

SELLERS DORSEY DIGEST

Issue 13 | December 10, 2020

NAVIGATION

Federal Updates

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State Updates

The Hawaii Department of Human Services released the QUEST Integration Medicaid Managed Care RFP to award up to five health plans statewide.

Private Sector Updates

Humana will acquire 50% of iCare, a Wisconsin-based health care company which will boost Humana's Medicaid presence in Wisconsin.

Sellers Dorsey Updates

Sellers Dorsey recently joined the Michigan Association of Health Plans and the Ohio Association of Health Plans.

Summary of Key Updates

Senate Majority Leader Mitch McConnell (R-KY) indicated the Senate will likely pass a House bill to extend government funding through December 18. In the same statement, McConnell urged Democrats to support his COVID-19 relief legislation, a \$908 billion spending plan that is a skinnier version of the bill House Democrats passed months ago. Without the one week continuing resolution, the government could see a shutdown beginning on December 11 ([InsideHealthPolicy](#), December 7).

- Representative Lowey (D-NY) introduced a bill to continue appropriations for FY21. The bill contains one-week health care extenders for Medicare and Medicaid and further delays disproportionate share hospital (DSH) reductions until December 19 ([House Committee on Appropriations](#), December 8).

On December 4, SCOTUS agreed to review *Azar v. Gresham* and *Arkansas v. Gresham*, both questioning whether the Trump administration can impose work requirements for Medicaid recipients. HHS Secretary Alex Azar and the state of Arkansas appealed the court decision where a three-judge panel unanimously struck down the requirements. The judges found the requirement is "arbitrary and capricious" since Secretary Azar failed to consider how it would advance the statutory purpose of the Medicaid Program to provide health care to individuals who otherwise could not afford it ([NYT](#), December 4; [SupremeCourt.gov](#), December 4).

President-elect Joe Biden announced key nominations and appointments for his administration's health team, bringing together an experienced group in public health, government, and crisis management ([InsideHealthPolicy](#), December 7).

On December 1, CMS issued its Physician Fee Schedule final rule to be effective January 2021.

From December 1 through December 8, CMS approved one additional Section 1135 waiver, three additional 1915(c) Appendix K waivers, and 14 SPAs, one of which is a time-limited, COVID-19 disaster relief SPA. Of note, the SPAs include new DSH hospital payments in Indiana and Virginia and CMS approval of Medicaid expansion in Oklahoma (beginning FY22).

Federal Updates

News

- On December 3, HHS released “Healthy Women, Healthy Pregnancies, Healthy Futures: Action Plan to Improve Maternal Health in America,” articulating a vision of making the United States one of the safest countries in the world for women to give birth. The document includes three specific goals: (1) reduce the maternal mortality rate by 50% in five years; (2) reduce the low-risk cesarean delivery rate by 25% in five years; and (3) achieve blood pressure control in 80% of women of reproductive age with hypertension in five years ([HHS](#), December 3; [Modern Healthcare](#), December 3).
- Drug manufacturer Eli Lilly announced HHS purchased an additional 650,000 doses of its antibody treatment for COVID-19. HHS, in turn, announced its agreement to partner with CVS Health (through Coram, the company’s specialty pharmacy and infusion arm) in a pilot to administer the drug to at-risk patients in long-term care facilities or at home ([Fierce Healthcare](#), December 3).
- On December 7, MACPAC announced its December meeting which will be held December 10-11. Covered topics include:
 - Health Equity in Medicaid
 - Extending Postpartum Coverage
 - The Families First Coronavirus Relief Act
 - Counter-cyclical Financing Adjustments
 - EHR and Behavioral Health Integration
 - Highlights from the 2020 Edition of MACStats
 - Access to Behavioral Health Services for Children
 - Impact and Implications of 2020 Elections
 - Medicaid Estate Recovery
 - Medicaid Managed Care Quality Rating Systems
 - Nursing Facility Payment Methods ([MACPAC](#), December 7).
- HHS announced plans to distribute \$923 million to over 9,000 nursing facilities that reduced COVID-19 deaths and infections from September to October. This is the second of the five-phase Nursing Home Quality Incentive Program under the CARES Act. Incentive payments increased from \$333 million distributed during the last round in October ([Modern Healthcare](#), December 7).

