

April 11, 2023

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION  
M E M O R A N D U M**

**SUBJECT: End of National Emergency but Continuation of Public Health Emergency (and Existing 1135 Waivers) Until May 11, 2023**

On April 10, 2023, President Biden signed into law House Joint Resolution (H.J. Res.) 7, which terminated the national emergency originally declared on March 13, 2020 (effective March 1, 2020) by President Trump under Section 202 of the National Emergencies Act.

H.J. Res. 7 does not affect the President's independently made emergency declaration pursuant to the Stafford Act or the federal Public Health Emergency (PHE) declaration by the Secretary of Health and Human Services scheduled to end on May 11, 2023 and discussed in an [IHA Memorandum dated March 3, 2023](#).

Specifically, the Section 1135 waivers that are of most concern to IHA members remain untouched by the end of the national emergency because legal authority for those waivers still exists even after the signing of H.J. Res. 7.<sup>1</sup> CMS has publicly addressed this scenario on its [website](#) and underscored that Section 1135 waivers will continue until the end of the federal PHE on May 11, 2023:

What happens if a national emergency ends before the PHE ends?

To be clear, the federal Public Health Emergency (PHE) for COVID-19 declared under section 319 of the Public Health Service Act, is not the same as the COVID-19 National Emergency declared by the Trump Administration in 2020 and implicated by H.J.Res.7. **Therefore, an end to the COVID-19 National Emergency does not impact current operations at HHS, and does not impact the planned May 11 expiration of the federal PHE for COVID-19 or any associated unwinding plans. Even if the COVID-19 National Emergency were to end, any existing waivers currently in effect and authorized under the 1135 waiver authorization for the pandemic, would remain in place until the end of the federal PHE for COVID-19.** (Emphasis added.)

Although the details of impact of the end of the national emergency under Section 202 of the National Emergencies Act before the end of other emergency declarations are unclear, it could

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<sup>1</sup> See 42 U.S.C. § 1320b-5(g)(1) (providing that an "emergency period" supporting 1135 Waivers can exist even without a national emergency declared under the National Emergencies Act).

have some impact on private group health plan provisions, such as the extension of election and notice deadlines for COBRA and other group health plans provisions.<sup>2</sup>

IHA will continue to track the impact of the expiration of the PHE and will provide links to these resources and other related information on IHA's website, [click here](#).

Contact IHA at [team-iha.org/contact-us](https://www.team-iha.org/contact-us) with questions.

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<sup>2</sup> See box entitled "Other Private Insurance Coverage Flexibilities" [here](#), noting that certain extensions may expire 60 days after the end of the Section 201 national emergency.