Issues for the week ending March 20, 2020

Federal Issues

Legislative

COVID-19 Activity Continues To Dominate Washington

Congress continued its flurry of legislative activity related to the coronavirus last week as the Capitol remains closed to the public, with two House members and one Senator announcing they have tested positive and several others self-quarantined.

President Trump signed H.R. 6201, the "Families First Coronavirus Response Act," into law on Wednesday, as Senate negotiators were working on a third legislative package to address the outbreak.

H.R. 6201 is the second wide-ranging legislative package enacted by Congress this month in response to COVID-19. President Trump previously signed an $8.3 billion emergency supplemental appropriations bill on March 6. The new law features a diverse set of healthcare and economic policies, including:

- Requiring private insurers, Medicare, Medicaid, CHIP, Medicare Advantage plans and other federal programs to **cover COVID-19 diagnostic testing without cost-sharing;**
- Increased federal funding to cover the cost of COVID-19 testing;

In this Issue:

- A temporary 6.2 percent increase to states' **federal medical assistance percentage** (FMAP) for the duration of the public health emergency;
- Employees of companies with fewer than 500 employees can take up to **12 weeks of job-protected leave** under the Family and Medical Leave Act — 10 weeks of which are paid at two-thirds the employees' usual wage, as long as they meet certain conditions;
- Full-time employees can get two weeks (80 hours) of **paid sick leave**, provided they work for a company with fewer than 500 employees and meet other conditions;
- **Refundable tax credits to employers** to cover wages paid to employees while they are taking time off under the law's sick leave and family leave programs;
- More than $1 billion in **emergency funding for food aid; and**
- $1 billion for emergency transfers to states in FY2020 to process and pay **unemployment benefits.**

- **House and Senate Approve New Rules to Allow for Remote Voting**
- **Hospitals Request Immediate Direct Assistance, Funding, and Regulatory Relief from Commonwealth**
- **Republicans Prevail in House Special Elections, Philadelphia Representative Sworn-In**

Regulatory

- **Pennsylvania Insurance Department Issues Notice Regarding (COVID-19) Coronavirus Insurance Coverage**
- **PA DOH Issues COVID-19 Guidance**

West Virginia

Regulatory

- **Governor Justice, WV Hospital Association Respond to COVID-19**

More to come: On Thursday, a package was released by the U.S. Senate Majority Leader Mitch McConnell—the Coronavirus Aid, Relief, and Economic Security Act, (CARES/ S. 3548). The package, which McConnell framed as a starting point in negotiations Democrats, is designed to mitigate the damaging economic effects of the coronavirus.

The bill mirrored the Trump administration's request on Wednesday for a $1 trillion relief package, including $500 billion in direct payments to taxpayers and $500 billion in loans to businesses and impacted industries. Negotiations continued throughout the weekend and McConnell has pledged to keep the Senate in session until an agreement is reached.

Hospital relief requested: The hospital community has been **advocating for** Congress to allocate a significant and direct distribution of financial resources to support hospitals in the response to COVID-19, accounting for expenses incurred due to potential COVID-19 patient surges, as well as the lost revenue as hospital efforts have turned fully to COVID-19 activities.

S. 3548 includes the following provisions of importance to the hospital community:

- Provides $75 billion to reimburse eligible health care providers for health care-related expenses or lost revenues not otherwise reimbursed that are directly attributable to COVID-19
- Creates a Medicare add-on payment of 20% for inpatient hospital COVID-19 patients
- Removes the Medicare sequester from May through December 2020
- Delays Medicaid disproportionate share hospital cuts by two years
- Provides flexibility to post-acute care providers, including waiving the inpatient rehabilitation facility 3-hour rule
- Provides new telehealth flexibilities, including eliminating the requirement that providers have a prior existing relationship with a patient to provide telehealth services, and waiving geographic and originating site requirements
- Supports hospital preparedness by providing $500 million to entities that are part of the Hospital Preparedness Program, with $200 million of these funds being made available within 30 days of enactment
- Appropriates at least $1.7 billion to be used to purchase products for the Strategic National Stockpile

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AHIP and BCBSA Offer Legislative Proposals to Protect Americans' Health Care and Coverage
AHIP and the Blue Cross Blue Shield Association (BCBSA) offered recommendations to Congress in order to support the stability of the insurance industry as the industry treats patients and mitigates the effects of the coronavirus. As noted in the letter, the recommendations include:

- Providing assistance to consumers and businesses to maintain coverage so people can get the care they need;
- Establishing a risk mitigation program applicable across the individual, employer, Medicare Advantage and Medicaid markets;
- Allowing a one-time special enrollment period (SEP) for the individual market;
- Enhancing funding for testing and treatment of COVID-19-related conditions for the uninsured; and
- Providing hospitals and independent providers direct federal funding and necessary resources to support relief efforts and maintain their practices.

