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Health Care-Related Expiring Provisions of the 117th Congress, Second Session

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Health Care-Related Expiring Provisions of the 117th Congress, Second Session

This report provides information on selected health care-related provisions that have expired or are scheduled to expire during the second session of the 117th Congress (i.e., during calendar year [CY] 2022). For purposes of this report, *expiring provisions* are defined as portions of law that are time-limited and will lapse once a statutory deadline is reached, absent further legislative action. The expiring provisions included in this report are any identified provisions related to Medicare, Medicaid, the State Children’s Health Insurance Program (CHIP), or private health insurance programs and activities.

The report also includes any identified expired or expiring provisions among other health care-related provisions enacted or extended in the Patient Protection and Affordable Care Act (ACA; P.L. 111-148), as well as certain health care provisions enacted or extended in the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA; P.L. 114-10). In addition, this report describes health care-related provisions within the same scope that expired during the first session of the 117th Congress (i.e., in CY2021). Although the Congressional Research Service (CRS) has attempted to be comprehensive, it cannot guarantee that every relevant provision is included in this report.

This report focuses on two types of health care-related provisions within the scope discussed above. The first, and most common, type of provision provides or controls *mandatory spending*, meaning it provides temporary funding, temporary increases or decreases in funding (e.g., Medicare provider bonus payments), or temporary special protections that may result in changes in funding levels (e.g., Medicare funding provisions that establish a payment floor). The second type of provision defines *the authority of government agencies or other entities to act*, usually by authorizing a policy, project, or activity. Such provisions also may temporarily delay the implementation of a regulation, requirement, or deadline or establish a moratorium on a particular activity. Expiring health care provisions that are predominantly associated with discretionary spending activities—such as discretionary authorizations of appropriations and authorities for discretionary user fees—are excluded from this report.

Certain types of provisions with expiration dates that otherwise would meet the criteria set forth above are also excluded from this report. Some of these provisions are excluded because they are transitional or routine in nature or because they have been superseded by congressional action that modifies their intent. For example, statutorily required Medicare payment rate reductions and payment rate rebasings that are implemented over a specified period are generally not considered to require legislative attention and are excluded from this report.

The report provides tables listing the relevant provisions that have expired or are scheduled to expire in CY2022 and those that expired in CY2021. **Appendix A** includes relevant demonstration projects and pilot programs that expired in CY2021. CRS did not identify any such projects or programs that have expired or are set to expire in CY2022.

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Contents

Tables

Table 1. Provisions Expiring in the 117 th Congress, Second Session.....	3
Table 2. Provisions That Expired in the 117 th Congress, First Session	5
Table A-1. Demonstration Projects and Pilot Programs that Expired in the 117 th Congress, First Session	7
Table B-1. Provisions Included in the Previous CRS Health Care-Related Expiring Provisions Report That Were Not Included in This Report.....	9
Table B-2. Demonstration Projects and Pilot Programs Included in the Previous CRS Health Care-Related Expiring Provisions Report That Were Not Included in This Report.....	11

Appendixes

Appendix A. Demonstration Projects and Pilot Programs	7
Appendix B. Provisions Included in the Previous CRS Health Care-Related Expiring Provisions Report	8

Contacts

Author Information.....	11
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This report identifies and briefly describes selected health care-related statutory provisions that have expired or are scheduled to expire during the second session of the 117th Congress (i.e., during calendar year [CY] 2022). For purposes of this report, *expiring provisions* are defined as portions of law that are time-limited and will lapse once a statutory deadline is reached, absent further legislative action. The expiring provisions included in this report are any identified provisions related to Medicare, Medicaid, the State Children’s Health Insurance Program (CHIP), or private health insurance programs and activities. The report also includes any identified expired or expiring provisions among other health care-related provisions enacted or extended in the Patient Protection and Affordable Care Act (ACA; P.L. 111-148), as well as certain health care provisions enacted or extended in the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA; P.L. 114-10).¹ In addition, the report describes health care-related provisions within the same scope that expired during the first session of the 117th Congress (i.e., during CY2021). Although the Congressional Research Service (CRS) has attempted to be comprehensive, it cannot guarantee that every relevant provision is included in this report.

