President Signs COVID-19 Relief Package – Providing Additional Support for Health Care Providers and Prioritizing Testing

On April 24, President Trump signed into law another COVID-19 relief package. Within this new package—H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act—an additional $75 billion is dedicated to support health care providers in managing coronavirus-related expenses and lost revenue. Importantly, the package also invests $25 billion in expanding our nation’s COVID-19 testing capacity.

The additional $75 billion in funding can be used to cover the costs of medical supplies and equipment, including personal protective equipment and testing supplies, and for other activities, such as funding emergency operations centers, retrofitting facilities, and building temporary structures to handle surge capacity.

Testing expansion received $25 billion in the new relief package to cover all necessary aspects of testing—research and development, validation, manufacturing, and purchasing and administering COVID-19 tests. Specifically, the $25 billion includes funding for:
States, localities, territories, and tribes—$11 billion for all aspects of testing expansion, including contact tracing and employer testing;
The Centers for Diseases Control and Prevention—$1 billion for public health data surveillance and affiliated analytics infrastructure modernization;
The National Institutes of Health—$1.8 billion for development and research;
The Biomedical Advanced Research and Development Authority—$1 billion for advanced research and development and related supplies;
The Food and Drug Administration—$22 million for support and administrative activities;
Community health centers and rural health clinics—$825 million;
U.S. Health and Human Services Office of Inspector General—$6 million for oversight administration; and
Testing for the uninsured—$1 billion.

Governor Carney Removes Restrictions on Out-of-State Health Care Workers to Assist in COVID-19 Response
Governor Carney Requires Delawareans to Wear Face Coverings in Public Settings

Pennsylvania 

Legislative

- Telemedicine Bill with Abortion Language Awaits Action by Governor Wolf, Veto Likely
- ACA, Mental Health Measures Set for Consideration by House Insurance Committee
- Wolf Administration’s Response to COVID-19 Pandemic Focus of Senate Public Hearing

Pennsylvania 

Regulatory

- Insurance Department Issues Notice of Temporary Producer Licensure During COVID-19 Pandemic

Industry Trends

Policy / Market Trends

- CMS Releases Annual Medicare Trustees Report

States are required to document and submit their testing plans, along with formal plans and timelines for reopening economies and easing current mitigation strategies.

Background
The CARES Act had originally provided $100 billion for hospitals and health care providers. The U.S. Department of Health and Human Services (HHS) announced the following distribution methodology:

- General Distribution ($50 billion)—Allocated for general distribution to Medicare facilities and providers impacted by COVID-19, based on eligible providers’ 2018 net patient revenue. The initial $30 billion was distributed between April 10 and April 17. Distribution of the remaining $20 billion began on April 24.
- Targeted
  - High Impact Areas—An allocation of $10 billion will go to providers in high-impact areas that have been particularly affected by the increased burden of caring for those with coronavirus
  - Rural—A distribution of $10 billion will support rural providers, including rural health centers, based on facilities operating expenses and payments could begin as early as this week
Provider Requirements

- A portion of the $100 billion Provider Relief Fund will be used to reimburse health care providers for COVID-related treatment of the uninsured. Every health care provider who has provided treatment for uninsured COVID-19 patients on or after February 4, 2020 can request claims reimbursement through the program and will be reimbursed at Medicare rates.

- All providers who received money automatically via the general distribution will still need to submit their revenue information so that it can be verified via the General Distribution Portal. An FAQ document is available for additional information.

- Providers who have been allocated a payment must sign an attestation confirming receipt of the funds and agree to the terms and conditions within 30 days of payment. Terms and conditions for the Provider Relief Fund distributions are available online. No response within 30 days will be considered acceptance of the terms and conditions.

- All recipients will be required to submit documents sufficient to ensure that these funds were used for health care-related expenses or lost revenue attributable to coronavirus. Additionally, as condition to receiving these funds, providers must agree not to seek collection of out-of-pocket payments from a presumptive or actual COVID-19 patient that are greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

Why this matters: Pennsylvania hospitals received $1.2 billion from the first distribution of funding from the CARES Act, and are enormously grateful for the federal support.

Hospitals continue to advocate for additional financial support as they continue to care for COVID-19 and other patients while dealing with extraordinary revenue losses. A recently released report—commissioned by the Hospital & Healthsystem Association of Pennsylvania and conducted by Health Management Associates—provides the first verified projections of the financial toll that COVID-19 has taken on Pennsylvania’s hospitals and health systems. In part, the report estimates that, statewide, the hospital community will experience more than $10.2 billion in losses during calendar year 2020.

