

# United States Senate

WASHINGTON, DC 20510

June 9, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Becerra,

The Department of Health and Human Services (HHS), in coordination with other federal agencies, must provide clear and consistent information on a cohesive plan for transitioning beyond the emergency policies put in place over the course of the past two years in response to the COVID-19 pandemic. As the American people return to normalcy, workers, families, frontline health care providers, and a range of other stakeholders need transparency and certainty regarding the path forward.

Furthermore, without comprehensive answers to the myriad of crucial questions surrounding the end of the public health emergency (PHE), Congress will lack the clarity and information needed to inform any productive discussion on potential phase-outs, extensions, terminations, or modifications for temporary flexibility and relief measures. We write to urge the Department and its sub-agencies to supply policymakers with the thorough responses, materials, and proactive engagement that the current situation and its serious implications demand.

To this point, the contradictory and often inexplicable actions taken by HHS, along with its sub-agencies and other federal departments, have produced widespread confusion, volatility, and, in some cases, outright chaos. The Centers for Disease Control and Prevention (CDC), for instance, announced on April 1, 2022 that it would end the public health authority under Title 42, with officials citing the pandemic's waning threat. As a result, experts expect millions of illegal immigrants to overwhelm our southern border. Less than two weeks later, however, your department extended its COVID-19 PHE determination, raising profound doubts as to the actual intent behind the termination of the Title 42 order. The CDC also triggered similar questions and concerns when it extended an onerous mask mandate for public transportation on April 13, 2022, days before the mandate was set to expire. The Biden administration continues to fight for the mandate even after a federal judge ruled that it was unlawful and exceeded the authority of CDC.

This unpredictable patchwork of mandates and questionable authorities will continue to erode the public's confidence in government health agencies. For frontline health care providers and patients, the administration's erratic approach to transitioning beyond a perpetual state of pandemic emergency could prove particularly problematic. The lack of clear guidance and

deliberative planning on the path forward make it impossible for these dedicated professionals to understand how the administration will bring the PHE to an orderly conclusion. Moreover, while some emergency policies should undoubtedly end as we work to return to normalcy and conserve taxpayer resources, other provisions advanced under the PHE determination, such as certain flexibilities in care delivery, could help to inform policymaking decisions well beyond the end of the emergency period.

To that end, we write requesting information related to the utilization and scope of blanket waivers implemented by the Centers for Medicare & Medicaid Services (CMS) since the January 31, 2020 PHE declaration. We respectfully ask you provide answers to the following in a thorough and expedient manner.

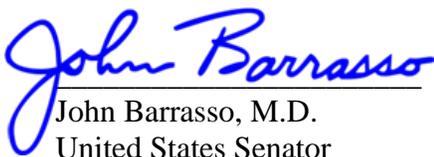
1. Please provide a comprehensive, chronological list of the blanket waivers implemented by CMS for the Medicare, Medicaid, and Children's Health Insurance (CHIP) programs that were in effect as of June 1, 2022. For each flexibility, please provide:
  - a. A brief description of the policy;
  - b. Its associated statutory authority;
  - c. Whether CMS considers the policy to be contingent upon the existence of a PHE declaration;
  - d. Effective date of implementation;
  - e. Per Section 1135(d) of the Social Security Act (42 U.S.C. § 1320b-5(d)), a copy of the original written notice to Congress for each authority used, if applicable; and
  - f. The original regulatory citation in rulemakings, transmittals, rulings, guidance, or other relevant agency documents.
2. Similarly, please provide a comprehensive, chronological list of blanket waivers implemented by CMS for the Medicare, Medicaid, and CHIP programs during some portion of the PHE that were no longer in effect as of June 1, 2022. For these flexibilities, please provide:
  - a. A brief description of the policy;
  - b. Its associated statutory authority;
  - c. Effective date of implementation and termination;
  - d. Justification for termination;
  - e. Per Section 1135(d) of the Social Security Act (42 U.S.C. § 1320b-5(d)), a copy of the original written notice to Congress for each authority used, if applicable; and
  - f. Original regulatory citation in rulemakings, transmittals, rulings, guidance, or other relevant agency documents.
3. The PHE under Section 319 of the Public Health Service Act (42 U.S.C. § 247d) terminates after 90 days of its most recent renewal or at the discretion of the Secretary. Given this timeline, has CMS developed plans or actions it intends to take to ensure stakeholders, including providers and patients, are aware of the expiration of these flexibilities?
  - a. If yes, please describe these plans in detail.

