

Report on Medicare Compliance Volume 32, Number 5. February 06, 2023 PHE and Many of Its Waivers Will End May 11, Ushering in Uncertainty, Compliance Risk

By Nina Youngstrom

When the COVID-19 public health emergency (PHE) expires May 11, along with many of its waivers and flexibilities, health care organizations may be left with unanswered questions and/or unintended consequences. For example, will Medicare pay for skilled nursing facility (SNF) admissions when patients were admitted without a three-day inpatient hospital stay during the PHE but discharged after?

That's one of the gray areas that has come up now that the Biden administration announced Jan. 30 that after almost three years, it will end the PHE, said Martie Ross, a consulting principal at PYA.^[1] The waiver of the three-day qualifying stay was intended to help with COVID-19 patient volumes, but it's unclear what happens with Medicare reimbursement if a SNF stay straddles the PHE. "CMS will have to come out and say it's OK as long as you came in during the PHE," Ross noted. The loss of that waiver without CMS guidance has her most concerned because it affects hospitals, SNFs and patients. "That could be a mess," she said. "That's the obvious one that we need CMS to step in on."

The current PHE extension was scheduled to expire in mid-April and HHS tacked on another month partly to give providers more time to adapt to a post-waiver world, according to a statement from the White House. "Hospitals and nursing homes that have relied on flexibilities enabled by the emergency declarations will be plunged into chaos without adequate time to retrain staff and establish new billing processes, likely leading to disruptions in care and payment delays, and many facilities around the country will experience revenue losses." The statement also said it opposes a bill passed Feb. 1 by Republicans in the House (H.R. 382) to immediately end the PHE, which the American Hospital Association said is not expected to be taken up by the Senate.

Now hospitals and other providers will start to run the waiver obstacle course. "The first bucket everyone has to prepare for are the flexibilities that will go away the day the PHE ends," said Richelle Marting, an attorney and certified coder in Olathe, Kansas. Many waivers will disappear because apparently CMS is ready to revert to the pre-PHE status quo for various reasons, including program integrity and quality of care. Other waivers will stick around because they were extended by CMS rulemaking or by Congress in the 2022/2023 Consolidated Appropriations Act (CAA). For example, the 20% add-on payment for COVID-19 MS-DRGs will continue through the end of the year in which the PHE ends, which we now know is 2023. CMS also will continue to pay about \$40 for administering COVID-19 vaccines in outpatient settings and higher rates for vaccines administered in patient homes through the end of the year.

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