In recent weeks many states have either started lifting pricing restrictions put in place during the COVID-19 pandemic or announced their plans to do so. Still, some state governments have indicated that they will continue to hold pricing restrictions in place as a means of protecting consumer welfare as people return to normal spending habits and economies recover from the toll of the pandemic. As the country begins turning the corner toward the end of the pandemic, the landscape of state price gouging restrictions remains muddy as governors take individualized approaches to states of emergency.

Recent trends show states beginning to rescind their states of emergency. While some states’ restrictions are completely lifted, others remain in force with no clear end date. And others have institutes partial pullbacks, such as California.
Understanding the evolving landscape is critical for businesses as they evaluate their compliance programs. For one, states such as South Dakota, Montana, and Wyoming have issued indefinite states of emergency which “shall continue for the duration of the emergency.” These declarations continue to obscure the end date for pricing restrictions.

On the other end of the spectrum, a handful of governors have either rescinded their emergency orders or allowed them to simply expire. For instance Kentucky, Massachusetts, and Alaska’s orders were all terminated, while Pennsylvania and Kansas’ governors let the orders expire. Similarly, Arkansas Governor Asa Hutchinson allowed the state of emergency to expire on May 30, 2021, but the Arkansas price gouging statute continued to apply for 30 days after the end of the emergency period. California, one of the first states to partially lift its price gouging restrictions, limiting them to medical and emergency supplies, is still otherwise operating under the Governor’s emergency declaration.

A multitude of emergency declarations are set to expire in the remaining days of June 2021, including Florida, Georgia, Idaho, Illinois, Indiana, Iowa, New Mexico, New York, Oregon, and Virginia. However, most states governors have continued to renew emergency extensions every 30 days like clockwork since the pandemic began. Renewing these emergency declarations just as they are set to expire creates an air of uncertainty as to when a true end date will arise.

Additionally, and perhaps critical in furthering the momentum of lifting restrictions, some governors are signaling their intentions regarding extensions to the states of emergency. For example, Mississippi governor Tate Reeves has recently announced that the state of emergency will be lifted as of August 15, 2021. Ohio Governor Mike Dewine also recently announced a lifting of the state’s emergency, effective June 18, 2021. These announcements signal a step forward in governors taking a proactive approach to creating solid goal posts in ending emergency extensions. In contrast, Oklahoma Governor Kevin Stitt extended the state of emergency every 30 days since his initial order on March 15, 2020 often on or right before the scheduled expiration date. On May 3, 2021, Governor Stitt announced he would rescind the emergency order effective May 4, 2021.

The unceasing extensions in the past fifteen months have not been without contest or cost. Pennsylvania’s Governor Tom Wolf, for example, previously had the ability to enact ninety-day renewals to emergency declarations. On June 10, 2021, a constitutional amendment was approved that effectively ended the Governor’s most recent disaster declaration. Similar tensions are also evident across the country as lawmakers and voters debate whether gubernatorial emergency declarations should require legislative approval before enactment. In May, Governor Brad Little of Idaho, who also extended emergency orders repeatedly since March 2020, vetoed two Senate bills that would have limited his powers and prohibited him from extending an emergency declaration for more than 60 days without legislative approval. These instances of legislative pushback bring to light the expansive powers—traditionally used during severe weather and natural disasters—that governors have exercised during the COVID-19 pandemic.

Moving forward, New York may become a trendsetter for outstanding states with no definitive end date for restrictions. Governor Andrew Cuomo of New York has
continued to issue a declaration extending the state of emergency every 7-14 days since his first COVID-19 disaster emergency order on March 7, 2020. On June 23, 2021, Governor Cuomo made an announcement confirming he will allow the emergency order to definitively expire on June 24, 2021. It is likely that other states particularly with soon-to-expire emergencies will begin to follow suit. As COVID-19 disaster emergencies begin expiring states should be looking to the economy’s recovery and continuing improvement in evaluating whether to lift pricing restrictions and allow traditional market forces to govern pricing.

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