Federal Issues

Legislative

Congress Spends $2 Trillion on Coronavirus Stimulus Plan

On Friday, President Trump signed into law the “Coronavirus Aid, Relief, and Economic Security (CARES) Act,” a $2 trillion economic stimulus bill cleared by Congress that is designed to stabilize the economy in the wake of the coronavirus pandemic.

The bill is the largest economic stimulus bill in American history — larger than the entire federal budget in the past fiscal year, excluding social safety net programs like Medicare and Medicaid. The package came together after a frantic week of negotiations between Senate Majority Leader Mitch McConnell (R-KY.), Minority Leader Chuck Schumer (D-NY), and Treasury Secretary Steve Mnuchin.

- The CARES Act is the third piece of legislation Congress has passed to address the pandemic. Signed into law earlier this month were the “Coronavirus Preparedness and Response Supplemental Appropriations Act 2020,” an $8.3 billion emergency aid package to help contain and treat the novel coronavirus-caused respiratory illness, and the “Families First Coronavirus Response Act,” legislation...
boosting coronavirus testing, providing paid emergency leave, enhancing unemployment insurance, strengthening food security initiatives, and increasing Federal Medicaid funding to states.

Broadly, the new legislation includes direct payments to taxpayers, enhanced unemployment benefits, loans and grants to affected businesses, as well as funding to front-line care providers and government agencies to support their response to the crisis.

Among the key healthcare measures are:

- **Funding for providers**: The bill provides $172.1 billion to ensure front-line providers have resources to prepare for, prevent and respond to the crisis, including $100 billion for hospitals.
- **Telehealth and over-the-counter drugs**: The bill includes a provision to permit health insurance coverage linked to HSAs to cover telehealth visits with no deductible for both COVID-19 and non-COVID-19 related services. It also allows HSA, MSA, and FSA funds to pay for over-the-counter drugs without a prescription.
- **Coverage of testing and preventive services**: The bill clarifies that all testing for COVID-19 is to be covered by private insurance plans without cost-sharing and requires insurers to pay either the rate specified in a contract between the provider and the insurer, or, if there is no contract, a cash price posted by the provider. It also requires coverage without cost-sharing of a vaccine within 15 days for COVID-19.

The bill also includes extensions of expiring health care programs, such as community health centers, through November 30, 2020. This tees up the possibility of a post-election vehicle that could address surprise medical bills and prescription drug costs.

**More to come**: The Senate has adjourned for at least a month but senators have instructed staff to begin developing a fourth coronavirus package, aimed at addressing downstream effects of the pandemic.

- Pennsylvania Extends License Renewal Deadlines for Nurses, Others
- DHS Issues Guidance, Encourages Use of Telemedicine Access for Centers of Excellence Patients
- Wolf Administration Provides Guidance Regarding Use of Hydroxychloroquine amidst COVID-19 Pandemic
- Pennsylvania Authorizes Licensed Health Care Professional to Provide Services via Telemedicine During Coronavirus Emergency
- Governor Wolf Requests Major Disaster Declaration to Support the COVID-19 Response
- New Web Portal to Improve Access to Critical Medical Supplies

**West Virginia Legislative**

- Governor Justice Issues Stay-at-Home Order in Response to COVID-19
- Governor Justice Signs Health Care Bills Recently Passed by WV Legislature
Key items from the federal CARES Act of importance to hospitals:

The bill temporarily halts the following detrimental payment cuts:

- Eliminates the $4 billion in Medicaid Disproportionate Share Hospital cuts in fiscal year (FY) 2020 and reduces the cut for FY 2021 to $4 billion from $8 billion
- Ensures hospitals are not subject to a two percent across-the-board Medicare “sequestration” cut from May through December 2020

Importantly, the bill provides new sources of financial support, including:

- $100 billion through the Public Health and Social Services Emergency Fund (PHSSEF) that will be available to reimburse hospitals, health systems, and other providers for expenses and lost revenue from efforts to “prevent, prepare for, and respond to coronavirus.” Providers will be reimbursed through grants and other payment mechanisms
- Under an expanded option through the Medicare Hospital Accelerated Payment Program, eligible providers may request accelerated payments for inpatient services that cover a time period of up to six months
- During the emergency period, a new 20 percent add-on to the diagnosis-related group (DRG) rate will be applied for patients with COVID-19
- Loan opportunities up to $10 million are available through the Small Business Administration’s (SBA) Paycheck Protection Program to be used to pay salaries, leave and health benefits, rent, and/or retirement obligations. Small businesses and 501(c)(3) non-profit organizations—including hospitals, health systems, and health care providers with fewer than 500 employees (full-time and part-time)—are eligible

Further guidance and details are needed regarding these opportunities, but initial information about the PHSSEF $100 billion grant program is as follows:

- **Eligible providers**: Public entities, Medicare- or Medicaid-enrolled suppliers and providers, and other non-profit and for-profit entities specified by the Secretary of the Department of Health and Human Services (HHS)
- **Eligible expenses**: Health care-related expenses or lost revenues not otherwise reimbursed and directly attributable to COVID-19. Examples include forgone revenue from cancelled procedures; building or construction of structures (including retrofitting); medical supplies and equipment, personal protective equipment (PPE); testing; and increased staffing or training
- **Application process**: The bill instructs the Secretary of HHS to release guidance on the application process and required documentation. Providers must have a valid tax identification number and will need to submit an application that includes a statement justifying the provider’s need for the payment. Applications will be reviewed on a rolling basis
- **Payment process**: The bill directs payments to be made on a rolling basis using the most efficient payment systems practicable to provide emergency payment, as determined by the Secretary of HHS. Payments may include pre-payment, prospective payment, and retrospective payment. The bill instructs the secretary to establish a reconciliation process under which payments must be returned to the fund if other sources provide reimbursement
- **Compliance**: Recipients of the payments will be required to submit reports and maintain documents, as determined by the secretary, to ensure compliance

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**Alliance Regroups to Continue Defense of Employer Coverage**
The "Alliance to Fight the 40," a broad-based coalition that successfully led the advocacy effort to repeal the 40% tax on employer-provided health benefits known as the "Cadillac Tax," has announced a new effort to preserve health coverage for working Americans and their families in the wake of the global COVID-19 pandemic.