Federal Issues
Regulatory

Federal Corona Virus Updates

The Centers for Medicare & Medicaid Services (CMS):

- Issued new guidance to **Part D sponsors** waiving patient signatures as proof of delivery for medications under Part D. CMS clarified the Department of Health and Human Services (HHS) does not require and will not audit for patient signatures as proof of delivery for any medications, including for controlled substances.

- Released new recommendations on **adult elective surgeries**, and non-essential medical, surgical, and dental procedures during the COVID-19 response (press release). CMS outlines factors that should be considered for postponing these procedures, and recommends they be delayed so that personal protective equipment (PPE), beds and ventilators can be preserved.
- Issued Frequently Asked Questions (FAQ) to clarify coverage for the diagnosis and treatment of COVID-19 by **catastrophic health plans**. CMS will not take enforcement action against any health issuer that amends its catastrophic plans to provide coverage without imposing cost-sharing requirements for COVID-19 related services before an enrollee meets the catastrophic plan's deductible.
- Updated the State Medicaid and Children's Health Insurance Program (CHIP) FAQ.
- Issued a press release announcing two Frequently Asked Questions (FAQs) on **Essential Health Benefits (EHB) Coverage** in response to the COVID-19 outbreak. The FAQs address COVID-19 testing and treatment coverage as an EHB, coverage for quarantines, possible pre-authorization, and current vaccine coverage requirements for health plans in the individual and small group market subject to EHB requirements.

- The Substance Abuse and Mental Health Services Administration (SAMHSA) issued guidance to ensure that **substance use disorder treatment services** are uninterrupted during this public health emergency.
- The Food and Drug Administration (FDA) released guidance on **clinical trials** of medical products during the COVID-19 Pandemic. The guidance states companies and researchers conducting clinical trials can alter their procedures when necessary to keep subjects safe during the coronavirus pandemic without prior approval of FDA or institutional review boards as long as they report them afterward.
- The HHS Office of Human Rights (OCR) issued a Bulletin "Waiver on HIPAA Sanctions and Penalties during Nationwide Public Health Emergency" to waive sanctions and penalties against a covered hospital that does not comply with certain provisions of the **HIPAA Privacy Rule** for disclosing a patient's health information (OCR announcement and fact sheet: Telehealth HIPAA waiver).
- The American Medical Association's (AMA's) Current Procedural Terminology (CPT®) Editorial Panel released a new code and description (87635) for COVID-19 testing offered by hospitals, health systems and laboratories in the United States. There was no existing CPT code adequately describing this test. The new code will immediately allow labs across the country to properly report testing for coronavirus (SARS-CoV-2). CPT Assistant also provided a fact sheet for coding guidance for the SARS-CoV-2 test in relation to the use of the new CPT code.

FDA releases guidance to mitigate ventilator supply disruptions. In response to the COVID-19 outbreak, the Food and Drug Administration released updated guidance to provide flexibility and expand the availability of ventilators and other respiratory devices to treat patients during the public health emergency. In addition, FDA released a letter to supplement the updated guidance that provides recommendations directed at providers.

FEMA releases updated COVID-19 advisory. The Federal Emergency Management Agency released a COVID-19 pandemic advisory describing in general terms what actions it is taking, how community-based testing sites will be managed, and information about the Defense Production Act.

Department of Labor urged to define 'health care provider.' The American Hospital Association (AHA) has asked the Department of Labor to accurately define "health care provider" as it promulgates regulations implementing key sections of the recently-enacted Families First Coronavirus Response Act and clarify how this policy will be operationalized, including how it interacts with state law.

Federal and state resources for reporting price gouging available. The Department of Justice has established a website, hotline and email for reporting price gouging and fraud. The National Center for Disaster Fraud is coordinating the effort and will triage complaints to the appropriate federal and/or state authorities. In a memo to United States Attorneys, Attorney General Barr reiterated that "[t]he pandemic is dangerous enough without wrongdoers seeking to profit from public panic and this sort of conduct cannot be tolerated." Many state attorneys general also have authority to investigate and prosecute price gouging and can be contacted directly with a complaint as well. A listing of state laws that cover or relate to price gouging can be found here.

