Federal Issues

Legislative

Congress Eyeing COVID-19 Oversight, New Legislative Package
Capitol Hill was largely quiet a week after pushing out a two trillion dollar spending bill to provide aid to individuals, businesses, and health care providers in the wake of the COVID-19 pandemic.

Two items of note:

- On Thursday, House Speaker Nancy Pelosi (D-CA) announced the establishment of a House Select Committee on the Coronavirus Crisis to oversee the Trump administration’s distribution of coronavirus relief funds over the next several months. The new Committee will be led by House Majority Whip James Clyburn (D-SC).
- Development of a fourth coronavirus legislative package is already underway at the staff level, but partisan cracks are beginning to show, leading to the possibility that this package won’t move through Congress at lightning speed like the previous three. House Minority Leader Kevin McCarthy (R-CA) and Senate Majority Leader Mitch McConnell (R-KY) both expressed apprehension over the necessity and timing of a fourth package. From the White
House on Tuesday, however, President Trump expressed interest in an additional aid bill for “rebuilding” the country’s infrastructure and creating jobs.

**Timing Unclear**: Pelosi has said she would like to have Congress return on April 20, if possible, but it is unclear if conditions will permit a return that soon.

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**Pennsylvania Legislative**
- Week’s Legislative Session Could See Vote on Bill Re-opening Non-Life Sustaining Businesses, Positioning Budget Bills

**Regulatory**
- Drug and Alcohol Treatment Guidance Available During COVID-19
- State COVID-19 Policy Guidance and Other Developments

**West Virginia Legislative**
- Governor Justice Delays Primary Election

**West Virginia Regulatory**
- West Virginia Insurance Commissioner to Work with NAIC in Seeking Insurer Preparedness Plans
- Board of Examiners for Speech-Language Pathology and Audiology Temporarily Suspends Telepractice

**Industry Trends**

**Policy / Market Trends**
- AHIP Files Supreme Court Amicus Brief Supporting Preemption of Arkansas Law Regulating Drug Benefit Claims
- CMS Releases Marketplace Open Enrollment Report for 2020
- Partnership for America’s Health Care Future Launches Resource Center
Federal Issues
Regulatory

CMS Releases Interim Final Rule on COVID-19 Regulatory Changes
The Centers for Medicare & Medicaid Services (CMS) is taking historic and unprecedented steps to equip the American healthcare system with maximum flexibility to respond to the 2019 Novel Coronavirus (COVID-19) pandemic. To that end, CMS released on March 31 an interim final rule, “Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency.”

The rule addresses a variety of payment and practice needs for patients and health care providers raised in response to the COVID-19 pandemic.

The following provisions are included within the IFC:

- **The majority of provisions pertain to hospitals such as:** permitting reimbursement for services performed outside of the hospital, expanding the scope of reimbursable emergency department services, and waiving limits on the number of Medicare patients allowed in doctor-owned hospitals.

- **CMS issued a blanket waiver under the physician self-referral law, or Stark law,** to allow flexibilities including allowing hospitals to receive rented equipment or services above fair market value, receive financial support (e.g., loans) from physician owners at interest below fair market value, and provide benefits and support to their medical staffs, such as multiple daily meals, laundry service for personal clothing, or child care services.

- **CMS also established new flexibilities for providers to participate in Medicare.** It widened the scope of practice for medical school residents and waived written physician order requirements for medically necessary services in hospitals.

- **Other rule provisions include:** expanding the scope of reimbursable respiratory assistance equipment, permitting the establishment of COVID-19 specific dialysis facilities to segregate infected patients, and waiving Medicaid requirements for onsite bi-weekly nurse visits for home health agency and hospice providers.

- **With respect to Medicare Advantage and Part D, CMS suspended some required reporting activities and “reprioritized” audits of certain providers** and Medicare Advantage plans to focus only on patient care. CMS also released a memorandum on audit reprioritization and a fact sheet on MA and Part D flexibilities. CMS also stated it “is suspending RADV activities related to the payment year 2015 audit and will not initiate any additional contract-level audits until after the public health emergency has ended.”

