Federal Issues
Legislative

U.S. House Passes COVID-19 Relief “HEROES” Package
On Friday, May 15, the U.S. House of Representatives passed a $3 trillion COVID-19 relief package, the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, by a 208 to 199 vote.

The sweeping HEROES package includes direct assistance for state and local governments and small businesses and provides direct payments to Americans, as well as rent and mortgage relief and extended unemployment benefits.

Highlights of the legislation include:
- Fully subsidized COBRA premiums for laid off or furloughed workers from March 2020-January 2021;
- A risk corridor program for the individual, small, self-insured, and large group markets during 2020 and 2021 and for Medicare Advantage (MA) through the length of the emergency period;
- A two-month special enrollment period (SEP) for individual market exchanges for those states that have not already opted for an SEP;

In this Issue:

Federal Issues
Legislative
- U.S. House Passes COVID-19 Relief “HEROES” Package
- Public Health Officials Testify Remotely on Pandemic Response

Regulatory
- CMS Provides Guidance to States Modifying Medicaid Managed Care Contracts
- IRS Issues Notices on Mid-Year Changes to Cafeteria Plan Elections, Clarifying COVID-19 Obligations for HDHPs, Health FSA Terms
- CDC Releases Guidance on Reopening
- TeleTracking Data Submission for Remdesivir Distribution; HHS Cancels Collection Deadline Scheduled for Today
- Hospitals & Insurers Urge Supreme Court to Reverse the Ruling on the ACA
- Insurers & Partners Send Letter to HHS for Medicaid Provider Relief
- Federal COVID-19 Policy Guidance and Other Developments

State Issues
Delaware
Regulatory
An SEP for Medicare beneficiaries;
A mandate that all insurers cover treatment for the coronavirus without cost sharing;
A mandate for coverage of the COVID-19 vaccine with no cost-sharing for Medicaid;
Delayed implementation of the Medicaid Financial Accountability Rule (MFAR);
10% increased federal payments to state Medicaid programs from July 1, 2020 to June 30, 2021 to support activities that strengthen their home and community-based services benefit; and
Increased payments to facilities that serve a high proportion of Medicaid patients through September 30, 2021.

A section-by-section summary of the HEROES Act is available [here](#).

The bill includes provisions of importance to hospitals, including:
- Providing an additional $100 billion to reimburse providers for eligible expenses or lost revenues due to COVID-19, based on an application process—setting the reimbursement at an amount equal to 100 percent of expenses and 60 percent of lost revenue, less any funds received through previous COVID-19 relief programs;
- Modifying the terms of the accelerated and advanced payments available through the Medicare program, including providing repayment terms at a 1 percent interest rate;
- Eliminating cost-sharing for COVID-19 treatment in most forms of health care coverage;
- Temporarily increasing funding to states by increasing their Federal Medical Assistance Percentage (FMAP) by 14 percent and Medicaid disproportionate share hospital (DSH) allotments by 2.5 percent;
- Increasing COVID-19 testing capabilities by providing $75 billion to the Centers for Disease Control and Prevention (CDC) to be distributed to state and local public health entities so that
they can test, trace, monitor, and suppress COVID-19 waves;

- Providing additional resources for front-line workers, including thorough access to bonus pay and child care;
- Expanding and extending certain paid sick and medical leave provisions;
- Expanding access to certain loans available through the Main Street Lending Program to nonprofit organizations, as well as making some of those loans eligible for forgiveness; and
- Authorizing $2 billion for a temporary expansion of the Federal Communications Commission’s (FCC’s) Rural Health Care Program to partially subsidize eligible health care providers’ broadband service.

**Hospital industry position:** The American Hospital Association submitted a letter commenting about a number of provisions included in the legislation. One point of emphasis in the AHA’s letter was the need for full loan forgiveness under the Accelerated Medicare Payments Program. The AHA wrote that it sees “full forgiveness of these payments for all hospitals as a necessary component for them to recover and rebuild while still delivering care during the ongoing pandemic and beyond.”

The House also approved a rule change to temporarily allow proxy voting for roll-call votes and permit committee hearings.

**Why it matters:** The House has largely played a back seat to the Senate in development of previous coronavirus legislation. Although Senate Majority Leader Mitch McConnell (R-KY) describes the bill as “dead on arrival,” in that chamber, passage of the bill puts Democrats in a stronger position to influence the next relief package, expected to be finalized next month.

