

# SELLERS DORSEY DIGEST

Issue 30 | April 22, 2021

## NAVIGATION

### Federal Updates

On April 15, Chiquita Brooks-LaSure had her confirmation hearing before the Senate Finance Committee for her nomination as CMS Administrator.

### State Updates

Rhode Island has removed its interim CEO, Chief of Medical services, Chief Medical Officer, and Chief Nursing Officer of Eleanor Slater Hospital after a no-confidence vote was passed by its nurses.

### Private Sector Updates

Ride-sharing company Lyft has launched Lyft Pass for Healthcare, which allows individuals to schedule nonemergency medical transport (NEMT) covered by health organizations including commercial health plans, Medicare, and Medicaid.

### Sellers Dorsey Updates

This week's Staff Spotlight Q&A is with one of our talented Senior Strategic Advisors, Dave Ulsh, who is Sellers Dorsey's first employee.

## Summary of Key Updates

CMS informed Texas on April 16 it would rescind its earlier approval of the state's 1115 waiver extension on the grounds that CMS erred in approving a deviation from waiver public comment requirements. The extension would have continued existing waiver authorities, including billions of dollars for an uncompensated care pool, through September 2030. Texas' waiver will now expire on September 30, 2022 ([CMS](#), April 16).

In a letter to the Department of Health and Human Services (HHS) Secretary Becerra, leaders of the House Committee on Energy and Commerce urged the Secretary to enforce HHS regulation on health care price transparency, which requires hospitals and insurers to publicly post pricing information on their websites ([House Committee on Energy and Commerce](#), April 13; [Becker's Hospital Review](#), April 14; [Modern Healthcare](#), April 14).

On April 29, the Federal Communications Commission (FCC) will start, on a rolling basis, to accept applications for the second round of its COVID-19 telehealth program funding ([Modern Healthcare](#), April 15).

CMS approved both Georgia's and Missouri's Medicaid 1115 waiver amendments to extend postpartum coverage. Georgia will extend coverage from 60 days to six months and Missouri will extend coverage to new mothers with a substance use disorder (SUD) who have incomes up to 196% of the federal poverty level for a year after giving birth. While CMS recommended Missouri expand one year of postpartum coverage to all new mothers, Missouri said it does not have the state legislative authority to broaden the request ([Inside Health Policy](#), April 16).

From April 13 to April 20, CMS approved two Section 1115 waivers, three Section 1135 waivers, two Section 1915(c) Appendix K waivers, and six SPAs, four of which are COVID-19 disaster relief SPAs.

*If you are a client and have questions, we advise you to consult with your Sellers Dorsey account or project contact.*

*If you are not currently working with Sellers Dorsey, please email [info@sellersdorsey.com](mailto:info@sellersdorsey.com).*

*Subscribe to this newsletter here: [www.sellersdorsey.com/about/newsletter](http://www.sellersdorsey.com/about/newsletter).*

## Federal Updates

### News

- On April 15, Chiquita Brooks-LaSure had her confirmation hearing before the Senate Finance Committee for her nomination as CMS Administrator alongside Andrea Palm, who is being considered for Deputy Secretary of the Department of Health and Human Services (HHS). If confirmed, Brooks-LaSure said she would quickly issue guidance on the Affordable Care Act's (ACA's) 1332 state innovation waivers, as well as rulemaking on surprise billing, and if applicable, advancing Biden's agenda for a potential public option. Several other topics that were discussed throughout the hearing included making telehealth flexibility permanent, improving dual-eligible care coordination, and flexibility for state Medicaid waivers. Andrea Palm promised to work with senators on their priorities including home and community-based services (HCBS), telehealth, oral health, and more. The hearing was largely congenial, focusing on important health care policies for the future ([Inside Health Policy](#), April 15; [Inside Health Policy](#), April 15; [Fierce Healthcare](#), April 15).
  - On April 20, Texas Sen. John Cornyn announced he plans to block Brooks-LaSure's nomination. Sen. Cornyn has requested more information from Brooks-LaSure on how she plans to help Texans keep their health insurance. He claims the Biden administration intentionally rescinded a Texas Medicaid waiver as a tactic to get the state to expand Medicaid. Some Medicaid advocates believe the waiver discouraged Texas from expanding Medicaid and thus encouraged the withdrawal. Finance committee Democrats still expect to hold a vote on Brooks-LaSure's nomination on April 22 to advance to the Senate floor ([The Hill](#), April 20).
- Congressional sources told *POLITICO* that Democratic lawmakers in Congress have narrowed their goals on Medicare expansion and drug pricing reform in the upcoming infrastructure bill, aiming for a limited expansion of health coverage for poor adults that would be paid for by a modest drug pricing reform ([Politico](#), April 15).
- The House Appropriations Health and Human Services subcommittee praised funding for maternal health in HHS's skinny discretionary budget hearing on April 15, but Representatives are still divided on whether the Hyde Amendment, which bans the use of federal funds to pay for abortions except to save the life of the woman or if the pregnancy is a result of rape or incest, should be included in Secretary Becerra's final budget request. The request would authorize \$200 million to reduce maternal mortality and morbidity in the U.S. and \$340 million to the Title X family planning program. While the discussion on inclusion or removal of the Hyde Amendment continues, Representatives applauded the funding included for the opioid epidemic and mental health, social determinants of health, and rural health investments ([Inside Health Policy](#), April 15).

