

SELLERS DORSEY DIGEST

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NAVIGATION

Federal Updates

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State Updates

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Private Sector Updates

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Sellers Dorsey Updates

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Summary of Key Updates

After a historically swift Senate confirmation, Justice Clarence Thomas swore in Amy Coney Barrett as the ninth justice on the Supreme Court. Coney Barret was confirmed by a vote 52 of the 100, with Senator Susan Collins (R-ME) as the only dissenting member of the majority party. Coney Barrett has been vocally conservative throughout her time in the Seventh Circuit Court of Appeals. She is expected to seal the conservative majority, which could impact decisions related to the Affordable Care Act, abortion rights, and use of Chevron deference. Democrats oppose the confirmation, stating that it is unprecedented to bring a new justice on to the court so close to a General Election ([AP](#), October 27; [NYTimes](#), October 26; [Law360](#), October 14).

HHS opened Phase 3 applications for up to \$20 billion in Provider Relief Funds (PRF) to a significantly broader group of providers than in the past and also broadened how providers may use grant dollars.

- Previously, PRF funding was only available to providers who had unanticipated Medicare or Medicaid expenses due to COVID-19. Under this phase, HHS expanded the pool of providers to include those who may only take commercial or private pay, behavioral health providers known to SAMSHA, and certain providers that began practicing in 2020.
- HHS will now allow providers to use their PRF dollars towards lost revenues attributable to COVID-19 rather than just unreimbursed expenses. HHS is defining lost revenues as a negative change in year-over-year actual revenue from patient related care sources. This will allow providers to remain more financially stable in spite of potential decreases in utilization over the course of the public health emergency (PHE) ([HHS press release](#), October 22; [HHS updated guidance](#), October 22).

CMS approved [Nebraska's 1115 demonstration](#) that conditions eligibility for an expanded tier of services (vision, dental, and OTC medications) on participation in wellness, personal responsibility, and community engagement for the adult Medicaid expansion population.

From October 20 through October 27, CMS approved 11 Medicaid State Plan Amendments (SPAs), three of which are time-limited, COVID-19 disaster relief response SPAs. Of note, Washington's COVID-19 disaster relief SPA rescinds flexibilities approved earlier in the PHE.

Federal Updates

News

- Ahead of the start of open enrollment on November 1, CMS posted a preview of plan and pricing information for plans offered through the ACA marketplace on HealthCare.gov. CMS also touts enhancements to the consumer resources available through HealthCare.gov and additional agents and brokers to assist consumers with the application and enrollment process ([CMS](#), October 26).
- On October 22, the FDA [approved](#) the antiviral drug Veklury (remdesivir) as a treatment for COVID-19 patients who are 12 years of age and older and require hospitalization. This is the first FDA approved treatment for COVID-19. Remdesivir was previously available under an emergency use authorization. The FDA has also granted new emergency use authorization for the drug for patients under age 12.
- While CMS Administrator Seema Verma has [previously pledged](#) that Medicare would make an eventual COVID-19 vaccine free for seniors, in October 23 remarks, HHS Deputy Chief of Staff for Policy, Paul Mango, reported that the agency was close to finalizing plans to make a vaccine free for all. While the CARES Act eliminates cost sharing for COVID-19 vaccines, there are potential legal barriers to waiving costs for Medicare if the FDA does not license the vaccines ([Inside Health Policy](#), October, 23).
- Although the economic downturn associated with the public health emergency has driven an increase in Medicaid enrollment, it has also created a shift in patient payer mix from commercial insurance to Medicaid. Increased Medicaid enrollment for providers is typically associated with lower payment rates and coupled with overall declining utilization as COVID-19 cases surge in many areas creates additional financial pressures for safety net providers ([Modern Healthcare](#), October 22).
- [Modern Healthcare](#) recently published an editorial by CMS Administrator Seema Verma who argues for “correcting the course on value-based care models.” While touting CMS’ recent regulations on price transparency, interoperability, and Stark Law reform, Administrator Verma contends changes are still necessary at the Center for Medicare and Medicaid Innovation (CMMI). Specifically, she argues that:
 - CMMI voluntary models with too many up front financial “carrots” stymie success. She advocates for more models with downside risk.
 - Some CMMI models rely on spending reductions relative to a particular benchmark or target, but these targets may not be accurate and lead to large payouts for providers. Verma argues for more data-driven benchmarks and, again, more downside risk.
 - CMMI must provide model participants more timely access to program data.