**Public Health Officials Testify Remotely on Pandemic Response**

On May 12, the Senate HELP Committee held a hearing on “COVID-19: Safely Getting Back to Work and Back to School.” The hearing featured testimony from members of the White House Coronavirus Task Force and witnesses and several committee members, including Chairman Lamar Alexander (R-TN), attended the hearing virtually, after some were exposed to individuals who tested positive for the virus.

- Chairman Alexander noted in his opening remarks that vaccines and treatments are the “ultimate solution,” but “until we have them, all roads back to work and back to school go through testing. The more tests we conduct, the better we can identify those who are sick and [have been] exposed, and we can quarantine the sick and exposed, instead of trying to quarantine the whole country.”
- Senator Patty Murray (D-WA), the panel’s ranking Democrat, used her time to criticize the President’s response to the COVID-19 crisis, calling it “a disaster all on its own.” She added, “We
need dramatically more testing. It is unacceptable we still don’t have a national strategic plan to make sure testing is free, fast and everywhere.”

Witnesses included Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, Dr. Robert Redfield, Director of the Centers for Disease Control and Prevention, Adm. Brett Giroir, Assistant Secretary for Health at the Department of Health and Human Services, and Dr. Stephen Hahn, Commissioner of the Food and Drug Administration. They largely agreed with calls to ramp up testing and cautioned that if states or localities move to reopen too soon and disregard the government’s reopening checkpoints they run the risk of triggering an outbreak that may be difficult control.

Federal Issues

Regulatory

CMS Provides Guidance to States on Modifying Medicaid Managed Care Contracts

The Centers for Medicare & Medicaid Services (CMS) released a new Center for Medicaid and CHIP Services Informational Bulletin (CIB) that provides states guidance on how to temporarily modify their Medicaid managed care contracts to address the impact of the COVID-19, such as adjusting provider payment methodologies and capitation rates within Medicaid managed care contracts.

IRS Issues Notices on Mid-Year Changes to Cafeteria Plan Elections, Clarifying COVID-19 Obligations for HDHPs, Health FSA Terms

The Internal Revenue Service (IRS) issued two notices impacting mid-year elections under a Section 125 Cafeteria Plan, clarification on applicability of COVID-19 testing and treatment requirements for High Deductible Health Plans (HDHPs), and carryover amounts under a Health Flexible Spending Arrangement (Health FSA).

Why it matters: The changes under the notices create new opportunities for employees to access employer-provided health coverage or modify their coverage arrangement to meet current needs.

The guidance under Section 125 Cafeteria Plans and HDHPs provides for increased flexibility with respect to mid-year elections on a prospective basis for employees who had previously declined coverage or to modify elections, as well as revocations, elections, or modifications to funding for Health FSAs and Dependent Care Assistance Programs for calendar year 2020.

With respect to HDHPs, this notice clarifies the relief provided in Notice 2020-15 regarding HDHPs and expenses related to testing for and treatment of COVID-19 applies to reimbursements of expenses incurred on or after January 1, 2020; and treatment of telehealth and other remote care services provided on or after January 1, 2020, with respect to plan years beginning on or before December 31, 2020, will be covered by the temporary safe harbor outlined in the CARES Act. The notice on the carryover amount under a health FSA increases the $500 limit for unused amounts that may be carried over to the following year.

CDC Releases Guidance on Reopening

The Centers for Disease Control and Prevention (CDC) released new guidance documents, providing brief checklists meant to help key businesses and others operating in public reopen safely. In separate one-page
documents, the CDC offers decision-making tools for schools, workplaces, camps, child care programs, mass transit systems, and bars and restaurants.

The Federal Emergency Management Agency (FEMA) created an Exercise Starter Kit with sample documents to help organizations navigate returning to full operations, and facilitate their own internal workshops based on reconstitution planning principles, the White House’s Guidelines for Opening Up America Again and a FEMA fact sheet on “Planning Considerations for Organizations in Reconstituting Operations During the COVID-19 Pandemic.”

TeleTracking Data Submission for Remdesivir Distribution; HHS Cancels Collection Deadline Scheduled for Today

Last week, in order to help inform current and future distributions of the drug remdesivir to areas of the country hardest hit by the pandemic, the U.S. Department of Health and Human Services (HHS) announced that it is requesting weekly data on the number of currently hospitalized COVID-19 patients and, of those hospitalized, the number requiring placement in intensive care units (ICUs).

However, HHS has canceled the May 18 deadline for hospitals and health systems to submit data. The deadline for submitting data into HHS’s TeleTracking system was supposed to be at 11:59 p.m. EST May 18. Over the weekend, HHS determined that it did not need the additional data at this time. Registered users of the TeleTracking portal received an email announcing the agency’s decision to postpone data collection.

