Federal Issues

Regulatory

**President Trump Issues Executive Order on Regulatory Relief to Support Economic Recovery**

On May 19, 2020, President Trump signed an [executive order](#) entitled “Regulatory Relief to Support Economic Recovery.” The Order seeks to combat the economic consequences of COVID-19 by giving “businesses, especially small businesses, the confidence they need to re-open.” In particular, the Order instructs agencies to “rescind, modify, waive, or provide exemptions from regulations and other requirements that may inhibit economic recovery.”

The Order comprises five specific directives to executive branch departments, executive agencies, and independent agencies:

- **First:** The Order mandates that agencies use, to the fullest extent possible and consistent with applicable law their emergency authorities to support the economic response to the COVID-19 outbreak. Relatedly, the Order encourages agencies to promote economic recovery through non-regulatory actions;
- **Second:** The Order requires agencies to identify regulatory standards that may inhibit economic recovery.

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economic recovery. Once agencies have identified those standards, they must then consider a variety of responses for the purpose of promoting job creation and economic growth. These include: (1) taking appropriate action to temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements; (2) exercising appropriate temporary enforcement discretion; and (3) providing appropriate temporary extensions of time for compliance;

• **Third**: The Order instructs agencies to provide regulated entities with compliance assistance—namely, guidance regarding what constitutes compliance and relaxed enforcement against those who attempt to comply in good faith. For example, the order requires agencies, other than the Department of Justice, to accelerate procedures for issuing a pre-enforcement ruling regarding whether proposed conduct in response to the COVID-19 outbreak is consistent with statutes and regulations administered by the agency. The Order further encourages agencies to formulate and make public, policies of enforcement discretion that decline enforcement against persons and entities that have attempted in reasonable good faith to comply with applicable statutory and regulatory standards;

• **Fourth**: The Order mandates that agencies revise their procedures and practices to reflect certain principles of fairness in administrative enforcement. The principles included largely reflect basic notions of due process, such as the proposition that liability should be imposed only for violations of statutes or duly issued regulations, after notice and an opportunity to respond and administrative enforcement should be free of unfair surprise; and

• **Fifth**: The Order requires agencies to review any temporary regulatory or enforcement measures they adopted in response to COVID-19 and determine which, if any, would promote economic recovery if made permanent. Agencies must then report the results of their determination to the Director of the Office of Management and Budget, the

- **House Panel Approves Concurrent Resolution to Address Business Waivers**
- **Children’s Mental Health Ombudsman Bill Clears House Committee**
- **House Children and Youth Committee to Consider Postpartum Depression Legislation**

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Assistant to the President for Domestic Policy, and the Assistant to the President for Economic Policy, who will monitor compliance with the Order.

Why this matters: The President’s Order has the potential to transform the regulatory landscape across a wide array of industries, including health care.

Federal COVID-19 Policy Guidance and Other Developments

HHS Extends Attestation Deadline for Emergency Funds: The Department of Health and Human Services has extended the deadline for health care providers to attest to receipt of payments from the Public Health and Social Services Emergency Fund and accept the terms and conditions.

Providers now will have 90 days, increased from 45 days, from the date they receive a payment to attest and accept the terms and conditions or return the funds. For example, the deadline for providers who received payment on April 10 is extended to July 9 from May 24. With the extension, not returning the payment within 90 days of receipt of payment will be viewed as acceptance of the terms and conditions.

The Coronavirus Aid, Relief, and Economic Security Act and Paycheck Protection Program and Health Care Enhancement Act included $175 billion in the Public Health and Social Services Emergency Fund to reimburse health care providers for health care-related expenses or lost revenues not otherwise reimbursed that are attributable to COVID-19.

CDC Issues Interim Guidelines for COVID-19 Antibody Testing: The Centers for Disease Control and Prevention issued interim guidelines for serologic methods used for monitoring and responding to the COVID-19 pandemic. The guidelines, which CDC says it will update regularly, include recommendations for choice of test and testing strategy; individuals who test positive for anti-SARS-CoV-2 antibodies; and additional considerations on the use of serologic tests.

FDA Approves Two Drugs to Help Address Shortages: The Food and Drug Administration approved two abbreviated new drug applications expected to alleviate shortages and help during the COVID-19 emergency.