CMS offers regulatory relief across its quality measurement programs. The Centers for Medicare & Medicaid Services granted a range of data reporting exceptions and extensions across its quality reporting and value-based payment programs for hospitals, post-acute care facilities and clinicians to relieve provider burden during the COVID-19 crisis. Specifically, the agency made it optional to submit data for the fourth quarter of 2019 (October through December) and first two quarters of 2020 (January through March, and April through June). In addition, CMS will not use data from Jan. 1 through June 30, 2020 to calculate performance in its quality reporting and value-based purchasing programs.

FDA authorizes first point-of-care diagnostic test for COVID-19. The FDA issued the first emergency use authorization for a point-of-care COVID-19 diagnostic, which the maker plans to make available to qualified health care providers and CLIA-certified labs by March 30. Point-of-care testing means that results are delivered to patients in the patient care settings, like hospitals, urgent care centers and emergency rooms, instead of samples being sent to a laboratory. This type of testing enables patients to receive more immediate results. For information, see the provider factsheet.

To accommodate patient access to certain drugs, FDA also said it does not intend to enforce Risk Evaluation and Mitigation Strategy requirements for certain laboratory testing or imaging studies during the COVID-19 emergency.

CMS releases suite of Medicaid/CHIP waiver tools. CMS released a series of COVID-19 checklists and tools for states to use for their Medicaid and Children's Health Insurance Programs. CMS says that, used together, these new resources form a comprehensive Medicaid COVID-19 federal authority checklist to make it easier for states to receive federal waivers and implement flexibilities in their program.

The following tools are now available:

- 1115 Waiver Opportunity and Application Checklist
- 1135 Waiver Checklist
- 1915(c) Appendix K Template
- Medicaid Disaster State Plan Amendment Template

Furthermore, CMS is providing states the option to request these waivers and other authorities be made effective retroactively, to at least March 1, 2020, the effective date of President Trump's national emergency declaration.

CMS releases FAQs on Medicare provider enrollment relief for COVID-19. CMS has released frequently asked questions regarding enrollment relief for Medicare providers in light of COVID-19. Among other areas, the FAQs include information on CMS's newly established Medicare provider enrollment hotlines, Medicare billing privileges and how CMS is exercising its 1135 waiver authority.

New COVID-19 MS-DRG assignment. CMS issued a corrected announcement regarding the Medicare Severity-Diagnosis Related Group Grouper to recognize the new ICD-10-CM diagnosis code, U07.1, for COVID-19. The initial MS-DRG assignment posted March 20 would have resulted in significant reimbursement reductions for hospitals. The ICD-10 MS-DRG Grouper assigns each case into an MS-DRG based on the reported diagnosis and procedure codes and demographic information (age, sex and discharge status). The ICD-10 MS-DRG Grouper software package to accommodate this new code, Version 37.1 R1, is effective for discharges on or after April 1, 2020.

Report: Prospective COVID-19 treatments at risk of shortage. A report by Premier, Inc., indicates dramatic spikes in demand for two antimalarial drugs that may influence positive COVID-19 outcomes. According to the report, demand for chloroquine and hydroxychloroquine increased significantly between March 1-17, placing them at risk of supply shortages. Some of the drugs' makers, including Teva and Bayer, have since announced that they will donate millions of tablets for these drugs to hospitals for further testing.

FCC exempts COVID-19 communications from prohibition on automated calls, text messages. The Federal Communications Commission March 20 issued a ruling confirming that the COVID-19 pandemic qualifies as an "emergency" under the Telephone Consumer Protection Act. Under this exception, hospitals, health care providers, state and local health officials, and other government officials may make automated calls and send automated text messages to wireless telephone numbers to communicate information about COVID-19, as well as mitigation measures without violating federal law. The TCPA, enacted in 1992 and subsequently updated by the FCC, is intended to restrict telemarketing calls and the use of automatic telephone dialing systems or prerecorded voice messages.

FDA expands remote use of patient monitoring devices. Health care providers can now use FDA-cleared non-invasive remote devices to monitor a patient's vital signs, the agency said today. The new policy, valid only for the duration of the COVID-19 emergency, includes devices capable of enabling remote interactions that measure body temperature, respiratory rate, heart rate and blood pressure. Providers can use the information as a supplement to diagnose or treat COVID-19 or co-existing conditions.

