

# SELLERS DORSEY DIGEST

Issue 15 | December 23, 2020

## NAVIGATION

### Federal Updates

On December 17, CMS released an updated toolkit to provide resources to states regarding coverage and reimbursement for COVID-19 vaccines and vaccine administration.

### State Updates

Virginia Governor Ralph Northam proposed a two-year budget stating the intent is to help Virginians navigate the next phase of the crisis, with a focus on spending in the second fiscal year.

### Private Sector Updates

Insurers in the state of Washington will face a tax hike if a health insurance levy proposed by Governor Jay Inslee is passed.

### Sellers Dorsey Updates

This week's Q&A is with Stella Lee, Senior Consultant. Stella has been with Sellers Dorsey for over four years and serves as a subject matter expert on various Medicaid financing initiatives.

## Summary of Key Updates

After bipartisan budget negotiations over the weekend, on December 21 the House and Senate each passed an omnibus spending package providing both appropriations for fiscal year 2021 and \$900 billion in new supplemental relief funds for COVID-19. The bill will now go to President Trump for signature. The package contains more than \$48.3 billion in new public health spending, including allotments for additional COVID-19 testing, surveillance, and vaccine purchase. While the House and Senate have passed the bill, President Trump has threatened a veto in opposition to the individual stimulus check amounts and other "wasteful and unnecessary provisions." If President Trump does not sign the bill, the Government remains funded through Monday and then faces a potential shutdown ([House Appropriations Committee](#), December 21; [The Washington Post](#), December 21; [Inside Health Policy](#), December 22; [Modern Healthcare](#), December 22).

CMS released a reminder that Hospital Price Transparency requirements go into effect January 1, 2021. Under the program, CMS plans to audit a sample of hospitals for compliance starting in January ([CMS](#), December 18).

On December 17, CMS announced Medicaid managed care organizations (MCOs) serving dually eligible beneficiaries will be able to participate in the new Direct Contracting Model. CMS expects to release a request for applications in early 2021 ([CMS](#), December 17; [Modern Healthcare](#), December 17).

CMS released its national health care spending data for 2019, concluding the growth rate was slightly in line with the 4.7% growth seen in 2018 and consistent with annual spending growth rate of 4.5% seen since 2016 ([Fierce Healthcare](#), December 16).

HHS announced it would increase phase three of the Provider Relief Fund allocation by \$4.5 billion dollars, for a total of \$24.5 billion in relief for hospitals and provider groups. The increase comes after HHS analysis of applications showed submissions for lost revenue would exceed the planned \$20 billion allocation ([HHS](#), December 16; [Becker's Hospital Review](#), December 16; [Inside Health Policy](#), December 16).

From December 15 through December 21, CMS approved 2 Section 1135 waivers, 4 Section 1915(c) Appendix K waivers, and 3 SPAs, all of which are time-limited, COVID-19 disaster relief SPAs.

## Federal Updates

### News

- After bipartisan budget negotiations over the weekend, on December 21 the House and Senate each passed an omnibus spending package providing both appropriations for fiscal year 2021 and \$900 billion in new supplemental relief funds for COVID-19. The bill will now go to President Trump for signature. While the House and Senate have passed the bill, President Trump has threatened a veto in opposition to the individual stimulus check amounts and other “wasteful and unnecessary provisions.” If President Trump does not sign the bill, the Government remains funded through Monday and then faces a potential shutdown. The package contains more than \$48.3 billion in new public health spending, including allotments for additional COVID-19 testing, surveillance, and vaccine purchase. Other key provisions include:
  - General
    - A second round of stimulus payments, with \$600 per adult and per child.
    - An addition \$3 billion for the Provider Relief Fund.
    - \$284 billion for the Paycheck Protection Program; businesses that received an initial loan may apply for a second one.
    - Extends CARES Act unemployment assistance programs and provides an additional \$300 to all weekly unemployment benefits.
    - Extends state and local governments’ ability to make expenditures with CARES Act Coronavirus Relief Fund awards through December 31, 2021. Similarly, allows recipients to spend the CARES Act Coronavirus Relief Fund awards through December 31, 2021.
    - Extends the eviction moratorium through January 2021.
  - Medicaid
    - Requires HHS to submit a report to Congress with a “full accounting, including methodology, of federal loans provided in fiscal years 2020 and 2021 through the Medicare Accelerated and Advanced Payments Program.”
    - Prohibits CMS from taking regulatory action related to the availability of Non-Emergency Medical Transportation (NEMT) until MACPAC completes its study. Also requires a new General Accounting Office report on NEMT.
    - Includes additional provider and driver requirements for NEMT.
    - Continues the moratorium on ACA-related Disproportionate Share Hospital (DSH) cuts for federal fiscal years (FFY) 2021, 2022, and 2023. In FFY 2024, the cuts begin at \$8 billion immediately and continue through FFY 2027.
    - Creates new state reporting requirements on “supplemental payments” to health care providers, which is limited to supplemental payment programs authorized under SPAs and demonstrations (Section 1115s). States are required to explain how payments are consistent with efficiency, economy, quality of care, and access (Social Security Act, Section 1902(a)(30)(A)).
    - Reverses CMS regulation regarding the inclusion of third-party payments in the calculation of a hospital’s specific DSH limit.
    - Extends Money Follows the Person (MFP) funding through 2023, changes institutional residency requirement from 90 days to 60 days and puts in place new application and reporting requirements for states.
    - Extends spousal impoverishment protections through September 2023.
    - Extends funds under the Community Mental Health Services Demonstration through September 2023.