The two types of time-limited provisions discussed in this report generally have been enacted in the context of *authorization laws* and thus typically are within the purview of congressional authorizing committees. The duration for which such a provision is in effect usually is regarded as creating a timeline for legislative decisionmaking. In choosing this timeline, Congress navigates tradeoffs between the frequency of congressional review and the stability of funding or other legal requirements that pertain to the program.

- The first type of provision in this report provides or controls *mandatory spending*, meaning it provides temporary funding, temporary increases or decreases in funding (e.g., Medicare provider bonus payments), or temporary special protections that may result in changes in funding levels (e.g., Medicare funding provisions that establish a payment floor).²
- The second type of provision in this report defines *the authority of government agencies or other entities to act*, usually by authorizing a policy, project, or activity with a date of expiration.³ Such provisions also may temporarily delay the implementation of a regulation, requirement, or deadline, or they may establish a moratorium on a particular activity.

Expired or expiring health care provisions that are predominantly associated with discretionary spending activities—such as discretionary authorizations of appropriations and authorities for discretionary user fees—are excluded from this report.⁴

¹ This report is the latest in a series of reports in which the Congressional Research Service (CRS) has tracked health care-related expiring provisions related to Medicare, Medicaid, the State Children’s Health Insurance Program (CHIP), or private health insurance. CRS also has tracked a group of other health-related provisions that were enacted or extended in the Patient Protection and Affordable Care Act (ACA; P.L. 111-148) or extended under the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA; P.L. 114-10), which have been periodically extended with Medicare, Medicaid, CHIP, and private health insurance provisions. Any applicable provisions within these categories are included in the CRS health care-related expiring provisions report for a given year.

² *Mandatory spending* is controlled by authorization acts; *discretionary spending* is controlled by appropriations acts. For further information, see CRS Report R44582, *Overview of Funding Mechanisms in the Federal Budget Process, and Selected Examples*.

³ For further information about these types of authorization provisions, see CRS Report R46417, *Congress’s Power Over Appropriations: Constitutional and Statutory Provisions*.

⁴ The Congressional Budget Office (CBO) is required to compile this information each year under §202(e)(3) of the

Certain types of provisions with expiration dates that otherwise would meet the criteria set forth above also are excluded from this report. Some of these provisions are excluded because they are transitional or routine in nature or because they have been superseded by congressional action that otherwise modifies their intent. For example, statutorily required Medicare payment rate reductions and payment rate rebasings that are implemented over a specified period are generally not considered to require legislative attention and are excluded from this report.

The report is organized as follows: **Table 1** lists the relevant provisions that have expired or are scheduled to expire in CY2022, and **Table 2** lists the relevant provisions that expired in CY2021. The provisions in each table are organized by expiration date and by applicable health care-related program. Each table includes a brief summary for each provision and the name of the CRS Analyst who covers the topic. Contact information for each CRS Analyst can be found at the end of the report.

Appendix A includes relevant demonstration projects and pilot programs that expired in CY2021. **Appendix B** provides information on the provisions that were included in the previous CRS report on health care-related expiring provisions, CRS Report R46818, *Health Care-Related Expiring Provisions of the 117th Congress, First Session*, published on June 14, 2021, but were not included in the body of this report.

Congressional Budget Act of 1974 (P.L. 93-344, as amended). For information on provisions that were set to expire on or before September 30, 2022, see CBO, *Expired and Expiring Authorizations of Appropriations for Fiscal Year 2022*, August 2022, at <https://www.cbo.gov/publication/58443>.

