

SELLERS DORSEY DIGEST

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NAVIGATION

Federal Updates

On March 23, HHS announced it would postpone, pending judicial review, implementation of the Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) final rule.

State Updates

Democratic state legislators in Colorado have introduced a bill that would create a state-administered health insurance option for individuals and small groups and businesses.

Private Sector Updates

Insurers that have been picking up copays and cost sharing for COVID-19 treatment have begun to wind down their contributions.

Sellers Dorsey Updates

View Sellers Dorsey's 30-minute presentation reviewing the highlights and impact of the American Rescue Plan Act, particularly on states and providers.

Summary of Key Updates

On March 19, the House passed a bill by a vote of 246-175 that would grant a nine-month extension to a moratorium on the Medicare sequester (i.e., a 2% cut on all Medicare services). The bill will now go to the Senate, where Senators must pass the bill by March 31 to avoid the across-the-board 2% reduction. Congress most recently extended the sequester moratorium as part of the December 2020 spending package ([Fierce Healthcare](#), March 19).

On March 18, the Senate voted largely along party lines to confirm former California Attorney General, Xavier Becerra, as Secretary of Health and Human Services (HHS). HHS is responsible for overseeing CMS, and most recently, playing a key role in directing the Biden administration's COVID-19 response. Becerra will advocate for Biden's health care agenda which includes expanding insurance to all Americans, using Medicare to negotiate for lower drug prices, and addressing ethnic and racial disparities in the current health care system ([Associated Press](#), March 18).

The House Committee on Energy and Commerce's health panel held a hearing on March 23 to discuss building on the Affordable Care Act (ACA) and legislation aimed at expanding health coverage and lowering costs, which included further incentivizing additional states to expand their Medicaid programs ([Inside Health Policy](#), March 19; [Committee on Energy & Commerce Memo](#), March 19).

President Biden revoked [Arkansas'](#) and [New Hampshire's](#) Medicaid work requirement waivers on March 17, but SCOTUS has recently accepted briefs from the parties and is currently moving forward with a consolidated appeal regarding the waivers ([Bloomberg Law](#), March 22; [Inside Health Policy](#), March 12; [Inside Health Policy](#), March 18; [Cochran vs. Gresham](#)).

On March 16, CMS announced it would not move forward with changes to Medicare Part D drug classification as part of the voluntary Part D Payment Modernization Model, which was included in a January 19, 2021 rule ([CMS](#), March 16; [Fierce Healthcare](#), March 16).

From March 16 to March 23, CMS approved 47 Section 1135 waivers and 11 COVID-19 disaster relief SPAs.

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Federal Updates

News

- On March 23, HHS announced it would postpone, pending judicial review of an action filed by the Center for Science in the Public Interest and others, implementation of the Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) final rule, which was originally published on January 19 in the *Federal Register*. The rule, originally to be effective as of March 22, would have required HHS to review many existing regulations that are ten years or older or else allow them to expire. HHS cited its inability to divert resources from the COVID-19 response as its primary reason for the delay ([Federal Register](#), March 23, [Endpoints News](#), March 19).
- In a March 17 hearing of the Senate Finance Committee, Senator Elizabeth Warren and other Democratic committee members called for a probe into issues and outcomes related to private equity-owned nursing facilities. This comes after committee witnesses requested greater accountability and transparency around how for-profit care systems spent federal COVID-19 relief funds, as well as research showing private equity ownership may correlate with lower staffing levels ([Inside Health Policy](#), March 18).
- On March 16, CMS announced it would not move forward with changes to Medicare Part D drug classification as part of the voluntary Part D Payment Modernization Model, included in a January 19, 2021 rule. The rule would have made changes to the protected drug classes for Part B, allowing plans to decline to cover drugs in five of the six protected categories. The rule would also have allowed plans to include only one drug per class rather than two. Other elements of the program appear unaffected ([CMS](#), March 16; [Fierce Healthcare](#), March 16).

Federal Legislation

- Lawmakers may now draft legislation that includes "congressionally directed spending" after House Republicans voted to lift a decades-long ban on earmarked allocations. Requests must include a publicly disclosed earmark and affirmation that neither the lawmaker nor their immediate family have a financial interest in the project(s) funded by the directed spending. Additionally, House GOP members are required to prove their request is an "appropriate use of taxpayer funds" and committee and party leaders may not consider a member's demographics (e.g., seniority, committee assignments, or position in elected leadership) when approving or denying a request. The new rules also implement oversight provisions by enlisting the Government Accountability Office (GAO) to audit a sample of the earmarks members approve and submit an annual report to Congress ([CQ](#), March 17).
- The House Committee on Energy and Commerce's health panel held a hearing on March 23 to discuss legislation aimed at building on the ACA and expanding health coverage and lowering costs, which included [HR340](#) to further incentivize additional states to expand their Medicaid programs. HR 340 proposes to provide the same level of federal Medicaid matching funds to those states that have not expanded Medicaid coverage to newly eligible populations, no matter when the state decides to enact the expansion. This would be an extension of the current ACA language where the enhanced FMAP is based on how long a state has had expanded coverage, rather than the date on which they expanded coverage ([Inside Health Policy](#), March 19, [Committee on Energy & Commerce Memo](#)).

