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Public Health Emergency Extended

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The U.S. Department of Health and Human Services (“HHS”) has [renewed the January 31, 2020 determination](#) that a public health emergency (“PHE”) exists nationwide. Each determination renews the PHE for 90 days, so all HHS/CMS waivers and flexibilities applicable during the PHE will continue until at least July 15, 2022, unless the PHE is terminated sooner. Any decision to terminate the PHE will also include 60 days’ advance notice to the states, per a January 21, 2022 [letter](#) from HHS to state governors. In the meantime, all state-based policies that are directly tied to the federal PHE also continue accordingly.

Note that expiration of the PHE does not automatically end all related waivers/flexibilities. Some expire immediately upon the end of the PHE, such as for certain Medicare telehealth services (including group psychotherapy and phone E/M codes 99441-99443) and controlled substance prescriptions without in-person visits. Others, such as copays for COVID-19 vaccines, testing, and treatments, end on the last day of the calendar quarter in which the PHE ends.

Certain others expire 151 days after the PHE ends pursuant to the recently-enacted Consolidated Appropriations Act of 2022 (P.L. 117-103), including the following:

- Expansion of the originating site definition to include any site at which the patient is located;
- Expansion of eligibility for certain healthcare facilities and providers to furnish telehealth services;
- Delay of the 6-month in-person requirements for furnishing mental health services through telehealth;
- Extension of coverage and payment for audio-only telehealth services; and
- Allowed use of telehealth services to meet the face-to-face requirements for hospice care.

Yet others expire at the end of the year in which the PHE ends, such as flexibilities that allow direct supervision of incident-to services by virtual presence through audio/video real time communications technology (excluding audio-only). CMS noted in its November 19, 2021, Final Rule that it will consider public requests to make this direct supervision flexibility permanent, but has not made any change as of yet.

Because various services have different legal and billing requirements related to the PHE, it is important for providers to be aware of the PHE's stated end date and how that date relates to the particular services provided.



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