Table I. Provisions Expiring in the 117th Congress, Second Session

Expires After	Health Care-Related Program	Provision^a	Statutory and/or U.S. Code Citation	Description	CRS Contact
3/31/2022	Medicaid	Additional Support for Medicaid Home and Community-Based Services (HCBS) During the COVID-19 Emergency	ARPA §9817	Increase in the federal government’s share of Medicaid expenditures (i.e., FMAP rates) by 10 percentage points for certain HCBS for states that meet the HCBS program requirements during the program improvement period.	Alison Mitchell
6/30/2022	Medicare	Temporary Suspension and Adjustment of Medicare Sequestration	2 U.S.C. §901a(6)	Waived the application of sequestration to the Medicare program from May 2020 through March 2022 and limited the sequestration of the Medicare Program to 1% (otherwise would be 2%) from April 2022 through June 2022.	Ryan Rosso
9/30/2022	Other	Additional Funding for Aging and Disability Services Programs	SSA §2010 42 U.S.C. §1397-1397h	Additional funding for SSA Title XX-B Elder Justice activities, with not less than \$100 million for FY2021 and FY2022 to be provided to enhance state Adult Protective Service programs.	Kirsten Colello
9/30/2022	Private Health Insurance	Establishing a Grant Program for Exchange Modernization	ARPA §2801 42 U.S.C. §18031 note	Funding for grants awarded to states in September 2021 to “modernize” their health insurance exchanges.	Vanessa Forsberg
12/16/2022	Medicare	Low-Volume Adjustment	SSA §1886 42 U.S.C. §1395ww(d)(12)	Increased Medicare IPPS payments to hospitals to account for the higher incremental costs associated with a low volume of total discharges.	Marco Villagrana
12/16/2022	Medicare	Medicare Dependent Hospital/ Decline Reclassification	SSA §1886 42 U.S.C. §1395ww(d)(5)(G)	A program for small rural hospitals with a high proportion of patients who are Medicare beneficiaries. These hospitals receive special treatment, including higher payments, under the Medicare IPPS.	Marco Villagrana

Expires After	Health Care-Related Program	Provision ^a	Statutory and/or U.S. Code Citation	Description	CRS Contact
12/16/2022	Medicaid	Medicaid FMAP Rate for the Territories	SSA §1905(ff) 42 U.S.C. §1396d(ff)	Increase in the federal government's share of most Medicaid expenditures (i.e., FMAP rates) for the territories (increase from 55% to 83% for American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands and from 55% to 76% for Puerto Rico). ^b	Alison Mitchell
12/16/2022	Other	Maternal, Infant, and Early Childhood Home Visiting Program	SSA §511 42 U.S.C. §711	Funding for grants awarded to states, territories, and tribes to support evidence-based early childhood in-home visits by health or social service professionals for families who are low-income or have other risk factors.	Patrick Landers
12/31/2022	Private Health Insurance	Exemption for Telehealth Services	I.R.C. §223 26 U.S.C. §223	Allows HSA-qualified HDHPs to cover telehealth services before the deductible is met and still be considered an HSA-qualified HDHP. Allows telehealth and other remote care coverage to be disregarded for determining HSA eligibility.	Ryan Rosso
12/31/2022	Medicare	Assistance for Rural Ambulance Providers in Low Population Density Areas	SSA §1834 42 U.S.C. §1395m(l)(12)(A)	Medicare add-on payments for ground ambulance transports that originate in qualified rural areas, called super-rural areas.	Marco Villagrana
12/31/2022	Medicare	Temporary Increase for Ground Ambulance Services	SSA §1834 42 U.S.C. §1395m(l)(13)(A)	An increase in the Medicare ambulance fee schedule rates for ground ambulance services that otherwise are established for the year. For transports originating in a rural area, the payment increase is in addition to the super-rural add-on payment.	Marco Villagrana
12/31/2022	Medicare	Home Health Prospective Payment System Rural Add-on: Frontier Counties	SSA §1895 42 U.S.C. §1395fff note	An increase to Medicare home health payments for services provided to <i>low-population-density counties</i> , referred to as “frontier counties,” defined as rural counties with a population density of six or fewer individuals per square mile.	Phoenix Voorhies

Source: Congressional Research Service (CRS).

Notes: ARPA = American Rescue Plan Act of 2021 (P.L. 117-2); CY = Calendar Year; FMAP = Federal Medical Assistance Percentage; HCBS = Home and Community-Based Services; HDHP = High Deductible Health Plans; HSA = Health Savings Account; IPPS = Inpatient Prospective Payment System; IRC = Internal Revenue Code; PAMA = Protecting Access to Medicare Act of 2014 (P.L. 113-93); SSA = Social Security Act; U.S.C. = U.S. Code.

