

Insights

Don't Let the End of the Public Health Emergency Create a Compliance Problem

May 19, 2023

By: Meghan M. Linvill McNab and Brandon W. Shirley

Over the past three years, healthcare providers have adapted to specific regulatory requirements that were originally set to end when the federal public health emergency (“PHE”) expired. The PHE provided certain flexibilities and regulatory requirements over the past few years, that enabled health care providers to navigate the challenging landscape presented by the pandemic. However, during this period, both state and federal government agencies have enacted laws and regulations that impact these flexibilities. The Biden Administration recently **announced** that the PHE ended on May 11, 2023. As a result, any regulatory requirements not extended ended on that date. While the following items are worth noting, healthcare providers are strongly advised to seek legal assistance to assess the impact of the PHE termination on their practices and prevent potential compliance issues.

- **COVID-19 Testing, Treatments, and Vaccines:** The end of the PHE will affect cost-sharing waivers and coverage of COVID-19 vaccines, testing, treatment, and related services depends on the beneficiary's enrollment status with Medicare, Medicaid, or private health insurance. Unless such benefits are covered by a person's insurance, this benefit will likely end.
- **Medicare Telehealth:** Congress extended the Medicare telehealth flexibilities until December 31, 2024,¹ including the elimination of the geographic area requirement and allowance for telehealth visits from the patient's home and over a smartphone. This extension also allows federally qualified health centers (“FQHCs”) and rural health clinics (“RHCs”) to be a distant site provider of telehealth rather than only an originating site provider.
- **Controlled Substances Prescriptions:** The Drug Enforcement Administration (“DEA”) published new rules for prescribing controlled substances via telehealth. Those rules, set to take effect on May 11, 2023, make it more difficult to prescribe controlled substances without an in-person visit. However, in response to public resistance to the changes, the **DEA announced** that it intends to continue the PHE flexibilities for prescribing controlled substances via telemedicine for a 6-month period, i.e., May 11 through November 11, 2023.
- **Licensure Requirements:** Indiana's Professional Licensing Agency announced that temporary licenses issued through the State's COVID-19 Temporary Healthcare Provider Registry expired on May 11, 2023.
- **Waiver of HIPAA Violations:** The Office for Civil Rights' (“OCR”) policy regarding the discretionary enforcement of violations against health care professionals providing telehealth services via non-HIPAA compliant technologies will end on May 11, 2023. Healthcare providers will need to be mindful of this change as the OCR's enforcement activity may increase following the end of the PHE.

- **Liability Immunity for COVID-19 Countermeasures:** The liability immunity granted to certain health care providers (e.g., pharmacists, pharmacy technicians, and pharmacy interns, previously active and retired health care professionals, and healthcare students) to administer medical countermeasures such as the COVID-19 vaccine continue until at least October 1, 2024 when the PREP Act is terminated. Since scope of practice laws are state-specific, health care professionals should be aware of any changes that will go into effect when the emergency declaration under the PREP Act is terminated.

The PHE introduced various flexibilities that had an impact on almost all healthcare providers to varying degrees. It is crucial for healthcare providers to verify how the conclusion of the PHE affects their practices and whether any of these modifications were extended by Congress or federal agencies. Additionally, healthcare providers should assess the implications of such changes on their operations, reimbursement, and other regulatory compliance functions. It is vital to remain vigilant and monitor changes to federal and state laws in the upcoming months. If you have any questions or would like additional information on specific aspects of the COVID-19 emergency declaration, please contact **Meghan M. Linvill McNab** or **Brandon W. Shirley** to understand and navigate this evolving regulatory landscape.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] H.R. 2617: <https://www.congress.gov/bill/117th-congress/house-bill/2617>; 42 U.S.C. § 1395m(m)(2)(b)(iii).