The legislation also included:
- $320 billion in additional funding for the Paycheck Protection Program; and
- $60 billion in funding for Economic Injury Disaster Loans.

With more than 20 million Americans filing for unemployment since the beginning of the outbreak and many businesses shut down across the country, it was critical that additional funding be allocated for programs established under the CARES Act, many of which have already exhausted their original funding levels.

Next steps? Discussions have begun on yet another coronavirus package, which Congress is likely to take up in late May or early June.

Federal Issues

Regulatory
HHS Publishes FAQs on Flexibility for Utilization Management, Prior-Authorization and Out-of-Network Billing

On April 21, the Department of Health and Human Services (HHS) released frequently asked questions for health insurance issuers, including those offering coverage in the individual, large and small group markets, addressing utilization management, prior authorization and out-of-network billing.

Section 6001 of the Families First Coronavirus Response Act (FFCRA) as amended by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) prohibits the application of pre-authorization or medical management requirements to certain items and services related to diagnostic testing for COVID-19. FAQs previously issued on April 11 provided more detail on the services covered by the CARES Act.

CMS Releases Additional MA & Part D Guidance on COVID-19

On Wednesday, the Centers for Medicare & Medicaid Services (CMS) issued guidance implementing Section 3709 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), which temporarily suspends sequestration of Medicare programs between May 1, 2020 and December 31, 2020.

CMS stated that it will suspend the application of the two percent payment reduction that would otherwise apply to Medicare Advantage (MA), Programs of All-Inclusive Care for the Elderly (PACE), Medicare-Medicaid Plans (MMPs), section 1876 and 1833 cost-based Managed Care Organizations (MCO), and Part D payments for enrollment periods that fall within the given sequestration suspension period. The two percent reduction will also not apply to any future retroactive adjustments made to payments for enrollment periods within the sequestration suspension period. CMS will continue to apply sequestration to payments for, and any retroactive adjustments made to payments for, enrollment periods outside of the sequestration suspension period.

CMS also issued a memorandum to provide Medicare Advantage plans and Part D sponsors with additional guidance regarding CMS’ expectations and plans to exercise its enforcement discretion with respect to certain policies and requirements during the COVID-19 public health emergency.

In this guidance CMS addresses several issues including:

- Mid-year benefit enhancements;
- Flexibility in Special Needs Plans model of care (MOC) requirements;
- Involuntary disenrollment;
- Prescription drug coverage and access;
- Rules around communicating with members regarding COVID-19; and
- Coverage of testing and testing-related services for COVID-19.

HHS to Publish Final Health IT Rules; Agencies Delay Certain Requirements, Enforcement Deadlines

As anticipated, the Department of Health and Human Services’ Office of the National Coordinator for Health Information Technology (ONC) and the Centers for Medicare & Medicaid Services (CMS) jointly announced an extension of implementation deadlines for final rules implementing the 21st Century Cures Act’s directive to make health care data move more seamlessly through the system and prevent information blocking.
Due to the COVID-19 emergency, CMS will give hospitals until July 1, 2021 to implement admission, discharge and transfer notification requirements once its final rule on interoperability and patient access is published in the May 1 Federal Register. The original deadline was January 1. **CMS also will not generally enforce the rule’s patient access and provider directory application programming interface policies for CMS-regulated payers - including Medicare Advantage (MA), Medicaid Fee-for-Service (FFS) programs, Medicaid managed care plans, Children’s Health Insurance Program (CHIP) FFS, CHIP managed care entities, and qualified health plan (QHP) issuers - until July 1, 2021. The rule’s other policies will be implemented and enforced on schedule. There was no commensurate delay in the required payer-to-payer communications that remain effective as of January 1, 2022.**

In conjunction with CMS, the ONC also will publish on May 1 its final rule implementing 21st Century Cures Act provisions on interoperability, information blocking and the Health IT Certification Program. While ONC will not enforce certain compliance dates and timelines for three months after they take effect, compliance with the information blocking provisions will be required November 2, 2020. Follow this link to HHS-ONC announcement.

The Office of Inspector General also published a proposed rule in the Federal Register to address how and when it will impose penalties based upon prohibited information blocking. Follow this link to OIG proposed rule.