While hospitals do not have to submit the COVID-19 admission and COVID-19 intensive care unit occupancy data to TeleTracking today, HHS has indicated it intends to ask for updated data again in the next few weeks.

Why it matters: In compliance with the daily reporting requirements, Pennsylvania is submitting bed capacity and utilization data on a daily basis on behalf of Pennsylvania hospitals. However, the state’s daily submission does not cover the required remdesivir reporting. Hospitals must report the six admissions and intensive care unit data fields into HHS’s TeleTracking web portal to fulfill the remdesivir data request.

For issues with accessing the TeleTracking portal or questions about the data, contact TeleTracking Technical Support at (877) 570-6903.

Hospitals & Insurers Urge Supreme Court to Reverse the Ruling on the ACA

The American Hospital Association (AHA), joined by America’s Essential Hospitals, Association of American Medical Colleges, and Federation of American Hospitals have urged the Supreme Court to reverse a federal appeals court decision that held the Affordable Care Act’s (ACA) individual mandate unconstitutional. “Since its enactment in 2010, the ACA has made substantial progress toward improving Americans’ access to quality health care,” the organizations said in a friend-of-the-court brief.

In a separate friend-of-the-court brief, the Hospital & Healthsystem Association of Pennsylvania and 35 other state hospital associations also urged the Supreme Court to reverse the appeals court decision. “The Patient Protection and Affordable Care Act made health care available to millions of individuals through insurance subsidies and expansion of the federal Medicaid program,” the brief states.
America’s Health Insurance Plans (AHIP) cited the widespread disruption that would occur if the ACA were invalidated, including the impacts that would be felt by those served by the individual and group markets, Medicaid, and Medicare in a friend-of-the-court brief. AHIP also underscored the significant uncertainty and turmoil resulting from the current COVID-19 pandemic and the importance of the coverage safety net the ACA provides across all markets.

Background
- These briefs were filed with the U.S. Supreme Court in Texas v. United States, the lawsuit filed by a Texas-led group of states and several individuals challenging the constitutionality of the ACA following the zeroing out of the individual mandate penalty.

Timing: Oral arguments in this case will occur during the fall, but an exact date has not been set.

Federal COVID-19 Policy Guidance and Other Developments

CDC Allocates $10.25 Billion to Expand Testing: The Centers for Disease Control and Prevention will award $10.25 billion from the Paycheck Protection Program and Health Care Enhancement Act to states, localities and territories by May 23 to expand COVID-19 testing and surveillance activities. View the latest funding allocations as well as previous COVID-19 allocations to the jurisdictions here.

CMS Issues New COVID-19 Guidance on Medicaid Managed Care Plans: The Centers for Medicare & Medicaid Services recently issued new guidance to states to allow temporary COVID-19-related modifications in provider payment methodologies and capitation rates under Medicaid managed care plans. States would be allowed to use directed payments to increase provider payments within managed care arrangements. Please see the CMS information bulletin to state Medicaid agencies for details.

The American Hospital Association, in its advocacy with CMS, requested many of the additional flexibilities regarding provider payment and capitation rates found in this new guidance to states. The following is a summary of the key provisions:

- **State Directed Payments to Temporarily Enhance Provider Payment**: States are permitted to contractually require managed care plans to make directed payments to providers to help mitigate the impacts of the COVID-19 public health emergency. The guidance requires that the directed payment must: be connected to utilization; advance quality goals and strategies, including responding to a pandemic; treat providers in a class, such as safety net hospitals, dental, and behavioral health centers equally; include risk mitigation strategies, such as risk corridors; require appropriate payment levels when compared to a benchmark, such as Medicare rates; and allow states to implement the directed payments retrospectively to the start of the current rate period. States meeting these stipulations will be required to submit to CMS certain rate certification documentation. CMS will expedite the review process for directed provider payments and encourages states to model requests on provided examples and use pre-print templates of a state requiring managed care plans to temporarily enhance provider payments in response to COVID-19.

- **Adjust Managed Care Capitation Rates to Reflect Temporary Increases in Medicaid Fee-for-Service Provider Payments**: States have two options to adjust managed care capitation rates to reflect temporary increases in provider payments. States will be permitted to exercise the current De Minimis rate adjustment authority to increase a rate cell of less than 1.5% by only submitting a contract amendment to CMS. If a state wishes to increase the rate cell above 1.5%, the state must
submit a revised actuarial rate certification and contract amendment to CMS for expedited agency review.