The group has rebranded as the Alliance to Fight for Health Care (AFHC) and will work to make sure families can maintain their job-based health care coverage throughout this global health and economic crisis.

- The diverse coalition includes coalition businesses, patient advocates, employer organizations, unions, local governments, health care companies, consumer groups, health plans and many others.

The group has developed a number of proposals to support the employer-provided health care system for the duration of this crisis, including:

- Continuing health care coverage after job loss;
- Supporting employers offering health care;
- Stability for health care funds providing coverage for millions of workers; and
- Supporting continuity of health coverage and our nation’s health care infrastructure

AHIP and BCBSA are founding members of the organization and continue the fight to preserve employer-sponsored coverage. More information on the transition is available here.

Federal Issues

Regulatory

COVID-19 Policy Guidance and Other Developments:

- AHIP and the Blue Cross Blue Shield Association (BCBSA) sent a letter to the National Governors Association (NGA) asking that health insurance providers be considered “essential infrastructure” and “essential businesses” across the states during the COVID-19 crisis.
- CMS withdrew its Medicaid program integrity proposed rule, which tightened restrictions on eligibility determinations.
- CMS Issues Temporary Regulatory Waivers and New Rules to Equip Healthcare System with Maximum Flexibility – On March 30, the Centers for Medicare & Medicaid Services (CMS) issued an array of temporary regulatory waivers and new rules to equip the healthcare system with maximum flexibility to respond to the COVID-19 pandemic. These temporary changes will apply immediately across the entire U.S. healthcare system for the duration of the emergency declaration.

This allows hospitals and health systems to deliver services at other locations to make room for COVID-19 patients needing acute care in their main facility.
The changes complement and augment the work of FEMA and state and local public health authorities by empowering local hospitals and healthcare systems to rapidly expand treatment capacity that allows them to separate patients infected with COVID-19 from those who are not affected.

CMS’s temporary actions empower local hospitals and healthcare systems to:

- Increase Hospital Capacity – CMS Hospitals Without Walls;
- Rapidly Expand the Healthcare Workforce;
- Put Patients Over Paperwork; and
- Further Promote Telehealth in Medicare.

More information:

- A copy of the full press release
- Additional background information on the waivers and rule changes
- COVID-19 waivers and guidance, and the Interim Final Rule

- Pennsylvania Receives Federal 1135 Waiver Approval—On March 24, the Department of Human Services (DHS) submitted a letter and request to CMS seeking the waiver of a number of federal Medicaid and Children’s Health Insurance Program (CHIP) requirements, which serve as barriers for the health care delivery system to address the COVID-19 pandemic. On March 28, CMS responded to DHS’ request and granted waivers relating to prior authorization, nursing facility pre-admission screening, provider enrollment, the provision of services in alternative settings, and other topics. DHS will provide additional guidance to providers in the coming days as it works to implement the flexibilities granted by CMS.

- CMS Announces Expansion of Medicare Accelerated and Advance Payment Program—As a result of the COVID-19 emergency and enhanced statutory authority included within the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act, CMS announced changes to its accelerated and advance payment program for Medicare providers and suppliers. Accelerated and advanced Medicare payments provide emergency funding and addresses cash flow issues based on historical payments when there is disruption in claims submission and/or claims processing. As described in a new fact sheet, CMS is expanding the program for all Medicare providers during the public health emergency related to COVID-19.

- DOL Issues FAQs on Employee Leave Policy—The U.S. Department of Labor (DOL) issued a question and answer document about the implementation of the Families First Coronavirus Response Act (FFCRA) which establishes new requirements around employee leave policies. The FFCRA generally applies to employers with fewer than 500 full-time and part-time employees within the United States, and the provisions take effect on April 1 and apply to leave taken between April 1 and December 31, 2020.

- FCC Chairman Announces $200 million COVID-19 Telehealth Program -- Federal Communications Commission Chairman Ajit Pai issued a draft order that would create a program to help eligible health care providers purchase telecommunications, broadband and devices to provide telehealth services to COVID-19 patients and others at higher risk for the virus while reducing practitioners’ exposure. Money for the proposed program came from the recently passed CARES Act. Pai also issued final rules for a broader and longer-term Connected Care Pilot, a program providing up to $100 million to support telehealth services for mainly low-income Americans and veterans.
• **White House Extends Social Distancing Guidelines Through April** -- President Trump said the guidelines for containing the spread of COVID-19, including social distancing, will extend through April 30. Modeling by the nation's health care experts has shown that the mitigation measures we are putting in place may significantly reduce the number of new infections and, ultimately, the number of fatalities.

• **Defense Production Act Formally Activated to Boost Supply of Ventilators, Other Critical Medical Resources** -- President Trump March 27 issued an executive order “to expand domestic production of health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators,” as enabled by the Defense Production Act. A separate executive order issued last week delegated DPA authority to the Departments of Health and Human Services and Homeland Security with respect to health and medical resources needed to respond to the spread of COVID-19.

• **HHS Quickens Pace of Johnson & Johnson COVID-19 Vaccine Candidate** -- The Department of Health and Human Services said it will speed the development and manufacturing of vaccines to prevent COVID-19, starting a candidate from Johnson & Johnson subsidiary Janssen Research & Development. The agency’s Biomedical Advanced Research and Development Authority will support non-clinical studies and a Phase 1 clinical trial of Janssen’s COVID-19 investigational vaccine, Ad26 SARS-CoV-2. The Phase 1 clinical trial is set to begin no later than fall of 2020 with the goal of making a COVID-19 vaccine available for emergency use in the United States in early 2021.