- Clarifies Medicaid Fraud Control Units' authority extends to patients in noninstitutional settings.
  - Requires Medicaid coverage of routine patient costs for beneficiaries participating in qualifying clinical trials ([House Appropriations Committee](#), December 21; [The Washington Post](#), December 21; [Inside Health Policy](#), December 22; [Modern Healthcare](#), December 22).
- On December 4, CMS released an Informational Bulletin reiterating and summarizing existing federal regulations and policy related to Medicaid and CHIP eligibility redeterminations. The bulletin notes recent Program Electronic Review Management (PERM), and other audits have "raised questions concerning state compliance with existing renewal requirements, including the inappropriate continued provision of eligibility for beneficiaries who have become ineligible due to a change in circumstances." Nevertheless, the bulletin also acknowledges the maintenance of effort provision attached to the Federal Medical Assistance Percentage (FMAP) increase under the Families First Coronavirus Response Act, which generally prevents states from terminating coverage during the COVID-19 public health emergency (PHE) ([CMS](#), December 4).
- On December 18, the FDA authorized Moderna's coronavirus vaccine for emergency use, allowing for millions more doses to be distributed around the country. Moderna's vaccine, unlike the Pfizer-BioNTech vaccine, does not need to be kept in extreme-cold storage, so states are hoping to provide it to less populated areas that may not have the correct freezer equipment to store the Pfizer vaccine ([New York Times](#), December 18).
- On December 17, CMS released an updated toolkit to provide resources to states regarding coverage and reimbursement for COVID-19 vaccines and vaccine administration. The toolkit includes updated operational and clinical considerations around vaccine prioritization and distribution and updated information related to coverage requirements, provider reimbursement, and reporting requirements ([CMS](#), December 17).
- MACPAC released its December 2020 "MACStats" Medicaid and CHIP data book. Among the key findings is a 5.6% increase in Medicaid and CHIP enrollment from July 2019 to July 2020, largely driven by the economic downturn due to COVID-19. The data book also shows Medicaid accounted for 9.2% of the federal budget in fiscal year 2019 (compared to the 14.5% dedicated to Medicare expenditures) and that together Medicaid and CHIP accounted for 16.9% of all national health expenditures in calendar year 2018 ([MACPAC](#), December 16; [Modern Healthcare](#), December 16).
- CMS released its national health care spending data for 2019, concluding the growth rate was slightly in line with the 4.7% growth seen in 2018 and consistent with annual spending growth rate of 4.5% seen since 2016. Specifically, "2019 saw faster growth in use and intensity of services and slower growth in medical prices." Total spending for the year is at \$3.8 trillion. Spending on products and services increased at a faster pace than last year while the suspension of the Affordable Care Act's health insurance tax for 2019 led to much slower growth in health insurance spending, which had an increase of 3.7% last year. The COVID-19 pandemic is not accounted for in the 2019 report, though will likely have a significant impact on spending patterns in the 2020 report ([Fierce Healthcare](#), December 16).
- HHS announced it would increase phase three of the Provider Relief Fund allocation by \$4.5 billion dollars for a total of \$24.5 billion in relief for hospitals and provider groups. The increase comes after HHS analysis of applications showed submissions for lost revenue would exceed the planned \$20 billion allocation. These payments represent about 88% of lost revenue reported by the 70,000 providers who will receive payment. Provider payments began on December 16 ([HHS](#), December 16; [Becker's Hospital Review](#), December 16; [Inside Health Policy](#), December 16).