### Federal Legislation

- Senator Jacky Rosen (D-NV) is drafting legislation that will help non-profit drug makers develop and introduce affordable drugs in the US. The anticipated bill is expected to reduce Food and Drug Administration (FDA) user fees and grant exemption from taxes and the Medicaid price rule for non-profit drug companies. The non-profit pharmaceutical industry historically has provided affordable medicine in poor countries but is growing in the U.S. as drug costs rise and hospitals face shortage of common generic injectables ([Inside Health Policy](#), April 15).

### Letters

- In a letter to HHS Secretary Becerra, leaders of the House Committee on Energy and Commerce urged the Secretary to enforce HHS' regulation on health care price transparency, which requires hospitals and insurers to publicly post pricing information on their websites. The letter cites reporting in early 2021

*If you are a client and have questions, we advise you to consult with your Sellers Dorsey account or project contact.*

*If you are not currently working with Sellers Dorsey, please email [info@sellersdorsey.com](mailto:info@sellersdorsey.com).*

*Subscribe to this newsletter here: [www.sellersdorsey.com/about/newsletter](http://www.sellersdorsey.com/about/newsletter).*

which revealed that many of the largest hospitals had not yet complied with the rule, while others had employed coding techniques that blocked pricing information from appearing in internet search results. While CMS issued technical guidance to insurers on March 23 barring search-blocking code, the new guidance does not specifically apply to hospitals ([House Committee on Energy and Commerce](#), April 13; [Becker's Hospital Review](#), April 14; [Modern Healthcare](#), April 14).

## COVID-19

- On April 15, HHS Secretary Becerra announced the renewal of the COVID-19 public health emergency (PHE), effective April 21, 2021. The declaration lasts for the duration of the emergency or 90 days but may be extended again by the Secretary after consultation with public health officials. Previous COVID-19 PHE declarations have been reauthorized for 90 days. Renewal of this most recent declaration will be required prior to July 21, 2021. The extension means most federal Medicare and Medicaid program flexibilities will remain in effect ([HHS](#), April 15).
- The Johnson & Johnson (J&J) COVID-19 vaccine will remain on hold as the Centers for Disease Control and Prevention (CDC) and the FDA indicated they need more evidence to determine if the blood clots experienced by the six individual cases are linked to the J&J shot. There are currently six verified cases of blood clots of more than seven million vaccinations of the J&J shot in the US. A Vaccine advisory group to the CDC will meet April 23 to decide whether to resume the J&J vaccine ([Associated Press](#), April 14; [Modern Healthcare](#), April 14; [Washington Post](#), April 22).
- The CEO of Pfizer indicated that people will likely need a third booster dose of the COVID-19 vaccine within 12 months of getting fully vaccinated and noted the possibility of annual vaccination. Currently, there is no information on how long the COVID-19 vaccine protects against the virus after being fully vaccinated; the Pfizer vaccine is more than 91% effective against COVID-19 and more than 95% effective against severe disease six months after the second dose ([CNBC](#), April 15).
- On April 29, the Federal Communications Commission (FCC) will start, on a rolling basis, to accept applications for the second round of its COVID-19 telehealth program funding. The FCC COVID-19 telehealth program was established by Congress under the Coronavirus Aid, Relief, and Economic Security (CARES) Act last year and provides health care organizations with funds to purchase telecommunications equipment needed to develop and offer telehealth services during the pandemic. The first round of the program will allocate \$150 million of the \$250 million in funding on May 6 ([Modern Healthcare](#), April 15).
- On April 16, the White House announced that it is investing \$1.7 billion from the American Rescue Plan Act (ARPA) to monitor, track, and combat emerging COVID-19 strains in the country. The funding will expand genomic sequencing of COVID-19 samples, establish six new Centers of Excellence in Genomic Epidemiology, and create a National Bioinformatics Infrastructure ([Inside Health Policy](#), April 16).