Federal Litigation

- President Biden revoked [Arkansas'](#) and [New Hampshire's](#) Medicaid work requirement waivers on March 17, but SCOTUS is moving forward with an unusual appeal by the Department of Justice (DOJ) in the consolidated case [Cochran v. Gresham, U.S., No. 20-37](#), to reverse two lower court decisions striking down the work requirements which had been approved for the two states under the Trump administration and to send the matter back to the HHS. Although the Biden administration revoked the

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waivers it has concerns over the lower court rulings which it claims may create uncertainty over HHS' authority over Medicaid policy. On Monday, the DOJ submitted a [brief](#) in the matter, asking if SCOTUS continues to decide the case on its merits to further consider whether HHS can allow states to "try out new measures – like alternative ways to deliver care – that indirectly advance Medicaid's main goal." In its letters to the states, CMS previously indicated the programs had 30 days to defend their 1115 waivers and demonstrate the waivers promote Medicaid objectives outlined in the Social Security Act. Arkansas crafted a response defending its program and indicated its work requirements are in line with Medicaid objectives by giving the non-elderly, non-disabled a way to "escape poverty." Conversely, New Hampshire did not defend its program to CMS ([Bloomberg Law](#), March 22; [Inside Health Policy](#), March 12; [Inside Health Policy](#), March 18).

- The U.S. District Court for the Southern District of Indiana issued a preliminary injunction on March 16 at the request of the drug maker Eli Lilly to put the 340B Administrative Dispute Resolution (ADR) rule on hold as the drug manufacturer proceeds with its [lawsuit](#). The injunction was granted based on the judge's determination that HHS under the Trump administration likely violated the rulemaking procedure for the ADR rule which creates a process to resolve disputes in the 340B drug discount program. The injunction order was welcomed by some stakeholders who argue the Health Resources and Services Administration (HRSA) should be the entity responsible for any action against drug makers' restrictions on 340B discounts instead of dispute resolution panels ([Inside Health Policy](#), March 18; [JD Supra](#), March 24).

Letters

- In a March 17 [letter](#) to the Acting Assistant Attorney General Richard Powers, the American Hospital Association (AHA) requested the Department of Justice's Antitrust Division investigate UnitedHealth Group's proposed acquisition of Change Healthcare. AHA expressed its concern that the acquisition would consolidate "competitively sensitive health care data" and reduce competition for the IT services to hospitals and other providers. The AHA argues that the acquisition will result in a massive combination of health data that will impact care decisions ([Modern Healthcare](#), March 18).

Waivers

- Section 1135
 - These waivers grant modifications to the public notice and submission timelines for medication assisted therapy (MAT) SPAs under the SUPPORT Act for the following states and territories: [Alabama](#), [Arizona](#), [Colorado](#), [Connecticut](#), [Delaware](#), [District of Columbia](#), [Florida](#), [Georgia](#), [Hawaii](#), [Iowa](#), [Idaho](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Massachusetts](#), [Michigan](#), [Minnesota](#), [Missouri](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire](#), [New Jersey](#), [New Mexico](#), [New York](#), [North Carolina](#), [Ohio](#), [Puerto Rico](#), [Rhode Island](#), [South Carolina](#), [South Dakota](#), [Texas](#), [U.S. Virgin Islands](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), and [Wyoming](#).
 - These waivers grant modifications to 42 C.F.R. §431.231(a) pertaining to the timeframe for reinstatement of Medical Assistance benefits related to a fair hearing and 42 C.F.R. §438.420(a)(i) pertaining to the timeframe to continue or reinstate benefits: [California](#), [Rhode Island](#), and [Virginia](#).
 - [Missouri and New York](#)
 - Waives clinic facility requirement.
 - [Oklahoma](#)
 - Allows use of legally responsible individuals for delivering personal care services.
 - [Oregon](#)
 - Modifies tribal notice and submission timelines for Medication-Assistance Treatment (MAT) SPA under the SUPPORT Act.