FDA lists test labs in diagnostic FAQs. The Food and Drug Administration has updated its COVID-19 diagnostic testing FAQs, a reference for clinical laboratories, commercial manufacturers, and Food and Drug Administration staff. The document now lists the clinical laboratories that are offering testing under FDA's Policy for Diagnostic Tests for Coronavirus Disease-2019; states that have chosen to authorize laboratories to develop and perform COVID-19 tests; commercial manufacturers that are distributing test kits and the serology tests being offered. Among other information, it also offers alternatives for certain items that are in short supply but which are needed for collecting patient samples for testing for COVID-19 infection, such as alternative swabs and transport media.

USP issues compounding guidance. U.S. Pharmacopeia issued guidance on strategies for conserving sterile compounding personal protective equipment and for compounding alcohol-based hand sanitizers to address consumer shortages during the COVID-19 pandemic. The Food and Drug Administration recently said it does not intend to take action against compounders that prepare alcohol-based hand sanitizers for consumer use for the duration of the COVID-19 emergency, provided that certain production guidelines are met.

CMS issues guidance for elective surgery; CDC issues PPE conservation strategies. The Centers for Medicare & Medicaid Services issued guidance to help hospitals and health systems evaluate whether to provide elective surgeries during community spread of COVID-19. The agency proposes a tiered framework based on the urgency of the procedure, health of the patient and surgical setting that facilities can use to determine whether to perform or postpone surgery.

The Centers for Disease Control and Prevention also has proposed strategies for optimizing personal protective equipment supplies, including eye protection, isolation gowns, facemasks and N95 respirators.

Updated FDA guidance on COVID-19 testing. The FDA March 17 issued several updated policies on testing for COVID-19. First, FDA is putting in place a policy that will allow states to take responsibility for tests developed and used by laboratories in their states, similar to the action the FDA granted to the New York State Department of Health. Laboratories developing tests in these states can engage directly with the appropriate state authorities, instead of with the FDA. These laboratories will not have to pursue an Emergency Use Authorization (EUA) with the FDA.

In addition, FDA expands application of a policy originally outlined in Feb. 29 guidance. Specifically, FDA will allow commercial test manufacturers to distribute, and labs to use, new commercially developed tests prior to the FDA granting an EUA. The policy was originally applicable only to laboratories certified to perform high-complexity testing consistent with requirements under the Clinical Laboratory Improvement Amendments.

Allocation of resources under the Defense Production Act. The President March 18 issued an Executive Order that invokes the Defense Production Act to expand production of personal protective equipment (PPE) and ventilators and other emergency medical supplies to ensure that the healthcare system is able to surge capacity and capability to respond to the spread of COVID-19. Under the EO, the Secretary of HHS is granted the authority to require companies to accept and prioritize contracts from the government in order to "promote the national defense" for health and medical resources, or in this case to produce PPE, ventilators, and any additional other specific health and medical resources he deems to be scarce and critical. The Secretary also has the authority to "allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense."

In doing so, HHS, in consultation with the Secretary of Commerce and other heads of federal agencies, may determine "nationwide priorities and allocations of all health and medical resources, including controlling the distribution of such materials (including applicable services) in the civilian market, for responding to the spread of COVID-19 in the United States."

OCR eases HIPAA telehealth enforcement for COVID-19 emergency. The Department of Health and Human Services' Office for Civil Rights will immediately exercise its enforcement discretion and waive potential penalties for HIPAA violations against health care providers that serve patients through everyday

communications technologies during the COVID-19 nationwide public health emergency, the agency announced. The discretion applies to widely available communications apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19. In support of this action, OCR will be providing further guidance explaining how covered health care providers can use remote video communication products and offer telehealth to patients responsibly. For more on HIPAA and COVID-19, see OCR's February Bulletin.

CDC adds to COVID-19 FAQ for health care workers. The Centers for Disease Control and Prevention has updated its COVID-19 FAQ page for health care professionals, including links to relevant guidance and resources. Questions include answers about protection of pregnant and other health care workers, testing, treatments, waste management and virus spread.

CMS issues infection control guidance for PACE organizations. The Centers for Medicare & Medicaid Services released COVID-19 infection control guidance for Programs of All-Inclusive Care for the Elderly (PACE) organizations, noting that there may be circumstances where a PACE organization may need to implement strategies that do not fully comply with CMS PACE program requirements. For example, PACE organizations may use remote technology as appropriate, including for scheduled and unscheduled participant assessments, care planning, monitoring, communication, and other related activities that would normally occur on an in-person basis. They also may provide home or mail delivery of Part D drugs and waive prior authorization requirements for Part D drugs used to treat or prevent COVID-19, when such drugs are identified.