- a. Citations in statute and the U.S.C. are provided where available.
- b. For FY2022, the Centers for Medicare & Medicaid Services (CMS) has construed the effect of the statutory amendments from the Families First Coronavirus Response Act (FFCRA; P.L. 116-127) providing federal Medicaid funding to the territories in FY2020 and FY2021 as providing federal Medicaid funding to the territories comparable to the increased levels provided in either FY2020 (for Puerto Rico) or FY2021 (for the other territories). CMS informed each territory of its FY2022 Medicaid funding level through letters sent in September 2021. The Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43) included a provision for the U.S. Government Accountability Office (GAO) to provide a legal review of the statutory language on the most plausible plain reading of how such FY2022 allotment levels should be calculated. GAO concluded “that section 1108(g) requires that HHS base its calculation of the FY 2022 allotment for Puerto Rico on the territory’s allotment for FY 2019, rather than FY 2020. Accordingly, HHS’s FY 2022 allotment of \$2,943,000,000 for Puerto Rico was not authorized.” See GAO, *Department of Health and Human Services: Fiscal Year 2022 Medicaid Allotment for Puerto Rico*, B-333602, November 15, 2021, at <https://www.gao.gov/products/b-333602>.

Table 2. Provisions That Expired in the 117th Congress, First Session
(CY2021)

Expired After	Health Care-Related Program	Provision ^a	Statutory and/or U.S. Code Citation	Description	CRS Contact
9/30/2021	Private Health Insurance	Preserving Health Benefits for Workers	ARPA §9501	Temporary premium assistance for COBRA continuation coverage for certain individuals who lost employer-based health insurance as a result of involuntary termination or a reduction in hours. It also provided employers with a refundable payroll tax credit to reimburse employers for unpaid premium amounts.	Ryan Rosso
12/31/2021	Private Health Insurance	Health Coverage Tax Credit	26 U.S.C. §35	Subsidies for the cost of qualified health insurance for taxpayers eligible for Trade Adjustment Assistance allowances because of job losses or whose defined-benefit pension plans were taken over by the Pension Benefit Guaranty Corporation because of financial difficulties.	Bernadette Fernandez

Expired After	Health Care-Related Program	Provision ^a	Statutory and/or U.S. Code Citation	Description	CRS Contact
12/31/2021	Private Health Insurance	Application of Premium Tax Credit in Case of Individuals Receiving Unemployment Compensation During 2021	I.R.C. §36B 26 U.S.C. §36B	Expands eligibility for and increased the amount of the premium tax credits (federal financial assistance that reduces the cost of purchasing health insurance offered through exchanges) for eligible individuals who receive Unemployment Compensation.	Bernadette Fernandez
12/31/2021	Private Health Insurance	Reduced Cost-Sharing	42 U.S.C. §18071	Expands eligibility for and increased the amount of federal cost-sharing reduction assistance for eligible individuals who receive Unemployment Compensation.	Bernadette Fernandez
12/31/2021	Medicare	Reporting Requirements with Respect to Clinical Diagnostic Laboratory Tests	SSA §1834A(a)(1)(B) 42 U.S.C. §1395m1(a)(1)(B)	Limits the reduction in payment rate for the Medicare Clinical Laboratory Fee Schedule to 15% for CY2022-CY2024. After 2024, the private payer rate will be implemented.	Jim Hahn
12/31/2021	Medicare	Supporting Physicians and Other Professionals in Adjusting to Medicare Payment Changes During 2021	SSA §1848 42 U.S.C. §1395w-4(t)	An increase in payments made to providers under the Medicare Physician Fee Schedule.	Jim Hahn
12/31/2021	Private Health Insurance	Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements	CAA, 2021 §214 of Division EE	Allows employers to provide flexibilities to employees participating in health FSAs, such as carryover of unused health FSA balances (including amounts greater than typically allowed by law) and midyear changes to their health FSA contribution amounts.	Ryan Rosso
12/31/2021	Medicare	Home Health Prospective Payment System Rural Add-on: Rural Counties	MMA §421 42 U.S.C. §1395fff note	An increase in Medicare payments for federally certified Home Health agencies for services provided in rural counties not designated as <i>frontier counties</i> , defined as rural counties with a population density of six or fewer individuals per square mile.	Phoenix Voorhies

Source: Congressional Research Service (CRS).

