

PUBLICATION

Biden Administration Announces Planned End of Emergency Declarations

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This past week, President Biden issued a Statement of Administration Policy announcing an intention to end both the Public Health Emergency (PHE) and the National Emergency declarations on May 11, 2023. While the administration's announcement coincided with the House of Representatives' consideration of legislation to terminate the PHE and National Emergency immediately, such legislation's Senate prospects appear sufficiently dim that affected parties can likely rely on the declarations continuing through May 11, 2023.

While Medicaid continuous enrollment and telehealth reflect two key areas of flexibilities that were decoupled from the end of the PHE, numerous other flexibilities – such as Physician Self-Referral Law waivers, and certain payment and coverage elements – remain tied to the end of the PHE, as helpfully summarized here by CMS.

As one example, since March 1, 2020, location requirements under the Physician Self-Referral Law's in-office ancillary services exception (Location Requirements) have generally been waived, so group practices could generally perform "designated health services" (DHS) in locations for which they did not meet the standard Location Requirements, such as the minimum number of hours per week open to the public.

As soon as the PHE ends or the Physician Self-Referral Law waivers otherwise terminate, any billings for DHS at such locations would violate the Physician Self-Referral Law, and also potentially expose providers to False Claims Act liability if providers learned of the issue and did not timely report or return such overpayments. As with dozens of other flexibilities under the PHE, providers that have capitalized on the flexibility regarding the Locations Requirements will likely need to thoughtfully unwind their present approach to resume compliance with the standard Location Requirements by May 11.

If you have questions about this alert, please contact [Joseph Keillor](#), [Sheila P. Burke](#), or a member of Baker Donelson's [Health Law](#) Group.