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SPAs

- COVID-19 Disaster Relief SPAs
 - Arizona ([AZ-20-0031](#)): Increases the payment rates for the administration of COVID-19 vaccines to the Medicare rate in effect at the time the service was provided. This time-limited COVID-19 response SPA has an effective date of December 1, 2020, and an expiration date upon termination of the public health emergency (PHE).
 - Arkansas ([AR-20-0024](#)): Adds pharmacists, pharmacy technicians, pharmacy interns, and pharmacies as qualified providers for COVID-19 vaccine administration. Reimburses swing beds in Critical Access Hospitals at a rate of \$400/day and adopts the Medicare fee schedule for COVID-19 vaccine administration reimbursement. This time-limited COVID-19 response SPA has an effective date of December 8, 2020, and an expiration date upon termination of the PHE.
 - California ([CA-20-0040](#)): Increases reimbursement rates for the COVID-19 vaccine administration to 100% of the corresponding Medicare reimbursement rate at the time the service is provided. Clarifies that pharmacies are qualified providers of COVID-19 vaccinations and that pharmacy technicians and interns acting within their scope of practice may administer the COVID-19 vaccination under pharmacist supervision. Applies the newly added benefit to the Alternative Benefit Plan (ABP) population. This time-limited COVID-19 response SPA has an effective date of November 2, 2020, and an expiration date upon termination of the PHE.
 - Louisiana ([LA-20-0021](#)): Covers pharmacy technicians, pharmacy interns, and pharmacies under the Other Licensed Practitioner benefit to administer COVID-19 vaccinations and reimburse administration of COVID-19 vaccines at 100% of Louisiana Region 99 Medicare rates. This time-limited COVID-19 response SPA has an effective date of November 2, 2020, and an expiration date upon termination of the PHE.
 - Maine ([ME-20-0025](#)): Implements an add-on payment to primary care, behavioral health, and dental service providers. Increases reimbursement for private non-medical institutions. Allows nursing facilities to relocate individuals with acquired brain injuries to a quarantine unit when diagnosed with COVID-19. Allows facilities to relocate residential care patients to a nursing facility bed or nursing facility patients to a residential care bed due to COVID-19. Allows pharmacies to bill for COVID-19 testing, and allows physician assistants, nurse practitioners and clinical nurse specialists to be qualified providers for ordering and recertifying a plan of care for private duty nursing services. This time-limited COVID-19 response SPA has an effective date of March 1, 2020, and an expiration date upon termination of the PHE.
 - Michigan ([MI-20-0013](#)): Provides Medicaid coverage of investigational drugs, devices, and biological agents and their administration that have received FDA emergency use authority, and increases the payment for COVID-19 vaccine administration to 100% of the Medicare rate. This time-limited COVID-19 response SPA has an effective date of December 1, 2020, and an expiration date upon termination of the PHE.
 - Missouri ([MO-20-0026](#)): Increases reimbursement rates to 100% of Medicare for COVID laboratory testing and specimen collection. This time-limited COVID-19 response SPA has an effective date of March 1, 2020, and an expiration date upon termination of the PHE.
 - Montana ([MT-20-0033](#)): Authorizes administration of COVID-19 vaccines with an FDA Emergency Use Authorization (EUA). Authorizes COVID-19 drug treatments that may be provided under EUA without regard to rebate status. This time-limited COVID-19 response SPA has an effective date of December 1, 2020, and an expiration date upon termination of the PHE.
 - Montana ([MT-20-0034](#)): Allows flexibility in the setting where autism treatment services are provided and face-to-face requirement during service provision. This time-limited COVID-19

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response SPA has an effective date of March 1, 2020, and an expiration date upon termination of the PHE.

- New Mexico ([NM-20-0025](#)): Adds pharmacists, pharmacy interns, pharmacy technicians, and pharmacies as qualified providers of COVID-19 vaccinations and implements reimbursement for COVID-19 vaccine administration. This time-limited COVID-19 response SPA has an effective date of December 1, 2020, and an expiration date upon termination of the PHE.
- Oregon ([OR-20-0018](#)): Increases certain payment rates and allows additional providers to order Home Health Services including Durable Medical Equipment. This time-limited COVID-19 response SPA has an effective date of March 1, 2020, and an expiration date upon termination of the PHE.

State Updates

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

- The Florida Senate Health Policy Committee unanimously approved a telehealth bill that would allow the state to permit and reimburse Medicaid providers for the use of telephone/audio-only calls as telehealth visits. The bill would also remove a provision in the state's 2019 telehealth law by allowing out-of-state health care providers to provide telehealth services without prior registration with the Florida Department of Health if they are in consultation with an in-state licensed health care professional. The bill comes after Florida experienced an enrollment surge in the state's Medicaid program due to COVID-19 and seeks to encourage enrollees towards regular doctor visits for illnesses before they exacerbate and require an emergency room visit ([Politico](#), March 17).
- Democratic state legislators in Colorado have introduced a bill that would create a state-administered health insurance option for individuals and small groups and businesses. The bill's public health care option would kick in if insurers fail to reduce their premiums for individual plans by 20% by 2024. The new public option would set prices for private insurers selling to individuals and small groups as well as price limits for hospitals and prescription drug makers on how much they can charge those who choose to buy plans under the public option. The bill intends to create more competition in the insurance market, particularly in rural areas where residents have few insurer options even under the ACA-created state health insurance exchange ([Associated Press](#), March 18).
- The Ohio Attorney General (AG) has filed a lawsuit against Centene alleging the insurer overcharged the state's Medicaid program by artificially inflating its drug dispensing fees and not accurately disclosing the true cost of its pharmacy services. The AG alleges that Centene filed reimbursement requests for amounts already paid by third parties as it subcontracted with various pharmacy benefit managers/pharmacy companies such as Envolve Health Solutions and Health Net Pharmacy Solution. Buckeye Health Plan, Centene subsidiary, is the Medicaid managed care organization that has contracted with the state to administer health benefits to 2.9 million low-income enrollees ([Modern HealthCare](#), March 11).