Notes: ARPA = American Rescue Plan Act of 2021 (P.L. 117-2); CAA = Consolidated Appropriations Act, 2021 (P.L. 116-260); COBRA = Consolidated Omnibus Budget Reconciliation Act; CY = Calendar Year; FSA = Flexible Spending Account; IRC = Internal Revenue Code; MMA = Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173); SSA = Social Security Act; U.S.C. = U.S. Code.

Appendix A. Demonstration Projects and Pilot Programs

This appendix would list selected health care-related demonstration projects and pilot programs that are scheduled to expire during the second session of the 117th Congress (i.e., during calendar year [CY] 2022). CRS did not identify any such projects or programs that have expired or are set to expire in CY2022.

Table A-1 lists the relevant demonstration project that expired in 2021. The expired demonstration project has portions of law that were time-limited and have lapsed as the relevant statutory deadline was reached, and subsequent legislation has not been enacted to extend the project (as of the date of this report's publication). When considering programs to include in this appendix, CRS attempted to identify expiring demonstration projects and pilot programs related to Medicare, Medicaid, the State Children's Health Insurance Program (CHIP), and private health insurance programs and activities. In addition, CRS examined health care-related demonstration projects and pilot programs that were enacted in the Patient Protection and Affordable Care Act (ACA). Although CRS has attempted to be comprehensive, it cannot guarantee that every relevant demonstration project and pilot program is included here.

Table A-1. Demonstration Projects and Pilot Programs that Expired in the 117th Congress, First Session
(CY2021)

Expired After	Health Care-Related Program	Provision	Statutory and/or U.S. Code Citation	CRS Contact
9/30/2021	Other	Demonstration Projects to Address Health Professions Workforce Needs	SSA §2008(c) 42 U.S.C. §1397g	Elayne Heisler

Source: Congressional Research Service (CRS).

Notes: SSA = Social Security Act; U.S.C. = U.S. Code.

Appendix B. Provisions Included in the Previous CRS Health Care-Related Expiring Provisions Report

This appendix provides information on the provisions that were included in the previous Congressional Research Service (CRS) report on health care-related expiring provisions, CRS Report R46818, *Health Care-Related Expiring Provisions of the 117th Congress, First Session* (hereinafter referred to as R46818), published on June 14, 2021, but were not included in the body of this report.

As does this report, R46818 included identified expiring provisions (of the same two types discussed herein) related to Medicare, Medicaid, the State Children’s Health Insurance Program (CHIP), or private health insurance programs and activities. R46818 also included other health care-related provisions that were enacted or extended in the Patient Protection and Affordable Care Act (ACA; P.L. 111-148) or extended under the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA; P.L. 114-10). At its publication date on June 14, 2021, R46818 covered extensions through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) and described health care-related provisions that, at the time of publication, expired during the 116th Congress (i.e., during calendar years [CYs] 2019 and 2020).

Some of the provisions detailed in R46818 fell within the scope of this report (i.e., they expired in 2021 or expired or are set to expire in 2022) as of the publication date of this report and are included in the body of this report. **Table B-1** includes other provisions detailed in R46818 that remained expired during 2019 or 2020 or were extended to dates beyond the second session of the 117th Congress (i.e., after CY2022). The third column in **Table B-1** provides each provision’s expiration date as it appeared in R46818. The fourth column reflects updated information, providing the current expiration date for provisions extended pursuant to modification. For more detailed background information on the provisions included in **Table B-1**, see R46818.

The demonstration projects or pilot programs that did not expire in 2021 but were included in R46818 are listed in **Table B-2**. These demonstration projects or pilot programs are not scheduled to expire at the end of the session in question and did not expire in the previous Congress.