## President-Elect Biden Administration

- Senate Finance ranking members Ron Wyden (D-OR) and Tom Carper (D-DE) are pressing Sen. Chuck Grassley (R-IA) to begin the confirmation process for HHS Secretary nominee Xavier Becerra so that they are ready to begin work in earnest on day one of the new administration. Carper stated, "I urge my colleagues in the Senate to prioritize [Becerra's] confirmation, so that we can work together to bring an end to this pandemic and execute President-elect Biden's vision to strengthen the Affordable Care Act..." ([Inside Health Policy](#), December 16).

## Federal Regulations

- CMS released a reminder that Hospital Price Transparency requirements go into effect January 1, 2021. Under the program, CMS plans to audit a sample of hospitals for compliance starting in January. The audit will check for publicly accessible standard charge information data either in a comprehensive machine-readable file with all items and services, or a display of 300 shoppable services in a consumer-friendly format. CMS reserves the right to take corrective action on noncompliant hospitals including (1) a written warning notice of the specific violations, (2) a request for a Corrective Action Plan (CAP) if noncompliance constitutes a material violation of one or more requirements, and (3) a civil monetary penalty of up to \$300 per day and publication of the penalty on a CMS website if the hospital fails to respond, submit a CAP, or comply with the requirements of a CAP ([CMS](#), December 18).
- CMS announced Medicaid MCOs serving dually eligible beneficiaries will be able to participate in the new Direct Contracting Model. This will be the first payment model that allows MCOs to take risk (either through a shared savings arrangement or through a full risk arrangement) for both Medicare and Medicaid costs for dual eligibles. Applicants must either be MCOs with existing Fully Integrated Dual Eligible Special Needs Plan (FIDE SNP) or Medicare-Medicaid Plan (MMP) contracts with CMS, or entities that are affiliated with an MCO holding such a contract. Applicants must also cover either Long-Term Services and Supports (LTSS) or behavioral health care for persons with serious mental illness or a substance use disorder, or both. CMS expects to release a request for applications in early 2021 ([CMS](#), December 17; [Modern Healthcare](#), December 17).

## Letters

- In a December 17 letter, the American Hospital Association, American Medical Association, American Health Care Association, and National Association for Home Care & Hospice urged Congressional leadership to extend the moratorium on applying the two percent Medicare sequester cuts through the end of the PHE ([American Hospital Association](#), December 17; [Inside Health Policy](#), December 17).
- In a December 17 letter, the Arizona Congressional delegation requested HHS exclude Medicaid rate increases from net patient revenue calculations for the purpose of calculating Provider Relief Fund allocations under the CARES Act. This request comes after concerns that Arizona's new HEALTHII program could result in decreased PRF distribution to Arizona hospitals ([Senator Sinema](#), December 17).

## Waivers

- Section 1115
  - Texas
    - On December 8, Texas submitted an [amendment](#) to its existing Healthy Texas Women Section 1115 Demonstration Waiver, which provides family planning services to individuals not otherwise eligible for Medicaid. The amendment would add a limited postpartum service package to the waiver, including targeted treatments for mental health, diabetes, asthma, addiction, and heart disease. The federal comment period will be open from December 15, 2020 through January 15, 2021.

- Section 1135
  - Kentucky
    - Modifies the 42 C.F.R. §431.231(a) timeframe for reinstatement of benefits related to fair hearings to allow the State to reinstate benefits for beneficiaries who request a hearing 10 days or more after the date of action.
    - Modifies the 42 C.F.R. §438.420(a)(i) timeframe to continue or reinstate benefits, to allow the Medicaid managed care plan to continue benefits if requested within the current 10-day time frame or reinstate benefits for the enrollee when the individual requests continuation of benefits between 11 and 30 days if the managed care plan has not yet made a decision on the appeal and the State fair hearing is pending.
  - Nevada
    - Modifies the 42 C.F.R. §431.231(a) timeframe for reinstatement of benefits related to fair hearings to allow the State to reinstate benefits for beneficiaries who request a hearing 10 days or more after the date of action.
    - Modifies the 42 C.F.R. §438.420(a)(i) timeframe to continue or reinstate benefits, to allow the Medicaid managed care plan to continue benefits if requested within the current 10-day time frame or reinstate benefits for the enrollee when the individual requests continuation of benefits between 11 and 30 days if the managed care plan has not yet made a decision on the appeal and the State fair hearing is pending.
- Section 1915(c) Appendix K
  - Indiana
    - Extends existing flexibilities through February 2021.
  - Minnesota
    - Temporarily removes the weekly 40-hour service limit for parents of minors and spouses who are paid to provide care under extended home care nursing or consumer directed community supports.
  - South Dakota
    - Adds electronic service delivery for some services.
  - Nebraska
    - Extends existing flexibilities until March 5, 2021.

