



Public Health Emergency Will End in May 2023

On January 30, 2023, President Joseph Biden announced that the *public health emergency* (PHE) and national emergency declaration related to the COVID-19 pandemic will finally end on May 11, 2023, after being in place for over three years.¹ This Health Capital Topics article will discuss the changes that will take place after both declarations cease, and the implications for stakeholders.

The PHE was declared by the Secretary of *Health and Human Services* (HHS) on January 31, 2020, and was extended every 90 days thereafter.² The PHE granted the federal government temporary powers to help alleviate the effects of the pandemic, particularly in the healthcare sector.³ Subsequent to the PHE, then-President Donald Trump issued a COVID-19 national emergency declaration, a separate declaration from the PHE, on March 13, 2020.⁴ The ultimate end date of both of these declarations was purposefully selected by The White House, with a specific goal of giving at least a 60-day advance notice of the PHE's end to healthcare providers, rather than abruptly ending this declaration, which could have created chaos and uncertainty throughout the healthcare system.⁵

With the end of the PHE and national emergency declaration, all of the regulatory waivers and flexibilities that were granted (CMS has "a 47-page list of blanket waivers that have been in effect during the emergency"⁶) are set to expire, and most flexibilities granted by the declarations will end.⁷ The declarations provided the federal government additional power to waive and modify regulatory requirements in a variety of areas, including private health insurance, Medicare, and Medicaid.⁸ Some of the major policies due to go away on May 11, 2023, at the end of the national emergency declaration and PHE, are listed below:

- During the COVID-19 pandemic, states were not allowed to remove Medicaid enrollees from their rosters, even if the enrollee was no longer Medicaid-eligible. Beginning May 12, 2023, states will be able to proceed with Medicaid redetermination. HHS expects this redetermination will result in 15 million Americans losing Medicaid benefits.

- Portions of the Anti-Kickback Statute and Stark Law were waived during the PHE to ensure care accessibility for Medicare and Medicaid beneficiaries. The waivers allowed hospitals to, among other things, compensate physicians above fair market value, e.g., provide hazard pay, and deliver other, additional benefits.
- The Centers for Medicare and Medicaid Services (CMS) waived requirements for hospital discharge planning during the PHE, and allowed hospitals significant administrative flexibility such as extended timelines for completing medical records and increasing the use of verbal orders.
- Hospitals were allowed to render patient care in locations beyond the hospital facility (i.e., at alternate care sites), as long as approval was gained from the state in which the hospital was located.
- Beneficiaries were not required to be admitted to the hospital for at least three days before Medicare would cover subsequent skilled nursing home stays.
- The Drug Enforcement Agency (DEA) allowed providers the flexibility to prescribe controlled substances through telehealth, which boosted care in rural areas.⁹ However, the DEA is working to make some of these flexibilities permanent. On February 27, 2023, the agency published a proposed rule that, if finalized, would establish two new limited exceptions for the telemedicine prescribing of controlled substances without a prior in-person exam.¹⁰

In addition to the waivers and flexibilities ending with the PHE, other policies were extended for a certain period of time beyond the PHE through acts of Congress or by the Biden Administration, including those listed below:

- The *New COVID-19 Treatments Add-on Payment* (NCTAP), the add-on Medicare payment for new treatments surrounding COVID-19, is expected to lapse at the end of the 2023 fiscal year.

- During the PHE, Medicare beneficiaries were able to receive telehealth services anywhere, not just in rural settings. Telehealth visits were able to be provided through smartphones in lieu of audio and visual capable equipment, and beneficiaries were able to remain in their houses for telehealth visits, without needing to step foot in a healthcare facility. The Consolidated Appropriations Act of 2023 extended these flexibilities through December 31, 2024.¹¹

The Biden Administration’s announcement that the PHE declaration will end on May 11, 2023, prompted responses from healthcare stakeholders such as the *American Hospital Association (AHA)* and the *Medical Group Management Association (MGMA)*. Stacey Hughes, the AHA Executive Vice President for Government Relations and Public Policy, stated that the decision to end the declaration represented progress made, but that the progress should not end with the PHE.¹² She also stated that the AHA will work with the Biden Administration to build on lessons learned during COVID-19, and the organization strongly urges that many of the flexibilities granted during the PHE be made permanent.¹³ MGMA asserted their appreciation that

the administration provided at least 90 days’ notice prior to the conclusion of the PHE.¹⁴ Additionally, MGMA sent a letter to the Senate and House of Representatives committees on telehealth, urging a permanent expansion of the telehealth services that was enacted during the PHE.¹⁵ Suggestions from MGMA included allowing permanent coverage of audio-only telehealth services and eliminating in-person requirements for mental telehealth services.¹⁶

