

Temporary Changes: States Cannot Terminate Medicaid Benefits During COVID-19 Emergency Period

States cannot terminate MA benefits or reduce waiver services

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The *Families First Coronavirus Response Act* (the FFCRA or the Act), P.L. 116-127, 134 Stat. 178, passed on March 18, 2020, making it the second major legislative initiative to address COVID-19 (the first was signed on March 6th and provided emergency funding relief). Subsequently, Congress passed the much larger economic stimulus package – the *Coronavirus Aid, Relief, and Economic Security* (CARES) Act that became law on March 27, 2020.

On April 30, 2020, the Pennsylvania Department of Human Services issued further state specific guidance.

So what does the FFCRA Act do and why are we writing about it?

First a little background. Under current law, the federal government matches state Medicaid spending on an open-ended basis. For most Medicaid (or Medical Assistance or MA) eligibility groups (*the matching rate does not apply to folks who qualify for MA benefits under the Affordable Care Act (ACA) expansion*), the regular matching rate, (the Federal Medical Assistance Percentage or FMAP), ranges from 50 percent to 77 percent, depending on a state's per capita income. In Pennsylvania the FMAP is 52.25%.

Section 6008 of the Act increases the regular FMAP by 6.2 percentage points, so Pennsylvania's matching rate would increase to 58.45%. The increase will end on the last day of the calendar quarter in which the COVID-19 emergency ends. *States, however, do not automatically receive the increase*, they must comply with Federal rules. As you can imagine, with all the budgetary constraints and escalating economic woes, it is critical that states comply!

Ok, so Pennsylvania must comply to get the increase in funds, but how does that help me or my loved one on MA? In a few very significant ways! Below I have listed a few of the most powerful and relevant compliance requirements that must be met.

1. The Pennsylvania Medical Assistance program may not dis-enroll any individual who is enrolled as of March 18, 2020 or who newly enrolls during the COVID-19 emergency period for any reason *unless* the individual is no longer a resident of the state or requests disenrollment.

2. If an individual is receiving Community HealthChoices Waiver services and the individual is determined to no longer meet the level-of-care (LOC) requirements (or other requirements), Pennsylvania must maintain the individual's participation in the Waiver and continue to provide services.
3. Normally, Long-Term or continuous nursing cannot be provided simultaneously with Adult Daily Living Services. Temporarily, Long-Term or continuous nursing may be provided as a separate service at the same time that Adult Daily Living Services are provided to ensure participant health and safety needs can be met.
4. Normally, respite can be authorized for up to 14 consecutive days in an institutional facility and may be increased up to 29 consecutive days, based on need and with prior CHC Managed Care Organization (MCO) approval. Temporarily, respite in a licensed facility may be extended beyond 29 consecutive days without prior approval of the CHC-MCO to meet the participant health and safety needs.
5. Initial LOC determinations may be conducted remotely using phone or video conferencing; the face-to-face requirement is temporarily waived.
6. Annual Reassessments, including the needs assessment and Level of Care Determinations may be conducted remotely using phone or video conferencing; the face-to-face requirement is temporarily waived. The 365-day time limit for annual reassessments to be performed is also temporarily waived.

These are just a few of the new parameters and changes. Keep in mind, however, that these changes are temporary. The expectation remains that once the COVID-19 emergency period ends, there will be a renewed scrutiny of Medicaid eligibility and compliance in accordance with pre-COVID statutes, rules, and regulations. Accordingly, we recommend that you contact a Certified Elder Law Attorney in your area for further guidance.