**ONC’s rule** finalized policies to:
- Create eight exceptions to the prohibition on information blocking by providers, vendors and exchange networks, including, among others, privacy, security and responding to requests that are infeasible. This requirement is effective November 2020.
- Adopt the HL7 FHIR standard for application program interfaces (APIs);
- Develop full data export capabilities for an individual patient and providers switching EHR systems; and
- Promulgate additional conditions of certification and maintenance of certification requirements for health IT developers.

**CMS’s rule** finalized policies to:
- Require electronic notification of inpatient admission, discharge and transfer as a hospital condition of participation in Medicare and Medicaid. The agency has pushed back the compliance date by six months to spring 2021; and
- Require payers and plans participating in Medicare, Medicaid, CHIP and federally facilitated exchanges to provide access to enrollee claims and other information through APIs by 2021. CMS will provide a six month period of enforcement discretion.

**Why this matters:** ONC and CMS first displayed the contents of their information blocking and interoperability final rules on March 9, 2020. Those rules contained various compliance dates for new requirements that were tied to the publication date of the final rules in the Federal Register. After initially delaying the compliance dates by withholding the final rules from publication in the wake of the Coronavirus (COVID-19) public health emergency, the agencies have now announced that the final rules will be published.

ONC and CMS will then exercise discretion to delay enforcement of certain provisions beyond the compliance dates published in the final rules in recognition of the health care industry’s current focus on the ongoing COVID-19 public health emergency. The move was justified to give providers relief as they turn
attention to COVID-19 and returning to normal business operations. Importantly, the enforcement delays announced by ONC and CMS do not affect the substantive requirements of the final rules.

Federal COVID-19 Policy Guidance and Other Developments

CDC Releases Guidance on the Use of Reusable Elastomeric Respirators: The Centers for Disease Control and Prevention has released contingency and crisis capacity strategies for the cleaning, decontamination and use of reusable elastomeric respirators during surge demand situations. Elastomeric respirators have facepieces that are made of synthetic or natural rubber that can be repeatedly cleaned and reused and are alternatives to disposable filtering facepiece respirators. The agency also updated its webpage on decontaminating and reusing disposable facepiece respirators to clarify the language on individual facility discretion to determine what decontamination method to use, certain decontamination methods and emergency use authorizations.

FDA Issues Guidance to Increase Mobile Patient Monitoring, Imaging Options: The Food and Drug Administration issued guidance allowing patients to use certain non-invasive fetal and maternal monitoring devices in the home during the COVID-19 emergency to reduce the need for in-clinic visits. FDA also issued guidance to expand mobile and portable imaging options to diagnose and monitor treatment of lung disease patients with COVID-19 during the emergency.

HHS Announces How It Will Distribute Additional Funds to Providers Under CARES Act: The Department of Health and Human Services announced that it is distributing additional funds from the Public Health and Social Services Emergency Fund, beginning April 24. The Coronavirus Aid, Relief, and Economic Security Act added $100 billion to this fund to reimburse health care providers for health care-related expenses or lost revenues not otherwise reimbursed that are attributable to COVID-19.

HHS previously distributed $30 billion from this fund based on providers' proportions of Medicare fee-for-service payments. According to the HHS announcement, $20 billion will be allocated to providers generally. The payment made to each provider will take into account what they previously received under the $30 billion distribution, so that their total allocation under both waves ($50 billion total) is proportional to their share of 2018 total net patient revenue.

In addition, HHS said that $10 billion will be allocated to hospitals in areas that have been particularly impacted by COVID-19; $10 billion to rural hospitals and health clinics; and $400 million to Indian Health Service facilities. HHS also announced that providers that have treated uninsured patients with COVID-19 on or after Feb. 4, 2020, can request reimbursement at Medicare rates, subject to available funding.

NIH Strategic Plan Outlines COVID-19 Research Priorities: The National Institutes of Health’s National Institute of Allergy and Infectious Diseases released a strategic plan for accelerating research to diagnose, prevent and treat COVID-19. The document outlines four key priorities: improving fundamental knowledge of SARS-CoV-2 and COVID-19; developing rapid, accurate diagnostics and assays to identify and isolate COVID-19 cases and track the spread of the virus; characterizing and testing potential treatments for COVID-19; and developing safe and effective vaccines to protect individuals from infection and prevent future SARS-CoV-2 outbreaks.