Regardless of whether certain COVID-19 era waivers and flexibilities are made permanent, providers will be hard pressed to move away from what has become common practice over the past three years. A Premier Inc. survey of its “hospitals and non-acute providers reveals 69 percent of respondents are currently leveraging” these waivers and flexibilities.¹⁷ While 80% of respondents have a plan in place to unwind their reliance on the waivers, more than half of those relying on waivers say they may need 120 days or more to fully revert to pre-COVID-19 operations.¹⁸ Therefore, whether the U.S. healthcare delivery system actually can go back to pre-COVID, “business as usual” operations remains to be seen.

1 “What Happens When COVID-19 Emergency Declarations End? Implications for Coverage, Costs, and Access” By Juliette Cubanski, Jennifer Kates, Jennifer Tolbert, Madeline Guth, Karen Pollitz, and Meredith Freed, Kaiser Family Foundation, January 31, 2023, <https://www.kff.org/coronavirus-covid-19/issue-brief/what-happens-when-covid-19-emergency-declarations-end-implications-for-coverage-costs-and-access/> (Accessed 2/3/23).

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*; “Covid Public Health Emergencies Will End May 11, White House Says” By Siladitya Ray, Forbes, January 31, 2023, <https://www.forbes.com/sites/siladityaray/2023/01/31/biden-administration-will-end-covid-19-emergency-declarations-on-may-11/?sh=19ac61655b99> (Accessed 2/1/23).

5 “Statement of Administration Policy” Executive Office of the President, Office of Management and Budget, January 30, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf> (Accessed 2/1/23).

6 “What’s at stake when the health emergency ends” By Maya Goldman, Axios, January 24, 2023 <https://www.axios.com/pro/health-care-policy/2023/01/24/public-health-emergency-policies-end> (Accessed 2/24/23).

7 “What the End of the Federal COVID-19 Emergency Means for Healthcare” By Maya Goldman and Mari Devereaux, Modern Healthcare, January 31, 2023, <https://www.modernhealthcare.com/policy/end-covid-public-health-emergency-healthcare-medicare-telehealth-medicaid> (Accessed 2/1/23).

8 Cubanski, Kates, Tolbert, Guth, Pollitz, and Freed, Kaiser Family Foundation, January 31, 2023.

9 Goldman and Devereaux, Modern Healthcare, January 31, 2023; “Federal Stark Law Waivers During COVID-19: A Strategic Guide for Physician Practices” American Medical Association, December 7, 2020, <https://www.ama-assn.org/system/files/2020-12/stark-waiver-guide.pdf> (Accessed 2/3/23); “Fact Sheet for State and Local Governments: CMS Programs & Payment for Care in Hospital Alternate Care Sites” Centers for Medicare and Medicaid Services, December 13, 2021, <https://www.cms.gov/files/document/covid-state-local->

[government-fact-sheet-hospital-alternate-care-sites.pdf](https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf) (Accessed 2/3/23); “COVID-19 & HIPAA Bulletin Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency” Department of Health and Human Services, March 15, 2020, <https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf> (Accessed 2/16/23).

10 “DEA’s Proposed Rules on Telemedicine Controlled Substances Prescribing after the PHE Ends” By Nathaniel Lacktman, Foley & Lardner LLP, February 27, 2023, <https://www.foley.com/en/insights/publications/2023/02/deas-telemedicine-controlled-substances-phe-ends> (Accessed 2/27/23).

11 Cubanski, Kates, Tolbert, Guth, Pollitz, and Freed, Kaiser Family Foundation, January 31, 2023; Goldman and Devereaux, Modern Healthcare, January 31, 2023; “2022 IPPS FINAL RULE RELEASED WITH ALLOWANCES DUE TO COVID-19 PHE, INCLUDING EXTENDED NCTAP” Yes Him Consulting, January 17, 2023, <https://yes-himconsulting.com/2022-ippf-final-rule-released-with-allowances-due-to-covid-19-phe-including-extended-nctap/> (Accessed 2/15/23).

