

# SELLERS DORSEY DIGEST

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## NAVIGATION

### Federal Updates

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### State Updates

An estimate from The Urban Institute predicts that states will see a \$125 billion revenue shortfall in fiscal year 2021.

### Private Sector Updates

Aetna, Centene, Humana, Kaiser Permanente and BCBS Medicare Advantage plans are facing intense competition during the open enrollment period.

### Sellers Dorsey Updates

Senior Strategic Advisors John Benz and Tom Traylor will lead a session at the America's Essential Hospitals Medicaid Summit on October 6.

## Summary of Key Updates

On September 28, House Democrats unveiled a \$2.2 trillion COVID-19 relief bill as a final effort to secure additional funding before the November 3 General Elections. Even if the bill passes the House, it is likely to face opposition from the Republican-controlled Senate. The bill contains the following health care related provisions:

- \$50 billion in new grant funds for health care providers, down from the \$100 billion HEROES Act that the House passed in May 2020.
- Requirement that all COVID-19 testing must be provided with no out-of-pocket costs regardless of the circumstances of the tests.

The bill does not provide a liability shield to protect health care and non-health care entities that reopened during the pandemic against potential lawsuits ([Modern Healthcare](#), September 29).

HHS has released guidelines that change how health care providers should calculate their lost revenue from the pandemic when applying for provider relief fund grants. The new guidance requires providers to base lost revenues on operating income rather than budgeted revenue or 2019 revenue, and caps overall losses in 2019 financial performance. The changes complicate calculating lost revenue and require particular attention from providers as over-claiming could result in False Claims Act liability ([Modern Healthcare](#), September 23).

MACPAC met [September 24-25](#) and discussed a variety of topics including funding and eligibility issues related to the public health emergency (PHE).

The House may vote on a stopgap funding measure next week. Agencies require the stopgap, through a continuing resolution, to maintain funding levels as the new federal fiscal year begins on October 1. Stakeholders note a bi-partisan effort to keep contentious riders (e.g., COVID-19 funding) out of the continuing resolution to better facilitate easy passage and avoid a government shutdown ([Washington Post](#), September 6).

Some state tax revenues are exceeding expectations in parts of the U.S., showing that the economic collapse due to the COVID-19 pandemic may not be as severe on government revenues as once feared ([Bloomberg](#), September 21).

From September 22 through September 29, CMS has approved nine SPAs, four of which are time-limited, COVID-19 response SPAs.

## Federal Updates

### News

- On September 23, CMS released [preliminary data](#) showing significant declines in service utilization for primary care, preventive care, and vaccinations among pediatric Medicaid and CHIP beneficiaries since the onset of the PHE.
- [CMS released its findings](#) related to the 2019 child and adult core sets.
  - For children, while median rates were above 75% for measures related to access to primary care and receipt of immunizations, median performance was below 50% on the following measures:
    - Two measures of dental and oral health care: use of preventive dental services and receipt of dental sealants.
    - Two measures of behavioral health care: follow-up visit within 7 days after hospitalization for mental illness and follow-up visit within 30 days of a new prescription for attention-deficit/hyperactivity disorder (ADHD) medication.
    - Two indicators of adolescent health care: chlamydia screening in women ages 16 to 20 and human papillomavirus (HPV) vaccination by age 13.
    - Developmental screening in the first three years of life.
  - For adults, median performance was below 50% on the following measures:
    - Antidepressant medication management.
    - Follow-up after hospitalization for mental illness.
    - Follow-up after emergency department visits for alcohol and other drug abuse or dependence.
    - Follow-up after emergency department visits for mental illness.
    - Initiation of and engagement in alcohol and other drug dependence treatment.
- [MACPAC met September 24-25](#) in a virtual session. Key discussion points included:
  - Prototype Countercyclical Financing Adjustment for Medicaid.
    - Commissioners discussed the merits and policy options related to an automatic countercyclical adjustment to the FMAP formula that could account for both increased enrollment in Medicaid and decreased state revenue. Such a formula was prototyped by the Government Accountability Office in 2008 but has not been implemented.
  - Relief Funding for Medicaid Providers Affected by the COVID-19 Pandemic.
    - Telehealth has offset some revenue loss, but total visits remain below pre-pandemic levels.
    - MedPAC's preliminary analyses suggest that federal provider relief funds and Medicare payment changes have been sufficient to offset several months of losses in the aggregate.
    - As reported by [Inside Health Policy](#), commissioners also expressed concern over how little of Medicaid relief funds have been distributed; according to MACPAC, less than 15% of potentially eligible providers applied for Medicaid relief funding by the end of August. Commissioners and staff were unclear as to why the uptake rate is so low.