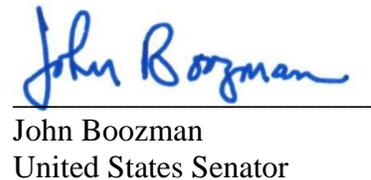
- b. If not, what is CMS's justification for why it has not done so?
4. Are there concrete steps CMS plans to take to ensure a smooth termination of PHE-related waivers and flexibilities absent Congressional action on extending such policies? If so, please describe in detail.
  5. For any blanket waivers that, in CMS's view, are not contingent upon a PHE declaration, how will CMS determine whether to continue, phase out, terminate, or modify the relevant policies after the termination of the PHE declaration?
  6. Section 1135(f) of the Social Security Act (42 U.S.C. § 1320b-5(f)) requires the Secretary to issue a report within one year of the PHE ending about the approaches it used to implement emergency waivers. Has CMS specified the metrics and methodology it plans to use in evaluating these waivers?
    - a. Until this report is published, please identify the most substantial waivers set to expire upon the PHE's termination with regard to:
      - i. Economic significance;
      - ii. Anticipated number of patients affected; and
      - iii. Anticipated number of providers affected.

This information will assist us in conducting administrative oversight and ensuring program integrity. Further, it will allow us to gain critical insight as to what is most effective when it comes to easing provider burden, improving beneficiary outcomes, and controlling program costs in a post-PHE world. Above all, providers and patients will stand to benefit from greater predictability and foresight into expected program changes in the coming weeks and months.

Once again, thank you for your prompt attention to this matter.

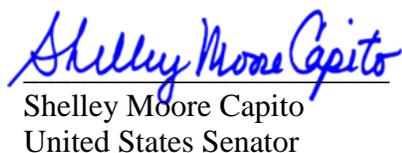
Sincerely,

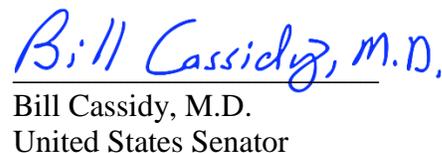
  
John Barrasso, M.D.  
United States Senator

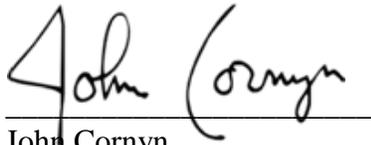
  
John Boozman  
United States Senator

  
Mike Braun  
United States Senator

  
Richard Burr  
United States Senator

  
Shelley Moore Capito  
United States Senator

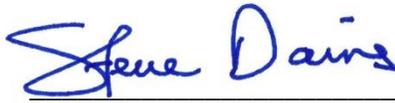
  
Bill Cassidy, M.D.  
United States Senator



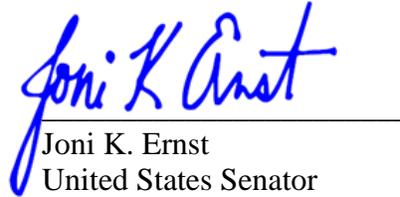
John Cornyn  
United States Senator



Mike Crapo  
United States Senator



Steve Daines  
United States Senator



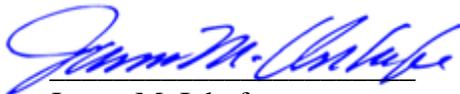
Joni K. Ernst  
United States Senator



Deb Fischer  
United States Senator



Charles E. Grassley  
United States Senator



James M. Inhofe  
United States Senator



James Lankford  
United States Senator



Cynthia M. Lummis  
United States Senator



Roger Marshall, M.D.  
United States Senator



Rand Paul, M.D.  
United States Senator



Rob Portman  
United States Senator



James E. Risch  
United States Senator



Marco Rubio  
United States Senator



Ben Sasse  
United States Senator



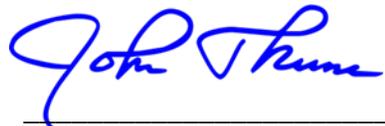
Rick Scott  
United States Senator



Tim Scott  
United States Senator



Dan Sullivan  
United States Senator



John Thune  
United States Senator



Todd Young  
United States Senator

CC: The Honorable Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services