- **CMS also modified its Medicare Advantage and Part D Star measures to “address the expected disruption to data collection and measure scores.”** Specifically, it:
  - Replaces the 2021 Star Ratings measures with earlier values from the 2020 Star Ratings (which are not affected by COVID-19);
  - Establishes how the agency will calculate or assign Star Ratings for 2021 in the event CMS’ functions become focused on only continued performance of essential agency functions and the agency and/or its contractors do not have the ability to calculate the 2021 Star Ratings;
  - Modifies the current rules for the 2021 Star Ratings to replace any measure with a data quality issue for all plans due to the COVID-19 outbreak with the measure-level Star Ratings and scores from the 2020 Star Ratings;
- Replaces the measures calculated based on HOS data collections with earlier values not affected by COVID-19 for the 2022 Star Ratings, in the event CMS is unable to complete HOS data collection in 2020 (for the 2022 Star Ratings);
- Removes guardrails for the 2022 Star Ratings so cut points can change by more than five percentage points if national performance declines as a result of the pandemic; and
- Expands the existing hold harmless provision for the Parts C and D improvement measures to include all contracts for the 2022 Star Ratings.

- **Regarding Medicare fee-for-service telehealth, CMS codified new telehealth flexibilities** that pertain to the originating site of service, expanding the scope of reimbursable telehealth services, permitting audio-only provider evaluations of patients, permitting physician video consults when required for rehab, skilled nursing, and hospice patients, and waiving rules that required a physician to have a prior relationship with a patient.

The regulation was effective immediately on March 31 but its provisions are applicable retrospectively to March 1 and generally last through the end of the public health emergency. Public comments are accepted until June 1.

**Why this matters:** CMS is issuing a sweeping array of new rules and waivers of federal requirements to ensure that local hospitals and health systems have the capacity to absorb and effectively manage potential surges of COVID-19 patients.

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**HHS Inspector General Information Blocking CMP Rule Expected**

The HHS Inspector General’s office is expected to soon release a proposed rule authorized by the 21st Century Cures Act to set forth the process by which the office will investigate claims of information blocking and issue civil monetary penalties (CMPs).

The Office of Management and Budget (OMB) concluded its review of the rule late last week, according to OMB’s website. The rule complements recently finalized “interoperability rules” from the HHS Office of the National Coordinator for health IT and CMS which specified behavior that would constitute information blocking of electronic patient health information. Until this CMP rule is finalized, ONC indicated OIG will not issue CMPs even after the interoperability final rules become in force. Despite this, enforcement agencies can invoke other authorities beyond the Cures Act-authorized CMP authority to enforce similar patient rights, as seen by the Office of Civil Rights action against a provider last year to enforce HIPAA’s patient records access right.

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**Federal COVID-19 Policy Guidance and Other Developments**

- **CARES Act Fund to Reimburse Providers for Uninsured Patients --** The federal government will use a portion of the Coronavirus Aid, Relief, and Economic Security (CARES) Act’s $100 billion emergency fund for hospitals and health care providers to reimburse providers treating uninsured COVID-19 patients, President Trump and Health and Human Services Secretary Alex Azar announced Friday. As a condition of receiving funds under this program, providers will be forbidden from balance billing the uninsured for the cost of their care. Providers will be reimbursed at Medicare rates. HHS will soon have more specifics on how the rest of the $100 billion will go to providers.
HHS Report Highlights Hospitals’ Challenges amid Pandemic -- The Department of Health and Human Services’ Office of Inspector General issued a new report highlighting numerous challenges facing hospitals amid the COVID-19 crisis. The report shines a spotlight on issues related to lab tests, personal protective equipment shortages and surge capacity challenges. While not in the OIG report, there are also shortages of critical drugs for patient care that must be addressed. The OIG report also highlights the tremendous strain – both physical and emotional – that this pandemic is putting on the shoulders of physicians, nurses and other caregivers and their families, and why they need our support during this critical time.

AHA Urges HHS and CMS to Waive Interest or Substantially Reduce Interest Rate on Accelerated/Advanced Payments -- The American Hospital Association urged the Department of Health and Human Services and Centers for Medicare & Medicaid Services to exercise existing authorities to waive interest or substantially reduce the interest rate on any balance owed on accelerated/advanced payments made under section 3719 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the March 28 expansion announcement by CMS. The high interest rate can put hospitals at further financial risk while they are already vulnerable, and may prevent hospitals from requesting crucial accelerated/advanced payments.

AHA Calls for HHS to Suspend Certain Requirements so Health Care Providers can Better Respond to COVID-19 -- The AHA urged the HHS Secretary to consider additional actions to temporarily suspend certain requirements so that health care providers can better respond to the COVID-19 outbreak. Among other actions, the AHA urged HHS to:

- Take additional steps to fully implement waivers of the Emergency Medical Treatment and Labor Act;
- Delay audits related to the Medicare cost report, such as the Medicare disproportionate share hospital/S-10 audit, and other federal reviews or audits;
- Ensure that teaching hospitals that increase their bed capacity to address the COVID-19 crisis are not penalized in their indirect medical education payments;
- Waive certain telehealth provisions to extend flexibility to hospital outpatient departments and critical access hospitals by allowing HOPDs to provide care via telehealth; and
- Confirm the extension of the Health Insurance Portability and Accountability Act protection through the duration of the declared health emergency.