Biden Administration

- President-elect Joe Biden announced key nominations and appointments for his health team, bringing together an experienced group in public health, government, and crisis management. Below is a list of the nominated team. Note: CMS Administrator has not been announced ([InsideHealthPolicy](#), December 7; [InsideHealthPolicy](#), December 3).
 - Xavier Becerra – Secretary of Health and Human Services
 - Attorney General of California and Former Congressmen who helped drive passage of the Affordable Care Act (ACA) and longstanding advocate of expanding access to health care.

- Dr. Vivek Murthy – Surgeon General
 - Distinguished physician who formerly held the role as Surgeon General. Dr. Murthy is a longtime advisor to Biden and former Vice Admiral in the Public Health Service Commissioned Corps.
- Dr. Rochelle Walensky – Director of the Centers for Disease Control and Prevention
 - Current Chief of Infectious Diseases at Massachusetts General Hospital and Professor of Medicine at Harvard Medical School. She has been on the front lines of the COVID-19 pandemic response in MA.
- Dr. Marcella Nunez-Smith – COVID-19 Equity Task Force Chair
 - Current Associate Professor of Medicine, Public Health, and Management at the Yale School of Medicine. She is the founding director of Yale’s Equity Research and Innovation Center and co-chair of the President-elect’s COVID-19 Transition Advisory Board.
- Dr. Anthony Fauci – Chief Medical Advisor to the President on COVID-19, and also continuing in his role as Director of the National Institute of Allergy and Infectious Diseases
 - Dr. Fauci will serve his 7th president in these roles.
- Jeff Zients – Coordinator of the COVID-19 Response and Counselor to the President
 - Recognized for his leadership of the 2013 HealthCare.gov tech surge and oversight of the “Cash for Clunkers” fuel-efficiency program, Zients will advise on the implementation of the federal government’s COVID-19 response.
- Natalie Quillian – Deputy Coordinator of the COVID-19 Response
 - A former White House and Pentagon senior advisor who previously helped coordinate the Obama-Biden administration’s interagency response to the opioid epidemic.
- In his first 100 Days, President-elect Biden plans to prioritize the following health agenda items: (1) moving to rejoin the World Health Organization, (2) asking Dr. Anthony Fauci to remain as director of the National Institute of Allergy and Infectious Disease, and (3) containing the coronavirus through mask adherence, vaccine distribution, and a major vaccine campaign ([Becker's Hospital Review](#), December 1).

Federal Regulations

- On December 1, CMS issued its Physician Fee Schedule final rule, effective January 2021. In addition to reimbursement changes for Medicare services, the rule finalizes the following proposed changes, in relevant part. *Note that as of December 8, the final rule has not yet been published in the Federal Register.
 - *Telehealth*: The final rule adds telehealth services to the covered services list and creates a third temporary category of criteria for adding additional services during the COVID-19 pandemic. These codes will stay on the covered services list through the end of the calendar year in which the public health emergency (PHE) ends.
 - *Rebase and Revise FQHC Market Basket*: Rebases and revises the FQHC market basket to reflect a 2017 base year with a net update of 1.7%.
 - *Medicare Shared Savings Program*: Finalizes plans to align quality measurement standards in the Medicare Shared Savings Program with the Quality Payment Program with a longer transition period for Accountable Care Organizations (ACOs). Beginning in performance year 2021, ACOs will be required to report either 10 measures to the CMS Web Interface or three clinical quality measures under Merit-based Incentive Payment System (MIPS), which can be reported electronically. In 2022, reporting will focus entirely on the three MIPS clinical quality measures ([CMS](#), December 1; [Modern Healthcare](#), December 1).