Table B-1. Provisions Included in the Previous CRS Health Care-Related Expiring Provisions Report That Were Not Included in This Report

Health Care-Related Program	Provision^a	Expired After Date as of CRS Report R46818	Current Expiration: Expired After	CRS Contact	
Medicare	Funding for Implementation of §101 of MACRA	MACRA §101(c)(3))	9/30/2019	9/30/2019	Jim Hahn
Medicare	Priorities and Funding for Measure Development	SSA §1848(s) 42 U.S.C. §1395w-4(s)	9/30/2019	9/30/2019	Amanda Sarata
Medicare	Extension of Blended Site Neutral Payment Rate For Certain Long-term Care Hospital (LTCH) Discharges	SSA §1886(m)(6)(B)(i) 42 U.S.C. §1395ww(m)(6)(B)(i)	9/30/2019	9/30/2019	Marco Villagrana
Medicare	Temporary Exception for Certain Spinal Cord Conditions from Application of the Medicare LTCH Site-Neutral Payment for Certain LTCHs	SSA §1886(m)(6)(F) 42 U.S.C. §1395ww(m)(6)(F)	9/30/2019	9/30/2019	Marco Villagrana
Other	Pregnancy Assistance Fund	ACA §10212	9/30/2019	9/30/2019	Jessica Tollestrup
Medicare	Transitional Payment Rules for Certain Radiation Therapy Services	SSA §1848 42 U.S.C. §1395w-4(b)(11)	12/31/2019	12/31/2019	Jim Hahn
CHIP	Increase to E-FMAP	SSA §32105(b) 42 U.S.C. §1397ee(b)	9/30/2020	9/30/2020	Alison Mitchell
Medicare	MACRA Technical Assistance to Small Practices and Practices in Health Professional Shortage Areas	SSA §1848(q) 42 U.S.C. §1395w-4(q)	9/30/2020	9/30/2020	Jim Hahn

Health Care-Related Program		Provision ^a	Expired After Date as of CRS Report R46818	Current Expiration: Expired After	CRS Contact
Medicare	Home Health Prospective Payment System Rural Add-On for High-Utilization Counties	SSA §1895 42 U.S.C. §1395fff note	12/31/2020	12/31/2020	Phoenix Voorhies
Medicare	Exclusion of Complex Rehabilitative Manual Wheelchairs from Medicare Competitive Acquisition Program ^b	SSA §1847(a) 42 U.S.C. §1395w-3(a)	6/30/2021	Permanent	Paulette Morgan

Source: Congressional Research Service (CRS).

Notes: ACA = Patient Protection and Affordable Care Act (P.L. 111-148); CHIP = State Children’s Health Insurance Program; CY = Calendar Year; E-FMAP = Enhanced Federal Medical Assistance Percentage; LTCH = Long-Term Care Hospital; MACRA = Medicare Access and CHIP Reauthorization Act of 2015 (P.L. 114-10); SSA = Social Security Act; U.S.C. = *U.S. Code*.

- a. Citations in statute and the U.S.C. are provided where available.
- b. Division N, Title I, Section 106 of the Further Consolidated Appropriations Act, 2020 (P.L. 116-97) prohibited the HHS Secretary from using competitive bidding information to adjust the Medicare payment rates for accessories when used in conjunction with complex rehabilitative manual wheelchairs, between January 1, 2020 and June 30, 2021. In a Final Rule published August 4, 2021 titled, “Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program; Payment for Complex Rehabilitative Wheelchairs and Related Accessories (Including Seating Systems) and Seat and Back Cushions Furnished in Connection With Such Wheelchairs” CMS indicates that “payment policy for wheelchair accessories and back and seat cushion used in conjunction with group 3 power wheelchairs would also apply for accessories used in conjunction with complex rehabilitative manual wheelchairs.” Available at <https://www.federalregister.gov/documents/2021/08/04/2021-16310/medicare-program-inpatient-rehabilitation-facility-prospective-payment-system-for-federal-fiscal>.

Table B-2. Demonstration Projects and Pilot Programs Included in the Previous CRS Health Care-Related Expiring Provisions Report That Were Not Included in This Report

Health Care-Related Program	Provision	Expired After Date as of CRS Report R46818	Current Expiration: Expired After	CRS Contact	
Medicare	Independence at Home Demonstration	SSA §1866E 42 U.S.C. §1395cc-5	9/30/2021	12/31/2023	Jim Hahn

Source: Congressional Research Service (CRS).

Notes: SSA = Social Security Act; U.S.C. = *U.S. Code*.

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