Dexmedetomidine hydrochloride 0.9% sodium chloride injection is indicated for sedation of initially intubated and mechanically ventilated patients during treatment in an intensive care setting and sedation of non-intubated patients prior to and/or during surgical and other procedures.

Succinylcholine chloride injection USP 200 mg/10 mL is indicated for general anesthesia, and to facilitate tracheal intubation and provide skeletal muscle relaxation during surgery or mechanical ventilation.
FDA Updates Certain COVID-19 Drug Compounding Guidance: The Food and Drug Administration updated two guidances for the temporary compounding of certain drugs used to treat COVID-19 patients.

The guidance for temporary compounding of certain drugs for outsourcing facilities now includes information to help hospitals determine which facilities are covered by the policy and clarifies policies for testing both container-closures and product stability. It also says FDA will not take action against outsourcing facilities for filling drug orders for copies of FDA-approved products.

In addition, FDA updated guidance for temporary compounding of certain drugs by pharmacy compounders to include reporting to FDA any adverse events associated with drugs they compounded.

FDA Removes Tests from List of Antibody Tests Under Review: The Food and Drug Administration posted a list of COVID-19 antibody tests that will no longer be marketed because they have not been authorized for emergency use under its revised policy or the manufacturer withdrew them from the list of tests under review for emergency use. To help ensure COVID-19 antibody tests are trustworthy, the agency revised its guidance May 4 to recommend manufacturers request an emergency use authorization within 10 business days after they validate their test.

HHS Announces Nearly $4.9 Billion Distribution to SNFs Affected by COVID-19: The Department of Health and Human Services announced that it has begun distributing nearly $4.9 billion from the Public Health and Social Services Emergency Fund to skilled nursing facilities to help them combat COVID-19.

HHS will make distributions to SNFs based on both a fixed basis and variable basis. Each SNF will receive a fixed distribution of $50,000, plus a distribution of $2,500 per bed. All certified SNFs with six or more certified beds are eligible for this targeted distribution.

The additional funds may help SNFs address critical areas such as labor, scaling up testing capacity, acquiring personal protective equipment, and other expenses directly linked to the pandemic.

Funding recipients must attest that they only will use the payments for permissible purposes, as set forth in the terms and conditions, and agree to comply with future government audit and reporting requirements.

HHS Releases National Health Care Quality Roadmap: The Department of Health and Human Services will work this year with the departments of Defense and Veterans Affairs and private sector stakeholders to develop a governance structure to improve and align federal health care quality programs while reducing administrative burden, according to a National Health Quality Roadmap released by HHS.

Required by an executive order last year, the roadmap outlines principles and specific actions to improve and align data collection, reporting, and measures in federal quality programs.

COVID-19 Could Spur More ‘Deaths of Despair,’ Wellness Advocates Warn: An annual report into death by several factors tied to mental health and wellbeing — otherwise referred to as “deaths of despair” — topped 150,000 in 2018. The report, authored by the Trust for America’s Health and the Well Being Trust and based on 2018 data, shows that while opioid deaths declined slightly, those induced by alcohol, suicide, synthetic opioids and psychostimulants continued to rise.

These trends, however, could be exacerbated by COVID-19’s impact on mental wellness, the groups warned. They recommend that public health organizations prioritize efforts to mitigate the COVID-19
pandemic’s impact on mental health, substance use, suicide and overall well-being by expanding existing wellness programs and developing new ones to reach those at risk.

**CDC Issues Updated Guidance for Newborns at Risk for COVID-19:** The Centers for Disease Control and Prevention issued revised guidance for pediatric clinicians on caring for newborns with confirmed or suspected COVID-19 or known COVID-19 exposure, including birth to a mother with confirmed or suspected COVID-19.

According to the CDC, data suggest that infants under one year old may be at higher risk for severe illness from COVID-19 compared with older children. The new guidance covers the diagnosis, evaluation, infection prevention and control practices for children younger than 29 days old.

**HHS Backs AstraZeneca COVID-19 Vaccine Candidate, Could Be Ready By October:** A collaboration between the Department of Health and Human Services and AstraZeneca is projected to make available 300 million doses of a COVID-19 vaccine, the first of which could be available as early as October, HHS said.