Federal Legislation

- A third COVID-19 relief bill is highly unlikely before the election, as the U.S. Senate has left Washington, D.C. for its October recess without passing its version of aid legislation. GOP Senators have been vocally opposed to the Democrat’s \$2 trillion spending bill and instead proposed a much skinnier \$519 billion aid bill which the Democrats blocked last week. Senators will not return to Washington, D.C. until the week of November 9, and House members are not expected until the following week.

Federal Regulations

- Stakeholders are calling for federal level licensing reform after seeing successes in allowing out-of-state providers to practice without a permanent in-state license during the pandemic. States’ more stringent licensing requirements could hinder access to telehealth on a more permanent basis. While there has been some interest in the Senate, federal lawmakers have not prioritized relaxing licensure requirements. The nursing industry could act as a model where 33 states have already passed a nurse-licensure

compact, allowing nurses to practice in their home state and all compact states based on their single license issued by the home state ([Modern Healthcare](#), October 24).

- CMS Administrator Seema Verma tweeted the agency has considered stakeholders' feedback and will delay the start of the Radiation Oncology Model (RO Model) to July 2021 through upcoming rulemaking. If implemented as planned, the RO Model will test whether bundled, prospective, site neutral, modality agnostic, episode-based payments to physician group practices, hospital outpatient departments, and freestanding radiation therapy centers will reduce Medicare expenditures while preserving the quality of oncology care. CMS had initially slated to run the program from January 1, 2021 to December 31, 2025 ([CMS](#), October 21).

Federal Litigation

- Purdue Pharma, manufacturer of the opioid OxyContin, has plead guilty in New Jersey federal court to one count of dual-object conspiracy to defraud the United States and violate the Food, Drug, and Cosmetic Act and two counts of conspiracy to violate the Federal Anti-Kickback Statute. The company and owners (Sackler family) have reached civil settlements to resolve its False Claims Act liability. In sum, the corporation and owners will pay in excess of \$8.3 billion in criminal and civil penalties ([Justice.gov](#), October 21).
- The National Association of Community Health Centers (NACHC) filed suit against HHS to compel the department to implement an alternative dispute resolution process that would allow health centers recourse if a drug company allegedly violates the 340B statute and stops shipping discounted drugs to the health centers' contracted pharmacies. NACHC notes, "while HHS has signaled some disapproval of recent manufacturers' practices, no action has been taken despite concerns raised by hundreds of bipartisan members of Congress." The Obama administration proposed a rule to create a 340B dispute resolution process in 2016, but the Trump administration withdrew the rule in 2017 ([NACHC](#), October 21; [Modern Healthcare](#), October 21).

Letters

- In an [October 21 letter](#) to Congressional leadership, the American Medical Association, American Hospital Association, American Health Care Association, and National Association for Home Care & Hospice urged an extension of the relief from the Medicare two percent sequester cut enacted in the CARES Act through the end of 2021, or through the end of the public health emergency in order to maintain the nation's health safety net.
- Following up on an [October 15 letter](#) to President Trump regarding COVID-19 vaccine distribution, on October 10 the National Governors' Association sent the White House an [extensive list of questions](#) regarding logistical coordination, planning, and financial assistance between states and the federal government.