CMS broadens access to telehealth during COVID-19 public health emergency. The Centers for Medicare & Medicaid Services announced several waivers and policy changes to broaden access to telehealth services for Medicare beneficiaries during the COVID-19 public health emergency. These include:

- Waivers of originating and geographic site restrictions on Medicare telehealth services, permitting the delivery of these services in all areas of the country and all locations, including patients' homes.
- The ability of providers to use expanded telehealth authority for new and established patients for diagnosis and treatment of COVID-19, as well as for conditions unrelated to the pandemic.
- Permission for providers to use everyday communications technologies, such as FaceTime or Skype, during the COVID-19 public health emergency, without running afoul of HIPAA penalties.

CMS also released a frequently asked questions document about the changes included in its announcement.

As a companion to the Medicare telehealth guidance, CMS also released Medicaid telehealth guidance to states. While CMS has underscored that Medicaid programs have the flexibility to allow for telehealth reimbursement and do not need the federal government's permission to do so, the guidance is designed to assist states in understanding the policy options available to them to reimburse Medicaid providers that provide telehealth services.

CMS releases telehealth toolkits. The Centers for Medicare & Medicaid Services released telehealth toolkits for general practitioners and providers treating patients with end-stage renal disease. Each toolkit links to sources of information on telehealth, such as how to initiate a telemedicine program, monitor patients remotely, develop documentation tools and other topics. They also outline temporary virtual services that could be used to treat patients during the COVID-ID pandemic.

CDC changes test interpretation for CDC EUA. Clinical laboratories using the CDC 2019-nCoV Real-Time Reverse Transcriptase-PCR Diagnostic Panel Emergency Use Authorization will no longer have to seek additional confirmation from CDC but instead will be able to report presumptive positive results as positives. In addition, labs using any test modifying the CDC EUA must still send their assay information to the FDA for emergency use authorization.

The Joint Commission suspends surveying. In response to the COVID-19 outbreak, the Joint Commission suspended all surveying until at least the end of April. The Centers for Medicare & Medicaid Services, in an email to stakeholders, said it agreed with TJC's decision. TJC said it also is working with its field staff and customers on plans to redirect TJC resources to best assist customers during this time.

CDC issues return-to-work criteria. The Centers for Disease Control and Prevention has provided guidance for occupational health programs and public health officials making decisions for personnel with confirmed or suspected COVID-19. The guidance says that return-to-work decisions should be made in the context of local circumstances and provides test-based and non-test-based strategies and suggested work restrictions.

Federal agencies announce emergency waivers, guidance. The Centers for Medicare & Medicaid Services, Occupational Health and Safety Administration and other agencies recently released a number of new documents and information related to COVID-19, including emergency declaration waivers; revised guidance for nursing homes on visitor limitations; guidance for flexibility with respirator fit-testing; clarifications regarding public charge determinations; and a new CPT code for coronavirus testing.

Cyberattack targets HHS, COVID-19 misinformation. HHS was the target of a cyberattack designed to delay the nation's response to COVID-19. According to reports, the attack overloaded HHS servers with millions of hits over several hours to slow the system. It coincided with broad dissemination of false information online and via text messaging about a national quarantine, according to the National Security Council.

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency alerted organizations to VPN vulnerabilities and referenced an expected increase in phishing attempts under the guise of COVID-19. HHS also issued recent alerts on phishing emails and fake coronavirus maps which spread malware.

AHIP and Health Care Stakeholders Send Letter to Congress and the Administration

Trade associations from across the entire health care spectrum came together with one voice in a letter to Vice President Mike Pence and Congressional leaders. In the letter, AHIP and other health care stakeholders provided government leaders with recommendations on immediate actions to take to address COVID-19.

Specifically, the letter recommends the following actions to ensure necessary resources are delivered to communities in need:

- Increase medical provider capacity through modifications of existing facilities, constructing temporary units, maximizing telehealth practices, directing patients to appropriate care alternatives

when hospitals are not required, and improving information sharing between facilities, among others;
- Expeditiously move to spur massive, increased production, distribution, and access to gowns, masks, gloves, testing kits, testing swabs, and respiratory machines; and
- Ensure continued access to medications and avoid supply-chain disruptions.

