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Are Long Term Pricing Controls Here to Stay? Three Reasons the Pessimists Might Be Right

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In some ways, it feels like the country is moving into another phase of how we experience the COVID-19 pandemic. With two vaccines in distribution, and more vaccine approvals possible, the pandemic could very well be effectively managed much sooner than experts initially feared. Given the light the end of the tunnel, it is worth renewing talk of how long state and federal price gouging restrictions could remain in place. Emergency declarations and their attendant price restrictions could continue longer than some might hope. In this post, we unpack a few of the strongest indications that these restrictions could endure until the end of the calendar year or beyond.

Appeal of Long Term Emergency Powers. An emergency declaration can—and often does—last indefinitely. States had many good reasons for issuing emergency declarations as part of their response to the pandemic. Having unlocked sweeping powers to respond to the COVID-19 virus, however, it remains to be seen how quickly states will be ready to scale back. When it comes to price gouging, many local actors may have a hard time foregoing enforcement actions and practices that, just weeks or months earlier, they had advocated for as necessary to protect their constituents. It is entirely possible that, rather than scaling those powers back as soon as possible, states may be more interested in maintaining some crisis powers to respond to potential resurgences of the virus, prepare for future emergencies, or keep them on hand as part of a necessary "new normal."

The COVID-19 pandemic was declared a national emergency on March 13, 2020. That declaration expires after one year unless renewed by the President, though it may also be terminated at any time by the President or by joint resolution of Congress. At this time, it appears likely that it will be renewed for another year. While Congress could rescind a renewed executive emergency declaration through a simple majority vote, that seems unlikely.

Vaccination Pacing Suggests a Longer Timeline. It is impossible to predict when a critical amount of the population will be willing and able to get vaccinated. We do know that vaccinations have rolled out more slowly than some had hoped, with about one-third of the anticipated 20 million doses actually distributed by January 1. Recent reported estimates indicate that a return to some form of "normalcy" is not expected before the fall. It is not yet clear whether mutations could, to any extent, delay that process or curb the effectiveness of the two currently-approved vaccines. In the meantime, it is unlikely that most emergency declarations—and their accompanying pricing restrictions—would be allowed to expire.

Even After the Pandemic Abates, Other Disasters May Persist. Dozens of states of emergencies are ongoing, including but not limited to those related to the COVID-19 pandemic. At the federal level, according to an October 2020 Congressional Research Service report, there are currently 37 national emergencies in effect, including one dating back to the Carter era. At the local level, in addition to the pandemic-related states of emergencies in effect in nearly all states, there may be concurrent and overlapping states of emergencies. States have emergency declarations in place that respond to a variety of ongoing challenges, ranging from social issues like the opioid epidemic to natural disasters like hurricanes and wildfires. Even after states allow their pandemic emergency declarations to expire, at least some of these other emergencies will likely persist. Since the specifics of goods and services covered varies widely, any price gouging restrictions that could remain in place due to other emergencies may apply to more limited goods or services. Still, many businesses could continue to find their products subject to price restrictions, albeit with different baseline dates and prices.

Time will tell whether this somewhat pessimistic perspective on the long horizon for price gouging restrictions will be proven true. Stay tuned – next week, we will discuss why these restrictions could potentially be turned off sooner than the some predict.

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