The agreement is part of the White House’s Operation Warp Speed, a public-private effort to facilitate, at an unprecedented pace, the development, manufacturing, and distribution of COVID-19 countermeasures. HHS says phase three clinical studies of AZD1222 are set to start in the summer. The Food and Drug Administration must still approve an emergency use authorization or licensure in order to make the vaccine available.

AZD1222 is the fourth vaccine candidate to receive HHS’ Biomedical Advanced Research and Development Authority support for late-state development and manufacturing. BARDA can provide up to $1.2 billion for vaccine manufacturing technology transfer, process development, scaled-up manufacturing and other development activities.

**Partnership Releases Cybersecurity Crisis Response Guide:** The Health and Public Health Sector Coordinating Council, a public-private partnership, released a crisis response guide to help health care providers respond to a critical incident.

The guide covers four focus areas during critical incidents: education and outreach, prevention techniques, detection and response, and team communications and wellbeing.

**FDA Approves Drug for Tracheal Intubation, Surgery or Ventilation Facilitation:** To facilitate tracheal intubation and provide skeletal muscle relaxation during surgery or mechanical ventilation, the Food and Drug Administration yesterday approved the use of succinylcholine chloride injection USP 200 mg/10 mL. FDA warns that the drug’s side effects include anaphylaxis, hyperkalemia and malignant hyperthermia.

**CDC Releases Framework for Providing Non-COVID-19 Clinical Care During the Pandemic:** The Centers for Disease Control and Prevention has released a framework for providing non-COVID-19 clinical care during the pandemic, based on the level of community transmission and potential for patient harm from deferring in-person care.

Among other considerations, CDC said health care systems should be prepared to rapidly detect and respond to an increase of COVID-19 cases in the community; provide care in the safest way possible; and
consider that services may need to expand gradually. “Given the dynamic nature of the pandemic, considerations may change over time and vary by practice type and setting,” the agency notes.

The AHA, Association of periOperative Registered Nurses, American College of Surgeons, and American Society of Anesthesiologists in April released a roadmap offering considerations for safely resuming elective surgery as the COVID-19 surge wanes in different parts of the country. Building on the April guidance, AHA, AORN, and AdvaMed released clinically based guidance to support the safe reentry of medical device representatives into hospitals and other surgical facilities as they resume elective surgeries.

CMS Gives Broad COVID-19 Test Payment-setting Authority to MACs: The Centers for Medicare & Medicaid Services said that until Medicare sets national payment rates for COVID-19-related testing claims, its Medicare Administrative Contractors have authority to set payment amounts in their respective jurisdictions.

The policy applies to claims received for newly created Healthcare Common Procedure Coding System codes and includes two codes used by laboratories to bill for certain COVID-19 lab tests, including serology tests. There continues to be no cost-sharing with Medicare patients for these tests.

HHS Provides $225 Million for Rural Communities’ COVID-19 Testing: The Health Resources and Services Administration, part of HHS, provided $225 million to rural health clinics for COVID-19 testing. The funding will support the expansion of testing by more than 4,500 RHCs in underserved rural areas nationwide. HRSA said that the funds may be used for a wide range of COVID-19 testing and related expenses, including planning for implementation of a COVID-19 testing program; procuring supplies to provide testing; training providers and staff on COVID-19 testing procedures; reporting data to HHS on COVID-19 testing activities; and building temporary structures, leasing properties, and retrofitting facilities to support COVID-19 response efforts.

In addition, HRSA said it will award $500,000 to support RHCs’ COVID-19 technical assistance efforts, which include conducting webinars and providing resources and guidance for implementation and management of testing programs. Read more here.

Union Seeks to Compel OSHA to Issue COVID-19 Emergency Standard: The AFL-CIO asked the U.S. Court of Appeals for the District of Columbia Circuit to order the Occupational Safety and Health Administration to issue within 30 days an emergency temporary standard to protect U.S. workers from COVID-19 under the Occupational Safety and Health Act of 1970.

The AFL-CIO and National Nurses United petitioned OSHA in March to issue an emergency temporary standard under section 6(c) of the Act. The court has ordered the Department of Labor to respond to the unions’ petition by 4:00 p.m. Friday, May 29 and the unions to reply to the department’s response by Tuesday, June 2. The petition does not specify the precise contents of an emergency standard and if compelled by the court to comply, the department would have a good deal of discretion in creating such a standard.