CMS Offers COVID-19 Telehealth Toolkit for Medicaid/CHIP: The Centers for Medicare & Medicaid Services released a toolkit for states to more quickly adopt Medicaid and Children’s Health Insurance Program policies for telehealth’s use during the COVID-19 pandemic. The toolkit includes population,
service and technology considerations for states, along with checklists to follow. It also identifies important factors for providers and pediatric patients. Finally, it provides guidelines for reviewing and adjusting coverage and reimbursement policies.

**CDC Awarding CARES Funds to Expand Surveillance, Testing, Contact Tracing:** The Centers for Disease Control and Prevention will award $631 million in Coronavirus Aid, Relief, and Economic Security Act funding to help public health agencies expand surveillance, testing and contact tracing to identify COVID-19 cases, protect vulnerable populations, and work with health care systems to manage and monitor their capacity.

**Nation's Governors Map COVID-19 Recovery Strategy:** The National Governors Association unveiled a roadmap for building the post-COVID-19 public health infrastructure and reopening the nation's economy. Among the group's recommendations is to ensure that the health care system is able to respond to potential surges, in which states should consider:

- Developing metrics to assess the health care system’s ability to safely treat both COVID-19 patients and all other patients requiring care without resorting to crisis standards of care;
- Requiring that health care providers continuously report on numbers of health care worker infections, number of hospital beds and levels of personal protective equipment and other medical equipment (such as ventilators) across the health care system;
- Partnering with industry and academic institutions to support PPE manufacturing;
- Removing regulatory barriers to establishing alternative sites of care or repurposing existing sites to serve COVID-19 patients in a surge;
- Expanding the pool of in-state and out-of-state licensed health care providers, expanding the use of telehealth and ensuring appropriate liability protections; and
- Expanding support for health care workers, including services such as child care and eldercare.

The roadmap also seeks to strengthen national surveillance systems, in part by mandating data reporting by hospitals, laboratories and other points of care.

**FDA Allows Pharmacies to Repackage Propofol for Hospital Patients:** The Food and Drug Administration issued guidance allowing pharmacies and outsourcing facilities to repackage, under certain conditions and during the public health emergency, FDA-approved propofol drug products for hospitals having difficulty obtaining adequate supplies in the sizes they use to support or treat patients with COVID-19. Also last week, FDA issued an emergency use authorization for IntelliVue Patient Monitors to remotely monitor hospital patients and reduce the risk of exposing health care providers to COVID-19.

**DOJ Urges Hospitals and Health Systems to Help Department 'Find the Bad Actors' of COVID-19:** The Department of Justice Associate Deputy Attorney General Bill Hughes is asking hospitals and health systems for their assistance in uncovering illicit activity related to the COVID-19 health crisis. Hughes highlighted the work that DOJ has undertaken during the pandemic to halt the hoarding and price gouging of medical supplies, along with investigations into fraud, scams and counterfeit products. DOJ is urging health care professionals to educate themselves and colleagues of ongoing illicit activity and report any conduct that needs federal law enforcement scrutiny. If you have concerns, you should call the National Center for Disaster Fraud at 1-866-720-5721, or email disaster@leo.gov.

**Medical Workers Exempt From Suspension of New Immigrant Visas:** President Trump suspended new immigrant visas for 60 days, exempting medical and other essential workers combating the COVID-19 emergency.
HHS to Waive National Practitioner Data Bank Query Fees: The Health Resources and Service Administration announced that the National Practitioner Data Bank will reimburse entities that conducted queries (one-time and continuous) via query credits, retroactive to March 1, 2020 and lasting through May 31. The NPDB assists health care organizations in their hiring, licensing and credentialing decisions through its repository of reports on health care fraud and abuse.

ASPR Releases New Resources on COVID-19: The Department of Health and Human Services’ Office of the Assistant Secretary for Preparedness and Response has shared a number of new COVID-19-related resources, including alternate care toolkits and strategies; webinars on relieving health care worker stress and crisis standards of care; and a workforce toolkit.

U.S. Customs Posts Guidance on Importing COVID-19 Resources: The U.S. Customs and Border Protection has launched a webpage to address questions about importing personal protective equipment and other medical products during the COVID-19 pandemic. The webpage includes a link to Food and Drug Administration contacts and resources for interested importers and other parties to get answers to questions about importing medical products under one of the FDA’s guidance documents or an emergency use authorization.

New CMS Toolkit to Aid Workforce Maximization at State and Local Levels: The Centers for Medicare & Medicaid Services unveiled a new COVID-19 toolkit for state and local health care decision makers seeking to maximize workforce flexibilities. CMS said that the toolkit, which includes a full suite of available resources to maximize responsiveness based on state and local needs was designed to aid workforce managers through information on funding flexibilities, liability protections, and workforce training.