- **Require Managed Care Plans to Make Certain Retainer Payments**: States are currently authorized through Section 1915(c) to allow certain home and community-based providers to bill and receive retainer payments for individuals enrolled in Medicaid even if the services cannot be provided during a public health emergency. This guidance would allow states to contractually require managed care plans to make these retainer payments to providers where the authorized service is covered under the contract.

**Administration Announces Initiative to Speed Development, Distribution of COVID-19 Vaccines, Therapeutics and Diagnostics**: The Trump administration Friday introduced *Operation Warp Speed*, a $10 billion public-private partnership intended to accelerate development, manufacturing and distribution of COVID-19 vaccines, therapeutics, and diagnostics by January 2021. The White House said the federal government will oversee treatment trial protocols, lead the selection of manufacturing partners, and work on a distribution plan that includes necessary materials, such as vials and appropriate storage. As a condition of receiving support from Operation Warp Speed, companies will provide donated allocations of countermeasures developed, including an eventual vaccine.

**At-home COVID-19 Sample Collection Kit Gains FDA Authorization**: The Food and Drug Administration Saturday authorized the emergency use of Everlywell, Inc.’s COVID-19 Test Home Collection Kit. The product is a standalone, at-home, nasal-swab sample collection kit that can be sent to specified labs for subsequent COVID-19 diagnostic testing using certain tests separately authorized by FDA for use with the new kit. The labs authorized to test specimens collected using the authorized kit are Fulgent Therapeutics and Assurance Scientific Laboratories. Individuals must be screened via an online questionnaire, the results of which are reviewed by health care professionals, in order to gain access to the kit. Results are returned to the patient through Everlywell’s independent physician network and online portal.

**Studies Shows COVID-19 Virus Can Spread Through Feces, Surfaces Contaminated by Presymptomatic Patients**: Infectious virus in feces is a common manifestation of COVID-19, according to a study from China published in the Center for Disease Control and Prevention’s Emerging Infectious Diseases journal. “Our findings indicate the need for appropriate precautions to avoid potential transmission of SARS-CoV-2 from feces,” the authors said. “Discharge and hospital cleaning practices should consider this possibility for critically ill patients or those who died who had high viral loads and are more likely to shed infectious virus.” Another study from China published in the journal investigated environmental contamination in two rooms of a quarantine hotel after two presymptomatic students who stayed there were laboratory-confirmed as having coronavirus disease.

**Study Looks at Impact of Certain Social Distancing Measures**: Shelter-in-place orders and the closure of restaurants, bars, and entertainment-related businesses helped to slow the spread of COVID-19 between March 1 and April 27, according to a study published by Health Affairs.

**FDA Authorizes Infusion Pumps’ Emergency COVID-19 Use, Sets Guidance for Pharmacy Compounders’ PPE Usage**: The Food and Drug Administration last Wednesday authorized the emergency use of infusion pumps to counteract insufficient supplies needed for the continuous infusion of medications, total parenteral nutrition and other fluids into COVID-19 patients. The agency said this includes infusion pumps with remote monitoring or remote manual control features that can help promote safe physical distances to reduce health care providers’ COVID-19 exposure. FDA also updated its guidance for pharmacy compounders’ use of personal protective equipment. The guidance clarifies that
intended-sterile drugs can be compounded in segregated compounding areas that are not within cleanrooms, assuming specific beyond-use dates are utilized. The agency said it adopted this policy to help assure patients’ access to necessary medications while reducing the risks of compounding when standard PPE are not available.

**FDA Warns Abbott Point-of-Care Test May Return False Negative Results:** Based on early data, the Abbott ID NOW point-of-care test to diagnose COVID-19 may return false negative results, the Food and Drug Administration announced, adding that it will continue to review data as the company conducts post-market studies to better understand the cause. "This test can still be used and can correctly identify many positive cases in minutes," said Tim Stenzel, M.D., director of the In Vitro Diagnostics and Radiological Health Office at FDA's Center for Devices and Radiological Health. "Negative results may need to be confirmed with a high-sensitivity authorized molecular test."

**CDC Warns of Rare Pediatric Condition Stemming from COVID-19:** The Centers for Disease Control and Prevention issued a health advisory warning of COVID-19-associated multisystem inflammatory syndrome in children. CDC recommends that health care providers report "any patient who meets the case definition to local, state, and territorial health departments to enhance knowledge of risk factors, pathogenesis, clinical course, and treatment of this syndrome."

**CMS Issues Nursing Home COVID-19 Toolkit:** The Centers for Medicare & Medicaid released a new toolkit of best practices to help nursing homes, states and departments of health address the COVID-19 crisis within nursing homes. The toolkit shares strategies and interventions from front-line providers, state governors’ COVID-19 task forces, associations and other experts, and is intended to serve as a compendium of resources dedicated to tackling the specific challenges facing nursing homes during the pandemic. Among the issues covered in the toolkit, which CMS said it will periodically update, are cleaning and disinfection, testing and workforce and staffing.

