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Prepare for the End of the Public Health Emergency: Compliance Concerns

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For nearly three years, federal and state agencies have waived or relaxed regulatory requirements and expanded reimbursement for services due to the COVID-19 public health emergency (PHE), but the signs indicate that the party is nearly over. Many states have already ended their emergency exceptions, and the federal PHE appears to be coming to an end. The current 90-day PHE extension issued by the Health and Human Services (HHS) will expire January 11, 2023. (See [here](#).) The Biden Administration has informally promised that it would notify stakeholders at least 60 days in advance of ending the PHE; consequently, there is a good chance that the PHE will be extended an additional 90 days into April 2023, but no formal announcement has issued yet. In the meantime, HHS has warned providers that most of the PHE waivers will end upon termination of the PHE and that providers should prepare now for a return to normal standards. (See CMS, “Creating a Roadmap for the End of the COVID-19 Public Health Emergency” (8/18/22), available [here](#).)

CMS Guidance. On August 18, 2022, the Center for Medicare and Medicaid Services (CMS) published guidance summarizing the COVID-19 waivers, which guidance serves as a roadmap for compliance as the PHE ends. (See “Creating a Roadmap,” cited above.) CMS also published a series of fact sheets discussing the waivers and deadlines specific to various provider types, including but not limited to:

- Physicians and Other Clinicians
- Hospitals and Critical Access Hospitals (CAHs)
- Ambulatory Surgery Centers (ASCs)
- Long Term Care Facilities
- Home Health Agencies
- Hospices
- Inpatient Rehabilitation Facilities
- Community Mental Health Centers
- Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs)
- Laboratories
- Durable Medical Equipment, Prosthetics, Orthotics and Supplies
- Ambulances

The fact sheets may be accessed here. HHS warned, “With this information in hand, we expect that the health care system can begin taking prudent action to prepare to return to normal operations and to wind down those flexibilities that are no longer critical in nature.” (CMS, “Creating a Roadmap,” cited above.)

Congressional Action. Congress has taken some action to extend certain waivers. For example, the Consolidated Appropriations Act of 2022 extended certain flexibilities relating to Medicare reimbursement for telehealth services for an additional 151 days after the PHE ends, including:

- Allowing the originating site to be anywhere the patient is located, including the patient's home.
- Expanding the list of practitioners who may be reimbursed for telehealth services.
- Permitting coverage for audio-only telehealth.
- Allowing FQHCs and RHCs to function as distant sites.

Additional bills have been proposed to further extend or permanently establish some of the waivers. With that said, the general rule remains that most waivers and expanded reimbursement will end with the expiration of the federal PHE. And again, some states may have already ended waivers, including but not limited to those relating to telehealth services provided by out-of-state providers. Providers need to ensure that they are in compliance with applicable standards.

Next Steps. Given state action and HHS warnings, healthcare providers should immediately take steps to:

- Review the HHS guidance identified above along with state waivers to confirm what practices were waived and when the waivers end.
- Identify practices and arrangements that must be revised to return to regulatory compliance once the PHE ends.
- Update policies and practices and train staff.
- Continue to monitor developments to confirm the PHE termination date.

Failure to take steps now may expose your organization to liability for noncompliance once the PHE ends, including denial or repayment of reimbursement, False Claims Act liability, and/or other penalties.