CMS Issues FAQ on Health Plan Administrative Flexibilities: In response to frequently asked questions, the Centers for Medicare & Medicaid Services encouraged health insurers to relax otherwise applicable utilization management processes, as permitted by state law, to ensure that staff at hospitals, clinics, and pharmacies can focus their limited time and resources on care delivery and patients can receive needed care without delay.

The agency also encouraged insurers to work with out-of-network providers to agree upon a rate to ensure that enrollees are not balance billed, noting that enrollees may not be able to access treatment by an in-network provider during the emergency, and to consider additional administrative flexibilities as the public health emergency continues.

With respect to formulary drugs prescribed for off-label use to treat COVID-19, CMS said insurers may wish to apply utilization management practices to prevent shortages and ensure access to all who may benefit. Issuers also should ensure that any changes to prior authorization and utilization management are clinically based and applied in a non-discriminatory manner and remain compliant with applicable essential health benefit regulations, the agency said.

HHS Awards Funding to Rural Communities to Combat COVID-19 Pandemic: The Health Resources and Services Administration Federal Office of Rural Health Policy awarded $161.5 million in Coronavirus Aid, Relief and Economic Security Act funding to help rural hospitals and communities respond to the COVID-19 emergency. The funding includes $150 million to assist 1,779 hospitals through the Small Rural Hospital Improvement Program and $11.5 million for telehealth resource centers to assist rural and underserved areas.
Battelle Adds Sites for No-cost N95 Respirator Decontamination: Battelle is adding nine processing sites for decontaminating compatible N95 and equivalent respirators for reuse by health care personnel, bringing the total states served to 15 and Washington, D.C. Each site is able to reprocess up to 80,000 respirators per day; decontamination services, which are available at no charge to health care providers, was made possible via a $400 million federal contract. A 2016 Food and Drug Administration study validated that the Battelle Critical Care Decontamination System™ technology successfully decontaminated N95 masks and that masks could withstand processing 20 times with no degradation of filtration performance.

CDC Updates COVID-19 Laboratory Testing FAQs: The Centers for Disease Control and Prevention updated its FAQs on COVID-19 laboratory testing and reporting. Topics include accessing laboratory testing, data and reporting, serology testing and ordering supplies.

Clinicians Can Earn MIPS Credit for Reporting COVID-19 Clinical Trials Data: Clinicians who participate in a clinical trial for a drug or biological product to treat a patient with novel coronavirus may now earn credit in the Merit-based Incentive Payment System, the Centers for Medicare & Medicaid Services announced. To receive credit for the MIPS COVID-19 Clinical Trials improvement activity, clinicians must attest to participating in the trial and report their findings through a clinical data repository or registry for the duration of the study. Clinicians attesting to the activity will automatically earn half of the maximum score in the MIPS improvement activity category.

New Report Makes Recommendations to Address U.S. Rural Health Care Crisis: The Bipartisan Policy Center released a new report examining the immense challenges facing the U.S. rural health care system as highlighted by the COVID-19 pandemic. The BPC’s Rural Health Task Force has developed recommendations over the last year to stabilize and improve the urgent problems challenging rural communities, including improving access to telehealth, offering short-term stabilization for struggling rural hospitals and providing multiple pathways to transform into models that are designed to meet the needs of individual communities. The report also includes recommendations for enhanced payments to keep obstetric units open and strategies to strengthen the rural health care workforce.

Report Examines Pandemic’s Early Impact on Hospital Finances: Hospitals’ already thin margins plunged into the red in March as non-emergency procedures and revenues fell and expenses for staff, supplies, and building capacity rose to prepare for a surge in COVID-19 patients according to a new report by health care consultancy Kaufman Hall.

Based on data from more than 800 hospitals, median operating margins fell to –8% in March, down from 4% in February. Operating earnings before interest, taxes, depreciation, and amortization fell 100% compared to the same period last year or 13 percentage points in absolute change.

The report also found that bad debt and charity care increased by 13% year over year. According to the report, the results “will be even more dramatic in coming months, as hospitals experience the effects of COVID-19 over extended periods.”