CMS Recommends Criteria for Assessing and Reopening Nursing Homes: In response to the significant impact of the COVID-19 pandemic on nursing homes, the Centers for Medicare & Medicaid Services recommended criteria for state and local officials who are considering how to mitigate risks.
The agency addresses the following factors: case status in a nursing home; adequate staffing levels; access to adequate testing; access to personal protective equipment; visitor guidelines; and local hospital capacity. In addition, the CMS guidance includes a three-phase reopening process for nursing homes and a FAQ document.

The agency also noted that because of the inherent risks of congregate living in this setting, aggressive efforts are still required and that nursing homes should be among the last facilities to reopen.

**CDC Distributes $11B to Expand COVID-19 Testing Capacity:** The Centers for Disease Control and Prevention awarded $10.25 billion from the Paycheck Protection Program and Health Care Enhancement Act to states, territories, and local jurisdictions and $750 million to tribal health programs to expand COVID-19 testing capacity and related activities. The funding will help them develop, purchase, administer, process, and analyze COVID-19 tests and trace and monitor contacts of infected people. View the latest funding allocations as well as previous COVID-19 allocations to the jurisdictions here.

**HHS Awards Contract to Make COVID-19 Drug Ingredients, Generics in U.S.:** The Department of Health and Human Services announced a $354 million agreement with a private partnership to make more active pharmaceutical ingredients and generic drugs in the United States to treat patients hospitalized with COVID-19 and prevent shortages of essential medicines.

Under the four-year agreement, Phlow Corporation will partner with Civica Rx, the nonprofit generic drug company created by hospital systems and others; AMPAC Fine Chemicals; the Medicines for All Institute at Virginia Commonwealth University’s College of Engineering and others to rapidly make the active pharmaceutical ingredients and medicines using advanced manufacturing processes. The contract can be extended up to 10 years to maintain the system and supplies.

**AHA, Others Release Additional Guidance for Resuming Elective Surgeries:** The American Hospital Association, Association of periOperative Registered Nurses, and AdvaMed released clinically based guidance to support the safe reentry of medical device representatives into hospitals and other surgical facilities as they resume elective surgeries paused during the COVID-19 pandemic.

Building on an April 17 roadmap for safely resuming elective surgery released by the AHA, AORN, American College of Surgeons, and American Society of Anesthesiologists, the guidance recommends hospitals provide personal protective equipment to medical device representatives essential to an invasive procedure and that representatives not provide their own PPE unless a facility has a shortage.

The guidance also does not recommend diagnostic testing for asymptomatic company representatives to prioritize COVID-19 diagnostic testing for patients, symptomatic health care workers, and those with known or suspected exposures.

**The Congressional Research Service published a frequently asked questions (FAQs) on private health insurance and COVID-19.** The FAQ details the covered benefits and consumer cost sharing related to COVID-19 testing, treatment, and a potential vaccine. It discusses recent legislation, references existing federal requirements, recent administrative interpretations of them in relation to COVID-19, and notes state and private-sector actions.
The Health Sector Coordinating Council (HSCC) and the Health Information Sharing and Analysis Center (H-ISAC) jointly released a tactical guide for how health care organizations can manage cybersecurity threats that occur during a crisis, such as the COVID-19 pandemic.

Over 30 employer and health care purchaser organizations, including the American Benefits Council, the ERISA Industry Committee, the National Alliance of Healthcare Purchaser Coalitions, and the Pacific Business Group on Health, signed a letter sent to Congressional Leadership communicating the business community's health care policy priorities in the context of the ongoing coronavirus pandemic. The letter outlines specific recommendations "to ensure our employees, their families, and everyone in our country, is able to access high quality, affordable health care during the COVID-19 pandemic and after the pandemic ends" and addressed the importance of COBRA subsidies and a long term solution to end surprise medical bills.

The Centers for Medicare & Medicaid Services (CMS) updated its guidance on billing codes for certain COVID-19 lab tests to include payment details for additional CPT codes created by the American Medical Association. Specifically, serology tests using CPT codes 86769 (single-step test that is often used at the point-of-care) and 86328 (a multi-step method test that is likely to be done by an independent lab or hospital), for which local Medicare Administrative Contractors (MACs) payment rates are $42.13 and $45.63, respectively.