- On December 3, the Trump administration increased access to COVID-19 telehealth services to make it easier for providers to get liability protection for coronavirus-related medical counter measures. Under the new policy, health care providers can use telehealth to order COVID-19 diagnostic testing and other countermeasures for out-of-state patients if the provider is already allowed to practice in that state. HHS notes this federal policy pre-empts any state law that limits practice to the contrary. Stakeholders note this speaks to the broader issue of inconsistent state medical licensing rules and their impact on telehealth growth overall ([Modern Healthcare](#), December 3).
- On December 3, CMS announced the Geographic Direct Contracting Model, or “Geo,” a model in which entities contract to take on risk for the total cost of care for Medicare fee-for-service beneficiaries within defined geographic regions.
 - The model requires participants to take full risk for Medicare Part A and B services for aligned Medicare fee-for-service beneficiaries in a defined target region.
 - The model will be tested over a six-year period in four to ten regions and will include two three-year performance periods, the first starts on January 1, 2022 and the second starts on January 1, 2025.
 - Beneficiaries in defined regions for the model are required to participate but maintain all Medicare benefits and appeal rights, and will not have increased out-of-pocket costs. CMS expects beneficiaries to have a choice of at least three direct contracting entities in each region.
 - Direct contracting entities have the opportunity to offer beneficiary engagement incentives (such as vouchers, gift cards, and wellness programs), and enhanced benefits.
 - CMS expects applicants for the model will be entities with “significant experience taking risk in value-based care models including sophisticated ACOs, health systems, health care provider groups and health plans.”
 - Applicants will be selected based on a combination of the score of their application across nine program domains as well as each applicant’s proposed discount which must be above a defined regional minimum and actuarially sound ([CMS](#), December 3; [CMS](#), December 3).
- On December 2, CMS released its Medicare Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center Payment System Final Rule for CY 2021. In addition to routine rate updates, the rule begins a three-year phase out of the Inpatient Only list, allowing additional services to be delivered in ambulatory settings. In the immediate term, ambulatory service centers will be able to perform 11 more procedures. The rule also continues current 340B payment policy of paying average sale price minus 22.5% for 340B-acquired drugs, a policy that is the subject of ongoing litigation but was upheld by the D.C. Circuit Court this summer. The rule also contains revisions to how CMS calculates star ratings for hospitals ([CMS](#), December 2; [CMS](#), December 2).

Federal Legislation

- There is growing bipartisan support for the \$908 billion spending bill that would serve as the next installation in COVID-19 relief funding. The total spend is a compromise from the larger House bill and the significantly smaller Senate Republican proposal. President Trump has also expressed his quick approval of a stimulus package ([The Washington Post](#), December 3).

Federal Litigation

- The U.S. Court of Appeals for the Second Circuit (Connecticut, New York, and Vermont) denied plaintiffs the chance to revive a lawsuit alleging Anthem and Express Scripts over charged employer plan beneficiaries for prescription drugs. The original case, filed in June 2016, was dismissed by a federal district judge in January 2018. In the original suit, the court determined Anthem did not violate the

Employee Retirement Income Security Act (ERISA) when it sold three of its pharmacy benefit managers (PBMs) to Express Scripts in 2009 and entered a 10-year PBM agreement with the company. Although these actions did result in higher prices for the employers, Anthem and Express Scripts are not liable because the drug prices are ultimately set under contracts, and the defendants had little discretion in determining those prices ([Modern Healthcare](#), December 7).

Letters

- In a December 2 letter, the American Hospital Association urged HHS to take additional steps and extend additional flexibilities to address the PHE. Specifically, the letter urges HHS and CMS to:
 - Suspend routine survey process and quality data reporting requirements.
 - Expand the physician supervision requirement waiver to include all nurse practitioners providing care within the scope of their license.
 - Allow for direct supervision flexibility and the retention of additional approved telehealth services until the end of the PHE.
 - Delay implementation of the price transparency rule's provisions that are resource-intensive and costly for providers to implement.
 - Require commercial plans serving the Medicare Advantage and federal Health Insurance Marketplace to cover all approved or authorized COVID-19 therapies and reimburse them at appropriate rates that cover the cost of drug acquisition, handling, and administration. Such services should be provided without prior authorization.
 - Coordinate with the Department of Defense (DoD) and other relevant agencies in an effort to provide necessary staffing relief for especially hard-hit hospitals.
 - Address issues related to 340B pricing.
 - Encourage and use cross-training opportunities for health care workers.
 - Coordinate an approach to support child care and other expenses to assist health care workers on the front lines ([American Hospital Association](#), December 2).