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- Medicaid’s response to COVID-19.
  - As reported by [Inside Health Policy](#), MACPAC commissioners expressed concern over the potential for states to restart the eligibility determination process as soon as the PHE ends. Commissioners advised CMS to release guidance to states on how to handle eligibility determinations after the PHE expiration date, which is currently set for October 23.
- Medicaid Estate Recovery Analyses.
  - Commissioners reviewed recent data on Medicaid estate recovery and considered the following policy options for future recommendations, to be considered in the December and January meetings:
    - Eliminate or Limit Assets Subject to Estate Recovery.
    - Revert from Mandate to a State Option.
    - Allow MLTSS States to Pursue the Cost of Care.
    - Establish Federal Standards for Hardship Waivers.
- Medicaid Drug Rebates and Medications Used for Opioid Use Disorder.
  - Commissioners discussed issues related to required coverage of medications used for opioid use disorder as they related to drug rebates. The commission considered a recommendation to change the definition of covered outpatient drug under the MDRP to cross reference coverage of MOUDs in 1905(a)(29) of the Act.
- Behavioral Health in Medicaid.
  - MACPAC outlined its workplan on four topics: access to mental health services for adults, access to behavioral health services for children, electronic health record use among behavioral health providers, and mental health parity implementation.
  - The commission also presented initial findings on Non-Institutionalized Adults with Mental Illness.
- Analyzing Racial and Ethnic Disparities in Medicaid and CHIP.
  - Commissioners considered options for improving data analysis related to racial and ethnic disparities.
- State Management of Waiting Lists for Home and Community-Based Services.
  - Staff presented information from a recently released [issue brief](#) on HCBS waiting lists.
- Medicaid coverage of Vaccines.
  - Staff provided an overview of current Medicaid coverage of vaccines for adults and children and potential barriers to access.
- Pediatric Oral Health Services in Medicaid Managed Care.
  - Commissioners discussed key monitoring and oversight approaches for provider network adequacy, use for preventive dental care and follow up care visits, grievances and appeals, other monitoring tools, enforcement actions, and other levers states can use to drive improvements in children’s oral health.

## Federal Legislation and Regulations

- President Trump nominated Judge Amy Coney Barrett of the 7th Circuit to replace the late Justice Ruth Bader Ginsburg. Judge Barret has a conservative record and, if confirmed, could be the deciding 5-4 vote on the ACA’s fate in *California v. Texas* ([Modern Healthcare](#), September 28).

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- CMS released [guidance](#) on September 25 about the FDA’s final rule related to eligible prescription drugs imported by states from Canada. Based on the final rule, CMS determined that a drug imported under the Final Rule would not meet the definition of a covered outpatient drug and therefore is not eligible for federal rebates since manufacturers would not report these drugs for “best price” or Average Manufacturer Price purposes. Therefore, they would not set new 340B prices. The Medicaid rebate program determines 340B ceiling prices, which means any potential state importation programs would be excluded from factoring into those prices ([Modern Healthcare](#), September 25).
- CMS announced a total \$165 million available for Money Follows the Person (MFP) states to help jump-start efforts to transition individuals with disabilities and older adults from institutions to community-based settings. Each state is eligible to receive up to \$5 million in supplemental funding for planning and capacity building activities to accelerate long-term care transitions and expand Home and Community-based Service (HCBS) capacity. States can accept supplemental allocation requests through June 30, 2021 ([CMS Newsroom](#), September 23).
- HHS has allocated almost \$360 million to improve maternal and child health through the Maternal, Infant and Early Childhood Home Visiting Program (MIECHV) and the State Maternal Health Innovation program. The funding will help states to set up task forces to collect and analyze data and reform service delivery as necessary ([Modern Healthcare](#), September 22).

## Waivers

- 1115
  - Missouri submitted a new [1115 waiver application](#) to provide coverage for former foster care youth up to age 26.
- 1915(c) Appendix K
  - [Connecticut](#)
    - Extend deadlines for required waiver reports.
  - [Colorado](#)
    - Temporarily expand allowable service settings.
    - Temporarily modify licensure requirements for service settings.
    - Temporarily increase payment rates.
    - Add electronic service delivery for some services.

## SPAs

- Traditional SPAs
  - [Colorado \(CO-20-0020\)](#): Updates drug reimbursement for outpatient hospital services. This SPA has an effective date of June 1, 2020.
  - [Massachusetts \(MA-20-0012\)](#): Emergency increase to the rates for home health services. This SPA has an effective date of April 4, 2020.
  - [Oklahoma \(OK-20-0033\)](#): Revises rate methodology for new Certified Community Behavioral Health (CCBH) service providers. This SPA has an effective date of July 1, 2020.
  - [Texas \(TX-20-0010\)](#): Revises the Texas State Plan to incorporate language that authorizes the state to negotiate value-based purchasing arrangements with drug manufacturers. This SPA has an effective date of June 1, 2020.