AHA Urges Additional Action to Expand Telehealth -- The American Hospital Association urged HHS and CMS to consider taking additional actions that would expand the ability of hospitals and health systems to use telehealth in response to the COVID-19 outbreak. Among other actions, AHA urged the agencies to:

- Allow hospital outpatient departments to bill for outpatient psychiatry programs delivered via telehealth so that behavioral health patients can continue to receive critical services;
- Waive the remaining statutory restrictions on practitioners eligible to provide services via telehealth and allow them to provide telehealth services from their homes without updating their Medicare enrollment; and
- Allow critical access hospitals to directly bill for telehealth services and allow them to be paid according to the payment methodology they already have selected.

AHA Urges CMS to Extend 20 Percent Hospital Add-on Payment to LTCHs -- The American Hospital Association urged CMS to use its authority to extend to long-term care hospitals (LTCHs) the 20 percent hospital add-on payment for Medicare beneficiaries diagnosed with COVID-19, which was authorized by the CARES Act. LTCHs are playing a critical role in supporting the growing number of general acute care hospitals that, because they have hit their maximum capacity, must transfer COVID-19 patients to other settings. LTCHs are one of the few other settings that are able
to accept these patients because they uniquely possess both ventilators and the clinicians needed to treat the virus, including pulmonologists, critical care nurses and respiratory therapists. Extending the 20 percent DRG add-on to LTCHs would help support their increasing role in fighting the pandemic.

- **Fraudulent Investigator Attempting to Obtain PHI** -- The Department of Health and Human Services’ Office for Civil Rights April 3 warned HIPAA-covered entities of an individual posing as an OCR investigator attempting to obtain patients’ protected health information. OCR is recommending that HIPAA-covered entities and business associates alert their workforce members and share steps to verify that someone is an OCR investigator, including asking for the individual’s email address, which will end in @hhs.gov, and asking for a confirming email from the OCR investigator’s hhs.gov email account. For additional questions or concerns, email OCRMail@hhs.gov.

- **OIG to Hold Off on Anti-kickback Sanctions for COVID-19 Activities Covered by CMS Blanket Waivers of Stark** -- The Department of Health and Human Services’ Office of the Inspector General says it will seek to ensure health care providers retain regulatory flexibility during the COVID-19 crisis, announcing that it will “exercise its enforcement discretion not to impose administrative sanctions under the Federal anti-kickback statute” for many payments covered by the Blanket Waivers of the Stark self-referral law that CMS published last week. OIG’s statement applies to 11 of the waivers issued by CMS, including compensation for services personally performed by a physician, incidental benefits or loans provided to a physician.

- **President Uses DPA to Facilitate Production of Ventilators** -- President Trump directed the Health and Human Services Secretary, in consultation with the Secretary of Homeland Security, to use Defense Production Act authorities to facilitate the supply of materials to produce ventilators to General Electric Company, Hill-Rom Holdings Inc., Medtronic Public Limited Company, ResMed Inc., Royal Philips N.V., and Vyaire Medical Inc.

- **FDA Updates Blood Donation Guidance to Spur Giving** -- In an effort to encourage more blood donations, the Food and Drug Administration said it is revisiting and updating several existing policies to help ensure an adequate-but-safe national blood supply. To account for COVID-19, the agency is providing notice of alternatives to certain blood donor eligibility requirements for the duration of the pandemic.

Among other changes, the guidance allows blood centers to reduce donation deferral periods for certain categories of blood donors from 12 months to three. FDA said it will provide notification when the alternative procedures are no longer in effect.

FDA also issued the following:

- Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products
- Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria
- Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Components

According to the agency, these recommendations are expected to remain in place after the COVID-19 pandemic ends, with any appropriate changes based on comments FDA receives.

- **HHS Allows Health Information Sharing During COVID-19 Emergency** -- To support federal public health authorities and agencies in need of COVID-19-related data, the Health and Human Services Office for Civil Rights will not penalize health care providers or their business associates for violations of certain HIPAA provisions. HHS said good faith uses and disclosures of protected
health information to the Centers for Disease Control and Prevention, Centers for Medicare & Medicaid Service, state and local health departments, and state emergency operations centers will help with the exchange of information to flatten the curve. Current regulations allow a HIPAA business associate to use and disclose protected health information for public health and health oversight purposes only if expressly permitted by its business associate agreement with a HIPAA covered entity.