FDA Authorizes First At-home COVID-19 Diagnostic Test Sampling: The Food and Drug Administration authorized the first diagnostic test with a home collection option for COVID-19.
Specifically, the FDA re-issued the emergency use authorization for the Laboratory Corporation of America COVID-19 RT-PCR Test to permit testing of samples self-collected by patients at home using LabCorp’s Pixel by LabCorp COVID-19 Test home collection kit.

LabCorp said the home collection kits should be available in most states in the coming weeks to consumers with a doctor’s order.

**NIH Panel Releases COVID-19 Treatment Guidelines:** A panel of experts convened by the National Institutes of Health released COVID-19 treatment guidelines for health care providers, which will be updated as new data become available.

Based on preliminary and published data, the guidelines include recommendations for two categories of therapy currently under investigation: antivirals, such as chloroquine and remdesivir; and host modifiers/immune-based therapies, such as convalescent plasma.

Each recommendation includes a rating for strength of recommendation and for quality of evidence supporting the recommendation. They also include guidance on caring for critically ill patients and using concomitant medications for treatment such as statins and corticosteroids.

**FBI Warns of Phishing Campaigns Targeting U.S. Providers:** The FBI warned of specific COVID-19-themed email phishing campaigns targeting U.S.-based medical providers.

The campaigns leverage email subject lines and content related to COVID-19 to distribute malicious attachments, which exploit Microsoft Word document files, 7-Zip compressed files, Microsoft Visual Basic Script, Java, and Microsoft Executables. The FBI alert contains specific indicators of compromise and malware hash signatures, which providers can use to identify and mitigate these threats.

The FBI requests organizations targeted by a phishing campaign to contact their local FBI Cyber Task Force with a copy of the email, the full email header and any attachments.

Organizations should not open the attachment unless they are able to examine it in a controlled and safe manner. If an organization is a victim of a cyber-intrusion, they should retain any logs, images of infected devices, and memory capture of all affected equipment, if possible, to assist in the response by the FBI.

**FDA Temporarily Expands Hospitals’ Access to Compounded Drugs, Authorizes Non-patient-specific Orders:** The Food and Drug Administration said that it will temporarily forgo action against 503A compounding pharmacies that provide to hospitals certain compounded drugs without patient-specific prescriptions. The agency’s temporary policy outlines specific criteria that pharmacies and hospitals must meet in addition to some conditions established in section 503A of the Federal Food, Drug, and Cosmetic Act.

While the agency recently provided additional guidance for 503B outsourcing facilities, it acknowledged that the flexibilities provided might not be sufficient to meet urgent needs. FDA says this new policy is intended to remain in effect for no longer than the duration of the COVID-19 public health emergency and will be modified as circumstances evolve.
State Issues

Delaware Legislative

Legislation Introduced to Limit the Governor’s Authority to Continue a State of Emergency

House Bill 330 limits the Governor’s authority to continue a state of emergency by requiring the General Assembly to adopt and set the time period for continuing the state of emergency. If the Speaker of the House of Representatives and President Pro Tempore of the Senate agree that it is not reasonably possible for the General Assembly to conduct a meeting and the Governor determines that it is necessary to continue the state of emergency, then and only then may the Governor continue the state of emergency without approval of the General Assembly.

This bill is not expected to be considered this legislative session.

State Issues

Delaware Regulatory

Governor Carney Removes Restrictions on Out-of-State Health Care Workers to Assist in COVID-19 Response

Governor John Carney issued the twelfth modification to his State of Emergency declaration, which will allow the Public Health Authority to activate more out-of-state health care workers to assist in Delaware’s fight against COVID-19.

Subject to certain restrictions, the modified declaration allows individuals who previously held a license to practice medicine in any United States jurisdiction, to provide health care services on a volunteer basis in Delaware when authorized by the Public Health Authority. The provider must be appropriately trained and their license must have been in good standing for a five-year period before it expired or lapsed. The Modification does not impact credentialing and compensation because hospitals should not be submitting claims in connection with those volunteer services.

The modification also limits restrictions on pharmacists, respiratory therapists, physician assistants, paramedics, emergency medical technician, and nurses allowing them to assist in Delaware’s response to COVID-19 under all the same conditions. It also allows state agencies and members of the public additional time to consider rules and regulations, giving agencies discretion to extend public comment periods for 30 days from the date the State of Emergency is rescinded.

Governor Carney Requires Delawareans to Wear Face Coverings in Public Settings

Governor John Carney issued the thirteenth modification to his State of Emergency declaration, requiring Delawareans to wear face coverings in public settings, including in grocery stores, convenience stores, pharmacies, doctor’s offices, and on public transportation. Governor Carney’s order does not require
children aged 12 or younger to wear a face covering. Any child 2-years-old or younger MUST NOT wear a face covering due to the risk of suffocation.