**HHS Awards Grants for Telehealth Training:** More than 150 organizations, including hospitals, received $15 million in grants to increase telehealth training during the COVID-19 pandemic, the Department of Health and Human Services announced. Funded by the Coronavirus Aid, Relief and Economic Security Act and awarded through the Health Resources and Services Administration, grants will go toward maximizing telehealth for COVID-19 referrals for screening and testing, case management, outpatient care and other essential services.

**CMS Releases FAQ on Requirement to Post Cash Price for Diagnostic Tests:** The Centers for Medicare & Medicaid Services has posted a FAQ on the Coronavirus Aid, Relief, and Economic Security Act requirement that providers of COVID-19 diagnostic tests make public the cash price for the tests on their website during the public health emergency. The FAQ also notes that under the CARES Act and Families First Coronavirus Response Act, group health plans generally must reimburse providers of COVID-19 diagnostic tests at the negotiated rate or cash price, and cover certain COVID-19 diagnostic testing without cost sharing, prior authorization or other medical management requirements during the public health emergency.

**Moody's Report Says Coronavirus to Pose Hospital Credit Risks Through 2021:** The nonprofit hospital and health care sector will continue to face credit risks from the coronavirus into 2021, according to a report released by Moody’s Investors Service. “Although federal government stimulus and emergency response funding will curb some of the losses, the assistance is unlikely to fully compensate hospitals,” the report notes. “While financial recovery for the sector depends on restarting nonemergency or elective services, the
pace and timing of that process will likely vary significantly by geography depending on when restrictions are lifted.”

**White House Announces Overhaul of Strategic National Stockpile:** President Trump announced plans to expand and restructure the Strategic National Stockpile. The White House said it plans to expand domestic production of supplies and equipment and utilize technology to improve visibility of supply chains. Separately, President Trump signed an executive order assigning authority under the Defense Production Act to the U.S. International Development Finance Corporation, headed by former Center for Medicare and Medicaid Innovation Director Adam Boehler, to provide financing to key industries producing goods and services needed to increase national stockpiles.

**FBI and CISA Warn of Serious Nation State Cyber Threats, Other Top Vulnerabilities:** China and its proxies have been observed attempting to identify and illicitly obtain valuable intellectual property and public health data related to vaccines, treatments, and testing from networks and personnel affiliated with COVID-19-related research, which could jeopardize the delivery of secure, effective, and efficient treatment options, the FBI and CISA warned recently.

**FDA Issues EUAs for Nurse Call System and Heart Diagnostic Tool:** The Food and Drug Administration authorized the emergency use of the Ascom telecare IP Nurse Call System and Eko electrocardiogram Low Ejection Fraction Tool. FDA said the remote call system could reduce contact with COVID-19 patients in isolation rooms; the screening device provides an assessment of possible underlying cardiac conditions in confirmed or suspected COVID-19 patients.

**SAMHSA Announces COVID-19 Grants for Suicide Prevention:** Community-based primary and behavioral health care providers, hospital emergency departments and other eligible entities can apply through May 22 for grants of up to $800,000 to support suicide prevention during the COVID-19 pandemic, the Substance Abuse and Mental Health Services Administration announced last week. The agency expects to award 50 grants.

**FEMA Updates Policy on Medical Care Costs Eligible for Financial Assistance:** The Federal Emergency Management Agency updated its policy for determining medical care costs eligible for assistance under its Public Assistance Program, available to government entities and certain private non-profit organizations during the COVID-19 emergency.

**FDA Authorizes Propofol Emulsion for Emergency Use for COVID-19 Ventilator Sedation:** The Food and Drug Administration May 8 authorized the emergency use of Fresenius Propoven 2% Emulsion, which the agency says "may be effective to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19 who require mechanical ventilation in an ICU setting." The EUA was necessary because Fresenius Propoven 2% Emulsion has important differences in its formulation compared to FDA-approved propofol drugs; FDA therefore says that providers should consult the fact sheet for more information before the drug's administration.

