

# SELLERS DORSEY DIGEST

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### Federal Updates

The Senate confirmed Vivek Murthy, President Biden's longtime public health advisor, for Surgeon General.

### State Updates

The Florida Legislature has released health care budget proposals that call for drastic cuts to Medicaid spending.

### Private Sector Updates

The Mississippi Attorney General's office is investigating Magnolia Health, a Centene Corporation subsidiary, for allegedly overcharging the Mississippi Department of Medicaid for drug costs.

### Sellers Dorsey Updates

Sellers Dorsey members look forward to attending the virtual State of Reform Federal Health Policy Conference on April 7-8.

## Summary of Key Updates

As of March 25, both the Senate and House have passed their own versions of legislation to extend the moratorium on the 2% Medicare sequester. The sequester was originally implemented in 2013 but was paused by Congress last year in response to the financial impact of the COVID-19 pandemic. HR1868, as [amended by the Senate](#), does not contain the House's waiver of the PAY-GO scorecard found in the American Rescue Plan Act (ARPA), but does extend the sequester moratorium through the end of CY2021 instead of the end of the public health emergency (PHE). The House will once again review the bill upon return from its recess in April. While the sequester bill goes through the legislative process, CMS has announced it will hold Medicare claims "for a short period" after April 1 to spare providers from the 2% sequestration cuts that would otherwise be in effect. Specifically, CMS indicated the hold on claims will not "affect providers' cash flow" ([Inside Health Policy](#), March 25; [Modern Healthcare](#), March 25; [Medicare Learning Networks](#), March 30).

On March 23, President Biden extended the Affordable Care Act (ACA) Exchange open enrollment period through August 15 ([The Hill](#), March 23; [Modern Healthcare](#), March 23).

The White House plans to reveal more details regarding the health care provisions of the next legislative package next month. Stakeholders expect the emerging health care legislation will look beyond the pandemic and instead address major health care reform ([Inside Health Policy](#), March 29).

President Biden announced his administration will double the COVID-19 vaccine goal to 200 million doses in the first 100 days of his presidency ([Politico](#), March 25).

From March 23 to March 30, CMS approved 4 Section 1135 waivers, 26 Section 1915(c) Appendix K waivers, and 8 COVID-19 disaster relief SPAs.

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## Federal Updates

### News

- The Senate confirmed Vivek Murthy, President Biden's longtime public health advisor, for Surgeon General. Murthy was Surgeon General during the Obama administration and will join the team of scientists and public health officials to advise President Biden on the pandemic response ([Politico](#), March 23).
- According to an analysis by *The Washington Post*, a 2020 CMS rule removing hundreds of procedures from the Medicare inpatient-only classification over the next three years will result in lower hospital reimbursement. Because the rule does not allow these procedures to be performed in other settings, such as ambulatory surgical centers, the rule will likely shift services from an inpatient to outpatient hospital setting that comes with higher out-of-pocket costs for Medicare beneficiaries ([The Washington Post](#), March 21).

### Federal Regulations

- On March 23, President Biden extended the ACA Exchange open enrollment period through August 15. President Biden had already extended the open enrollment period through May 15 to respond to the volatility in employer-backed coverage, a financial side effect of the COVID-19 pandemic. Moreover, ARPA included provisions that provide greater financial assistance to certain exchange enrollees, and stakeholders expect that about 25% of people who enroll in coverage through HealthCare.gov will be able to upgrade to a plan with lower cost sharing. These savings will begin on April 1 ([The Hill](#), March 23; [Modern Healthcare](#), March 23).

### Federal Legislation

- The White House plans to reveal health care details of the next legislative package next month. Stakeholders expect the emerging health care legislation will look beyond the pandemic and instead address major health care reform. Details surrounding what might be included in the future bill have not been released yet, and the Biden administration continues to focus on the pandemic response ([Inside Health Policy](#), March 29).
- In response to maternal health disparities, disproportionately affecting women of color and made even more obvious by the COVID-19 pandemic, Rep. Lauren Underwood (D-Ill.) has introduced the Black Maternal Health Momnibus Act of 2021 ([HR959](#)). The bill proposes to "end preventable maternal mortality and severe maternal morbidity in the United States and close disparities in maternal health outcomes." The bill focuses on social determinants of health, a diversified perinatal workforce, increased access to midwives and doulas, and improved data collection. States have similarly taken note of growing inequities. Several have considered extending postpartum Medicaid coverage through federal waivers and now have the option to do so under ARPA ([Modern Healthcare](#), March 26).
- The Children's Health Insurance Program (CHIP) is up for renewal in 2027. Some stakeholders are concerned that if the Supreme Court of the United States (SCOTUS) invalidates the entire ACA, it could result in additional pressures to eliminate CHIP. Specifically, advocates worry that invalidation of the ACA will require the Congressional Budget Office's (CBO's) financial analysis of the cost to reauthorize the program to increase from its current projections. CBO's most recent projection is substantially lower than previous projections, as the calculations considered keeping kids enrolled in CHIP is cheaper than having them enter the ACA market. Historically, the program has been used as a Congressional bargaining chip during other budget negotiations. [HR6151](#), which is currently sitting with the House Energy and Finance Committee, could make funding for CHIP permanent and dismiss the funding concerns for future reauthorization ([Inside Health Policy](#), March 26).