Read Governor Carney's modified order, which is effective 8:00 AM a.m. on Tuesday, April 28. Click here for resources about face coverings.

Under Governor Carney's modified order, businesses must also take certain steps to keep their employees and customers safe.

By 8:00 a.m. on Friday, May 1, businesses must:
- Require employees to wear a face covering while working in areas open to the public and in areas where coming within 6 feet of other staff is likely;
- Provide, at the business' expense, face coverings and hand sanitizer for their employees;
- Deny entry to individuals who do not have a face covering - or if one is not available for them; and
- If any business denying entry is providing medication, medical supplies, or food, the business must provide alternate methods of pickup or delivery.

State Issues

Pennsylvania
Legislative

Telemedicine Bill with Abortion Language Awaits Action by Governor Wolf, Veto Likely
Skyrocketing utilization of telemedicine was the backdrop to the Senate's 29-21 concurrence vote to approve Senate Bill 857, legislation that governs the use of telemedicine services and requires health insurers to reimburse health care providers who provide telemedicine services.
- Prior to Senate action, the House of Representatives amended Senate Bill 857 with language that prohibits the administration of abortion-related services by referencing the list established by the U.S. Food and Drug Administration—the Risk Evaluation and Mitigation Strategies (REMS) list. One of the drugs included on this list is an early-term abortion medication, mifepristone.
- Senate Democrats made several attempts to remove the abortion-related provisions, including a motion to revert to a previous version of the bill, which the Senate passed 47-1 in 2019.

Senate Bill 857 awaits consideration by Governor Tom Wolf, who has already expressed opposition to the amended bill’s abortion language.

ACA, Mental Health Measures Set for Consideration by House Insurance Committee
The House Insurance Committee will consider on Monday, April 27, several proposals addressing the Affordable Care Act (ACA) and mental health parity laws:
- House Bills 1439 and 1696 – Address requirements pertaining to insurer compliance and reporting on mental health parity laws; and
- House Bills 469 (coverage for essential health benefits), 470 (prohibitions on lifetime limits), 471 (prohibitions on the use of pre-existing condition exclusions), and 913 (coverage of children/young adults up to age 26).
Wolf Administration’s Response to COVID-19 Pandemic Focus of Senate Public Hearing

Members of the Wolf Administration and business community appeared virtually before the Senate Community, Economic & Recreational Development and Senate Veterans Affairs & Emergency Preparedness Committees April 23 to discuss the Wolf Administration’s response to the COVID-19 pandemic. The joint public hearing had two panels, comprised of the following individuals, present testimony:

Panel 1: Business Community
- Gene Barr, president, and CEO, Pennsylvania Chamber of Business and Industry;
- Gordon Denlinger, state director, National Federal of Independent Businesses (NFIB);
- Jon O’Brien, executive director, General Contractors Association of Pennsylvania;
- Bill Festa, president, Pennsylvania Association of Realtors;
- Matt Stuckey, resident, Stuckey Automotive; and
- Heather Miller, CEO, School Express, Inc.

Panel 2: Wolf Administration
- Dr. Rachel Levine, secretary, PA Department of Health (DOH);
- Dennis Davin, secretary, PA Department of Community & Economic Development (DCED); and
- David Padfield, director, PA Emergency Management Agency (PEMA).

GOP committee Chairmen Mike Regan (R-Cumberland) and Tom Killion (R-Delaware) opened the hearing by commending various essential workers, including first responders and companies producing personal protective equipment (PPE). They also referenced the Wolf Administration’s waiver process, the lack of transparency, rising unemployment for small businesses, and the obligation to exercise legislative oversight.

Minority committee Chairwomen Pam Iovino (D-Allegheny) and Lindsey Williams (D-Allegheny) said the proceedings would give the public an opportunity to understand and learn the direction the state was headed in regarding COVID-19, including adhering to federal guidelines phasing in the reopening of businesses.

Gene Barr, President and CEO of the Pennsylvania Chamber of Business and Industry, discussed his organization’s work with health care associations regarding PPE and the need to address liability issues outside of their normal business operations because of the potential for litigation. Barr described reopening as a "balancing act," needing to keep businesses safe coupled with reducing the spread of the virus. He also mentioned the significant costs to the health care industry and how growing unemployment translates to a one percent increase in the suicide rate and about a 3.3% increase in drug overdoses. Barr said returning the economy must be done in a way so employees and customers feel safe.