**CMS Provides Eligibility Relief for Hospitals:** The Centers for Medicare & Medicaid Services recently provided hospitals with new Medicare blanket waivers to address the COVID-19 public health emergency. The waivers expand hospitals’ ability to offer swing-bed services for patients who do not require acute care but do meet the skilled nursing facility level-of-care criteria. This waiver provides additional options in the case where hospitals are unable to find placement in SNFs.
The policy also provides relief by waiving, for the duration of the public health emergency, eligibility requirements for the following:

- Hospitals classified as sole community hospitals, in which CMS waived distance, market-share and applicable bed requirements; and
- Hospitals classified as Medicare-dependent, small rural hospitals, in which CMS waived eligibility requirements that the hospital has 100 or fewer beds during the cost reporting period and at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals entitled to Medicare Part A benefits during the specified hospital cost reporting periods.

Both eligibility waivers are intended to assist hospitals in meeting their communities’ needs, including increasing hospital capacity and promoting COVID-19 patients’ appropriate cohorting.

State Issues

Delaware

Regulatory

**Governor Carney Releases Phase 1 Economic Reopening Guidance**

Governor Carney released guidance for Phase 1 of Delaware’s rolling reopening. Delaware’s Phase 1 reopening plan provides general and sector-specific guidance for Delawareans and Delaware businesses. Phase 1 of Delaware’s economic reopening will begin on June 1. Delaware has been implementing a rolling reopening of the economy — permitting establishments to open, if they can do so safely in accordance with guidance from the Delaware Division of Public Health (DPH) and the U.S. Centers for Disease Control and Prevention (CDC). As Delaware enters Phase 1, Delawareans must still wear face coverings in public settings. Delawareans and Delaware businesses also must adhere to strict social distancing requirements, and follow basic hygiene practices, including frequent hand washing. Vulnerable Delawareans should continue to shelter in place during Phase 1.

**Governor Carney Announces Statewide Contact Tracing Plan for COVID-19**

Governor John Carney announced that the State of Delaware entered into an agreement with the nonpartisan research institution NORC at the University of Chicago to build Delaware’s statewide contact tracing program to contain COVID-19, limit Delawareans’ exposure to the disease, and restart Delaware’s economy. The contact tracing program builds on Delaware’s statewide plan to test up to 80,000 Delawareans monthly for COVID-19. Expanded testing and contact tracing efforts are key to reopening Delaware’s economy under guidance from the White House and the U.S. Centers for Disease Control and Prevention (CDC). NORC also has partnered with the State of Maryland to perform contact tracing. Delaware and Maryland will share information to more effectively monitor COVID-19’s spread across state lines.

State Issues

Pennsylvania

Legislative
Legislation Permitting County Governments to Develop COVID-19 Plans Headed to Governor’s Desk
Legislation passed by the Senate and House that gives county governments the option to develop and implement their own plans to prevent the spread of COVID-19 by permitting industries that have not already been deemed essential to operate, if it is safe to do so, will soon be headed to Governor Tom Wolf for consideration.

Senate Bill 327 also requires:
- The Governor to notify specified individuals when a statute or regulation is suspended, modified, or waived under the disaster declaration for the COVID-19 emergency;
- The Treasury Department to review debt held by the Commonwealth;
- The establishment of the COVID-19 Cost and Recovery Task Force to monitor and track the response by the Commonwealth to the public health emergency;
- Suspension of new regulations under the Regulatory Review Act during the COVID-19 declaration of disaster emergency issued by the Governor; and
- Require the Department of General Services to conduct an annual survey of state facility usage.

State Issues

Pennsylvania
Regulatory

Insurance Department Releases Guidance Related to In-Person Operations and Sales by Insurance Producers
The Insurance Department on Friday posted guidance related to in-person operations and sales for insurance licensees in counties moving to the yellow phase of reopening in the Commonwealth. The guidance has been submitted for publication in the Pennsylvania Bulletin. The guidance is as follows:
- Telework and remote operations must continue where feasible in counties that have been designated to move to the yellow phase;
- In instances where telework and remote operations are not feasible, insurance licensees will be permitted to resume in-person operations, including in-person sales, with restrictions to protect licensees and consumers;
- Licensees must adhere to the guidance, building safety and business safety orders issued by Governor Tom Wolf that details procedures businesses must follow to conduct in-person operations in counties slated to move to the yellow phase of reopening;
- Licensees are advised that unsolicited in-person sales continue to be prohibited across the commonwealth under the Governor’s order, regardless if licensees are operating in red or yellow counties; and
- Any insurance licensee found to be in violation of this Notice may be subject to Enforcement actions by the Pennsylvania Insurance Department, including the levying of monetary penalties and revocation or suspension of license. Additionally, non-compliance can result in a referral to the Pennsylvania State Police for further prosecution.
Highmark is assessing the impact of this guidance on its operations in counties, which have moved into the yellow phase or are moving to the yellow phase.