DOL Updates Mental Health Parity and Addiction Equity Resources

Tuesday, the Department of Labor (DOL) issued its 2020 Report to Congress, Parity Partnerships: Working Together along with a Mental Health Parity and Addiction Equity Act (MHPAEA) Enforcement Fact Sheet and Appendix for 2019. Under MHPAEA, the DOL is required to submit a report to Congress on compliance of group health plans with the law's requirements.

Why this matters: The report describes the DOL's work with state regulators and the National Association of Insurance Commissioners (NAIC) to promote uniform implementation and enforcement of MHPAEA as well as its ongoing dialogue with plans, consumers and providers to identify the challenges to achieving full compliance.

State Issues

Delaware

Regulatory

Delaware Executive Orders Relating to the COVID-19 State of Emergency

Governor's Executive Orders

- **March 12, 2020**: a Declaration of a State of Emergency due to the public health threat of COVID-19 was issued. It directs the Delaware Emergency Management Agency (DEMA) and the Delaware Department of Health & Social Services' Division of Public Health to mobilize state agency resources to assist with Delaware's response to the virus. It became effective as of 8:00 a.m. E.D.T. on March 13, 2020.
- **March 16, 2020**: the First Modification of the Declaration of a State of Emergency to advise that the CDC issued new guidance for large events and mass gatherings, including conferences, social events, concerts and other types of assemblies was issued.
- **March 18, 2020**: the Second Modification of the Declaration of a State of Emergency to further restrict events and gatherings; to restrict food service to only take-out or delivery; to close casinos, bowling alleys, concert venues, movie theaters, sports facilities, fitness centers and health spas; to ensure additional precautions in nursing homes, retirement facilities, or assisted-living facilities; to promote authority to the Delaware Emergency Management Agency and the Division of Public Health to cancel any gatherings for public health reasons; to authorize the Secretary of Labor to develop emergency rules relating to unemployment insurance; to address requirements for telemedicine services; and to address the sale of alcoholic beverages was issued.
    - With respect to health insurance carriers, the Governor's Updated Emergency Declaration reinforces that:
        - Patients do not have to present in-person or before relevant telemedicine services may be provided;

        - Delaware residents do not need to be in Delaware at the time relevant telemedicine services are provided; and
        - Out-of-state providers who would be permitted to provide these telemedicine services in Delaware if they were licensed under Title 24 may provide telemedicine services to a Delaware resident if they hold an active license in another jurisdiction

- **March 21, 2020**: the Third Modification of the Declaration of a State of Emergency to close all Delaware beaches, except to persons using the beaches for exercise or to walk their dogs, subject to certain precautions recommended by the CDC on COVID-19, which became effective as of 5:00 p.m. E.D.T.
- **March 22, 2020**: the Fourth and Fifth Modification of the Declaration of a State of Emergency requiring all individuals located in Delaware to shelter in place—that is, to stay at home or at their place of residence—except with respect to certain essential activities and to work to provide essential business and government services, is in the interests of preserving public safety and health and limiting community spread of COVID-19.
    - "Insurance Carriers and Related Activities" are identified as essential business activities permitted to remain open.
    - Non-essential closure FAQ.
    - Click here for the full modified State of Emergency declaration and additional details.
- **March 23, 2020:** the Governor declared a Public Health Emergency and released a more robust Order to assist with Delaware's response to the coronavirus (COVID-19). The Delaware Emergency Management Agency (DEMA) and the Delaware Division of Public Health (DPH) issued a companion order focused on strengthening Delaware's health care workforce in response to COVID-19. Under the order from DEMA and DPH:
    - Nurses, doctors, mental health care providers, pharmacists and other health care professionals who have active licenses or certificates of good standing in any U.S. jurisdiction are authorized to provide in-person health care services in Delaware throughout the emergency, as well as telemedicine services.
    - Delaware health care professionals whose licenses expired in the last five years are authorized to provide health care services in Delaware, assuming their licenses were in good standing for the five-year period.
- For the latest on Delaware's response, go to de.gov/coronavirus.

