Federal Issues
Legislative

House Freshmen Push for HIT Relief
As Congress returns from its district work period, 51 freshmen members of the House of Representatives – led by Reps. Anthony Brindisi (D-NY) and John Joyce (R-PA) – sent a letter to leaders of both parties in support of including a suspension of the Affordable Care Act’s Health Insurance Tax (HIT) in an end-of-the-year legislative package.

Why this matters
- The HIT adds hundreds of dollars annually to the cost of ACA policies, as well as Medicare Advantage and Medicaid managed care plans (paid by state governments).
- The bipartisan letter was signed by 24 Democrats and 27 Republicans, more than half of the freshman class.

The letter states: “As Congress considers policies to bring down health care costs, acting immediately to extend a moratorium on the HIT for 2020 and beyond is a step Congress can take now to protect individuals and families, seniors, and small businesses from higher health care costs...we urge you to include a delay of the HIT for 2020 and 2021 in legislation that must pass before the end of the year, to deliver lower...
health care costs to millions of Americans across the country."

Highmark joins AHIP, BCBSA and the employer-led Stop the HIT Coalition in advocating strongly for repeal or suspension of the HIT.

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**Federal Issues**

**Regulatory**

**Statutory Conscience Rights Rule Overturned**

A federal judge overturned the final rule on statutory conscience rights finding the rule violated the Administrative Procedure Act.

**Background**

The final rule was released in May by the Department of Health and Human Services (HHS) and was intended to go into effect on July 22; however, HHS delayed enforcement to November 22 due to the legal challenge. The final rule strengthened protections for health care workers employed by organizations receiving federal funds who have moral and/or religious objections to providing certain services.

**Why this matters:** There are no obligations for health plans at this time. It is expected the government will appeal the decision to the Second Circuit Court of Appeals.

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**State Issues**

**Pennsylvania**

**Regulatory**

**PA Supreme Court Strikes Down Statute of Repose for Medical Liability Suits**

The Pennsylvania Supreme Court, in *Yanakos v. UPMC*, struck down a provision in the Medical Care Availability and Reduction of Error (MCARE) Act that established a deadline for filing medical actions in Pennsylvania. The provision is known as a statute of repose. Since its passage during 2002, the MCARE Act had placed this hard deadline on medical liability actions, requiring that they be brought, with certain exceptions, within seven years of the alleged event.

**Background to the court case:** This case involved a liver transplant where the patient alleged, 12 years after the surgery, that she still suffered from the condition meant to be remedied by the transplant. The defendants sought to have the case dismissed due to the seven-year statute of repose outlined in the
MCARE Act. Both the trial court and the intermediate appellate court upheld the statute of repose which barred the claims.

On appeal, a sharply divided Supreme Court (4–3) declared the seven-year statute of repose in violation of Article 1, Section 11 of the Pennsylvania Constitution. Essentially, the court held that the statute of repose removed the plaintiffs' rights to Open Courts guaranteed by the Constitution, without a compelling reason.

**Why this matters:** This decision potentially opens up all medical providers, including hospitals, to claims made by plaintiffs for medical liability dating back several years, at least in cases where the plaintiff could not or did not “discover” his or her injury until much later.

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The Pennsylvania Legislature is in recess the week of November 11.

The Delaware Legislature has adjourned for the year.

The West Virginia Legislature has adjourned for the year.

**Congress**

The U.S. Congress is in session November 12-15.

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- 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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