- **FDA Grants Emergency Use of SARS-CoV-2 Antibody Test** -- The Food and Drug Administration authorized emergency use of two new diagnostic tests for COVID-19, including the first reported test to measure SARS-CoV-2 antibodies in blood collected from individuals with suspected COVID-19.

- **CDC Updates COVID-19 Infection Control Guidance for Health Care Facilities** -- The Centers for Disease Control and Prevention updated its infection prevention and control guidance for health care facilities, and posted a form for reporting patients under investigation for COVID-19 infection.

- **Labor Department Issues Rule on New Paid Sick Leave and Expanded Family and Medical Leave Requirements** -- The Department of Labor issued a temporary rule to enable new paid sick leave and expanded family and medical leave requirements established under the Families First Coronavirus Response Act. The rule, which is necessary for the new policy to become operational on April 1, 2020, effective on April 2, 2020, and expire on December 31, 2020, codifies changes to the federal definition of “health care provider.”

- **Study Finds Presymptomatic COVID-19 Transmission Likely** -- Some COVID-19 patients in Singapore likely transmitted the virus to others on the island before they were symptomatic, according to a report released by the Centers for Disease Control and Prevention. The authors identified seven clusters of cases in which presymptomatic transmission likely occurred. Other studies also have suggested such transmission can occur. “The potential for presymptomatic transmission underscores the importance of social distancing, including the avoidance of congregate settings, to reduce COVID-19 spread,” the authors said.

- **CDC Posts COVID-19 ICD-10-CM Code** -- The official guidelines for the new ICD-10-CM code go into effect April 1 through September 30 and have been posted by the Centers for Disease Control. These codes will help capture and report surveillance data for the virus.

- **HHS Sets Email Address for Hospital-specific COVID-19 Questions** -- Hospitals and health systems are encouraged to direct COVID-19 questions to a new Department of Health and Human Services email. The new email address serves as a one-stop resource to triage a wide range of COVID-19 inquiries from hospitals across HHS’s offices and operating divisions, including the Centers for Disease Control and Prevention, Food and Drug Administration, Centers for Medicare & Medicaid Services and Office of Assistant Secretary for Health. HHS says hospitals can send their COVID-19 questions to [HospitalCOVID19@hhs.gov](mailto:HospitalCOVID19@hhs.gov).

- **DOL Issues FAQs on Employer Provisions in Families First Coronavirus Response Act** -- The Department of Labor March 28 released a set of frequently asked questions, which included information on how it defines “health care provider” and “emergency responder” under policies established by the Families First Coronavirus Response Act.

- **CDC Issues Guidance on Decontaminating Filtering Facepiece Respirators** -- The Centers for Disease Control and Prevention’s National Institute for Occupational Safety and Health issued guidance on decontaminating disposable filtering facepiece respirators (FFRs) for reuse during times of contingency and crisis capacity.

CDC does not recommend that FFRs be decontaminated and then reused as standard care but rather as an option that may need to be considered when FFR shortages exist.
The guidance includes crisis standards-of-care decontamination recommendations for the following methods:
- Ultraviolet germicidal irradiation
- Vaporous hydrogen peroxide
- Moist heat

- **AHA, AAMC and CHA Request Tax Filing Extension for 501(c)(3) Organizations** -- The American Hospital Association, Association of American Medical Colleges and Catholic Health Association of the United States requested that the Internal Revenue Service provide a six-month automatic extension for filing Forms 990, 990-T, and 4720 to any Section 501(c)(3) organization that is required to file Form 990, Schedule H. The unprecedented effort to fight the pandemic has disrupted normal clinical and management operations in unforeseen ways. At this time, all resources must be made available to meet the demands of the health and economic emergency we face.

In addition, the organizations asked that the IRS not impose any penalties if hospitals required to file Schedule H are delayed up to one year in completing a community health needs assessment or implementation plan.

- **AHA, Others Urge DEA to Increase Annual Caps for Controlled Substances** -- The American Hospital Association, American Medical Association, American Society of Anesthesiologists, American Society of Health-System Pharmacists, and Association for Clinical Oncology are urging the Drug Enforcement Agency to allow drug manufacturers and 503B outsourcing facilities to receive increased annual production quota controlled-substance allocations during the COVID-19 crisis. Doing so, the organizations say in a letter to the DEA, will allow them to meet “legitimate, and absolutely critical, patient care needs” caused by huge spikes in demand for morphine, hydromorphone, fentanyl, and other opioids because of the number of patients requiring ventilation.

