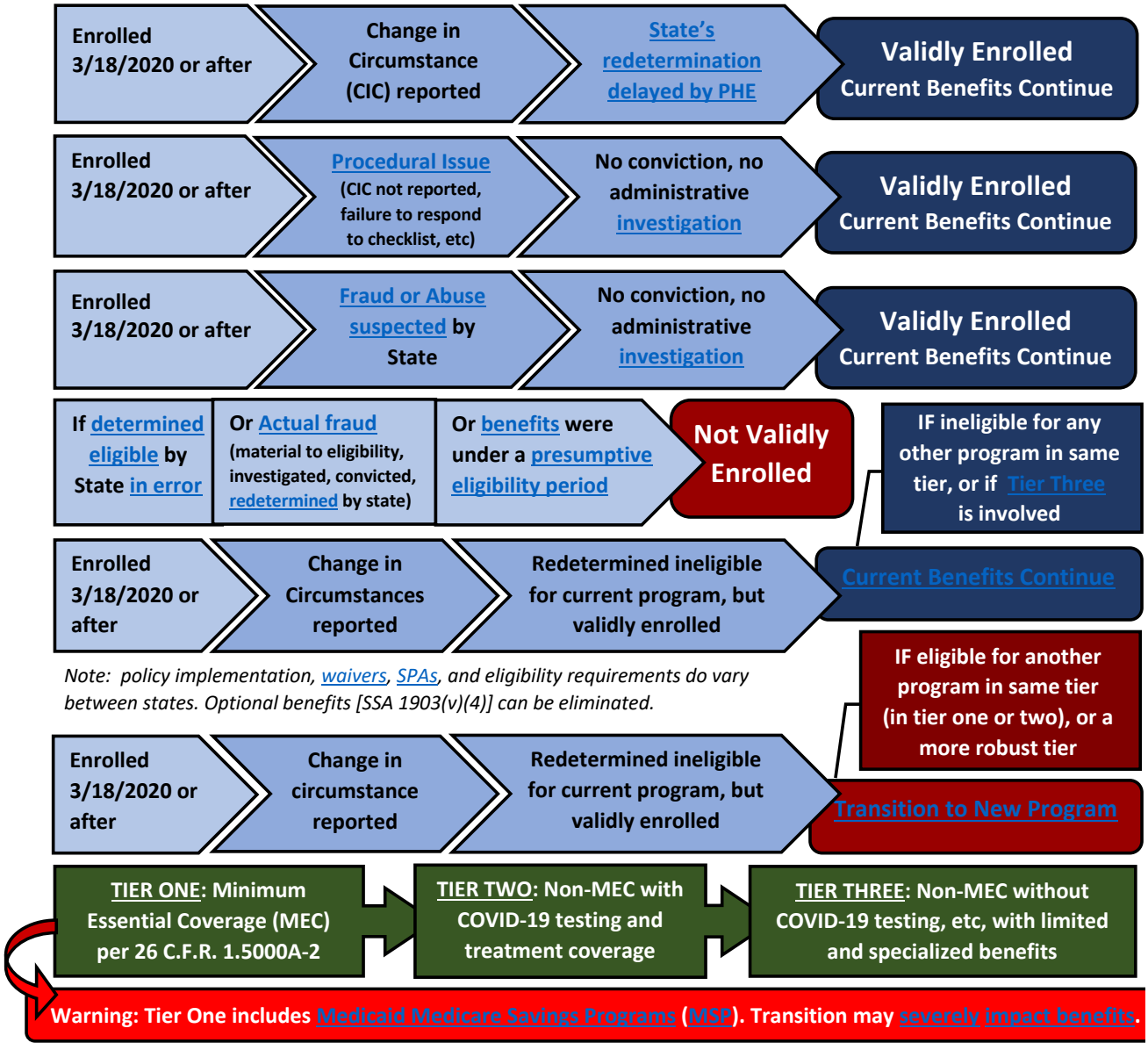
FFCRA 6008(b)(3) applies through the end of the MONTH in which PHE ends.

States must cover COVID-19 testing and treatment, without cost-sharing.

FFCRA 6008(b)(4) applies through the end of the quarter in which PHE ends.

Continuous Medicaid Enrollment for the Validly Enrolled

With 42 CFR 433.400 in play as of 11/2/2020, the continuous Medicaid enrollment rule applies only to beneficiaries "validly enrolled" as of 3/18/2020 (or thereafter), as defined at 433.400(b). Continuous enrollment also now includes three tiers of benefits. Under certain circumstances, a transition to a different benefit program (within the same tier) can be required, even if the amount, duration, and scope of benefits are reduced as a consequence. For details see the COVID-19 FAQs, IFR Factsheet, and CMS Call transcripts, or review federal policy updates.



Change in Circumstances Requires a Redetermination

To process changes in circumstances, states must complete redeterminations. (This also applies during PHE, with state delay specifically permitted. If validly enrolled, continuous enrollment applies regardless.) Notice of adverse action must be provided a minimum of 10 days in advance, with fair hearing rights. See 42 CFR 435.917, 431.211, and 42 CFR part 431, subpart E. Notice must be written, timely and adequate, in plain language, and accessible to persons with limited English proficiency and persons with disabilities. General exceptions are listed at 42 CFR 431.213, 431.214, and 435.403 (42 CFR 433.400(d) for PHE). Later efforts to recover from a beneficiary who would be ineligible if not "validly enrolled" during PHE equates to retroactive termination of enrollment and is in violation of FFCRA section 6008(b)(3) and 42 CFR 431.211. See also 42 CFR 435.902 regarding simplicity of administration and the best interests of the individual.