Department of Insurance Bulletins Relating to the COVID-19 State of Emergency

- **March 9, 2020**: Insurance Commissioner Trinidad Navarro issued Domestic and Foreign Insurers Bulletin No. 115 to, among other things, remind Delaware's health insurers that testing for COVID-19 is a covered essential health benefit and that access to telehealth and telemedicine services should be made available. Commissioner's bulletin to insurers
    - The bulletin is directed to health insurers regarding coverage for COVID-19. The bulletin is effective immediately and remains in effect until withdrawn or suspended.
    - The general message of the bulletin is one of encouraging insurers to be proactive in planning for COVID-19 and to be prepared to address COVID-19 cases in Delaware. Much of the bulletin references existing law in Delaware with which carriers should already be complying.

- **March 20, 2020:** Insurance Commissioner Trinidad Navarro and the Delaware Department of Insurance issued Domestic and Foreign Insurers Bulletin No. 116 with recommended actions for the insurance industry. Requests included asking health insurers to waive all prior authorization constraints for lab testing and future treatment of confirmed or suspected COVID-19 patients, and that insurers consider ceasing cancellations or non-renewals of insurance policies due to nonpayment of premium throughout the duration of the declared Delaware State of Emergency. Department of Insurance March 20 Bulletin.

- For the latest on Delaware's response, go to de.gov/coronavirus

State Issues

Pennsylvania

Legislative

House and Senate Approve New Rules to Allow for Remote Voting

The COVID-19 pandemic has led to a change in how the Pennsylvania General Assembly will conduct business on Capitol Hill. This week the House of Representatives and Senate returned to Harrisburg to amend their respective rules to permit each chamber to conduct legislative business remotely, including voting. While neither chamber will be casting votes on Monday, March 23, the House is scheduled to be in session on March 24-25. Although the Senate schedule will be determined on an as needed basis, they will likely reconvene to address actions taken by the House in response to COVID-19 pandemic.

Meanwhile, members are responding to the COVID-19 pandemic by seeking support for proposed legislation and resolutions:

Limiting Disaster Powers
Rep. Russ Diamond (R-Lebanon) - A resolution to terminate Wolf's COVID-19 emergency declaration "if the need arises."

Privacy
Sen. Doug Mastriano (R-Franklin) - A resolution that would call on the federal government to suspend privacy regulations for people who have tested positive for COVID-19. There should be "full disclosure of anyone who came within immediate contact of any contaminated citizen."

Rent
Rep. Mary Isaacson (D-Philadelphia) and Rep. Summer Lee (D-Allegheny) - A bill that would "provide an exemption from eviction for workers who are unemployed, separated from their employment, or unable to find employment." Lawmakers are drafting a bill to limit landlords' right to evict tenants when a governor declares a state of emergency.

Schools
Sen. Andy Dinniman (D-Chester) and Sen. Scott Martin (R-Lancaster) - A bill that would cancel the state PSSA and Keystone exams for the remainder of this school year. The measure would also require the state Department of Education to waive federal testing requirements. Dinniman is also drafting a measure that

would give school districts authority to deliver online instruction until the end of the academic year. *(Gov. Wolf has already announced the cancellation of testing.)*

Hospitals Request Immediate Direct Assistance, Funding, and Regulatory Relief from Commonwealth

Last week, the Hospital & Healthsystem Association of Pennsylvania (HAP) submitted a letter to the **Wolf Administration** and the legislature requesting immediate direct assistance, funding, and regulatory relief.

HAP outlined several areas that the hospital community and other providers will need support for short- and long-term response efforts:

- Resources for additional staff and supplies to help hospitals bolster existing facilities and expand to temporary options to treat patients
- Emergency response funding to support the front-line health care providers who are preparing for and responding to a potential surge of patients
- Coordination of public health entitles (state, county, and city) to ensure that all organizations are speaking with the same, unified voice. This will minimize unnecessary administrative burden on hospital staff and provide a consistent public message
- Expanded access to testing and treatment for COVID-19
- Insurance coverage and payment for telemedicine as a way to help patients get screening and care for non-emergency health needs
- Waivers to provide flexibility for staffing and maximizing efficient health care delivery (known as 1135 waivers)
- Support for health care workers who need child care
- Access to places for COVID-19 patients to go after they no longer need hospital care, but still need to complete their 14-day quarantine
- Temporary suspension of surveying health care facilities during the COVID-19 crisis, to allow hospitals to solely focus on patient care
- Temporary suspension of burdensome requirements by insurers to approve procedures
- Expedited licensure for nurses and other health care providers who care for COVID-19 patients
- Support for federal funding from the Coronavirus Preparedness and Response Supplemental Appropriations Act and future federal funding mechanisms

Why this matters: These recommendations reflect the needs not only to support hospitals, but to support the entire health care field in confronting this unprecedented challenge.