12 “Administration to End COVID-19 Emergency Declarations on May 11” American Healthcare Association, January 31, 2023, <https://www.aha.org/news/headline/2023-01-31-administration-end-covid-19-emergency-declarations-may-11> (Accessed 2/1/23).

13 *Ibid.*

14 “MGMA Washington Connection 02/02/2023: Biden Administration To End COVID-19 PHE on May 11” MGMA Missouri, February 2, 2023, <https://mgma-mo.org/news/13082814> (Accessed 2/16/23).

15 *Ibid.*

16 *Ibid.*

17 “The End is Near: Are Providers Ready for the Unwinding of the COVID-19 Public Health Emergency?” Premier, February 9, 2023, <https://premierinc.com/newsroom/blog/the-end-is-near-are-providers-ready-for-the-unwinding-of-the-covid-19-public-health-emergency> (Accessed 2/24/23).

18 *Ibid.*



LEADERSHIP

(800) FYI -VALU

Providing Solutions in an Era of Healthcare Reform

- Firm Profile
- HCC Services
- HCC Leadership
- Clients & Projects
- HCC News
- Upcoming Events
- Contact Us
- Email Us

- Valuation Consulting
- Commercial Reasonableness Opinions
- Commercial Payor Reimbursement Benchmarking
- Litigation Support & Expert Witness
- Financial Feasibility Analysis & Modeling
- Intermediary Services
- Certificate of Need
- ACO Value Metrics & Capital Formation
- Strategic Planning
- Industry Research



Todd A. Zigrang, MBA, MHA, FACHE, CVA, ASA, ABV, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.



Mr. Zigrang is the co-author of *“The Adviser’s Guide to Healthcare - 2nd Edition”* [AICPA - 2015], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Guide to Valuing Physician Compensation and Healthcare Service Arrangements* (BVR/AHLA); *The Accountant’s Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies*; *Business Appraisal Practice*; and, *NACVA QuickRead*. Additionally, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); the National Association of Certified Valuators and Analysts (NACVA); the American Health Lawyers Association (AHLA); the American Bar Association (ABA); the Association of International Certified Professional Accountants (AICPA); the Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Certified Valuation Analyst (CVA) designation from NACVA. Mr. Zigrang also holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter. He is also a member of the America Association of Provider Compensation Professionals (AAPCP), AHLA, AICPA, NACVA, NSCHBC, and, the Society of OMS Administrators (SOMSA).



Jessica L. Bailey-Wheaton, Esq., is Senior Vice President and General Counsel of HCC. Her work focuses on the areas of Certificate of Need (CON) preparation and consulting, as well as project management and consulting services related to the impact of both federal and state regulations on healthcare transactions. In that role, Ms. Bailey-Wheaton provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.



Additionally, Ms. Bailey-Wheaton heads HCC’s CON and regulatory consulting service line. In this role, she prepares CON applications, including providing services such as: health planning; researching, developing, documenting, and reporting the market utilization demand and “need” for the proposed services in the subject market service area(s); researching and assisting legal counsel in meeting regulatory requirements relating to licensing and CON application development; and, providing any requested support services required in litigation challenging rules or decisions promulgated by a state agency. Ms. Bailey-Wheaton has also been engaged by both state government agencies and CON applicants to conduct an independent review of one or more CON applications and provide opinions on a variety of areas related to healthcare planning. She has been certified as an expert in healthcare planning in the State of Alabama.

Ms. Bailey-Wheaton is the co-author of numerous peer-reviewed and industry articles in publications such as: *The Health Lawyer*; *Physician Leadership Journal*; *The Journal of Vascular Surgery*; *St. Louis Metropolitan Medicine*; *Chicago Medicine*; *The Value Examiner*; and *QuickRead*. She has previously presented before the ABA, the NACVA, and the NSCHBC. She serves on the editorial boards of NACVA’s *QuickRead* and AHLA’s *Journal of Health & Life Sciences Law*.



Janvi R. Shah, MBA, MSF, serves as Senior Financial Analyst of HCC. Mrs. Shah holds a M.S. in Finance from Washington University Saint Louis. She develops fair market value and commercial reasonableness opinions related to healthcare enterprises, assets, and services. In addition she prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services and applies utilization demand and reimbursement trends to project professional medical revenue streams and ancillary services and technical component (ASTC) revenue streams.



For more information please visit:
www.healthcapital.com