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- During the House Committee on Energy and Commerce’s [hearing last week](#), Democratic Representatives urged hold-out states to expand their Medicaid programs. ARPA includes a temporary five percentage point increase in federal Medicaid matching funds for states that newly expand their program. The hearing included discussions on Medicaid being essential to making health care more affordable and suggestions that additional expansion provisions could be included in a future reconciliation bill ([Inside Health Policy](#), March 24).
- Democratic lawmakers plan to propose legislation that would allow Health and Human Services (HHS) to negotiate prices for some of the most expensive brand-name drugs covered under Medicare, an idea staunchly opposed by major pharmaceutical companies and Republican lawmakers. While there is strong bipartisan public support (88% support, according to a [2019 Kaiser Family Foundation poll](#)) for federal drug-pricing actions, Senate Republicans are expected to block such legislation, leaving Democrats with the options of passing the bill using reconciliation or eliminating the Senate filibuster. PhRMA, the lobbying group representing major pharmaceutical companies, opposes the drug-pricing action, arguing any such measure will result in less pharmaceutical innovation and reduced access to medicines ([Kaiser Health News](#), March 23).

## COVID-19

- President Biden announced his administration will double the COVID-19 vaccine goal to 200 million in the first 100 days of his presidency. The announcement came after the Biden administration reached more than 114 million shots in the first two months after the inauguration, with an estimated 2.5 million COVID-19 doses being delivered per day. The country is expected to reach 200 million vaccinations in approximately five weeks ([Politico](#), March 25).
- According to a *Moody’s Investor Services* report, the COVID-19 pandemic has resulted in lower hospital margins but increased liquidity, owing in part to advanced payments under the CARES Act. The report shows the median hospital operating margin was 0.5% in 2020, down from 2.4% in 2019. The report also found the pandemic has impacted patient mix, resulting in higher acuity patients due to fewer elective procedures ([Healthcare Dive](#), March 26).
  - *Moody’s* also reported the pandemic adversely impacted median operating margins for nonprofit hospitals. However, cash on hand remained stable or slightly increased due to the Medicare advanced payments, deferral of payroll taxes, suspension of retirement contributions, and deferral of capital spending ([Modern Healthcare](#), March 25).
- The COVID-19 has also resulted in lower charity care spending among 15 of the country’s not-for-profit health systems, according to a *Modern Healthcare* analysis. Charity care accounted for 1.4% of overall spending in 2020, down from 1.6% in 2019. The analysis attributes the decline primarily to overall lower patient volumes because of the pandemic ([Modern Healthcare](#), March 26).

## Waivers

- Section 1115
  - On March 4, New York submitted a request to CMS to extend its existing 1115 Demonstration Waiver Medicaid Redesign Team (MRT) for three additional years. While continuing most of the waiver’s program and expenditure authorities, the request includes two programmatic amendments. The amendments seek to transition the non-emergency medical transportation and pharmacy benefits from managed care to fee-for-service. The MRT extension request also indicates the state intends to submit a concept paper for a forthcoming demonstration to address health disparities and delivery system issues. CMS will accept comments on the proposed amendment through April 23 ([CMS](#), March 4).