Waivers

- Section 1115
 - On October 20, CMS approved Nebraska's "[Heritage Health Adult](#)" 1115 waiver application.
 - The demonstration applies to adults who are not medically frail or pregnant, ages 21 through 64, and who are eligible under the Medicaid adult group expansion—having income at or below 138% of the federal poverty level.
 - The demonstration ties a tier of additional Medicaid benefits (vision services, dental services, and OTC medications) to participation in approved wellness and personal responsibility initiatives. Beneficiaries who do not participate in these initiatives will not lose eligibility and will maintain access to other Medicaid services. Beginning April 1,

State Updates

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

- Florida's solicitation, valued at \$30 million, seeking a contractor to set up and operate a drug importation program from Canada did not receive any bids by the September deadline. The Trump administration issued final rules in September allowing states, effective November 30, to apply for federal permission to establish this program, which Florida projects will help lower drug prices for people covered by state programs such as Medicaid and the Corrections Department by \$150 million a year. Colorado also plans to implement a similar program by allowing consumers to obtain drugs from Canada at their U.S. pharmacy or through mail order, estimating an average savings of 61% off the current price of medicines for Colorado residents. Vermont, Maine, New Hampshire, and New Mexico are also looking to create similar programs in their states ([KHN](#), October 26).
- Southwest Georgia Regional Medical Center (SGRMC) officially closed on October 22 after operating for 73 years. The decision to close the rural hospital was announced in July. SGRMC was in dire need of upgrades and renovations and struggled to secure funding for improvements. Rural health researchers identified this as the 16th rural hospital to close nationally this year. For the southwest Georgia community, the closest hospital in the county is now more than 20 miles away ([Modern Healthcare](#), October 23).
- Gov. Phil Murphy (D-NJ) signed two bills on October 23 impacting the State's long-term care industry. The first bill requires skilled nursing facilities to maintain a minimum staff-to-patient ratio during morning, evening, and overnight shifts. The second bill creates policies to prevent social isolation of residents and enable better communication with loved ones. The facilities must ensure residents can have contact with other facility residents and family members and be able to engage in religious and recreational activities, except for those specifically restricted or prohibited ([Modern Healthcare](#), October 23).
- The Court of Appeals, First Appellate District in California denied a bid by Blue Cross Blue Shield (BCBS) to recover \$12 million from a public managed care organization (MCO) the payer accused of improperly shifting beneficiaries between Medicaid and private insurance plans. The trial court judge found, and the appellate court agreed, the MCO's public status indemnified it from BCBS's suit. This will create an interesting precedent for public MCOs and potentially providers, in their ability to use their government status as a legal defense in future suits ([Health Payer Specialist](#), October 23).

Budgets

- According to the National Governor's Association, states on average have spent 90% of their COVID-19 relief funds, and without additional funding, will have to cut services and lay off workers. Nine states, according to a [survey](#) from the Kaiser Family Foundation, are planning or expecting future Medicaid budget cuts. They report the funds provided by the CARES Act and Paycheck Protection Program have been insufficient for providers serving Medicaid and low-income patients. This has resulted in some states giving providers various forms of relief, including retainer payments to HCBS providers and interim or add-on payments to nursing facilities. Due to 2021 state budget shortfalls, Colorado, Nevada, and Wyoming have reported cutting provider rates across all or most provider categories ([InsideHealthPolicy](#), October 27).
- As states deal with budget shortfalls, the outcome of Governors' races and control of state legislatures will have various consequences relating to health policy. Congress remains unclear on health care reform, allowing states influence over coverage and cost containment policies, as Medicaid provider pay rates are in jeopardy of being cut. Two major state health care ballot initiatives will be decided this election. The first is a proposal to allow Oklahoma lawmakers increased flexibility to fund the State's Medicaid expansion by taking annual funds from a tobacco company settlement to help fund Medicaid programs.

The other is a regulation measure for California dialysis clinics. A key state election to watch is in North Carolina, where if the legislature is flipped, it may open the door for the State to expand Medicaid ([ModernHealthcare](#), October 24).