COVID-19

- Commercial insurers are advocating for Medicare to set prices for the COVID-19 vaccine and administration to prevent the price gouging that payers saw with Remdesivir earlier in the PHE. Specifically, Remdesivir cost private health insurance plans more than \$3,000 per treatment course although the World Health Organization has never commented on the drug's efficacy in reducing patient deaths ([Bloomberg](#), December 3).

Waivers

- Section 1115
 - The state of Wisconsin submitted an [amendment](#) to its SeniorCare Section 1115 Demonstration Waiver which provides a comprehensive prescription drug benefit to Wisconsin residents aged 65 and older with income at or below 200% of the Federal poverty level (FPL) and who are not otherwise eligible to receive full Medicaid State Plan benefits. The amendment adds vaccinations to the list of covered benefits. The federal public comment period is open through January 1, 2021.

- Section 1135
 - Oregon
 - Allows the State to modify the deadline for the face-to-face encounters required prior to the delivery of home health services.
 - Allows private duty nursing services to be delivered by RN and LPN program graduates who have not yet obtained licensure.
- Section 1915(c) Appendix K
 - Montana
 - Extends the end date to January 26, 2021.
 - Removes the Mental Health Group Home service temporarily added to the waiver by a previous Appendix K submission and removes associated provider type.
 - Describes how state settings initial and annual reviews for the HCBS Final Rule will be reviewed using non-face-to-face contact.
 - Allows Montana HCBS Waiver for IDD providers to be reimbursed for tiered services, provided that daytime staffing hours maintain a specified percentage.
 - Pennsylvania
 - Extends the anticipated end date to March 5, 2021.
 - Adds flexibilities to allow Adult Daily Living services to be provided remotely or in the participant's home.
 - Allows waiver services to be provided in alternative settings subject to guidance from the Office of Long-Term Living.
 - Maryland
 - Temporarily exceed service limitations for Respite Care, Family Consultation, Adult Life Planning, and Intensive Individual Support Services.
 - Decreases minimum billing requirements for Therapeutic Integration and Intensive Therapeutic Integration.
 - Increases the Individual Support Services' daily limit and Respite Care days.
 - Allow spouses, parents, and family members to provide services.
 - Allow other practitioners in lieu of approved providers within the waiver.

SPAs

- Traditional SPAs
 - California (CA-15-0024): Adds licensed midwives to the Alternative Benefit Plan (ABP) section of the state plan. This SPA has an effective date of July 1, 2015.
 - Indiana (IN-20-0016): Establishes a DSH allocation method. Hospitals may decline all or part of their annual DSH payment by submitting documentation to the State indicating the decision to decline. This SPA has an effective date of July 1, 2020.
 - Maine (ME-16-0015): Increases reimbursement for personal care services and private duty nursing services. This SPA has an effective date of July 1, 2016.
 - Michigan (MI-20-0008): Implements new federal regulations to permit physician extenders to order home health services and durable medical equipment (DME). This SPA has an effective date of August 1, 2020.
 - Michigan (MI-20-1001): Establishes the ABP the State uses to implement requirements for the Healthy Michigan Plan. This SPA has an effective date of August 1, 2020.
 - Ohio (OH-20-0020): Suspends the value-based purchasing Episode Based Payments program for program years 2020 and 2021. This SPA has an effective date of September 1, 2020.

