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Navigating Your Organization Through the Termination of COVID-19 Emergency Declarations

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After two years, a multitude of factors are pointing toward the end of the formal public health emergency declaration, related emergency declarations, and associated waivers in connection with COVID-19, including declining case counts and improving therapeutics, a shifting political landscape and sheer societal exhaustion, as well as signals from key governmental bodies.

A distinctive feature of the COVID-19 emergency declarations was the associated waiver or liberalization of a host of longstanding federal regulatory requirements across a wide variety of domains, including telemedicine, Medicare coverage rules, Medicaid enrollment, fraud and abuse regimes, and Occupational Safety and Health Administration requirements, as summarized in [Baker Donelson's Coronavirus Task Force hub](#). Many providers have relied heavily on emergency waivers to adapt their patient care delivery models and financial relationships with physicians such as leases and service agreements.

Federal emergency waivers generally relied on the declaration of a "Public Health Emergency" by the Secretary of the Department of Health and Human Services (DHHS) under §319 of the Public Health Service Act and/or the President's declaration of a "National Emergency" under the National Emergencies Act. DHHS Secretary Xavier Becerra most recently renewed the Public Health Emergency on January 14, 2022, and President Joe Biden most recently renewed the National Emergency on February 18, 2022. In many cases, waivers will automatically expire concurrently with the expiration of the corresponding emergency declaration(s), although Congress legislatively extended certain telehealth flexibilities for five months following the termination of the Public Health Emergency as part of the broader [Consolidated Appropriations Act signed by President Biden on March 15, 2022](#).

The Public Health Emergency is presently set to expire in mid-April if not affirmatively extended. However, prior non-binding statements from DHHS that states would receive 60 days' courtesy advance notice prior to the expiration of the Public Health Emergency may point towards a final brief extension for at least a few weeks past mid-April. On March 3, 2022, the Senate narrowly passed legislation to end the National Emergency. The House of Representatives is viewed as unlikely to join the Senate in seeking to legislatively end the National Emergency, but the Senate's message may nonetheless moderately increase the political pressure on the Biden Administration to chart an off-ramp for the National Emergency.

The Centers for Medicare & Medicaid Services published a detailed [State Health Official Letter](#) on March 3, 2022, providing extensive guidance to states regarding planning to resume routine operations of eligibility and enrollment with respect to Medicaid, the Children's Health Insurance Program, and the Basic Health Program. Notwithstanding the letter's message of preparing for the end of the Public Health Emergency, the letter refrained from announcing the planned termination date of the Public Health Emergency, and seemingly did not clearly commence the non-binding 60-day courtesy advance notice period to which DHHS has publicly committed.

The overarching message of the state health official letter was for states to proceed deliberately through a 14-month timeframe in accomplishing redeterminations of continued eligibility for Medicaid, so while providers

should not face an immediate sharp increase in uninsured patients, they should begin budgeting for the impact of the gradual return of Medicaid enrollment to closer to pre-pandemic levels.

In addition to the Public Health Emergency and National Emergency, state-level emergency declarations have often been accompanied by waivers of licensure and Certificate of Need requirements. While some states have already allowed their state-level emergency declarations to lapse, other states appear likely to key off the termination of the federal emergencies.

In the coming weeks, Baker Donelson will publish a series of articles to help your organization prepare for the expiration of the key emergency declarations and associated waivers. This series will highlight some of the most critical adaptations that must be timely unwound and identify those features of the regulatory landscape that have permanently shifted due to the pandemic.

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