- **FEMA Implements Ventilator Request Process** -- Given the scarcity of the ventilators in the Strategic National Stockpile and the current capacity of the private sector to meet the demand, the Federal Emergency Management Agency has adopted a new process to manage federal ventilator resources to ensure the ventilators are shipped to the states in the amount needed to manage the immediate crisis.

For ventilators, FEMA defines “immediate” as requirements necessary to sustain life within a 72-hour window. FEMA asked states and tribes to request ventilators from the SNS through their FEMA and Health and Human Services regional leadership.

They said the request should include detailed responses to five questions:
- How many usable ventilators, ICU beds and convertible ventilators are currently available within the state/tribe?
- What is the current hospital bed and ICU bed occupancy rate in the state/tribe?
- How many new ICU beds does the state/tribe estimate it can stand-up and the number of ventilators, or FDA-approved ventilator alternatives, it can or is standing up?
- What is the decompression ability of hospitals in the state/tribe (i.e., are there currently field hospitals or alternate care facilities established)?
- How many anesthesia machines are in the state/tribe and have they been converted?

According to FEMA, the federal government currently has 10,469 ventilators available.
• **FEMA, HHS Task Force Targets Supply Chain Needs** -- The Federal Emergency Management Agency and HHS have created a Supply Chain Stabilization Task Force to address the need for personal protective equipment, ventilators and other life-saving equipment. The task force will support COVID-19 hot spots with a four-pronged approach: preserve PPE and supplies; accelerate manufacturing of equipment; expand the industry; and allocate resources to the needed areas.

• **Administration Asks Hospitals to Report Certain COVID-19 Data Daily** -- Vice President Pence, on behalf of President Trump and the White House Coronavirus Task Force, Sunday sent a letter to the nation's hospitals requesting that all hospitals report certain data on COVID-19 testing results, bed and ventilator capacity.

• **CMS Releases Waivers for COVID-19** -- The Centers for Medicare & Medicaid Services released a substantial number of new waivers related to COVID-19. The waivers apply nationwide and are retroactive to March 1, 2020. Among other areas, the waivers include:
  ✓ Allowing hospitals to establish additional treatment locations;
  ✓ Expanding access to telehealth;
  ✓ Removing self-referral barriers to responding to COVID-19;
  ✓ Allowing for additional workforce capacity; and
  ✓ Eliminating certain administrative requirements.

• **AHA Urges HHS and CMS to ‘Directly and Expeditiously’ Distribute Funds to Hospitals and Health Systems as Designated by CARES Act** -- The American Hospital Association asked the Department of Health and Human Services and Centers for Medicare & Medicaid Services to directly and expediently distribute to rural and urban hospitals and health systems funds from the Public Health and Social Services Emergency Fund that were designated for providers in the Coronavirus Aid, Relief, and Economic Security Act. The CARES Act increased funding for the Public Health and Social Services Emergency Fund by $100 billion in order to reimburse eligible health care providers for health care-related expenses or lost revenues that are attributable to COVID-19. The AHA said that in past, relatively similar situations, Medicare Administrative Contractors have been used to pay claims and distribute monies directly to providers for purposes other than Medicare payment. However, standing up a process for the MACs over time to directly distribute funds based on hospital applications is not an easy or quick task. Therefore, the AHA asked HHS and CMS to direct the MACs to immediately distribute funds to every hospital in the U.S.

• The Department of Homeland Security’s (DHS) Cybersecurity & Infrastructure Security Agency (CISA) published new guidance on identifying critical infrastructure workforce.

• Department of Health and Human Services (HHS) Office of Civil Rights (OCR) issued a bulletin to ensure that entities covered by civil rights authorities comply with their obligations under laws and regulations that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs, including in the provision of health care services during COVID-19.

• The Department of the Treasury and Small Business Administration (SBA) issued guidance for the Paycheck Protection Program for businesses with under 500 employees.

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### State Issues

**Delaware**  
**Regulatory**  

**White House Declares Delaware a Major Disaster amid Coronavirus Pandemic**
On Sunday, April 5, 2020, Delaware was declared a major disaster by the White House, allowing for Federal money to become available to the state government, some local governments and certain private nonprofit organizations. President Donald Trump has declared major disasters in 36 states starting with New York on March 20. Major disasters have also been noted in Pennsylvania, New Jersey and Maryland.

**Governor Carney Restricts Gatherings, Requires Businesses to Strictly Comply with Social Distancing**

On April 1, 2020, Governor John Carney signed the ninth modification to his State of Emergency declaration, further limiting public gatherings and ordering essential businesses to take specific steps to enforce social distancing and fight the spread of coronavirus disease 2019 (COVID-19).

