

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

On March 31, the Biden administration revealed [The American Jobs Plan](#), a proposal focused largely on creating jobs and building infrastructure. The plan proposes to make the [Money Follows the Person \(MFP\)](#) program permanent and asks Congress to direct \$400 billion towards the expansion of home and community-based services (HCBS). The plan will reduce waitlists for home care services while simultaneously creating more jobs in the home care workforce. If successful, this would be one of the largest financial investments made in HCBS in over a decade. Stakeholders expect the HCBS investment to come through grants and an increased, long-term Medicaid match rate for states ([Inside Health Policy](#), April 6; [Modern Healthcare](#), March 31).

Providers and stakeholders are awaiting CMS guidance to provide more detail on how and when states can use their increased HCBS funding ([Inside Health Policy](#), March 26; [Inside Health Policy](#), April 1).

On March 30, CMS began to recoup any outstanding balance from accelerated and advance payments made to providers earlier in the public health emergency (PHE). Providers can expect CMS to pull the dollars owed directly from Medicare part A and B claims processed after the one year anniversary of their first payment's issue date ([CMS](#), April 1).

The Supreme Court of the United States (SCOTUS) has suspended its review of the Medicaid work requirements [formerly approved](#) for Arkansas and New Hampshire pending another order ([Inside Health Policy](#), April 6; [Politico](#), April 5).

From March 30 to April 6, CMS approved 3 Section 1135 waivers, 3 Section 1915(c) Appendix K waivers, and 16 SPAs, 2 of which are COVID-19 disaster relief SPAs. Of note, CMS has authorized SPAs in Montana and Ohio that rescind existing COVID-19 flexibilities.

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Federal Updates

News

- The National Rural Health Association (NRHA) is pushing for funding for infrastructure investment over provider relief, according to *Inside Health Policy*. The American Rescue Plan Act (ARPA) allocated \$8.5 billion to rural providers. An NRHA spokesperson said the Biden administration should allow providers to spend these funds on increasing broadband access, workforce support, and capital improvements, which have generally not been allowed under previous COVID-19 relief packages. The Department of Health and Human Services (HHS) has yet to release guidance on how it defines “rural providers” for the purposes of relief dollars and how these dollars can be spent (*Inside Health Policy*, March 31).
- A March 2021 Office of Inspector General (OIG) data brief found most states do not provide complete or accurate data in their Transformed Medicaid Statistical Information System (T-MSIS) for payments to providers for managed care services delivered to Medicaid enrollees. The OIG recommends CMS review state T-MSIS data and where necessary, require states submit corrective action plans to ensure data completeness and quality (*OIG*, March 30).
- On March 26, CMS announced it would resume hospital survey activities beginning March 23. In January, the agency had temporarily suspended most hospital survey activities, except for immediate jeopardy investigations. CMS intends to investigate complaints received during the suspension period within 45 days (*CMS*, March 26; *Becker’s Hospital Review*, March 26).
- HHS Secretary Xavier Becerra announced an additional \$50 million in advertising to bolster the Affordable Care Act’s (ACA) Special Enrollment Period outreach campaign, which runs through August 15, 2021. HHS encourages individuals to enroll in the exchange market places during the extended Special Enrollment Period noting the increased tax credits available to consumers through ARPA (*HHS*, April 1).
- The [Medicare Payment Advisory Commission](#) (MedPAC) met April 1-2 and discussed the role of private equity in Medicare. The Commission found that although private equity ownership of major provider types is somewhat limited (e.g., 4% of hospitals and 11% of nursing facilities), the gaps in available provider ownership data make it difficult to track private investment. For example, Commissioners were not able to determine from extant data sources the percentage of physician practices currently owned by private equity firms. Commissioners also expressed concern about the impact private equity investment strategies could have on utilization and overall Medicare spending, as some strategies could increase provider costs. MedPAC will include information from its research on the impact of private equity on Medicare in its June 2021 report to Congress ([MedPAC](#), April 2; [Modern Healthcare](#), April 2).
 - MedPAC also discussed streamlining CMS’ portfolio of alternative payment models (APMs). MedPAC’s research shows CMS will operate 12 APMs with 21 different tracks in 2021. Commissioners noted that of the models the Center for Medicare and Medicaid Innovation (CMMI) has tested, only four have expanded into permanent programs. MedPAC noted many clinicians are in multiple models, which can dilute models’ incentives. Commissioners adopted a recommendation for its June 2021 report to Congress that CMS “should implement a more harmonized portfolio of fewer alternative payment models that are designed to work together to support the strategic objectives of reducing spending and improving quality” ([MedPAC](#), April 1; [Modern Healthcare](#), April 1).
 - In addition, MedPAC approved recommendations to:
 - Adjust the Medicare Advantage benchmark policy, which will lower federal spending on Medicare Advantage.
 - Require coverage of all vaccines and vaccine administration under Medicare Part B and increase Medicare payments for vaccines.

