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Compliance Checklist for the End of the COVID-19 Public Health Emergency (PHE)

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Here's an excerpt of an 11-page checklist developed by PYA. View the entire checklist at <https://bit.ly/3li7rpW>. Contact Martie Ross, a consulting principal with PYA, at mross@pyapc.com and Kathy Reep, a senior manager with PYA, at kreep@pyapc.com.

Example Checklist

READ ME: The end of the COVID-19 public health emergency (PHE) means the end of federal regulatory waivers and flexibilities. Providers must now roll back policies and practices implemented in reliance on those waivers and flexibilities. Unless stated otherwise, return to normal operations must be completed before May 12, 2023.

PYA has prepared this checklist to help providers identify the work to be done by that date. Rather than summarizing each waiver and flexibility (e.g., "CMS changed the timeline from 5 to 21 days"), the checklist states the rule that will be in effect following the end of the PHE (e.g., "The timeline is 5 days"). For each item, we cite the relevant regulation, as applicable.

This checklist focuses primarily on waivers and flexibilities relating to the Medicare program. It does not address the following:

- Waivers and flexibilities made permanent or terminated prior to 1/1/2022
- Reimbursement for COVID-19 vaccinations, testing, and treatment
- Modifications to Medicare value-based purchasing programs
- CMS-approved state Medicaid program waivers and flexibilities
- State and local waivers and flexibilities

Note the following are not impacted by the end of the PHE. Any changes to or discontinuation of these requirements will be the subject of separate regulatory action:

- Food and Drug Administration (FDA) emergency use authorization for COVID-19 vaccines, tests, and treatments
 - Hospital and long-term care facility COVID-19-related reporting requirements
 - Health care provider vaccine mandates
 - Occupational Safety and Health Administration's (OSHA)'s Healthcare Emergency Temporary Standard
 - Duties and obligations relating to Provider Relief Fund payments
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We have categorized the waivers and flexibilities by the type of provider most directly impacted. Because a waiver or flexibility may impact more than one provider type, one should review each section to identify all relevant post-PHE changes.

This checklist is current as of the date of publication noted below. PYA will update the checklist as additional guidance becomes available. This checklist does not constitute and cannot be relied upon as legal, tax, accounting, banking, financial, or any other form of professional or other advice. We have made a reasonable effort to address all waivers and flexibilities, but we do not and cannot warrant the completeness of this checklist.

1. Applicable to Multiple Provider Types

A. Medicare Provider Enrollment

1. CMS will resume normal application processing timelines
2. Practitioners who have opted out of the Medicare program will no longer be permitted to cancel their opt-out status earlier than allowed by regulation (42 C.F.R. 405.445)
3. Effective Jan. 1, 2024, practitioners who render telehealth services from their home will be required to report their home address on their Medicare enrollment

B. Medicare Appeals

- All regulatory flexibilities relating to Medicare appeals (e.g., extended timeframes) will terminate

C. COVID-19 Diagnostic Testing and Reporting

- Providers of COVID-19 diagnostic tests will no longer be required to post cash prices for those tests; however, all hospital price transparency rules will remain in effect

D. State licensure requirements

- CMS will defer to state law on issues regarding licensure requirements

E. Fraud and abuse

1. Any financial arrangement with a physician entered into in reliance on the Stark Law blanket waivers must be brought into compliance with a Stark Law exception (including fair market value) or be terminated, except appropriate repayment terms agreed to prior to the end of the PHE may continue beyond that date
2. Any financial arrangements entered into in reliance on HHS Office of Inspector General's (OIG)'s FAQs regarding the application of its administrative enforcement authorities to arrangements directly connected to the PHE must be brought into compliance with the fraud and abuse laws or terminated (<https://oig.hhs.gov/coronavirus/authorities-faq.asp>)

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