The Food & Drug Administration (FDA) issued a Consumer Update and Coronavirus Testing Basics fact sheet to provide information about the different types of tests available and the steps involved in obtaining results. The fact sheet describes the different types of tests, outlines what they do, how long it takes to get results, and the limitations of each test.

The CDC released new information on their COVID-19 Serology Surveillance Strategy, including using serology testing for surveillance to better understand how many infections with SARS-CoV-2 have occurred at different points in time, in different locations, and within different populations in the United States.

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**CMS Releases Pre-Publication Version of the Final MA and Part D Rule for CY 2021**

Today, the Centers for Medicare & Medicaid Services (CMS) released a pre-publication version of a final regulation containing revisions to the Medicare Advantage (MA) and Part D Prescription Drug Benefit programs for calendar year (CY) 2021 (Fact Sheet). CMS states that this final rule “implements a subset of the proposals from the February 18, 2020, proposed rule" and "focuses on more immediate regulatory actions" before the June 1 bid deadline. CMS intends to address the remaining proposals in subsequent rulemaking later in the year.

**Highlights from CMS’ fact sheet and final rule include:**

- Codifies sections of the Cures Act that allow beneficiaries with End Stage Renal Disease (ESRD) to enroll in an MA plan, beginning in plan year 2021;
- Finalizes several Star Ratings changes, including increasing the weight of patient experience/complaints and access measures from 2 to 4 for 2023 Star Ratings (2021 measurement
period). CMS also finalized its proposal to directly remove outliers when setting cut points for certain measures but is delaying this change until 2024 Star Ratings (2022 measurement period);

- Finalizes changes to the medical loss ratio (MLR) calculations to ensure all amounts paid for covered services, including expanded supplemental benefits are counted as covered medical expenses;
- Codifies network adequacy standards and new flexibilities to encourage use of telehealth and improve access in rural areas;
- Removes outpatient dialysis as a facility specialty type that is subject to network adequacy standards. CMS also indicates that it will require an attestation from plans regarding access and availability of dialysis services, including outpatient facilities; and
- Expands the chronic conditions for which plans can offer certain supplemental benefits; and finalizes its proposal to impose restrictions on D-SNP "look-alike" plans beginning in 2022, but delays application to existing plans by one year, until 2023.

**State Issues**

**Delaware**

**Legislative**

**Delaware House of Representatives Meets Virtually**
The Delaware House of Representatives held a virtual session on May 26, 2020 to introduce and pass [House Concurrent Resolution 85](#) (HCR 85) to remove any impediments to conducting virtual meetings. This is the first time in Delaware history that the House of Representatives has met virtually. The Senate will meet virtually on May 27, 2020 to also vote on HCR 85. The Delaware General Assembly is expected to reconvene on June 30, 2020 to pass the budget bills for fiscal year 2021.

**State Issues**

**Delaware**

**Regulatory**

**State of Emergency Updates**
- Governor John Carney announced Delaware will lift the ban on short-term rental units and the mandatory 14-day quarantine for out-of-state travelers on June 1 as part of the rolling reopening of Delaware’s economy. Governor Carney also announced that outdoor gatherings of up to 250 people – including weddings and outdoor graduation ceremonies – will be permitted in Delaware beginning on June 1, with basic public health precautions in place to protect against spread of COVID-19. Cloth face coverings must be worn in accordance with Governor Carney’s State of Emergency declaration, and individuals must maintain social distance of at least six feet from anyone outside of their household.
Governor Carney provided an update on Delaware’s statewide testing plan, which aims to increase access in Delaware to 80,000 tests monthly. Vulnerable populations, including elderly Delawareans and members of low-income and at-risk communities are among those prioritized for community-based testing under the plan. Other priority groups include symptomatic individuals, anyone with known exposure to COVID-19, and certain front-line essential workers. Locations for testing events are being driven by data related to high incidence rates for COVID-19 cases. Testing times and locations will continue to be posted on a new testing calendar on the coronavirus.delaware.gov/testing website several days in advance.