Testimony offered by other business panel participants highlighted similar themes, including:
- The inconsistent granting of waivers and use of the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) guidelines;
- Overall lack of transparency;
- Bias towards national big-box chain stores over small businesses,
- Lack of coherent and scientific-based guidelines;
- The decision-making behind which businesses were deemed essential and non-essential;
- Inability to service clients in the middle of transactions; and
- How some entities used COVID-19 to break contracts and withhold payments.

Senators’ questions and discussion focused on a variety of business issues, including liability, the business closure process, CISA guidelines, business interruption insurance, confusion over the unemployment claim process, and potential decisions by some individuals to not return to work because they are making more money on UC. Regarding business interruption insurance, Barr said the issue is being examined.

Senators questioned representatives of the Wolf Administration on the following issues, including:
- DCED’s refusal to release the list of employers that received waivers and those that were rejected; Sec. Davin explained the department is examining the entire list to ensure there are appropriate quality controls. There were 42,000 waivers and they want to ensure that no proprietary information is released;
- The availability of testing for employees of personal care and nursing homes; Sec. Levine said a significant amount of testing is being performed on residents and staff at long-term living facilities and testing has been prioritized in those settings. Levine also noted that anyone with symptoms is immediately quarantined and tested, however, we are not able to test asymptomatic people every day;
- Best methods for getting PPE to small businesses;
- How DCED is assisting the many small businesses that missed out on Small Business Administration (SBA) loans;
- Administration assistance to local governments;
- Reporting of COVID-19 deaths;
- Is DOH considering utilizing mobile testing facilities that could be taken to high-case areas? Sec. Levine said DOH is collaborating with Rite Aid to provide testing at its locations as well as hospitals. Mobile van sites has not been discussed;
- The need to have manufacturers, the chemical association, small businesses, realtors, the Farm Bureau, and other stakeholders as well as the General Assembly involved in the plan to reopen Pennsylvania; and
- The importance of wearing masks. Sec. Levine said it basically comes down to "my mask protects you and your mask protects me, and we’re best protected when we’re both wearing masks."

The committees remain committed to ongoing dialogue with stakeholders and other interested parties.

**State Issues**

**Pennsylvania**

**Regulatory**

**Insurance Department Issues Notice of Temporary Producer Licensure During COVID-19 Pandemic**

In order to preserve continuity of certain insurance services, the Pennsylvania Insurance Department (PID) issued April 22 a notice to all state insurance companies and agencies that it will issue temporary producer licenses to qualifying individuals interested in becoming Pennsylvania resident insurance producers during the COVID-19 pandemic. The notice sets forth the following:
Prerequisites for temporary licensure; Terms and conditions for insurers and temporary producer licensees; How to apply for licensure; and An anticipated timeline for implementation and duration.

As a result of the COVID-19 pandemic, all producer examination testing centers were closed and will remain closed until further notice. The PID is currently working with its examination vendor to make remote electronic testing available and anticipates possible implementation in late summer or early fall.

**Industry Trends**

*Policy / Market Trends*

**CMS Releases Annual Medicare Trustees Report**

CMS released the 2020 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, also known as the Medicare Trust Funds. This report analyzes the solvency of the Medicare program given the current state of the economy. This report does not reflect the potential impacts of the COVID-19 pandemic on the Medicare program due to the speed at which the pandemic occurred and the uncertainty associated with the effects. Despite this, the report is still informative in warning the Medicare program was not in good financial health even before the pandemic. Medicare’s costs under current law continue to rise from their current level of 3.7 percent of GDP in 2019 to 6.0 percent in 2044. In 2019, the Hospital Insurance (Part A) expenditures exceeded income by $5.8 billion. The increase in the costs and increasing deficits lead stakeholders to estimate that the Hospital Insurance trust fund will be insolvent in 2026, the same as in last year's report.

**Why this matters:** Without congressional action, this date is likely to move up given COVID-19’s effect in increasing the unemployment rate and numbers of Medicare disability claimants, causing a significant decrease in the payroll taxes, which act as revenue for the trust fund. Many believe that Congress will act upon the Hospital Insurance Trust Fund before the program goes insolvent due to the bipartisan support of the Medicare program.
Interested in reviewing a copy of a bill(s)? Access the following web sites:

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

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