• **FEMA Updates Advisory: PPE Supplies Flown in From Overseas** -- The Federal Emergency Management Agency coordinated flights from Asia with 80 tons of personal protective equipment for New York, New Jersey and Connected, with more flights going to Illinois today and Ohio Tuesday, FEMA said in an update on the federal government’s response to COVID-19. In addition, FEMA will deliver over the next 48 hours ventilators from the Strategic National Stockpile to Michigan, New Jersey, Illinois and Connecticut. The advisory noted that 27 states and 12 tribes issued stay at home orders.

• **CARES Act Reforms Privacy Law Covering Substance Use Disorder Treatment Records** -- The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act includes the reintroduced Protecting Jessica Grubb’s Legacy Act. By more closely aligning 42 CFR Part 2 with HIPAA regulations, the new law will improve the ability of hospitals and health systems to receive and share vital information necessary to provide safer, better coordinated care to patients with substance use disorder.

• **Joint Commission Issues New COVID-19 FAQs** -- The Joint Commission has issued a new standards FAQ on monitoring patients at high risk for suicide who have known or suspected COVID-19. In a separate FAQ, the accrediting agency also said organizations may defer completing performance evaluations for diagnostic computed tomography and magnetic resonance imaging equipment during the COVID-19 pandemic when a state of emergency has been declared and the organization has activated its emergency operations plan.

• **FDA Issues New and Expanded EUAs for PPE** -- The Food and Drug Administration last weekend expanded and updated guidance on the emergency use authorization for personal protective equipment, including:
  - [Imported, Non-NIOSH-Approved Disposable Filtering Facepiece Respirators](#)
  - [NIOSH-Approved Air Purifying Respirators for Use in Health Care Settings During Response to the COVID-19 Public Health Emergency](#)
  - [Battelle Decontamination System](#)
  - [Enforcement Policy for Gowns, Other Apparel, and Gloves](#)
General EUA information, including fact sheets for providers and patients, is available [here](#).

**CMS Provides Additional Details on Quality Reporting and Value Program Relief** -- The Centers for Medicare & Medicaid Services last weekend announced additional details about its implementation of reporting exceptions and extensions across quality reporting and value programs. The agency is sharing the following resources:

- Guidance Memo - Quality Reporting and Value-based Purchasing Programs, describing specific changes to CMS provider, hospital, and post-acute care quality reporting programs.
- Quality Payment Program COVID-19 Factsheet, outlining Merit-based Incentive Payment System extreme and uncontrollable circumstances policy and procedures for MIPS-eligible clinicians affected by COVID-19.

**FDA Authorizes Emergency Use of Rapid Response COVID-19 Test** -- The Food and Drug Administration authorized emergency use of the ID NOW Instrument in patient care settings to quickly test for COVID-19 through direct nasal or throat swab testing. According to the manufacturer, Abbott, the test may detect positive results in five minutes and negative results in 13 minutes. Read the authorization letter and health care provider factsheet [here](#).

**CMS Eases Certain CLIA Laboratory Requirements During COVID-19 Emergency** -- To meet the urgent need to expand laboratory capacity, the Centers for Medicare & Medicaid Services announced a relaxed enforcement policy under the Clinical Laboratory Improvement Amendments during the COVID-19 public health emergency with respect to review of pathology slides, proficiency testing, alternate collection devices, and requirements for a CLIA certificate. Among other flexibilities, CMS said the policy will enable:

- Pathologists to review pathology slides remotely if certain defined conditions are met;
- U.S. laboratories performing COVID-19 testing that apply for CLIA certification to begin testing as quickly as possible; and
- Laboratories within a hospital/university hospital campus to hold a single CLIA certificate for the laboratory sites within the same physical location or street address.

**AHA Launches “100 Million Mask” Challenge to Aid Health Care Workers** -- The American Hospital Association announced a national initiative to secure millions of masks for health care workers, including physicians, nurses, and caregivers treating COVID-19 patients and at greater risk due to the nationwide shortage of personal protective equipment. The effort will facilitate private sector partnerships to address these shortages in the fight against COVID-19. [Click here](#) for more information on how to support the 100 Million Mask Challenge.

**PPE, Other COVID-19 Resources Subject to HHS Hoarding Restrictions** -- The Department of Health and Human Services designated certain health and medical resources needed to respond to the spread of COVID-19 subject to hoarding restrictions under the Defense Production Act and a March 23 executive order. The designation includes N95 and certain other respirators, ventilators, personal protective equipment, drug products, medical device sterilization services and disinfecting devices.

**FDA Issues Guidance on Producing Hand-Sanitizer Alcohol** -- To increase the supply of hand sanitizers, FDA issued guidance for manufacturers that would like to produce alcohol (i.e., ethanol or ethyl alcohol) for use in alcohol-based hand sanitizers for consumers and health care personnel. The policy applies to entities that are not currently regulated by FDA as drug manufacturers. It does not extend to other types of active ingredients used into alcohol-based hand sanitizers, such as isopropyl alcohol. FDA last week said it does not intend to take action against compounders that prepare alcohol-based hand sanitizers for consumer use for the duration of the COVID-19 emergency, provided that certain production guidelines are met.
FDA Issues EUA for Ventilator Use -- The Food and Drug Administration issued an Emergency Use Authorization to ease ventilator supply shortages. Effective throughout the COVID-19 emergency, the EUA authorizes use of certain alternative ventilator devices, tubing connectors and accessories in health care settings to treat patients during the pandemic.