Governor Carney signed the 19th modification to his State of Emergency declaration, formalizing steps taken earlier in the week to allow restaurants to expand outdoor seating capacity. All Delaware food and drink establishments may apply to their local municipal or county jurisdiction with plans to expand outdoor seating. The Delaware Office of Alcohol Beverage Control also will review plans submitted by applicants with liquor licenses. Delaware restaurants and bars are scheduled to open their indoor spaces at 30 percent of stated fire capacity during Phase 1 of Delaware’s economic reopening, beginning June 1. To help Delaware business prepare for reopening, the State of Delaware launched a new Business to Business Toolkit to help connect businesses with vendors selling masks, gloves, and other protective supplies. The toolkit includes a listing of self-reported information from suppliers that responded to the Governor Carney’s Community Call-to-Action. Governor Carney and the Delaware Division of Public Health (DPH) also updated guidance for Delaware churches and other communities of worship. Delaware churches and houses of worship may conduct outdoor services without limitations on gathering sizes, as long as they follow social distancing and other basic health precautions, including around handwashing and face coverings.

**State Issues**

**Pennsylvania**

**Legislative**

**Legislature Prepares to Address 2020-2021 Budget**

The Pennsylvania General Assembly returns to Harrisburg this week to consider what is being described as a “partial budget” to fund the Commonwealth for the first five months of the 2020-2021 fiscal year. The COVID-19 pandemic continues to impact the state’s economy, including a shortfall in tax revenues and increased spending to implement coronavirus mitigation plans.

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**Governor Wolf Vetoes Bill Authorizing Counties to Establish COVID-19 Mitigation Plans for Businesses**

On May 19, Governor Tom Wolf vetoed legislation that would have permitted Pennsylvania counties to develop and implement their own mitigation plans during the COVID-19 state of emergency. Senate Bill 327 also addressed the following:

- Required 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;
- Required the Treasury Department to review debt held by the Commonwealth;
- Established the COVID-19 Cost and Recovery Task Force to Monitor and track the response by the Commonwealth to the public health emergency;
- Suspended new regulations under the Regulatory Review Act during the COVID-19 declaration of disaster emergency issued by the Governor;
- Required the Department of General Services to conduct an annual survey of state facility usage; and
- Allowed counties to develop and implement a countywide COVID-19 mitigation plan for businesses.

**House Endorses Regional Response Health Collaborative Measure**

The House has voted 201-1 to approve legislation that would create the Regional Response Health Collaborative Act. House Bill 2510, sponsored by House Speaker Mike Turzai (R-Allegheny), will provide funding to support efforts to improve readiness of nursing homes, assisted living facilities, and personal care homes in preparing for and responding to the COVID-19 virus. The bill also provides federal emergency funding to the Department of Human Services, including:
- Long-Term Care: $449,000,000
- Long-Term Care-Managed Care: $8,000,000
- Community Health Choices: $50,000,000
- Community ID Waiver Program: $259,280,000
- Autism Intervention Services: $720,000

House Bill 2510 has been sent to the Senate for further consideration.

**House Panel Approves Concurrent Resolution to Address Business Waivers**

On May 21, the House Veterans Affairs and Emergency Preparedness Committee approved a concurrent resolution in part to address two gubernatorial vetoes for House Bill 2388 and House Bill 2412, measures that would have provided waivers to the Governor’s Business Closure Order to various industries. Attempts by House Republicans to override Governor Wolf’s veto of House Bill 2388 failed because it did not receive the required two-thirds vote in the House of Representatives.

The concurrent resolution, which must be adopted by both the House of Representatives and the Senate in order to take effect, addresses the following:

- **House Resolution 836** would terminate the COVID-19 Disaster Emergency. The premise for the concurrent resolution is that if the need arises in the case that the Executive Branch overreaches or violates the rights of Pennsylvania citizens, the Legislature could terminate the disaster emergency declaration. The resolution’s sponsor, Representative Russ Diamond (R-Lebanon) stated that the goal of the disaster emergency was to flatten the curve and not overburden hospitals, and emphasized that this has been met, which means that the emergency declaration is not needed anymore. Democrats on the committee expressed concerns with terminating the emergency disaster declaration that mainly revolved around newer federal funding ceasing for Pennsylvania with the termination of the disaster emergency.

House Resolution 836 is scheduled for consideration next week by the House of Representatives.

**Children’s Mental Health Ombudsman Bill Clears House Committee**
The House Human Services Committee voted unanimously to approve a proposal impacting children’s mental health. **House Bill 2187** would establish a statewide children’s mental health ombudsman. The ombudsman will report to the executive director of the Governor’s Office of Advocacy and Reform. The measure addresses the following:

- Advocating for the mental health needs of children;
- Identifying barriers to effective mental health treatment;
- Monitoring and ensuring compliance with statutes governing children’s mental health; and
- Receiving, investigating and resolving through administrative action complaints filed by a child or an individual legally authorized to act on behalf of the child.