Governor Carney's modified emergency order limits public gatherings to 10 people through May 15, or until the public health threat has been eliminated. For the purposes of the order, public gatherings include weddings, funerals, and related activities.

The order also requires new action from businesses that remain open. Under Governor Carney’s modified emergency order, businesses must:

- Allow no more than 20 percent of stated fire capacity in the store at any given time – and no more than ten percent during exclusive hours for high-risk populations.
- Clearly mark six-foot spacing in check-out lines and other high-traffic areas, including outside.
- Discontinue any self-serve foods, or product sampling.
- Designate staff to enforce the number of people coming into the store and enforce limits.

**Governor Carney Urges Delawareans, Businesses, Nonprofits to Support COVID-19 Response in a Community Call to Action**

On April 2, 2020 Governor John Carney issued a community call-to-action, urging all Delaware citizens, businesses and nonprofits to offer their assistance in Delaware’s fight against coronavirus disease (COVID-19).

The State of Delaware launched an online tool at de.gov/coronavirus to connect Delawareans offering materials and supplies with organizations, medical providers and others in need of assistance.

**Department Of Insurance Issues Bulletins Relating to Compliance to Regulatory Requirements During Covid-19**

On Friday, April 3, Insurance Commissioner Trinidad Navarro issued Domestic and Foreign Insurers Bulletin No. 117 and Producers and Adjusters Bulletin No. 33 to provide additional guidance to insurers, other regulated entities and consumers regarding compliance with regulatory requirements during the COVID-19 public health emergency. This Bulletin is being provided in addition to, but not in place of, any prior guidance previously issued by Bulletin.

**State Issues**

Pennsylvania
Legislative

Week’s Legislative Session to Include Swearing-in of New House Members, Votes to Position Budget Bills, Business Closures

When the Pennsylvania General Assembly reconvenes April 6, three House members – Tim Bonner (R-Mercer, 8th District), Kathleen C. Tomlinson (R-Bucks, 18th District) and Eric Davanzo (R-Westmoreland, 58th District) – will take the oath of office for the seats they recently won in the March 17 special elections.

In the Senate, the Appropriations Committee is slated to begin consideration of legislation addressing the 2020-2021 budget, in anticipation of work in the near future. Senate and House leaders and the Wolf Administration are keeping a close watch on state’s fiscal health during the COVID-19 crisis. According to the Department of Revenue, tax revenues fell six percent short of official estimates in March. Business closures will continue to exacerbate revenue shortfalls from sales and income taxes.

On a related note, the House is tentatively scheduled to consider a proposal that would address Governor Wolf’s decision to close non-life sustaining businesses, an issue that continues to raise questions among the business community. An amendment is being drafted to Senate Bill 327 that would exempt many different businesses included in the March 28 memorandum issued by U.S. Cybersecurity and Infrastructure Agency (CISA) if they adopt the guidelines created by the Centers for Disease Control (CDC) to protect their workers and the public. The amendment language requires the following:

- Governor Wolf must develop a COVID-19 emergency plan for businesses to comply with if they plan to continue operations in Pennsylvania;
- The plan must be published on the Department of Community and Economic Development’s (DCED) publicly-accessible website; and
- The plan must be developed using recommended guidance for mitigating exposure to COVID-19, from the CDC and conform with the March 28, 2020 Advisory Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response, as published by the U.S. Cybersecurity and Infrastructure Agency (CISA).

The Wolf Administration and Senate and House Democrats have signaled their opposition to this effort.

State Issues

Pennsylvania

Regulatory

Drug and Alcohol Treatment Guidance Available During COVID-19

On Wednesday, April 1, Secretary of Drug and Alcohol Programs, Jen Smith held a press conference to discuss issues impacting the department related to the COVID-19 pandemic and individuals seeking treatment for substance abuse, particularly opioid addiction. Smith said health care professionals should continue to provide critical drug and alcohol services to individuals in need, using the following guidance issued in part under Governor Wolf’s disaster declaration:
• Department of Drug and Alcohol Programs (DDAP) allow a physician to prescribe medication that an individual may take for a maximum of 28 days, which is in response changes made by the federal government;
• Patients need to be at a point in their treatment and protocol where they are able to take home 28 days’ worth of medication;
• Health care providers and clinicians will make the determination on which patients can avail themselves of the 28 day option;
• Substance use disorder counselors may use telehealth via two-way interactive audio such as video conferencing or teleconferencing to improve access and flexibility to treatment; and
• DDAP, working in conjunction with sister state agencies, is communicating with providers treating individuals with alcohol use disorder to determine the best support mechanisms and reduce the need for emergencies related to alcohol withdrawal syndrome.