CDC Updates COVID-19 Testing and Preparedness Guidelines -- The Centers for Disease Control and Prevention updated its COVID-19 testing priority guidance, which gives first priority to testing hospitalized patients and symptomatic health care workers. The agency also updated its interim guidelines for collecting, handling and testing COVID-19 clinical specimens to allow for self- or health care worker-collected nasal or nasal turbinate swabs if nasopharyngeal swab is not possible. In addition, CDC updated its checklists and resources for hospital and health care professionals preparing for patients with suspected or confirmed COVID-19. Check the CDC webpage frequently for the latest CDC guidance on the COVID-19 emergency.

HHS Asks Governors to Extend Capacity of Health Care Workforce to Address Pandemic -- Health and Human Services Secretary Alex Azar asked the nation's governors to immediately allow health professionals licensed or certified in other states to practice in their state in person or through telemedicine. In addition, he asked states to:

- Waive certain statutory and regulatory standards “not necessary for the applicable standards of care to establish a patient-provider relationship, diagnose, and deliver treatment recommendations” using telehealth technologies;
- Relax scope of practice requirements for health professionals, including allowing them to practice in all care settings;
- Allow physicians to supervise a greater number of other health care professionals and to do so using remote or telephonic means;
- Allow for rapid certification/licensure and recertification/relicensure of certain health care professionals;
- Develop a list of their state liability protections for in-state and out-of-state health professionals during this national emergency and modify, rescind or waive any medical malpractice policies that may prevent coverage of health professionals responding to the COVID-19 emergency in another state;
- Modify laws or regulations as appropriate to allow medical students to triage, diagnose and treat patients under the supervision of licensed medical staff; and
- Allow pharmaceutical deliveries without signature to prevent delivery person contact with recipients.

Providers May Request COVID-19 Investigational Treatment for Sickest Patients -- The Food and Drug Administration is investigating whether convalescent plasma from recovered COVID-19 patients contains viable antibodies to treat SARS-CoV-2 in the sickest patients. While FDA trials continue, providers may request the plasma for investigational use in patients with the most serious and life-threatening COVID-19 infections. For more information, visit FDA.gov.

DOL Answers Common COVID-19 Workforce Questions -- The Department of Labor has released information on common issues employers and employees face when responding to COVID-19, and its effects on wages and hours worked under the Fair Labor Standards Act, job-protected leave under the Family and Medical Leave Act, and paid sick leave and expanded family and medical leave under the Families First Coronavirus Response Act. The new law allows employers of health care providers or emergency responders to elect to exclude such employees from eligibility for the leave provided under the Families First Coronavirus Response Act.

HHS Issues PHI Guidance for COVID-19 First Responders -- The Department of Health and Human Services' Office for Civil Rights issued guidance on disclosing protected health information
about individuals who have been infected with or exposed to COVID-19. The guidance outlines the following circumstances for when and what information can be disclosed without HIPAA authorization, including names or other identifying information about individuals:

- When needed to provide treatment;
- When required by law;
- When first responders may be at risk for an infection; and
- When disclosure is necessary to prevent or lessen a serious and imminent threat.

The document further states that in these situations, PHI can be shared with law enforcement, paramedics, other first responders and public health authorities so they can take extra precautions or use personal protective equipment. The guidance also states that these individuals or groups should use or disclose "minimum necessary" PHI to meet the disclosure’s purpose.

- **National Uniform Billing Committee Issues COVID-19 Claims Guidance** -- The National Uniform Billing Committee has issued guidance to help health care providers flag claims for COVID-19-related services. Specifically, NUBC recommends that institutional claims for COVID-19-related services include the “DR” condition code for a national or regional disaster/emergency and use one of four applicable diagnosis codes. In addition, hospitals and health systems that have moved COVID-19 testing to off-campus facilities should use the hospital outpatient type of bill (013x), main hospital address and National Provider Identifier for these claims, the guidance states.

- **Joint Commission Issues FAQ Covering PPE, Emergency Management** -- The Joint Commission issued the following FAQs related to COVID-19:
  - Personal Protective Equipment - Mask Considerations When Caring for Known or Suspected COVID-19 Patients
  - Emergency Management – Duration for Continuing Disaster Privileges
  - Personal Protective Equipment - Conserving Facemasks and Respirators During a Critical Shortage

- **CMS Provides Information on 6.2% FMAP Increase as Part of Recently-approved Legislation** - The Centers for Medicare & Medicaid Services issued an FAQ to address a temporary 6.2% increase to qualifying states’ and territories’ Federal Medical Assistance Percentage, enacted as part of the Families First Coronavirus Response Act signed into law on March 18. The document outlines the requirements states must meet for eligibility for the FMAP increase.

- **CMS Adds Enforcement Flexibility for Exchanges’ COVID-19-related Payment Decisions** -- The Centers for Medicare & Medicaid Services issued an FAQ to outline COVID-19-related payment and grace period flexibilities for issuers offering coverage on the federally-facilitated exchanges and state-based exchanges on the federal platform. The agency says it will “exercise enforcement discretion” if issuers extend premium payment deadlines and delay cancellations or terminations of coverage for non-payment of premiums, assuming these are done with the permission of applicable state regulatory authorities. CMS also is encouraging state-based exchanges to take a similar approach.

CMS also released the following FAQs:

- Availability and Usage of Telehealth Services Through Private Health Insurance Coverage
- Prescription Drugs and the COVID-19 for Issuers Offering Health Insurance Coverage in the Individual and Small Group Markets

- **NIH Launches COVID-19 Safety Training Platform** -- The National Institute of Environmental Health Sciences, part of the National Institutes of Health, has launched a website offering COVID-19 safety training resources for frontline responders, including hospital and other health care workers.
In collaboration with the Centers for Disease Control and Prevention, Office of the Assistant Secretary for Preparedness and Response, Occupational Safety and Health Administration and National Institute for Occupational Safety and Health, NIEHS said it plans to use funding from the March 6 supplemental emergency funding package to expand the virtual training platform.