- [Oklahoma \(OK-20-0001\)](#): Expands Medicaid. This SPA has an effective date of July 1, 2021.
- [Oklahoma \(OK-20-0002\)](#): Establishes an ABP for the adult group. The ABP will include the same services traditionally available to categorically needy individuals under the State's approved state plan. This SPA has an effective date of July 1, 2021.
- [Oklahoma \(OK-20-0003\)](#): Describes the methodology for determining the State's Federal Medical Assistance Program (FMAP) rate, including an enhanced FMAP for the expansion population under the ACA. This SPA has an effective date of July 1, 2021.
- [Oklahoma \(OK-21-0002\)](#): Adds an ABP to the State's plan to cover the Medicaid Expansion population. This SPA has an effective date of July 1, 2021.
- [Oklahoma \(OK-21-0003\)](#): Establishes a methodology to claim the appropriate FMAP rate for individuals enrolled in the new adult group. This SPA has an effective date of July 1, 2020.
- [South Dakota \(SD-20-0009\)](#): Removes the face-to-face requirement for community mental health center providers. This SPA has an effective date of July 1, 2020.
- [Virginia \(VA-20-0013\)](#): Establishes a DSH payment for non-state government owned acute care hospitals and applies the nursing facility inflation rates to specialized care facilities. This SPA has an effective date of July 1, 2020.
- COVID-19 Disaster Relief SPAs
 - [Minnesota \(MN-20-0021\)](#): Implements a rate increase for Personal Care Assistant services. This time-limited, COVID-19 response SPA has an effective date of December 1, 2020.

State Updates

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

- On December 8, the Med-QUEST Division of the Hawaii Department of Human Services released the [QUEST Integration Medicaid Managed Care Request for Proposal \(RFP\)](#) seeking to award up to five health plans statewide to ensure access to care for Medicaid beneficiaries, though the Med-QUEST Division will consider proposals to serve certain islands only. Proposals are due February 15, 2021, and contracts will be awarded March 15, 2021. Hawaii has seen its Medicaid enrollment numbers increase by 19% over the past year ([Hawaii.gov](#)).

Private Sector Updates

- Humana will acquire 50% of iCare, a Wisconsin-based health care company, which will boost Humana's Medicaid presence in Wisconsin. Humana and Centers for Independence have run iCare as a joint venture since 1994. This deal will increase Humana's Medicaid membership to more than 730,000 members across Wisconsin, Florida, Illinois, and Kentucky ([Health Payer Specialist](#), December 4).
- Shortly after Alameda Health System's CEO, Delvecchio Finley, resigned, Atrium Health named Finley the next president and CEO of Navicent. Finley will be based in Macon, Georgia and will start his new role in February 2021 ([Modern Healthcare](#), December 3).
- Paul A. Tufano, AmeriHealth Caritas Chairman and CEO, has joined several c-level health care executives as a new board member for America's Health Insurance Plans (AHIP). Tufano has been with AmeriHealth Caritas for nearly 10 years but has been its CEO since 2014 ([AP](#), December 3).
- Aetna announced an update to its coverage policy which will now cover noninvasive prenatal testing (NIPT) for all pregnancies. Aetna has joined other insurers, such as Humana and UnitedHealthcare, in deeming NIPT which measures cell-free fetal nucleic acids in maternal blood as medically necessary for screening to fetal aneuploidy. Over the summer, the American College of Obstetricians and Gynecologists

issued new guidelines recommending prenatal aneuploidy screening for all pregnant women ([Modern Healthcare](#), December 3).

- The American Hospital Association (AHA)'s Executive Vice President for Government Relations and Public Policy, Tom Nickels, is retiring in early 2021. Nickels has been with AHA for 26 years. Stacey Hughes, a political consultant who works with AHA, will replace Nickels. Hughes will join AHA in January ([Modern Healthcare](#), December 3).
- Kaiser Permanente has developed a COVID-19 care prediction tool called COVAS that can accurately create risk assessments for patients with COVID-19. Kaiser concluded that the COVAS tool was able to predict with 95% reliability when a patient was at high need of respiratory care or at risk of death within one week of visiting an emergency room ([Health Payer Specialist](#), December 2).

Sellers Dorsey Updates

- Sellers Dorsey recently joined the [Michigan Association of Health Plans](#) and the [Ohio Association of Health Plans](#). We are proud to continue our work within Michigan and Ohio and look forward to helping health plans in these states expand their services.
- We continue to seek talented and passionate professionals to join our ever-growing team. [Visit our career opportunities.](#)



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