State COVID-19 Policy Guidance and Other Developments

• Update on DOH Crisis Standards of Care -- The Department of Health (DOH) is providing an opportunity for review and comment on revised Crisis Standards of Care for Pandemic guidance, according to a letter from Pennsylvania Secretary of Health Dr. Rachel Levine. This draft document reflects modifications from the Interim Pennsylvania Crisis Standards of Care for Pandemic Guidelines. The revised draft document fulfills the goal of providing a framework that will preserve the greatest amount of lives and health of our community in the event that resources become scarce. DOH will be accepting input regarding the draft document until April 7, 2020. The department hopes to communicate any updates resulting from comments by April 10.
• Pennsylvania Treasury to Provide Relief for Hospitals Fighting COVID-19 -- Pennsylvania Treasurer Joe Torsella announced a bond purchasing program that seeks to provide financial relief to non-profit and public health care systems in Pennsylvania. This program is designed to help to provide liquidity to health care systems, while reducing the extreme borrowing costs they have recently incurred, caused by unusual market volatility. Treasurer Torsella will redirect certain existing investments in the Commonwealth’s Consolidated Cash Pool to enable the purchase of up to $240 million in variable rate demand obligations (VRDO) of Pennsylvania hospitals. The purchases will be limited to no more than $50 million from any one issuer. The program will be evaluated after a period of 30 days. The program focuses on existing municipal bonds rated in the top three categories, by at least one of the nationally recognized ratings agencies.

Many hospitals use VRDO as one means of financing operations. VRDOs are highly rated and highly liquid investment instruments. With recent market disruptions however, interest rates hospitals have to pay have gone up sharply. From rates of less than one percent a few weeks ago, many hospitals paid rates as high as 7.28 percent last week, according to Bloomberg data. Although rates have begun to decline following passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act—which included a provision, supported by state treasurers, to help stabilize the municipal finance market—it has not fully normalized, and the market remains volatile.

By participating in this market, the Pennsylvania Treasury is looking to stabilize the short-term borrowing cost for hospitals by capping the interest rate at no more than two percent, regardless of market volatility. This would provide a fair return to the Treasury on its investment, provide savings to health care institutions, and help ensure liquidity in the future. The steps the Treasurer is taking
will help to provide more liquidity to the health care system and enable hospitals to maximize resources to purchase vital equipment and supplies during this COVID-19 public health crisis.

- **Update on Hospital Data Reporting Requirements** – Data collection and analysis is increasingly important for both epidemiological surveillance and public health decision making during this pandemic. Reported data by hospitals will be used by federal and state government to inform ongoing efforts to allocate resources.

  - **State Reporting:** As a reminder, per the order by the Secretary of the Pennsylvania Department of Health (DOH), effective March 24, 2020, all hospitals licensed in this commonwealth are instructed to complete the Essential Elements of Information (EEI) data collection tool in the Knowledge Center—Health Incident Management System. After initial completion, each hospital and each campus location of a hospital shall update the EEI survey three times a day at 0800, 1600, and 2400.

  - **Reporting to PAPSRS:** On Friday, the Pennsylvania Patient Safety Authority issued Program Memorandum No. 2020-01: Acute care reporting of COVID-19 cases that may be health care-associated infections (HAI). This bulletin clarifies that the DOH is not requiring acute health care facilities to report COVID-19 cases into the Pennsylvania Patient Safety Reporting System (PAPSRS), including those cases that may be HAIs.

  - **Federal Reporting:** Recently, the Centers for Medicare & Medicaid Services sent a letter to hospitals, on behalf of Vice President Mike Pence and the White House Coronavirus Task Force, requesting that all hospitals report the following new data to support federal efforts to fight COVID-19:
    - COVID-19 testing data from academic/university/hospital labs that conduct “in-house” laboratory testing to the U.S. Department of Health and Human Services—Reports on “in-house” laboratory testing are to be submitted via the designated spreadsheet by email by 5 pm EST each day
    - Daily counts of patients with suspected and confirmed COVID-19 diagnoses, and current use and availability of hospital beds and mechanical ventilators to the Centers for Disease Control and Prevention (CDC)—hospitals should report this data to the CDC National Healthcare Safety Network (NHSN) COVID-19 Patient Impact and Hospital Capacity Module. Information regarding the NHSN reporting requirements is available online.