- **FDA Provides Instructions to Manufacturers Importing PPE, Updates Testing FAQs** -- The Food and Drug Administration adjusted its import screening to expedite personal protective equipment and clarified types of PPE that can be imported without engaging with FDA. To provide flexibility, FDA will facilitate access to critical legitimate PPE and devices and monitor the import systems to prevent and mitigate potential issues. FDA established an email, for industry representatives to address questions or concerns. FDA also updated its FAQ on diagnostic testing for SARS-CoV-2 to answer additional questions.

- **Antitrust Agencies Recognize the Need for Collaboration During COVID-19 Emergency** -- The Department of Justice and Federal Trade Commission announced expedited procedures for reviewing the antitrust impact of joint efforts among competitors related to the novel coronavirus. The agencies specifically noted that “health care facilities may need to work together in providing resources and services to communities without access to personal protective equipment, medical supplies, or health care.” To the extent that there is a need for guidance, the agencies said they will work to resolve all COVID-19-related requests addressing public health and safety within seven calendar days of receiving all needed information.

- **CDC Updates COVID-19 Guidance for Those at Higher Risk of Infection** -- The Centers for Disease Control and Prevention recently updated prevention tactics for populations at a higher risk of contracting COVID-19. Groups include those over the age 65; people with underlying health conditions, especially ones that weaken the immune system such as HIV; and people living in long-term care facilities. CDC said there is not enough research on the virus’ effects on pregnant women, but monitoring for infection is recommended.

- **CDC Updates Guidance on Discharging Patients with COVID-19** -- The Centers for Disease Control and Prevention March 23 issued updated guidance clarifying that patients with COVID-19 can be discharged from a health care facility when clinically indicated. For such patients, a discharge does not require that the patient meet CDC criteria for the discontinuation of COVID-19 precautions.

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**CMS Releases Guidance and FAQs on Payment Flexibilities, Telehealth Coverage, and Prescription Drugs During COVID-19**

The Centers for Medicare & Medicaid Services (CMS) posted guidance on Payment and Grace Period Flexibilities for Issuers Offering Coverage on the Federally-facilitated Exchanges and State-based Exchanges on the Federal Platform. Under the newly released guidance, CMS announced that it will exercise enforcement discretion to permit issuers of qualified health plans (QHPs) and stand-alone dental plans (SADPs) to extend payment deadlines for initial binder payments as well as ongoing premium payments during the period of the COVID-19 national emergency.

Additionally, CMS released two Frequently Asked Questions (FAQs) on the Availability and Usage of Telehealth Services Through Private Health Insurance Coverage, and on Prescription Drugs and the Coronavirus Disease 2019 (COVID-19) for Issuers Offering Health Insurance Coverage in the Individual and Small Group Markets.
The Telehealth FAQ announces that issuers in the individual and group markets may make mid-year product changes to expand coverage of telehealth services or to reduce or eliminate cost-sharing. Issuers may also modify catastrophic plans to provide pre-deductible coverage for telehealth services. The prescription drugs FAQs addresses prescription drug coverage issues including coverage of early refills; drug supplies for longer than 90 days; and therapeutic alternatives for drugs experiencing a shortage.

State Issues

Delaware
Legislative

Governor Issues New Modifications to his State of Emergency Declaration
Governor John Carney issued his 7th modification to his State of Emergency declaration, effective March 30, 2020 at 8:00 a.m. The modification orders any individual who enters Delaware from another state, and who is not merely passing through, to immediately self-quarantine for 14 days from the time of entry into Delaware or for the duration of the individual's presence in Delaware, whichever period is shorter. This self-quarantine requirement shall not apply to public health, public safety, or healthcare workers, or any other individual providing an assistance to an Essential Business or providing an emergency service related to COVID-19. This self-quarantine requirement shall not apply to individuals commuting into Delaware to work for an Essential Business or to perform Minimum Business Operations as permitted by the Fifth Modification of the Declaration of a State of Emergency. Highmark BCBS meets both of these exemption criteria.

Governor Carney issued his 8th modification to his State of Emergency declaration, effective March 30, 2020 at 8:00p.m. The modification addresses child care organizations, and also directions for essential health businesses open during this pandemic. Under the Miscellaneous provisions, it states, “No provision contained in this Order shall be construed as relieving any policyholder of the obligation to pay premium payments due an insured or to comply with other obligations that a policyholder may have pursuant to a covered insurance policy.” However a correction is needed to clarify that the payments are due to an “insurer” not “insured”. The modification also stipulates that all regulations requiring any in-person contact before or during telemedicine services provided by any medical professional are hereby suspended.

State Issues

Pennsylvania
Legislative

Governor Wolf Signs Measures Addressing COVID-19
On Friday, March 27, Governor Tom Wolf signed several bills passed by the Pennsylvania General Assembly earlier this week that address the COVID-19 pandemic. Each proposal, approved with unanimous bi-partisan support, seeks to provide the Commonwealth’s citizens, health care industry and business communities with some semblance of relief during the crisis.
Links to the new laws (Acts) include:

- **House Bill 1232** (Act 10 of 2020) Health Care Funding Support / ERCA Amendments
  Authorizes the fund transfer of $50 million from the General Fund for the purpose of buying medical equipment and supplies for health care entities to meet urgent patient and staff need to address surge demand of COVID-19 cases. Before any transfer occurs, federal funds and funds made available via the Governor’s disaster proclamation must be used. In addition, the law amends the state Fiscal Code to permanently establish the Enhanced Revenue Collection Account (ERCA), which is a restricted account in the General Fund, extends the temporary regulations authorized by the Medical Marijuana Act and the deadline for the declarations and payments of the estimated Personal Income Tax (PIT).