Private Sector Updates

- Intermountain Healthcare and Sanford Healthcare, two not-for-profit health systems, announced they plan to merge to form the country's seventh-largest not-for-profit health system by revenue. Both health systems signed a letter of intent to create a 70-hospital system with about \$15 billion in annual revenue. The CEOs of Intermountain Healthcare and Sanford Healthcare expect to close the deal by summer 2021. This merger would create a network of hospitals and clinics, combining Intermountain's 24 hospitals with Sanford's 46 hospitals. Further, this system would have a total of 435 clinics across 7 states. Intermountain CEO Dr. Marc Harrison will lead the new system in Salt Lake City ([Modern Healthcare](#), October 26).
- Anthem won the right to continue participating in Kentucky's Medicaid program after Franklin County Circuit Judge Phillip Shepherd cited several irregularities in the procurement process the State used to select the five payers (Molina Healthcare, UnitedHealthcare, Humana, Aetna, and Centene) calling it "arbitrary" and poorly documented. Anthem obtained a restraining order to ban Kentucky from sending out notices informing Medicaid recipients that it will no longer be a managed care insurer for the program. Humana Health Plan is appealing the judge's order granting Anthem the right to continue participating in Kentucky's Medicaid program and seeking emergency relief to vacate the Franklin Circuit Court decision, according to *Louisville Business First* ([Health Payer Specialist](#), October 26 and October 28).
- Quest Diagnostics announced it will return \$138 million of the CARES Act funding it received this spring due to the company's strong third quarter financial results. President and CEO Steve Rusckowski stated, "Several months into this pandemic, we do not require this funding. As a result, we believe returning these funds to the government now is the right thing to do." Quest's revenue increased to \$2.8 billion in the third quarter, which is a 42.5% increase from last year ([Becker's Hospital Review](#), October 23).
- Centene's acquisition of WellCare is fueling its major expansion in the Medicare Advantage (MA) market for 2021. The payer is growing its market presence by 30% for 2021 and will offer plans in nearly 1,250 counties in 33 states. Centene, the largest Medicaid MCO in the country, completed a \$17 billion acquisition of WellCare earlier this year, which has focused on both the MA and Medicaid markets. Michael Polen, SVP and CEO of Medicare Solutions for Centene, stated "The number of MA members in the country has more than doubled over the past decade." MA enrollment has grown about nine percent from 2019 to 2020 ([Health Payer Specialist](#), October 23).
- Providers are increasingly asking patients about their living situations, recognizing that social factors contribute to poorer health outcomes. A 2019 survey of more than 750 hospitals and more than 700 physician practices across the U.S. from June 2017 through August 2018 found many providers screened for at least one social need. Experts believe screening for social determinants of health is an important first step for providers to address the individual needs of a patient as well as the needs of communities. [RWJBarnabus health system](#) recently launched an initiative called "Health Beyond the Hospital" which creates a social continuum of care network that screens patients for social needs, provides referrals to support services with local partners, and follows up with those organizations to ensure the patients' needs were met ([Modern Healthcare](#), October 23).
- Aetna's Virginia Medicaid group has teamed up with Vital Decisions of New Jersey, a telehealth provider, to allow seriously ill enrollees to communicate their care preferences and goals. This effort is part of Aetna's goal to improve health outcomes and better serve their members at every stage of their lives ([Health Payer Specialist](#), October 23).

- Independence Blue Cross has partnered with Montreal-based Alveole, an urban beekeeping company, to place two beehives on a balcony at the payer's headquarters in Philadelphia. This partnership is part of Independence Blue Cross' sustainability efforts. The payer and Alveole's goal is to educate employees about the importance of bees ([Health Payer Specialist](#), October 23).

Sellers Dorsey Updates

- Sellers Dorsey has grown tremendously over the last several years and continues to seek excellent talent. We hire experienced and self-motivated professionals and maintain a positive culture that is essential to retaining talent and fostering collaboration and accomplishment. Check out our [career opportunities](#).
- Members of the Sellers Dorsey team attend, sponsor, and speak at events year-round, enhancing knowledge and relationships that help our clients to realize opportunities. We are proud sponsors of the upcoming virtual [NAMD Conference](#) on starting on November 9. Participants from Sellers Dorsey include former Medicaid directors Gary Jessee, Leesa Allen, and Nancy Smith-Leslie, along with several of our policy subject matter experts. Don't forget to visit our virtual booth! Click [here](#) for more information on important events.



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