

MELICK & PORTER, LLP COVID-19 MEMO:

Melick & Porter, LLP provides you with the below update regarding the impact of COVID-19 on issues relating to insurance in the United States. The below is not meant to be all-inclusive, but provides an overview as to the trends in the United States. If you have any questions regarding any of the updates below, please do not hesitate to contact us.

SUMMARY OF IMPORTANT LEGISLATION AND EMERGENCY ORDERS AND DIRECTIVES:

Below we provide an overview as to the types of legislative actions that have been occurring, both on a federal and state level.

- The CDC issued an order under Section 361 of the Public Health Service Act to temporarily—at least through the end of 2020—halt residential rental evictions for Americans struggling to pay rent due to the COVID-19 pandemic. The CDC states that the ban is necessary to mitigate the spread of COVID-19, a historic threat to public health, by preventing homelessness and facilitating stay-at-home/social distancing directives.
- Effective August 25, 2020, a new [rule](#) published by the United States Small Business Administration (SBA) establishes an administrative process for appealing SBA loan review decisions under the Paycheck Protection Program (PPP). Under the process, a borrower may challenge written decisions by the SBA regarding ineligibility and loan forgiveness, including a decision that a borrower:
 - Was ineligible for a PPP loan in the first instance
 - Was ineligible for the PPP loan amount received or used PPP proceeds for unauthorized purposes
 - Is ineligible for PPP loan forgiveness in the amount determined by the lender in its full approval or partial approval decision issued to SBA and/or
 - Is ineligible for PPP loan forgiveness in any amount when the lender has issued a full denial decision to SBA.
- House Speaker Nancy Pelosi and Treasury Secretary Steven Mnuchin spoke on Tuesday, September 1, 2020. With no deal between Democrats and the Trump Administration in sight, it is appearing more likely that Congress might package additional coronavirus relief with the 12 must-pass appropriations bills before the government runs out of funding on September 30, 2020.

INSURANCE AND COVERAGE RELATED NEWS AND ORDERS/LEGISLATION:

Below we provide an update as to regulations, news, and litigation specifically related to insurance and potential coverage.

- The NAIC and nearly all U.S. state insurance departments have issued guidance to health insurance carriers in the areas of telehealth, consumer outreach, special enrollment periods, prescription refills and cost-shares (co-pays, deductibles and co-insurance).

Specifically, in this guidance, many of these states are:

- requiring insurers to waive cost-sharing for COVID-19 testing when ordered in accordance with Centers for Disease Control and Prevention (CDC) guidelines and prohibiting insurers from requiring prior authorization for such testing;
 - requiring insurers to permit early refills, except for drugs in certain drug classes such as opioids, when consistent with doctor/pharmacist approvals;
 - directing insurers to keep their policyholders informed with accurate information about coverage for COVID-19-related testing and treatment;
 - directing insurers to expand the availability of telemedicine for their policyholders and eliminating barriers to its use; and
 - directing insurers to continue to ensure network adequacy given the anticipated increase in demand due to COVID-19.
- As of September 1, 2020, the NAIC and 24 U.S. state insurance departments have issued guidance to the insurance industry and consumers regarding how COVID-19 implicates business interruption insurance coverage. This guidance addresses how the economic consequences of COVID-19 affect a typical business interruption insurance policy; how an official declaration of a state of emergency affects business interruption insurance policies; and how employers' remote work directives affect business interruption insurance coverage.

The state legislatures of California, Louisiana, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and South Carolina have introduced legislation that would retroactively expand coverage under existing business interruption insurance policies to cover losses due to the COVID-19 outbreak.

BUSINESS AND COMMERCE NEWS AND LEGISLATION RELATED TO COVID-19:

Below we discuss news regarding the economic impact of COVID-19 and measures being taken to address that.

- The federal deficit is expected to reach a record \$3.3 trillion dollars this year, according to projections by the Congressional Budget Office (CBO). That is over twice the largest level on record, but lower than earlier estimates.

LITIGATION/CIVIL JUSTICE SYSTEM UPDATES AND ORDERS:

Below we, highlight additional judicial orders related to the COVID-19 pandemic.

- The Massachusetts Trial Court in collaboration with local government and community partners, is hosting virtual town halls across the Commonwealth, bringing together local officials, court and community leaders to provide information to the public about how to access local resources and the court during the COVID-19 pandemic.
 - See the schedule of upcoming [Trial Court virtual town halls](#).
- The State of Maine Judicial Branch issued Order PMO-SJC 7 given the Court's ongoing concerns for the health of both Judicial Branch employees and members of the public; the Supreme Judicial Court has determined that almost all trial court proceedings must be conducted remotely—through video or telephonic formats—while the Phased Management Plan is in effect.
- The New Hampshire Judicial Branch has decided that remote monitoring and recording of court hearings continue to be the safest method by which media outlets can inform the public about court proceedings. The Branch is mindful of the importance of media access to public court proceedings during the pandemic. In its continuing effort to serve the public, it has issued updated protocol to accommodate the media, including photographers and videographers, so that they may attend hearings in person or via remote access, subject to the procedures and protocols outlined below.
 - Pursuant to the Supreme Court [Orders](#), in person courtroom proceedings are restricted to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge.
 - The Superior Courts now offer media access to all non-confidential proceedings via the WebEx platform. Media can refer to the Daily Dockets for case information and must contact the Communications Office to request access. More information regarding this process, as well as technical tips are available on the printable document [Videoconferencing Etiquette and Technical Tips](#).
 - Any media outlet that seeks access to a District Court proceeding must contact the Communications Office to arrange for telephonic access.