- **House Bill 68** (Act 9 of 2020) Unemployment Compensation Relief
  Extends the time period for an employer to request relief from charges. The Act also requires employers to provide notification of the availability of unemployment compensation to the employees at the time of separation from employment and allows an employee to file a claim in the first-week when employment stops or hours are reduced.

- **Senate Bill 422** (Act 12 of 2020) Primary Election Date Change
  Amends the Election Code to create the Pennsylvania Election Law Advisory Board. The measure also changes the date of the Pennsylvania Primary from April 28, 2020 to June 2, 2020.

- **Senate Bill 751** (Act 13 of 2020) Public School Revise
  Revises the educator evaluation system. The law also permits the Pennsylvania Secretary of Education to order the closure of all school entities until the pandemic is over, waives the requirement that school entities be open for at least 180 days of instruction, increases the number of flexible instructional days, waives career and technical education program hours, and allows employees of school entities to receive compensation.

Both chambers of the Pennsylvania General Assembly are tentatively scheduled to reconvene the week of April 6.

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**State Issues**

**Pennsylvania**

**Regulatory**

**Pennsylvania Extends License Renewal Deadlines for Nurses, Others**

In response to the COVID-19 public health emergency, the Pennsylvania Department of State has granted extensions for licensure renewals for nurses, graduate medical trainees, and nursing home administrators.

The following professional and occupational license renewal deadlines will be extended:

- Under the State Board of Medicine, the Graduate Medical Trainee license renewal deadline has been extended from June 30 to September 28, 2020
- Under the State Board of Nursing, Registered Nurse, Clinical Nurse Specialist, Certified Registered Nurse Practitioner and Prescriptive Authority license renewal deadlines will be extended from April 30 to July 29, 2020. The Practical Nurse license renewal will be extended from June 30 to September 28, 2020
- Under the State Board of Examiners of Nursing Home Administrators, the Nursing Home Administrator license renewal deadline will be extended from June 30 to September 28, 2020
The state also has waived some regulations for nurses, removed barriers for pharmacies to provide services, enabled retired health care professionals to practice, and announced that in-state and out-of-state health care practitioners can treat patients via telemedicine during the coronavirus emergency.

- **Continuing Education** -- Governor Wolf granted requests to suspend restrictions on distance-learning for continuing-education requirements for certain licensed professionals.

**Professional Licensure**

**Renewals** -- The Wolf administration has granted extensions for licensure renewals for nurses, graduate medical trainees, and nursing home administrators.

- Under the State Board of Medicine, the Graduate Medical Trainee license renewal deadline has been extended from June 30, 2020, to Sept. 28, 2020.
- Under the State Board of Nursing, Registered Nurse, Clinical Nurse Specialist, Certified Registered Nurse Practitioner and Prescriptive Authority license renewal deadlines will be extended from April 30, 2020, to July 29, 2020. The Practical Nurse license renewal will be extended from June 30, 2020, to Sept. 28, 2020.
- Under the State Board of Examiners of Nursing Home Administrators, the nursing home administrator license renewal deadline will be extended from June 30, 2020, to September 28, 2020.

- **Physicians** -- The institutional license requirement that limits qualified medical doctors to practicing at no more than two affiliated facilities have been suspended

- **Physician Assistants** -- Suspended requirements for physician assistants’ written agreements, including that written agreements receive board approval, the ratio for physician supervision is suspended, and the requirement that the board must approve the use of a physician assistant at satellite operations is suspended.

- **Nursing** -- Certain administrative requirements for nurses, including temporarily extending license expiration dates and waiving associated fees during the coronavirus emergency, have been temporarily removed

- **Nursing Workforce Waiver Instructions** -- Directions for the suspended provisions related to the licensure requirement waivers were provided for temporary permits, renewals, and certified registered nurse practitioner applications.

- **Additional waivers** specific to Certified Registered Nurse Practitioners’ (CRNPs) collaborative agreements, English language proficiency testing requirement for Registered Nurses(RNs) and Practical Nurses (PNs) temporary practice permits, required 1,500 hours of education for PN licensure by examination and endorsement, the administration of anesthesia by Certified Registered Nurse Anesthetists (CRNAs) in cooperation with a surgeon is temporarily waived and replaced with any physician, and certification by endorsement for clinical nurse specialists (CNSs).

- **Pharmacists** -- Pharmacists whose licenses are expired/inactive for less than four years can apply for reactivation of their licenses. Their CE requirements and license reactivation fees will be suspended.

**Retired Practitioners**

- **Reactivating Retired Health Care Professionals** -- The state is enabling retired
health care professionals to assist with the COVID-19 response by waiving certain licensing regulations. Licensees under the board of medicine (medical doctors, physician assistants, respiratory therapists, and perfusionists) and board of osteopathic medicine (osteopathic doctors, physician assistants, respiratory therapists, and perfusionists) who are inactive/retired status for less than four years can apply for reactivation of their license. Registered nurses, clinical nurse specialists, and certified registered nurse practitioners whose licenses are expired/inactive for less than five years can apply for reactivation of their licenses. Pharmacists whose licenses are expired/inactive for less than four years can apply for reactivation of their licenses.

- **Providing Services Through Telemedicine** -- Health care professionals licensed under any of BPOA’s licensing boards can provide services to patients with telemedicine. Licensed practitioners in other states can provide services to Pennsylvanians via the use of telemedicine, without obtaining a Pennsylvania license.

- **Out-of-State Practitioners** -- Certain health care practitioners not licensed in Pennsylvania can receive temporary licenses to provide additional staff to assist with a potential surge of COVID-19 patients, consistent with specific guidance provided by BPOA.

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**DHS Issues Guidance, Encourages Use of Telemedicine Access for Centers of Excellence Patients**

On Friday, March 27, Pennsylvania’s Department of Human Services issued additional guidance encouraging the state’s opioid use disorder Centers of Excellence (COE) to use telemedicine to provide case management for their patients during the current the COVID-19 public health emergency.