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- Change the pass-through drug policy for outpatient services such that Medicare only pays for drugs tied to a specific service.
 - Replace the current value-based purchasing program for skilled nursing facilities.
 - Require CMS to report on patient experience measures for skilled nursing facilities.
 - Revise the Medicare indirect medical education (IME) payment to better reflect costs ([MedPAC](#), April 1; [Modern Healthcare](#), April 1).
- The American Physician Groups (APG) is advocating to include additional provider relief in the infrastructure package released by the Biden administration. While APG is not requesting a specific amount, it is asking the administration to prioritize physicians, specifically those in primary care, to be included in any future relief package. APG is requesting this inclusion as it was not included in ARPA. The Biden administration is still reviewing the \$24 billion in unallocated funds from the first provider relief package to determine how to proceed ([Inside Health Policy](#), March 29).

Federal Regulations

- Providers and stakeholders are awaiting CMS guidance to provide more detail on how and when states can use their increased HCBS funding. ARPA included a provision authorizing a 10 percentage point Federal Medical Assistance Percentage (FMAP) increase for state Medicaid programs to pay for HCBS services, specifically supplementing, and not supplanting current funding. Stakeholders have requested a flexible timeline for spending the funds (funds are currently available from April 1, 2021 through March 31, 2022) and flexibility in how the funds can be spent. However, advocates are split on the level of detail CMS should provide with some requesting "reasonable parameters" and others expressing authorization to use the increased FMAP on direct support workforce and HCBS infrastructure. Separately, LeadingAge sent a [letter](#) to leaders in both houses requesting they make the 10% FMAP increase permanent to address the critical workforce shortages in the Long Term Services and Supports space ([Inside Health Policy](#), March 26; [Inside Health Policy](#), April 1).

Federal Litigation

- SCOTUS has suspended its review of the Medicaid work requirements [formerly approved](#) for Arkansas and New Hampshire. This suspension comes weeks after the high court removed oral arguments for the case from the calendar. While the work requirements case is officially on hold, the lawsuit has not been tossed out entirely, and it remains unclear what SCOTUS plans to do next ([Inside Health Policy](#), April 6; [Politico](#), April 5).

COVID-19

- On March 30, the Federal Communications Commission (FCC) released a statement that it will be moving forward with Round 2 of its COVID-19 Telehealth Program. The program includes a \$250 million allocation to offer telecommunication services, information services, and connected devices for providers to improve telehealth services during the pandemic. This program builds on Round 1's \$200 million funding authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Providers can expect the application window for funding to open within the next 30 days. The agency has established rating criteria for this round's application to identify the neediest areas, tribal communities, health care provider shortage areas, and unfunded Round 1 applicants ([FCC](#), March 30; [Fierce Healthcare](#), April 1).

Waivers

- Section 1135
 - [Kentucky](#), [Nevada](#), and [Texas](#)
 - Modifies 42 C.F.R. §431.231(a) timeframe for reinstatement of benefits related to fair hearing.

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- Modifies 42 C.F.R. §438.420(a)(i) timeframe to continue or reinstate benefits.
- Section 1915(c) Appendix K
 - Colorado
 - Increases payment rates for adult day services, specialized day services, adult day service transportation, day habilitation, non-medical transportation, supported employment, alternative care facilities, group residential services and supports, and supported living programs. Timeframes and percentages of payment rate increases vary by service.
 - Implements “guard rails” for retainer payments to ensure providers may not exceed 3 episodes of up to 30 days per beneficiary.
 - Maine
 - Clarifies a previous submission related to rates paid for self-directed services to clarify that rates are monthly vs. per diem.
 - Texas
 - Temporarily (March through October 2020) makes retainer payments to residential support and supervised living providers.