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- COVID-19 Response SPAs
  - [Arkansas \(AR-20-0019\)](#): Modifies other licensed practitioner benefits to allow licensed pharmacists within their State scope of practice with CLIA waiver certification to provide diagnostic COVID-19 antigen tests and to reimburse pharmacists providing COVID-19 testing using a state-developed fee schedule. This time-limited COVID-19 response SPA has an effective date of June 25, 2020.
  - [Delaware \(DE-20-0006\)](#): Creates three episodes of 30 consecutive days of retainer payments to providers of 1915 Pathways to Employment supported employment services. The State also temporarily increases provider rates by 5%. This SPA has an effective date of March 18, 2020.
  - [Maine \(ME-20-0023\)](#): Includes additional coverage and payment for COVID-19 testing, adds tele-dentistry to telehealth benefits, adds publicly-owned hospitals to those eligible to receive supplemental payments, and adds qualifications for direct support professionals, mental health rehabilitation technicians, and behavioral health professionals. This time-limited COVID-19 relief SPA has an effective date of March 1, 2020.
  - [Maine \(ME-20-0023-A\)](#): Rescinds payment provisions in the state plan that increased private non-medical institution reimbursement for substance abuse treatment facilities and increased private non-medical institution reimbursement for childcare facilities. This time-limited COVID-19 relief SPA has an effective date of June 1, 2020.
  - [Washington, DC \(DC-20-0006\)](#): Permits the District of Columbia Medicaid program to make retainer payments to Adult Day Health Program (ADHP) providers whose operations have been impacted by the ongoing public health crisis related to COVID-19. This time-limited COVID-19 relief SPA has an effective date of March 12, 2020.

## State Updates

Click [here](#) to view Sellers Dorsey's state budget tracking summaries.

- An estimate from The Urban Institute predicts that states will see a \$125 billion revenue shortfall in fiscal 2021. New Jersey's sales-tax receipts in August rose 3% from a year earlier, with non-partisan legislative analyst's forecasting that revenue will exceed the Governor's projections by \$1.4 billion for the fiscal year. California, Georgia, and Ohio are experiencing a similar situation and avoiding major losses originally predicted. Although some states are currently in a better standing than once expected, Ty Schoback, a senior municipal analyst at Columbia Threadneedle Investments stated, "We know from past recessions states and locals experience a lagged effect on their tax revenues. So it's not to say they're in the clear as budget challenges will certainly persist" ([Bloomberg](#), September 21).

## Private Sector Updates

- Aetna, Centene, Humana, Kaiser Permanente and BCBS Medicare Advantage (MA) plans are facing intense competition during the open enrollment period. There are now over 2,000 plans that have entered the MA market over the last three years. Currently, UnitedHealthcare and Humana are the largest payers. CMS stated that it expects MA enrollment to reach 27 million next year. Since 2017, there has been a 77% increase in MA plans ([Health Payer Specialist](#), September 28).
- Humana announced a \$60 million public housing investment in New Orleans. This partnership follows a recent health care trend of improving health outcomes by investing in affordable housing in vulnerable areas. This housing project will cover an entire block and will be reserved specifically for Medicaid recipients. Following the trend, CareSource announced that it is allocating \$50 million for affordable housing projects. Additionally, Anthem and Aetna plan to invest in similar initiatives ([Health Payer Specialist](#), September 28).

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- North Carolina is switching from fee-for-service to managed care in 2021. The State awarded contracts to North Carolina Blue Cross Blue Shield (BCBS), Centene (operating as WellCare of N.C.), AmeriHealth Caritas, UnitedHealthcare, and Carolina Complete Health, a provider-led entity. There have been disputes over the contract reward. Aetna did not receive a contract and has refiled a petition in state court requesting judicial review of the award ([Health Payer Specialist](#), September 29).
  - On September 29, North Carolina Health News reported that a provider-led entity that also lost the bid, My Health By Health Providers, a consortium of major hospital systems in North Carolina, petitioned a Wake County Superior Court judge to reverse the State's decision. In the court document filed on September 23, the provider-led entity argued that the contract awarding process gave a weighted bias to traditional insurance companies over the 12 health systems that have joined together as My Health By Health Providers. They also stated that they are troubled that the judge issued a ruling in summary judgment, a step that precluded them from presenting their entire body of evidence in a hearing.
  - Matt Salo, executive director of the National Association of Medicaid Directors, who was interviewed in the article, said the challenges in North Carolina are not unique and that all of this litigation might eventually lead states to reconsider managed care systems. "I appreciate that this is really important stuff, that this is big business, these are contracts that are very, very meaningful," Salo said in a telephone interview last week. "But having said that, if we keep going on this trajectory, where everybody who doesn't like the outcome, just resorts to the courts, and sues and has a bid protest, we're going to end up in a world where states are just going to throw their hands up and say, 'You know what, it's easier if we just go back to fee for service'" ([North Carolina Health News](#), September 29).
- Molina Healthcare will acquire Affinity Health in a \$380 million deal. Affinity Health is a New York-based Medicaid managed care organization that serves 284,000 members in New York City, Westchester, Orange, Nassau, Suffolk and Rockland counties in New York state. This deal will likely close in the second quarter of 2021. Earlier this year, Molina Healthcare announced it will also acquire Passport Health's Medicaid and dual-eligible business lines, as well as Magellan Complete Care ([Fierce Healthcare](#), September 29).

## Sellers Dorsey Updates

- Sellers Dorsey Senior Strategic Advisors [John Benz](#) and [Tom Traylor](#) will lead a session at the [America's Essential Hospitals Medicaid Summit](#) on October 6 titled *Value-Based Contracting from both the Hospital and Health Plan Perspective*. The panel of experienced experts will detail their value-based contracting journey over the last 5+ years.



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