Republicans Prevail in House Special Elections, Philadelphia Representative Sworn-In

With the COVID-19 crisis as a backdrop, three special elections took place Tuesday, March 17. The vacant seats, located in Bucks, Mercer and Westmoreland Counties, were the result of sitting Republican members' wins for other elected offices in November 2019. Former House Human Services Committee Chair Gene DiGirolamo is now a Bucks County commissioner; Rep. Justin Walsh was elected to the Westmoreland County Court of Common Pleas; and Rep. Tedd Nesbit was elected a Mercer County Court of Common Pleas Judge.

The composition of the House of Representatives will not change as a result of the Republican victories. Members, however, will not be able to vote until they are sworn in:

House District 18:

Harold Hayes (D): 46.63% - 3,343 votes
K.C Tomlinson (R): 53.37% - 3,826 votes

House District 58:
Robert Prah (D): 40.57% - 3,293 votes
Eric Davanzo (R): 52.58% - 4,267 votes
Kenneth Bach (L): 6.85% - 556 votes

House District 8:
Phil Heasley (D): 24.63% - 1,288 votes
Tim Bonner (R): 75.37% - 3,941 votes

Despite concerns raised by some regarding the convening of groups, the Centers for Disease Control and Prevention (CDC) said the cutoff threshold for the size of the gatherings is at the discretion of community leaders based on the current circumstances the community is facing and the nature of the event. Others said the elections should take place to avoid voter disenfranchisement.

Also taking place this week was the swearing in of the newest House member – Rep. G. Roni Green, representing the 199th District in Philadelphia.

State Issues

Pennsylvania

Regulatory

Pennsylvania Insurance Department Issues Notice Regarding (COVID-19) Coronavirus Insurance Coverage

Last week, the Pennsylvania Insurance Department issued in the *Pennsylvania Bulletin*, Notice 2020-03 Regarding Coronavirus Insurance Coverage. The Notice directs insurers to:

- Prepare to address claims related to COVID-19;
- Have access to accurate information and respond quickly to inquiries about coverage and benefits;
- Assist members in any way to avoid balance billing should they seek care from an out of network provider;
- Encourage insurers to waive cost sharing for COVID-19 testing, ease preauthorization requirements and anything that might be perceived as a barrier to care;
- Encourage insurers to review their networks to insure that they are adequate to handle the potential increase in need for healthcare services and review their telehealth delivery and reimbursement policies;
- Be aware of the need for expedited formulary exceptions and the need to use out of network pharmacies in some instances; and
- Coordinate with their self-funded groups.

Insurers were asked to provide information on the steps they are taking to respond to the items outlined in the Notice.

PA DOH Issues COVID-19 Guidance
The Pennsylvania Department of Health (DOH) released two iterations of guidance (one on March 17 and an update on March 20) to help meet changing care delivery needs. Guidance **released on March 21**, further clarified DOH's expectations in regards to elective procedures and alternative space usage.

DOH plans to continue to update the guidance to meet evolving care delivery needs.

State Issues

West Virginia
Regulatory

Governor Justice, WV Hospital Association Respond to COVID-19
In a March 21 address, Governor Jim Justice urged West Virginia residents to follow the recommended guidelines to avoid contracting the coronavirus. While West Virginia was the last state to have an individual test positive for the virus, he is not calling for a statewide shutdown of non-essential businesses or requiring residents to remain in their homes.

Meanwhile, the President and CEO of the West Virginia Hospital Association, Joe Letnaunchyn, recently addressed the situation, stating that West Virginia hospitals have instituted emergency response plans focusing on three core areas: patient care, facilities and staff. Among some of the actions taken by hospitals and health systems are revising patient care procedures to help increase capacity in several areas and reviewing, rescheduling elective procedures, and using virtual visits, when appropriate, while maintaining the safety and health of patients as a top priority.

The Pennsylvania General Assembly schedule is fluid for this week due to the current public health crisis.

The Delaware Legislature has postponed their legislative session.

The West Virginia Legislature has completed session for 2020.

Congress
The U.S. House and the U.S. Senate schedule is fluid for this week due to the current public health crisis.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: **http://legis.delaware.gov/.**
Pennsylvania Legislation: **www.legis.state.pa.us.**
West Virginia Legislation: **http://www.legis.state.wv.us/**
For copies of congressional bills, access the Thomas website – **http://thomas.loc.gov/.**