Private Sector Updates

- Insurers that have been picking up copays and cost sharing for COVID-19 treatment have begun to wind down their contributions. Many payers have announced their intent to resume charging members for these expenses. Plans will continue to cover COVID-19 testing and vaccinations as required by the federal government. ([Health Payer Specialist](#), March 19).
- The Blue Cross Blue Shield Association (BCBSA) is partnering with Feeding America to provide COVID-19 vaccine outreach in vulnerable communities. Advocates and policy experts have raised concerns around reaching underserved populations and high-risk patients. Feeding America will distribute clinical

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information and educational materials at their 200 food banks, while BCBSA will provide physical handouts and social media posts with further information ([Fierce Healthcare](#), March 18).

- Med-QUEST has awarded statewide QUEST Integration Managed Care Contracts to AlohaCare, Hawaii Medical Service Association, WellCare Health Insurance of Arizona, doing business as 'Ohana Health Plan, and UnitedHealthcare. Kaiser Foundation Health Plan was awarded contracts for Oahu and Maui only. The contracts will go into effect on July 1, 2021 ([Med-QUEST Division](#), March 18).
- The demand for advanced practice clinicians is on the rise as health care organizations, payers, providers, tech companies, and private-equity ventures bolster and build out their primary-care oriented services. With an estimated shortage of 20,400 primary care-physicians in 2020, industry observers expect the growing number of nurse practitioners (NP) and physician assistants (PA) to meet this demand. The supply of NPs and PAs has continued to grow exponentially, with the NP workforce more than doubling from 2010 to 2017 ([Modern Healthcare](#), March 18).
- Amazon plans to expand its virtual health service benefit, Amazon Care, to all its employees this summer as well as making Amazon Care available to other companies. Amazon Care offers virtual visits, in-person primary care visits at home or offices, and prescription delivery. Services include addressing urgent care needs and preventative issues, such as vaccinations and screenings. The expansion of Amazon Care is Amazon's most recent development focused on employee health care through primary care models ([Fierce Healthcare](#), March 17).
- Throughout the pandemic, millions of people became unemployed and lost employer-sponsored coverage. The Kaiser Family Foundation estimates over 6 million people enrolled in Medicaid between February and September 2020. In an economic downturn, reliance on safety net programs like Medicaid rises, and the need to protect Medicaid program integrity for beneficiaries and taxpayers becomes increasingly important. Stakeholders identify five recommendations to maintain Medicaid integrity: (1) COBRA enrollment, (2) premium assistance as part of the exchange eligibility process, (3) coordination of benefits for COVID-19 testing and vaccine services, (4) prohibiting out-of-network and administrative denials, and (5) reinstating Medicaid coordination of benefits with TRICARE ([Fierce Healthcare](#), March 15).
- The American Rescue Plan Act includes the biggest expansion of [health insurance tax credits](#) under ACA in a decade. The expansion reduces costs for new customers, individuals already enrolled in the program, those experiencing unemployment this year, and potentially those whose incomes were too high to previously qualify for subsidies. While as of April 1 new exchange consumers will find health insurance subsidies will be automatically applied, existing consumers may have to go back on the exchange to get the increased subsidies or wait until they pay their taxes in order to claim the tax credits ([Associated Press](#), March 12).

Sellers Dorsey Updates

- Sellers Dorsey has developed a video addressing the highlights of the ARPA and its impact particularly on states and providers. [Click here to watch the presentation](#). This 30-minute video discusses how the \$1.9 trillion in appropriated funds will address economic and health issues stemming from the COVID-19 pandemic.
- Recently Sellers Dorsey added Mari Cantwell as a Director. Mari is the most recent former Medicaid Director from the California Department of Health Care Services (DHCS), having served in that position for nearly five years before joining Sellers Dorsey in 2020 as Senior Strategic Advisor. Mari leverages her

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deep knowledge of Medi-Cal and the California health care systems and marketplace to assist clients primarily in that state. [Read more about Mari](#) and join us in welcoming her to the firm.



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