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**State Issues**

**West Virginia**

**Legislative**

**Governor Justice Delays Primary Election**

Last week Governor Jim Justice announced that he was delaying the state’s May 12 primary election. Despite having one of the lowest confirmed COVID-19 totals in the country, Governor Justice said the new date for the election would be June 2. He previously ordered that the election format be changed to all-mail.
West Virginia Insurance Commissioner to Work with NAIC in Seeking Insurer Preparedness Plans

The West Virginia Offices of the Insurance Commissioner (OIC) has issued Bulletin No. 20 – 04a, which requires insurers to outline minimum elements of a preparedness plan they are required to have in place to address the following:

- How they will assess and manage disruptions and other risks to their services and operations; and
- How they will assess and monitor the financial risk that may arise.

The OIC has elected to participate in the National Association of Insurance Commissioners (NAIC) All State COVID-19 Operational and Financial Impact Survey. As a result, insurers will submit survey responses directly to the NAIC as soon as possible, but in no event later than April 15, 2020.

Board of Examiners for Speech-Language Pathology and Audiology Temporarily Suspends Telepractice Prohibition

The West Virginia Board of Examiners for Speech-Language Pathology and Audiology has issued a letter to notice the suspension of rules that prohibit telepractice by provisional licensees and Speech Pathology or Audiology Assistants. The suspension shall remain in effective during the COVID-19 emergency.

Industry Trends
Policy / Market Trends

AHIP Files Supreme Court Amicus Brief Supporting Preemption of Arkansas Law Regulating Drug Benefit Claims

AHIP filed an amicus brief supporting efforts to uphold the preemption of an Arkansas state law seeking to regulate the reimbursement and management of certain prescription drug benefit claims. The lawsuit, Rutledge v. PCMA, was filed by the Pharmaceutical Care Management Association (PCMA) and is currently pending in the U.S. Supreme Court. The Arkansas law at issue was found to be preempted under ERISA by the U.S. Court of Appeals for the Eighth Circuit. AHIP’s amicus brief supports PCMA’s effort to have the Eighth Circuit’s decision upheld by the U.S. Supreme Court.

Why this matters: The brief filed today focuses on the importance of the uniform administration of employer sponsored plans under ERISA. Among other things, the brief highlights the role and function of pharmacy benefit managers (PBM) and other third-party administrators (TPAs) in designing and administering ERISA plan benefits. It also explains the complexity of administering prescription drug benefits, and how those benefits are provided to millions of individuals covered under ERISA plans. Finally, the brief details the negative effects laws like the one passed in Arkansas have on the design and uniform administration of employer sponsored plan benefits, and why they are preempted by ERISA.

The case is currently scheduled for oral arguments this month. However, it is unclear how or if those arguments will occur in light of the ongoing COVID-19 pandemic, and what impact that may have on when the Supreme Court may issue a decision.
CMS Releases Marketplace Open Enrollment Report for 2020

The Centers for Medicare & Medicaid Services (CMS) released the Health Insurance Exchanges 2020 Open Enrollment Report. The report summarizes health plan selections made on the individual exchanges during the 2020 open enrollment period (OEP), including in the 38 states using healthcare.gov as well as in the 13 state-based exchanges.

Key findings in the report include:

- Approximately 11.4 million consumers selected or were automatically reenrolled in an Exchange plan during the 2020 OEP in all states plus the District of Columbia. This is a reduction of about 0.3% or around 35,000 from the final 2019 OEP total;
- Approximately 25% of 2020 OEP plan selections were new enrollments, a 1% increase from 2019;
- In the 38 states using healthcare.gov, average premiums decreased 3% from $612 in 2019 to 595 in 2020;
- For enrollees receiving advance payments of the premium tax credit (APTC) in healthcare.gov states, APTC on average covered 85% of total premium for 2020 OEP enrollments versus 86% of 2019 OEP enrollments--average premium after APTC thus increased from $87 in 2019 to $89 in 2020;
- 7% of total plan selections in healthcare.gov states were for health savings account (HSA)-eligible plans, a decrease from recent years (8% in 2019 OEP and 9 percent in 2018 OEP); and
- The average individual deductible for 2020 OEP plan selections was $2,835, an increase of 4% from 2019 OEP. When CSR variant plans are excluded, the average deductible was $5,316, a 4% increase from 2019 OEP.

Partnership for America’s Health Care Future Launches Resource Center

The Partnership for America’s Health Care Future, of which AHIP, BCBSA and the AHA are members of, launched an online hub and resource center for a new effort called “Working Together.” This is a beltway focused campaign, which will highlight what industry leaders are doing to address COVID-19. The campaign is intended to demonstrate America’s health care leaders are working to: expand access, improve quality, strengthen employer provided coverage, protect our most vulnerable, and preserve control for patients.
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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