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- On March 1, Alabama submitted a request to CMS for a new 1115 Demonstration Waiver. The waiver requests authority to reimburse for acute inpatient stays in institutions for mental diseases (IMD) for Medicaid eligible individuals ages 21-64 with a serious mental illness. The state also seeks a waiver of statewideness to target access issues in Mobile, Washington, and Baldwin counties. CMS will accept comments on the proposed amendment through April 24 (CMS, March 1).
- On March 1, New Mexico submitted a request to CMS to amend its existing 1115 Demonstration Waiver, Centennial Care 2.0. CMS will accept comments on the proposed amendment through April 26. The proposed amendment seeks to make the following changes:
  - Waive the IMD exclusion for all Medicaid beneficiaries.
  - Establish High-Fidelity Wraparound (HFW) as an intensive care coordination approach for children and youth who have high intensity needs.
  - Create Graduate Medical Education (GME) expansion funding mechanism designed to develop new or expanded GME programs.
  - Add coverage of the COVID-19 vaccine and its administration for individuals who have limited benefit plan coverage (CMS, March 1).
- Section 1135
  - Alabama
    - Modifies public notice and submission timelines for medication assisted therapy (MAT) SPA under the SUPPORT Act.
  - Kentucky, Nevada, and Texas
    - Modifies 42 C.F.R. §431.231(a) timeframe for reinstatement of benefits related to fair hearing.
    - Modifies 42 C.F.R. §438.420(a)(i) timeframe to continue or reinstate benefits.
- Section 1915(c) Appendix K
  - Connecticut, Georgia, Idaho, Kentucky, Massachusetts, Minnesota, New York, North Dakota, Oregon, Virginia, and Wisconsin extend waiver end date to six months after the conclusion of the PHE.
  - Alaska
    - Temporarily exceeds service limitations for Day Habilitation services.
  - Georgia
    - Temporarily increases payment rates for Community Access Services, Community Residential Alternative Services, and Community Living Support Services and modifies waiver reporting timeframes.
  - Hawaii
    - Extends end date for increased provider payment rates for Personal Assistance/Habilitation, Community Learning Services (individual and group), Adult Day Health, and Individual Employment Supports (job development and coaching) through June 2021.
  - Indiana
    - Temporarily adds accompanying and transportation services to Attendant Care Services.
  - Kentucky
    - Temporarily allows for overtime or increased service coverage related to COVID, and allows Case Managers to assist with obtaining the vaccine.
    - Temporarily authorizes respite and personal assistance services for participants accessing residential services.

- Temporarily allows Community Mental Health Centers to enroll and provide services.
  - Clarifies requirement for home delivered meals.
  - Temporarily allows waiver services to be provided in an acute hospital setting.
  - Discontinues retainer payments for Adult Day Health Centers and Adult Day training providers.
- Louisiana
  - Modifies waiver reporting timeframes.
- Massachusetts
  - Temporarily modifies eligibility criteria to include individuals leaving long-stay facilities due to COVID-19.
  - Temporarily increases payment rates for Day Habilitation Supplement and other services.
  - Temporarily makes retainer payments to some providers.
  - Modifies waiver reporting timeframes.
- Michigan
  - Clarifies Level of Care (LOC) due dates.
- Minnesota
  - Temporarily increases the maximum duration of Adult Day Services from 4 to 6 hours per day.
- Nebraska
  - Extends waiver end date to June 30, 2021.
- New York
  - Suspends conflict of interest standards for duration of Appendix K approval.
- North Dakota
  - Updates timeframes for provider training and LOC reevaluations.
- Ohio
  - Allows a one-time payment as a rate increase for Waiver Nursing, Personal Care, and Home Care Attendant services.
- Pennsylvania
  - Temporarily increases payment rates for Transportation Trip and Community Participation Supports and implements an interim quality assurance and improvement process.
- Washington
  - Temporarily allows remote supports to be provided without prior authorization if approved through a person-centered service planning process.
  - Temporarily adds Assistive Technology services.
  - Modifies public notice requirements.

## SPAs

- COVID-19 Disaster Relief SPAs
  - Arizona ([AZ-21-0002](#)): Issues a second COVID-19 direct payment identical to the first approved payment for nursing facilities. This time-limited COVID-19 response SPA has an effective date of January 1, 2021, and an expiration date upon termination of the PHE.
  - California ([CA-21-0016](#)): Increases the reimbursement of oxygen and respiratory equipment to 100% of the corresponding Medicare rates and exempts these rates from the 10% payment