SPAs

- Traditional SPAs
 - California ([CA-21-0001](#)): Updates the Current Dental Terminology dental code set from 2019 to 2020. This SPA has an effective date of July 1, 2021.
 - Kentucky ([KY-20-0013](#)): Revises reimbursement for ground ambulance providers licensed as class I-III to make interim and final supplemental payments. This SPA has an effective date of January 1, 2021.
 - New Hampshire ([NH-20-0004](#)): Increases nursing facility per diem rates by 3.1%. This SPA has an effective date of January 1, 2020.
 - New Jersey ([NJ-20-0001](#)): Updates the 2020 Medicaid fee schedules. This SPA has an effective date of January 1, 2020.
 - New Jersey ([NJ-20-0016](#)): Updates the Medicaid fee schedule for Adult Day Health and Private Duty Nursing. This SPA has an effective date of October 1, 2020.
 - New Jersey ([NJ-20-0021](#)): Adds a COVID-19 Vaccine Administration Fee. This SPA has an effective date of December 19, 2020.
 - New York ([NY-20-0061](#)): Clarifies the existing methodology for distribution of the rural enhancement for personal care services. This SPA has an effective date of July 1, 2020.
 - Montana ([MT-21-0003](#)): Rescinds section 7.4 of previously approved relief SPA ([MT-20-0024](#)) of the state plan to furnish medical assistance to the optional eligibility group. This SPA has an effective date of March 18, 2020.
 - Ohio ([OH-21-0001](#)): Rescinds the temporary suspension of beneficiary copayments, approved in previous relief SPA ([OH-20-0012](#)). This SPA has an effective date of January 5, 2021.
 - Ohio ([OH-21-0002](#)): Rescinds the temporary Presumptive Eligibility (PE) flexibilities, approved in previous relief SPA ([OH-20-0012](#)), which expanded populations for which PE determinations were made. This SPA has an effective date of January 1, 2021.
 - Ohio ([OH-21-0003](#)): Rescinds the temporary expansion of Prior Authorization (PA) for medications that allowed automatic renewal of PA without clinical review or time/quality

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- extensions, which was previously approved in relief SPA ([OH-20-0012](#)). This SPA has an effective date of January 1, 2021.
 - Ohio ([OH-21-0004](#)): Rescinds the temporary increase in the maximum number of bed hold days available for Nursing Facility (NF) and Intermediate Care Facility (IFC) residents from 30 days to 60 days per calendar year, which was approved in a previously approved relief SPA ([OH-20-0012](#)). This SPA has an expiration date of January 1, 2021.
 - Oklahoma ([OK-21-0013](#)): Updates the reimbursement methodology for tribal providers rendering residential substance use disorder (SUD) services. This SPA has an effective date of January 1, 2021.
 - Utah ([UT-21-0001](#)): Provides a two year exception to the requirement that the state have a Medicaid Recovery Audit Contractor program in place, starting February 1, 2021, and terminating January 31, 2023. This SPA has an effective date of February 1, 2021.
- COVID-19 Disaster Relief SPAs
 - Kansas ([KS-21-0004](#)): Adds pharmacy interns and techs to the providers who can administer vaccines. Continues to follow current vaccines administration reimbursement methodology for interns and techs, paying \$14.15 per 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.
 - Oklahoma ([OK-21-0011](#)): Adds nurse practitioners, clinical nurse specialists, and physician assistants working in accordance with state law to the list of providers who can order home health services as per the CARES act. This time-limited COVID-19 response SPA has an effective date of March 27, 2020, and an expiration date upon termination of the PHE.

State Updates

- The Ohio Department of Medicaid has awarded Aetna Better Health a contract to serve as the specialized managed care organization for children with complex behavioral health care needs. Aetna Better Health will run OhioRISE (Ohio Resilience through Integrated Systems and Excellence) which is aimed at eliminating gaps in care for approximately 60,000 young adults with behavioral, addiction, and mental health struggles within the state. Main contracts for the Ohio Medicaid program have yet to be announced ([Health Payer Specialist](#), April 6).
- On March 26, a District Judge granted Georgia permission to intervene in a current lawsuit challenging the Trump HHS approval of the state's 1332 waiver. The waiver allows the state to rely on agents and brokers instead of Healthcare.gov to enroll consumers starting 2022. Plaintiffs Planned Parenthood and Feminist Women's Health Center charge that the waiver and guidance violate both the ACA and the Administrative Procedure Act and are detrimental to the state's insurance market. Georgia cites in its [motion to intervene](#) that its interests are not currently served by either party in the case ([Inside Health Policy](#), April 6).
- The North Carolina Healthcare Association (NCHA) has released a statement conveying support for the inclusion of Medicaid expansion in Governor Roy Cooper's proposed budget. NCHA estimates that Medicaid expansion would eliminate \$2.8 billion of uncompensated care usually covered by state hospitals. The governor's \$27 billion budget proposal expands Medicaid eligibility by October 1 for more than 600,000 residents. The state is one of 12 that has yet to expand Medicaid coverage to low-income individuals ([State of Reform](#), April 5).
- Forty health systems and insurers in Oregon have signed a voluntary compact pledging to secure 70% of their payments to value-based payment (VBP) models and reduce their health care expenses in alignment