**Why this matters:** The Pennsylvania Insurance Department has been focused on health insurer compliance with federal and state laws governing mental health benefits. If the bill becomes law, health plans may be affected.

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**House Children and Youth Committee to Consider Postpartum Depression Legislation**

The House Children and Youth Committee will consider legislation that adds postpartum depression as a qualifying “at risk” factor in order to allow a child to receive early intervention services – **House Bill 1270**. Postpartum depression education and services continue to be a priority for Highmark and the Allegheny Health Network.

The committee also plans to consider the following non-controversial resolutions:

- House Resolution 793 – Designates October 5 as Anti-Bullying Awareness Day
- House Resolution 748 – Designates November 19 as Children’s Grief Awareness Day

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**State Issues**

**Pennsylvania**

Regulatory

**Governor Wolf Announces Counties Moving to Yellow and Green Status**

Governor Wolf announced that the following counties would be moving to the yellow phase effective Friday, May 29: Dauphin, Franklin, Huntingdon, Lebanon, Luzerne, Monroe, Pike, and Schuylkill Counties. He anticipates the rest of the state will move to the yellow phase by June 5.

Also on May 29, 17 counties will move to the green phase: Bradford, Cameron, Clearfield, Clarion, Crawford, Elk, Forest, Jefferson, Lawrence, McKean, Montour, Potter, Snyder, Sullivan, Tioga, Venango, and Warren.

As a reminder, Yellow Phase counties must follow these guidelines:

- Telework must continue where feasible;
- Businesses with in-person operations must follow business and building safety orders;
- Child care open complying with guidance;
- Congregate care and prison restrictions in place;
- Schools remain closed for in-person instruction;
Stay at home order lifted for aggressive mitigation;
Large gatherings of more than 25 prohibited;
In-person retail allowable, curbside and delivery preferable;
Indoor recreation, health and wellness facilities and personal care services (such as gyms, spas, hair salons, nail salons and other entities that provide massage therapy), and all entertainment (such as casinos, theaters) remain closed;
Restaurants and bars limited to carry-out and delivery only; and
All businesses must follow CDC and DOH guidance for social distancing and cleaning.

State Issues

West Virginia
Regulatory

Reopening of West Virginia Moves into Weeks Four and Five
West Virginia Strong – the Comeback continues, moves into Week 4, 5:

Week 1: Thursday, April 30 – Sunday, May 3 (underway)
Week 2: Monday, May 4 – Sunday, May 10 (underway)
Week 3: Monday, May 11 – Sunday, May 17 (underway)
Week 4: Monday, May 18 – Sunday, May 24 (underway)
Week 5: Monday, May 25 – Sunday, May 31 (underway)
Week 6: Monday, June 1 – Sunday, June 7
Week 7: Monday, June 8 – Sunday, June 14

Guidance for Week 4, Monday, May 18, permitting the opening of:
- Fitness centers, gymnasiums, and recreation centers; and
- Sports training facilities (gymnastics, cheerleading, dance, martial arts, and similar facilities)

Thursday, May 21:
- Indoor dining at restaurants;
- Large/specialty retail stores;
- State park campgrounds for in-state residents only (Guidance for ALL campgrounds);
- Hatfield McCoy Trail System;
- Outdoor recreation rentals (Kayaks, bicycles, boats, rafts, canoes, ATVs, and similar equipment);
- Outdoor motorsport and powersport racing with no spectators;
- Tanning businesses;
- Whitewater rafting;
- Zip lining; and
- Indoor malls and similar facilities.

The executive order requiring out-of-state travelers to self-quarantine was lifted for Week 4. Additional is available for hotels, motels, condo hotels, rental properties, and cabins.

Guidance for Week 5, Tuesday, May 26:
- State Park cabins and lodges (In-state residents only);
- Bars (indoor bars at 50% capacity and outdoor bars);
- Museums and visitor centers; and
- Zoos.

Saturday, May 30, 2020:
- Spas and massage businesses; and
- Limited video lottery retailers (Guidance documents will be provided when available).

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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