

## Government Relations Update – January 28, 2020

### Pennsylvania Issues

#### Legislation

- **State False Claims Act:** On January 14, 2020, Senator Lindsey M. Williams (D–Allegheny), Representative Seth Grove (R–York) and Pennsylvania Attorney General Josh Shapiro (D) joined a bipartisan group of state legislators for a press conference to announce their support for the enactment of a State False Claims Act. Curt Schroder, Director of the Pennsylvania Coalition for Civil Justice Reform, immediately issued a statement opposing the initiative.

The Federal False Claims Act (FCA) has been in existence since the Civil War to penalize vendors seeking to defraud the federal government, but it does not apply well in healthcare. The FCA includes a penalty of up to three times the government’s damages and civil penalties ranging from \$10,957 to \$21,916 per false claim, as well as interest. It is important to note that the FCA applies to all “false” or “incorrect” claims, not just fraudulent claims. The federal government, private whistleblowers and plaintiffs lawyers use this potential penalty to extort major settlements from hospitals when they have merely made innocent billing mistakes. A State False Claims Act would merely expand the bounty payable to whistleblowers and their trial lawyers, who would double their recovery at the expense of state taxpayers. As a result, no separate state law is necessary. The Hospital Association of Pennsylvania (HAP) opposes the bill.

### Federal Issues

#### Legislation

- **HR 3055:** On December 20, 2019, President Donald Trump (R) signed two spending packages totaling \$1.4 trillion to fund the federal government through the remainder of the federal fiscal year. Spending bill HR 3055 temporarily delayed scheduled reductions in payments to disproportionate share hospitals (DSH), provided funding for community health centers, boosted funding for opioid misuse treatment and prevention, and strengthened telehealth in rural areas by increasing grant funding. Funding for many of these healthcare initiatives will expire on May 22, 2020 absent an extension. House Speaker Nancy Pelosi (D–CA–12) announced her support for an omnibus healthcare package, which would renew these funding initiatives while also addressing surprise medical billing issues and Medicare drug pricing limits.

#### Miscellaneous

- **Affordable Care Act Challenge:** On December 18, 2019, the United States Court of Appeals for the Fifth Circuit issued its decision in *Texas v. United States*, a case presenting once again the question whether the Affordable Care Act (ACA) is constitutional and sustainable. The court held that the individual mandate is unconstitutional, but it reversed the district court’s conclusion that the mandate cannot be severed from the ACA and remanded to the district court for further proceedings on that critical issue.

The practical consequence of the Fifth Circuit’s ruling is to preserve the ACA without the mandate, at least for the time being. HAP and 32 other state hospital associations filed a motion with the United States Supreme Court challenging the circuit court opinion and urging that the ACA remain fully intact. However, with the district court’s severability holding now vacated, the United States Supreme Court is less likely to feel pressured to hear an expected appeal expeditiously, if at all.