Specifically, the guidance indicates that:

- Telemedicine can be delivered through audio-video conferencing hosted by a secure mobile telehealth application or, if a secure telehealth app is not available, apps like FaceTime, Skype, or Zoom can be used;
- During this state of emergency, telephone-only services may be utilized in situations where video technology is not available;
- COE providers will be able to bill for payment as if the telemedicine or telephonic encounter had taken place in person; and
- Sufficient office and clinic hours must remain available to meet the needs of new patients and established patients who either do not choose or cannot use telemedicine to receive services in their homes.

This guidance builds upon previously released guidelines by the Office of Medical Assistance Programs and the Office of Mental Health and Substance Abuse Services, Department of Drug and Alcohol Programs, and Department of State’s Bureau of Professional and Occupational Affairs promoting the use of telehealth for patients.

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**Wolf Administration Provides Guidance Regarding Use of Hydroxychloroquine amidst COVID-19 Pandemic**

In response to COVID-19 pandemic and potential shortages of medications, the Wolf Administration issued the following guidance on the use of hydroxychloroquine:
• Board of Medicine and Osteopathic Medicine prescribers should include the patient’s diagnosis on the prescription. If written for a COVID-19 diagnosis, the diagnosis has been confirmed by a positive test result and documented on the prescription. Smaller quantities of hydroxychloroquine should be prescribed for COVID-19 patients when appropriate to prevent potential shortages.

• Pharmacists should verify the patient is confirmed COVID-19 positive before dispensing. Patients established on therapy or utilizing the medication for other diagnoses (e.g. Lupus or Rheumatoid Arthritis) should be able to continue to access without diagnosis verification. Smaller quantities of hydroxychloroquine should be dispensed to COVID-19 patients when appropriate to prevent potential shortages.

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**Pennsylvania Authorizes Licensed Health Care Professionals to Provide Services via Telemedicine During Coronavirus Emergency**

In order to increase the number of health care practitioners available to respond to the COVID-19 emergency and to ensure continuity of patient care and services, Governor Wolf has granted the Department of State’s request to allow health care professionals licensed under any of the Department of State’s Bureau of Professional and Occupational Affairs (BPOA) licensing boards to provide services to patients via telemedicine during the coronavirus emergency. Currently, no Pennsylvania statute authorizes or prohibits the practice of telemedicine.

The Department also requested authorization from the Governor to allow licensed practitioners in other states to provide services to Pennsylvanians via the use of telemedicine for the duration of the emergency without obtaining a Pennsylvania license.

The Department states that there is a significant need for certain health care professionals to physically travel to Pennsylvania to assist in the emergency effort, but also to provide services via telemedicine. This request was approved by the Governor. However, practitioners must meet the following requirements:

• They are licensed and in good standing in their home state, territory or country.
• They must provide the Pennsylvania Board with the following information prior to practicing telemedicine with Pennsylvanians:
  o The practitioner’s full name, home or work mailing address, telephone number where they can be reached, and an email address. Identify the practitioner’s license type, any license number or other identifying information that is unique to that practitioner’s license, and the state or other governmental body that issued the license.

All practitioners using telemedicine are advised to remain informed of all federal and state laws, regulations and guidance regarding telemedicine, including but not limited to a practitioner’s obligations under the Health Insurance Portability and Accountability Act (HIPAA) and recent guidance provided for the U.S. Department of Health and Human Services, which can be found [here](#). The Department did note that the authorization to engage in telemedicine from a professional licensing standpoint is separate and apart from any insurance coverage/payment issues that fall under the Department of Health, the Department of Human Services, the Department of Insurance, or any other state or federal agency.

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**President Approves Disaster Declaration for Pennsylvania**
Governor Wolf has requested a major disaster declaration from the President through the Federal Emergency Management Agency (FEMA) to provide additional support for state, county and municipal governments and certain non-profits as well as individuals who are struggling during the COVID-19 outbreak. “The COVID-19 outbreak has taxed our commonwealth and our communities in ways that are almost incomprehensible”, said Governor Wolf. He is calling upon the President and the federal government to lend support that will make a tangible difference in the lives of Pennsylvanians.

On January 20, 2020 Pennsylvania did receive an emergency declaration under the President’s nationwide emergency proclamation. This allowed Pennsylvania to receive reimbursement for eligible expenses for emergency protective measures for the state, county, local governments and certain non-profits for the duration of the emergency incident. The President approved the additional disaster declaration on March 30. This approved request will provide additional emergency protective measures, including but not limited to Disaster Unemployment Assistance (this will be available to anyone not eligible for regular state unemployment insurance), Crisis Counseling, Community Disaster Loans and the Disaster Supplemental Nutrition Program or D-SNAP.

**New Web Portal to Improve Access to Critical Medical Supplies**

On Friday, March 27, Governor Tom Wolf announced the development of a new web portal, the [Commonwealth of Pennsylvania Critical Medical Supplies Procurement Portal](#). The portal, developed through a joint effort between the Pennsylvania Emergency Management Agency (PEMA), the Department of Health (DOH), the Department of General Services (DGS) and the Department of Community and Economic Development (DCED), will help expedite access to critical medical supplies for the state’s health care systems during the COVID-19 pandemic, including medical providers, emergency responders, and other health care professionals. The Governor’s full press release can be found [here](#).

**State Issues**

**West Virginia**

**Legislative**

**Governor Justice Issues Stay-at-Home Order in Response to COVID-19**

Effective the evening of March 24, Governor Justice issued a stay-at-home order for residents of West Virginia. The order is similar to orders issued by other governors, allowing residents to leave their homes for a limited number of circumstances, including the purchase of food, seeking medical care, attending a worship service, etc. Justice also announced this week:

- Extended the statewide school closure until April 20; and
- Extended the state's tax filing deadline to match the new federal deadline – from April 15 to July 15, 2020. Governor Justice said the state is waiving all interest and penalties on property tax filings until May 1.