**Governor Wolf to Move 12 More Counties to the Yellow Phase on May 22**

Last Friday, Governor Tom Wolf announced that several counties in South Central Pennsylvania, in addition to Beaver County in Southwestern Pennsylvania, will be moving into the yellow phase on Friday May 22 at 12:01 AM. Those counties include Adams, Beaver, Carbon, Columbia, Cumberland, Juniata, Mifflin, Perry, Susquehanna, Wyoming, Wayne, and York. With the addition of these counties, there will be a total of 49 counties in the yellow phase. The remaining 18 counties are still in the red phase.

Moving into the yellow phase does not guarantee that a county will next move to the green phase. The State is closely monitoring the counties in the yellow phase. If there is an increase in COVID-19 cases, a county may move back to red in order to not overwhelm the healthcare system. The Governor urges all Pennsylvanians to continue to exercise good judgment.

**Pennsylvania Distributes Two Remdesivir Shipments to Hospitals**

Last week, Pennsylvania received two shipments of the investigational antiviral medication, remdesivir—an experimental treatment for hospitalized patients with advanced COVID-19, and distributed the doses of the drug to hospitals across the Commonwealth.

The Pennsylvania Department of Health distributed the drug to hospitals based on the number of COVID-19 patients at the hospital over a recent seven-day period, and the severity of the illness of those patients, based on whether they are on a ventilator.

The first allotment—of 1,200 doses—was sent to fifty-one hospitals on May 12. Pennsylvania’s second shipment—of nearly 8,000 doses—was provided to 21 hospitals on May 15. Another 58 hospitals are slated to receive the drug today.

The U.S. Food and Drug Administration (FDA) issued an emergency use authorization (EUA) for the drug on May 1, 2020. Preliminary results of a randomized controlled clinical trial of the investigational drug in hospitalized patients suggested that remdesivir was associated with faster recovery.

**Why it matters:** The Hospital & Healthsystem Association of Pennsylvania is in the process of convening a clinical panel with expertise in infectious disease, clinical research, and medical ethics, to help provide input to the state in future distributions of the drug. Hospitals that receive an allocation should be mindful that they need to consider carefully how to make decisions about how the drug is used.

**PA Department of Health Updates Hospital Guidance Mandating Patient Testing for COVID-19 Prior to Discharge to a Long-term Care Facility**

The Department of Health (DOH) revised its hospital guidance on May 12, requiring mandatory COVID-19 testing for patients prior to discharge to a nursing care facility, personal care home, or an assisted living residence. If a patient tested positive for COVID-19 prior to admission to the hospital, the hospital does not need to test the patient again.
While hospitals must test patients for COVID-19 prior to discharge, test results do not need to be obtained prior to discharge. Hospitals must communicate to the receiving facility that a test has been administered, and the results or that results are pending, if the results have not been received by the hospital. Facilities may refuse to accept a patient/resident if a COVID-19 test has not been administered.

Per DOH’s guidance, patients known to have or suspected of having COVID-19 but awaiting test results should be discharged to a facility with the ability to adhere to infection prevention and control recommendations of the DOH and the U.S. Centers for Disease Control and Prevention for the care of COVID-19 patients. DOH’s guidance precludes facilities from refusing to accept or readmit a patient or resident due to pending or positive test results. DOH reiterates this message in its Interim Guidance for Nursing Care Facilities during COVID-19 directing facilities to adhere to HAN 502.

This updated guidance is effective immediately. DOH may update or supplement this guidance as needed.

**Why it matters:** Vast numbers of deaths from coronavirus have come in nursing homes, accounting for nearly half of COVID-19 deaths in Pennsylvania. In addition to shortages of staff, supplies, and personal protective equipment, the primary reason for problems in these facilities has been a failure to have a plan to control infection. As a result, hospitals must work closely with nursing homes to ensure that patients are only discharged to a facility with the ability to adhere to infection prevention and control recommendations of the DOH and CDC for the care of COVID-19 patients.

---

**State Issues**

**West Virginia**

**Legislative**

**Liability Protection Bill to Help West Virginia Citizens During COVID-19 Pandemic**

Senator President Mitch Carmichael announced that legislation is being crafted to extend liability protections to small business owners and workers, including health care workers and first responders who are at the forefront in treating citizens impacted by the Coronavirus pandemic. According to Carmichael, the legislation targets lawsuit abuse and individuals seeking to take advantage of the COVID-19 crisis. Carmichael said he believes the Legislature can quickly take action that will provide protections against these lawsuits.