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with the state's cost growth benchmark of 3.4%. Organizations that fail to meet the target would be issued a state-enforced performance improvement plan and could be financially penalized. The 3.4% cost growth rate target would be in place for the next four years until gradually falling to 3%. The compact builds upon existing cost growth benchmarks and VBP arrangements in the state ([Modern Healthcare](#), April 2).

- A federally commissioned [study](#) found Indiana's Medicaid expansion program, Healthy Indiana Plan, is no better at improving health and access to care than other state expansions. When compared with states that have not expanded, findings show Indiana has mixed results in improving the health of low-income individuals. The Healthy Indiana Plan was created by former Vice President Pence and former CMS Director Seema Verma in 2015, and stakeholders have followed the plan closely due to its complexity. The study reported the expansion was successful in reducing the number of uninsured state residents, but it could take several years to analyze the impact of expansion on the overall population ([Kaiser Health News](#), April 1).
- After Florida legislators released budget proposals that introduced drastic cuts to Medicaid, the Florida Hospital Association is urging lawmakers to reconsider the proposed cuts. The Florida Senate proposed \$250 million in cuts to Medicaid hospital inpatient and outpatient rates and an additional \$77 million in cuts to hospitals primarily serving Medicaid patients. The House cuts are even larger, with a \$288 million reduction in Medicaid hospital inpatient and outpatient care and a \$226 million reduction to the state's critical care fund for safety-net hospitals ([Becker's Hospital Review](#), March 31).
- A Mississippi provision to extend postpartum Medicaid coverage from two months to a full year was not included in the state's Medicaid bill passed last week. The Mississippi Division of Medicaid temporarily extended postpartum coverage as a condition of federal COVID-19 relief funding, but many were hopeful for a long-term change as authorized under ARPA. Physicians advocated for the extended coverage, citing Mississippi as having the highest infant mortality rate in the country, and the 21st highest maternal mortality rate overall ([Modern Healthcare](#), March 31).
- The Wyoming legislature has rejected Medicaid expansion, voting against the bill ([HB0162](#)) in a 3-2 vote in the state Senate Labor and Health Committee. An estimated 25,000 state residents would have been extended coverage under the proposed expansion ([Wyoming Public Media](#), March 31).

Private Sector Updates

- Interest by hospitals, providers, and medical technology manufacturers in acquiring ambulatory surgery centers has increased during the past year. The pandemic drove volume towards the outpatient setting due to the fear of contracting the virus within the hospital setting. Similarly, hospitals have been forced to move more patients and procedures out of their inpatient facilities to preserve space, allowing for greater opportunities to invest in surgery centers. Commercial payers may favor of surgery centers for certain procedures because of the reduced cost when compared to hospitals. Additionally, CMS increased the number of procedures that can be done at ambulatory surgery centers, adding 267 more procedures eligible for outpatient reimbursement in 2021 ([Fierce Healthcare](#), April 5).

Sellers Dorsey Updates

- April is a busy month for Spring conferences! Sellers Dorsey members will attend the [Annual Conference of the American Society on Aging](#) on April 6-15, [State of Reform Federal Health Policy Conference](#) on April 7-8, [Medicaid Health Plans of America's Spring Policy Forum](#) on April 20-21, and several more. Check out our [events page](#) to see all the conferences our staff will attend and participate this month.

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- With the surge in anti-Asian hate crimes, Sellers Dorsey is committed to combatting racism and the health inequities that come with it. Read our [recent statement](#) here and learn more about what we're doing to address racism and health disparities.
- Our Staff Spotlight Q&As highlight our firm's diverse, talented, and motivated staff and the recent work they have done. [Check out our Q&A featuring Matt Onstott](#), Director, who works on an array of initiatives in Medicaid financing, Medicaid managed care, business development, and provider policy and reimbursement.



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