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- reductions in the state plan. This time-limited COVID-19 response SPA has an effective date of March 1, 2020, and an expiration date upon termination of the PHE.
- Kentucky ([KY-20-0011](#)): Disregards any excess resources for long-term care members the month the PHE ends. This time-limited COVID-19 response SPA has an effective date of March 15, 2020, and an expiration date upon termination of the PHE.
  - Massachusetts ([MA-21-0002](#)): Adds a temporary rate increase from 15-minute increment rate to full-day and partial-day per diem rate for adult day health and day habilitation providers. This time-limited COVID-19 response SPA has an effective date of August 1, 2020, and an expiration date upon termination of the PHE.
  - Nevada ([NV-21-0003](#)): Updates the Other Licensed Practitioners (OLPs) to include pharmacies, pharmacy interns, qualified pharmacy technicians, and licensed dental hygienists, and allows for 100% Medicare payment for COVID-19 vaccine administration. This time-limited COVID-19 response SPA has an effective date of December 11, 2020, and an expiration date upon termination of the PHE.
  - North Carolina ([NC-21-0003](#)): Allows pharmacists to administer COVID-19 vaccines and approves the COVID-19 Medicaid Disaster Relief Round 7 State plan. This time-limited COVID-19 response SPA has an effective date of March 1, 2020, and an expiration date upon termination of the PHE.
  - Texas ([TX-21-0001](#)): Allows licensed practitioners practicing within their scope of practice, such as nurse practitioners and physician assistants, to order Medicaid home health services during the pandemic. This time-limited COVID-19 response SPA has an effective date of March 18, 2020, and an expiration date upon termination of the PHE.
  - Washington ([WA-20-0039](#)): Modifies the termination date of previously approved provisions to end at an earlier date. This time-limited COVID-19 response SPA has an effective date of October 20, 2020, and an expiration date upon termination of the PHE.

## State Updates

- The Florida Legislature has released health care budget proposals that call for drastic cuts to Medicaid spending. The health care budgets released by the Senate and House stand at \$42.3 billion and \$42.1 billion, respectively. Both budget proposals reduce the Medicaid rate for hospitals; the Senate bill proposes a 7.5% cut, and the House bill goes further to 8.9% for outpatient services, 8.6% for inpatient services, and a 2% cut for nursing homes. The proposed cuts to Medicaid hospital spending total an estimated \$250 million under the Senate plan and \$391.4 million under the House plan. The Florida Hospital Association strongly condemned the proposed cuts, particularly the cuts under the House plan ([Politico](#), March 24; [Politico](#), March 25).
- The Missouri State House Budget Committee voted against a \$1.6 billion spending plan that would have funded the first year of Medicaid expansion in the state. Republican state lawmakers have strongly opposed Medicaid expansion; however, the legislature was ultimately mandated to create an expansion plan for the state when 53% of Missouri voters approved the program in the August primary election. Missouri Republican lawmakers' efforts to block the Medicaid expansion program could land the state in court ultimately forcing it to comply with the voter-approved plan ([St Louis Post-Dispatch](#), March 26).

## Private Sector Updates

- The CMS Innovation Center plans to make Alternative Payment Models (APMs) a top priority through 2022. APMs is a value-based care fee incentive system that aims to promote quality and outcomes over quantity of care. Advocates stress that value-based systems could be a key way to address social determinants of health and overall patient health outcomes ([Health Payer Specialist](#), March 26).

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- A [report](#) from Kaufman Hall found 39% of hospitals could have negative operating margins this year despite optimistic pandemic recovery. The report, commissioned by the American Hospital Association (AHA), seeks to understand COVID-19's effect on hospital operating margins using data gathered from 900 hospitals from before the pandemic, during the pandemic, and present day. Based on their findings, Kaufman Hall modeled optimistic and pessimistic scenarios to gauge the various types of recovery hospitals may have by the end of 2021. Both scenarios indicated hospitals' financial statuses will remain below pre-pandemic levels through the end of CY2021 ([Becker's Hospital Review](#), March 24).
- The Mississippi Attorney General's office is investigating Magnolia Health, a Centene Corporation subsidiary, for allegedly overcharging the Mississippi Department of Medicaid for drug costs. The investigation was launched after [Ohio filed a lawsuit against Centene](#) in early March for the manipulation of drug prices. Centene has dismissed Mississippi's plans to investigate the Medicaid practice and calls all claims unfounded ([Health Payer Specialist](#), March 26; [Modern Healthcare](#), March 24).

## Sellers Dorsey Updates

- Sellers Dorsey continues to seek talent from across the nation. We are currently hiring for several positions. [Click here](#) for the most recent career opportunities.
- Next week, Sellers Dorsey members will attend the virtual [State of Reform Federal Health Policy Conference](#) on April 7-8. The conference is focused on bridging the gap between health care policy and political reality. We look forward to hearing from and engaging with industry thought leaders.
- Check out our recent Staff Spotlight Q&A with Nancy Kohler, Director, who is an expert in quality improvement and works on value-based care payment arrangements for many Sellers Dorsey clients. [Learn more about Nancy](#) and the work she does.



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