---

**State Issues**

**West Virginia**

**Regulatory**

**New Emergency Order Requires Health Insurers to Cover Diagnostic Testing**

The West Virginia Insurance Commissioner issued Emergency Order 20-EO-07 to mandate health insurers offering group and/or individual health insurance to provide coverage for diagnostic testing for the detection of COVID-19 and related services to all individuals who reside or work in assisted living residences and residential care communities, as identified in Executive Order 27-20 and Executive Order 35-20.
The order also stipulates the following:

- Has a retroactive effective date to March 18, 2020;
- Benefits must be provided without imposing any cost-sharing requirements, including deductibles, copayments, and coinsurance;
- Benefits are not subject to any prior authorization or other medical management requirements;
- With this benefit being a mid-year plan change, the insurance commissioner will take a non-enforcement position as long as those changes are made to provide increased coverage for services related to the diagnosis and treatment of COVID-19 during the declared public health emergency, national emergency, insurance emergency and State of Emergency; and
- The insurance commissioner may take enforcement action against any health insurer that attempts to limit or eliminate other benefits, or to increase cost-sharing, to offset the costs of increasing the generosity of benefits related to the diagnosis and/or treatment of COVID-19.

Why it matters: Highmark West Virginia is complying with all Emergency and Executive Orders issued by the insurance commissioner and governor.

West Virginia Prepares for Week Four Reopening
Governor Jim Justice announced week four of his reopening economy plan will begin Thursday, May 21. The following businesses and public activities will be allowed to resume operations:

- Indoor dining at restaurants at 50 percent capacity;
- Large, specialty retail stores;
- State park campgrounds to in-state residents;
- Outdoor recreation rentals;
- Outdoor motorsport and power sport racing without spectators; and
- The Hatfield-McCoy trail system.

With the Memorial Day holiday approaching, cabins and lodges at state parks will reopen to in-state residents on May 26.

Wheeling-Ohio County Health Department Issues Notice for Required Universal Face Coverings to Reduce COVID-19
As businesses begin to open in West Virginia, the Wheeling-Ohio County Health Department issued a notice highlighting specific requirements for employees and guests, including the wearing of masks or cloth face coverings to further prevent the spread of COVID-19. The guidance includes:

- **Small businesses with 10 or fewer employees**: Require employees to wear PPE when appropriate, with special considerations for those employees that come into contact with the general public;
- **Restaurants with takeaway service or outdoor dining**: Require all employees to wear cloth face coverings at all times. Such coverings shall be cleaned or replaced daily;
- **Religious entities and funeral homes**: All attendees should sanitize their hands and put on a mask or face covering before entering the building;
- **Barbershops, hair salons, nail salons, pet grooming and other professional services**: Professionals should wear masks as a safety measure when providing a service. These masks can
be disposable or cloth and must be disposed of or washed properly as required by the CDC. Disposable masks should be made available to consumers and may only be used for a single customer.

- **Wellness centers operated by or with WV licensed health care providers:** Encourage all employees and patrons to wear appropriate personal protective equipment (PPE) where applicable, including appropriate face coverings;
- **Drive-in movie theaters:** Require employees to wear PPE as and when appropriate, with special considerations for those employees that come into contact with the general public;
- **Indoor dining at restaurants:** Require all employees to wear cloth or disposable face coverings at all times. Such coverings shall be cleaned or replaced daily;
- **Large/specialty retail stores:** Require employees to wear PPE when appropriate, with special considerations for those employees that come into contact with the general public;
- **State park campgrounds:** Guests should be strongly encouraged to wear cloth or disposable cloth face coverings. Require employees to wear a mask or cloth face covering at all times when the employee is on duty;
- **Outdoor recreation rentals:** Outfitters are encouraged to provide all guests with masks upon arrival, if they do not already have them. Patrons should be encouraged to use cloth or disposable face coverings while on the premises. Employees must wear proper PPE, including cloth face coverings, when working on shared equipment and interacting with patrons;
- **Lodging Facilities:** Guest should be strongly encouraged to wear cloth or disposable cloth face coverings in common areas. Bellmen and valets should wear a mask or cloth face covering when interacting with guests. Workers and guests should be informed to wear cloth face coverings at all times in property public spaces and common areas.
- **Tanning:** Require employees to wear PPE when appropriate, with special considerations for those employees that come into contact with customers.

The Wheeling-Ohio County Health Department strongly supports the recommendations from the Centers for Disease Control and Prevention (CDC) that everyone wear non-medical face coverings in public settings. This recommendation does not replace recommendations to continue practice social distancing (staying 6 feet apart), to stay home, and to frequently wash and sanitize your hands.
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/).

The content of this email is confidential and intended for the recipient specified only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.