**Governor Justice Signs Health Care Bills Recently Passed by WV Legislature**
The West Virginia Legislature adjourned its 2020 regular session on Saturday, March 7. On March 25, Governor Jim Justice signed a majority of the measures passed during the legislative session. Below are the new laws that impact Highmark West Virginia:

**Pharmacy Benefit Manager Regulations:** House Bill 4058 makes technical amendments to current law with respect to licensure of PBMs. Imposes a fine of not less than $1,000 and not more than $10,000 per violation. The bill was signed on February 28; effective May 18, 2020.

**Insulin Copay Cap:** House Bill 4543 requires health plans to cover at least one type of insulin in all the following categories: rapid-acting; short-acting; intermediate-acting; long-acting; pre-mixed insulin products; pre-mixed insulin/GLP-1 RA products; concentrated human regular insulin. Cost sharing for a 30-day supply of a covered insulin prescription insulin may not exceed $100 for a 30-day supply regardless of the quantity or type of prescription insulin used to fill the covered person’s prescription needs. The new law also does the following:

- Requires insurers to provide coverage for equipment and supplies for the treatment and/or management of diabetes for both insulin dependent and noninsulin dependent persons, including blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar and orthotics;
- Requires an insurer to include coverage for diabetes self-management education;
- Requires all health care plans to offer an appeals process for persons who are not able to take one or more of the offered prescription insulin drugs in subsection (c); and

**Mental Health Parity Reporting:** Senate Bill 291 requires health insurers to report their compliance with mental health parity benefits law. Health plans will be required to submit an annual report, and thereafter only submit information pertaining to changes to their mental health benefits. The Insurance Commissioner is required to submit a report to specific legislative committees with data demonstrating parity compliance and medical necessity criteria. Senate Bill 291 was signed on March 25 and is effective June 5, 2020.

**Network Adequacy / Dental Assignment of Benefits:** House Bill 4061 creates and implements the Health Benefit Plan Network Access and Adequacy Act following the NAIC’s model law. The measure was amended to require dental insurers to accept assignment, which mandates direct payment to non-participating or out-of-network dentists for covered services. These dentists must post somewhere conspicuously that patients receiving services may have additional out of pocket expenses above those made by the insurer. House Bill 4061 was signed by the governor on March 25; Effective June 5, 2020.

**Drug Manufacturer Reporting Requirements:** Senate Bill 689 requires a drug manufacturer to submit a report to the Auditor with the following information for each brand-name, specialty, and generic drug manufactured by the drug manufacturer and sold in the state directly by the drug manufacturer or a wholesale drug distributor: (1) The names of the 25 most frequently prescribed prescription drugs across all plans; (2) The percent increase in annual net spending for prescription drugs across all plans; (3) The percent increase in premiums that were attributable to prescription drugs across all plans; (4) The percentage of specialty drugs with utilization management requirements across all plans; and (5) The premium reductions that were attributable to specialty drug utilization management. Signed by the governor on March 25. Effective June 3, 2020.
Telemedicine Coverage Parity: House Bill 4003 requires an insurer to provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy. The law does the following:

- Prohibits an insurer from excluding a service for coverage solely because the service is provided through telehealth services;
- Requires an insurer to provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company;
- Prohibits an insurer from imposing any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or imposing upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.
- Allows an originating site to charge an insurer a site fee; and
- Requires the coverage required by this section to include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.
- Signed by the governor on March 25; effective June 5, 2020.

Contraceptive Mandate: House Bill 4198, signed by the governor on March 25 and effective June 5, 2020, requires an insurer to provide coverage for a 12-month refill of contraceptive drugs obtained at one time by the insured after the insured has completed the initial supply of the drugs, unless the insured requests a smaller supply or the prescribing provider instructs that the insured must receive a smaller supply.

Pharmacist Provider Mandate: Senate Bill 787 prohibits health plans from denying benefits for any health care service performed by a pharmacist if:

- The service performed was within the lawful scope of the pharmacist’s license;
- The plan would have provided benefits if the service had been performed by another health care provider; and
- The pharmacist is included in the plan’s network of participating providers.

Requires health plans to include an adequate number of pharmacists in its network of participating health care providers. States that the participation of pharmacies in the plan network’s drug benefit does not satisfy the requirement that plans include pharmacists in their network of participating health care providers. Requires health benefit plans that delegate credentialing agreements to contracted health care facilities to accept credentialing for pharmacists employed or contracted by those facilities. Requires health plans to reimburse facilities for covered services provided by network pharmacists within the pharmacists’ scope of practice per negotiations with the facility. Signed by the governor on March 25. Effective June 5, 2020.

Insurance Fraud Prevention Act Amendments: House Bill 4361 updates the Insurance Fraud Prevention Act by establishing requirements for insurers to disclose any information concerning a fraudulent insurance act or a suspected fraudulent insurance act to the commissioner. The law also:

- Prohibits a person convicted of a felony involving dishonesty or breach of trust, or a felony violation of law reasonably related to the business of insurance, from participating in the business of insurance;
• Prohibits a person in the business of insurance from knowingly or intentionally permitting a person convicted of a felony involving dishonesty or breach of trust, or of a felony reasonably related to the business of insurance, from participating in the business of insurance and
• House Bill 4361 was signed on March 25; effective June 5, 2020.

Medicaid Dental Coverage: Senate Bill 648 expands the Medicaid program to include dental coverage for adult recipients and to establish an amount of coverage available. Signed by the governor on March 25. Effective June 5, 2020.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Pennsylvania Legislation: www.legis.state.pa.us.
West Virginia Legislation: http://www.legis.state.wv.us/
For copies of congressional bills, access the Thomas website – http://thomas.loc.gov/.

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