## SPAs

- COVID-19 Disaster Relief SPAs
  - **New Mexico (NM-20-0024)**: Implements targeted access supplemental payments for Safety-Net Care Pool hospitals from April to December 2020. This SPA has an effective date of April 1, 2020, and an expiration date of March 15, 2021 or the expiration of the PHE, whichever comes first.
  - **Texas (TX-20-0021)**: Reimburses Intermediate Care Facilities to reserve a bed for eligible residents during an additional 90-day temporary leave of absence taken to reduce the risk of COVID-19 transmission from the period of March 20, 2020 through October 23, 2020. This time-limited COVID-19 relief SPA has an effective date of March 20, 2020.
  - **West Virginia (WV-20-0006)**: Reimburses enrolled Hospitals and Critical Access Hospitals (CAHs) for the use of Medicare certified swing beds and adjusts Medicare swing bed rates for non-CAHs effective September 21, 2020, and CAHs effective October 19, 2020. This time-limited COVID-19 relief SPA has an effective date of March 1, 2020.

## State Updates

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

- Virginia's Governor Ralph Northam proposed a two-year budget intended to help Virginians navigate the next phase of the COVID-19 crisis, with a focus on spending in the second fiscal year. The proposal restores roughly half of the \$2.7 billion in spending that was frozen earlier due to the pandemic and includes an estimated \$650 million deposit into the State's cash reserve. According to Finance Secretary Aubrey Layne, Virginia is showing increased revenue growth, and tax revenues could be \$685 million above previous forecasts ([The Washington Post](#), December 16).

## Private Sector Updates

- Insurers in the state of Washington will face a tax hike if a health insurance levy proposed by Governor Jay Inslee is passed. The tax would be based on a per-member per-month assessment at a to-be-determined rate, which would impact many Medicaid MCOs. The tax is estimated to raise millions of dollars in the coming years. The revenue would help fund Washington's public health departments ([Health Payer Specialist](#), December 21).
- Tenet Healthcare will sell its urgent care business to FastMed for \$80 million. FastMed is growing its urgent care and ambulatory portfolio, adding 87 urgent care centers to its 104 existing locations across several states. It is expected that Tenet Healthcare will close this deal by the first quarter of 2021 ([Fierce Healthcare](#), December 18).
- Centene is on track to have its year-over-year revenue increase up to 49% in 2020; however, it is expected that Centene's revenue in 2021 will grow by only 4.2%, according to *Health Payer Specialist*. Due to the forecast of slower growth, investors recently sold some stock ([Health Payer Specialist](#), December 18).
- Because of the ongoing pandemic, insurers are putting a special focus on mental health. Kaiser Permanente introduced a new mental health support program that features several apps including Calm, Headspace, and Whil that focus on meditation, mindfulness, and improving sleep. Other apps called myStrength, SilverCloud, and Thrive focus on cognitive behavioral therapy. Blue Cross Blue Shield of Massachusetts also launched a program focusing on substance abuse that provides addiction services to enrollees at their homes ([Health Payer Specialist](#), December 18).
- Anthem has named Dr. Shantanu Agrawal, current CEO of the National Quality Forum, as its new Chief Health Officer. Dr. Agrawal will help the insurer improve its CMS star ratings for its Medicare Advantage plans and manage Anthem's enterprise health strategy. Dr. Agrawal was previously a deputy administrator for CMS ([Health Payer Specialist](#), December 17).
- Kaiser Permanente recently named Greg Christian as its new President of the insurer's Hawaii market and John Yang as its President and Medical Director of the Hawaii Permanente Medical Group. Christian is also the COO of Kaiser's health plan and hospital division in Southern California ([Health Payer Specialist](#), December 16).

## Sellers Dorsey Updates

- This week's Q&A is with Stella Lee, Senior Consultant. Stella has been with Sellers Dorsey for over four years and serves as a subject matter expert on various Medicaid financing initiatives. [Learn more](#) about Stella and the great work she does at the firm.
- Sellers Dorsey offices will be closed from December 24 to January 1, 2021. Because of the office closure, there will not be a new issue of the *Digest* on December 31. The next issue will be released on Thursday, January 7. Have a safe and happy new year!



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