## Waivers

- Section 1115
  - On April 16, CMS approved Georgia's Medicaid waiver extending its postpartum coverage from 60 days to six months ([CMS](#), April 16; [Inside Health Policy](#), April 16).
  - On April 16, CMS approved Missouri's request to extend postpartum coverage for one year after giving birth to new mothers with a substance use disorder (SUD) who have incomes up to 196% of the federal poverty level. While CMS recommended Missouri expand one year of postpartum coverage to all new mothers, Missouri maintains it does not have the state legislative authority to broaden the request. Stakeholders are hopeful that the extension of Medicaid postpartum coverage for up to a year will become a permanent and mandatory program ([CMS](#), April 16; [Inside Health Policy](#), April 16).

*If you are a client and have questions, we advise you to consult with your Sellers Dorsey account or project contact.*

*If you are not currently working with Sellers Dorsey, please email [info@sellersdorsey.com](mailto:info@sellersdorsey.com).*

*Subscribe to this newsletter here: [www.sellersdorsey.com/about/newsletter](http://www.sellersdorsey.com/about/newsletter).*

- On March 31, Tennessee submitted a request to amend its existing Section 1115 Demonstration Waiver, TennCare III, effective July 1, 2021 to CMS. CMS will accept public comments on the amendment through May 15. The amendment would make the following programmatic modifications:
  - Integrate remaining HCBS, including state plan Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and 1915(c) services, into managed care. The services would continue to be authorized under the existing 1915(c) waiver, but services would be delivered under managed care. Tennessee made an initial move toward integration in 2016 when it established a fully integrated Medicaid Managed Long Term Services and Supports (MLTSS) model (Employment and Community First CHOICES) and closed new enrollment in its non-capitated HCBS waiver programs.
  - Add a new benefit for “enabling technology” in the Employment and Community CHOICES program.
  - Transition children receiving SSI from the specialty TennCare Select program to TennCare, providing them choice of managed care organizations (MCOs).
  - Assign inmates of public institutions to TennCare Select.
  - Modify the Employment and Community First CHOICES eligibility criteria to clarify that the demonstration group includes individuals eligible for Medicaid, but whose Medicaid category does not confer LTSS (CMS, March 31).
  
- In an April 16 letter to Texas Medicaid Director Stephanie Stephens, CMS informed Texas it would rescind its earlier approval of a waiver extension, stating CMS had “materially erred” in approving Texas’ request for an exemption from public notice requirements around 1115 waiver submissions. CMS had approved Texas’ waiver extension, which maintained the state’s existing managed care delivery system, extended and resized its uncompensated care pool, and established a new directed payment program through September 30, 2030. In its rescission letter, CMS contends Texas did not demonstrate sufficient basis for the exemption, which requires “a sudden emergency threat to human lives,” as the state had nearly two years left in its waiver approval period at the time of its extension submission, providing ample time to go through a standard public notice and stakeholder engagement process. CMS concludes its error in approving this exemption deprived stakeholders of the opportunity to comment on the waiver extension which includes significant programmatic and funding changes. Accordingly, CMS indicates the program and expenditure authorities in place prior to the state’s extension request will remain in place and are set to expire on September 30, 2022. CMS emphasizes that Texas must comply with public notice and comment requirements if and when it chooses to pursue a new waiver extension application.
  - Biden administration officials, cited anonymously in the *Washington Post*, characterized CMS’ rescission of the waiver extension as part of an “effort to push state officials toward accepting the Affordable Care Act’s Medicaid expansion.”
  - In a statement issued in response to CMS’ letter, Texas Governor Greg Abbott accused the Biden administration of “obstructing health care access” for Texans by rescinding its waiver extension approval. Texas Attorney General Ken Paxton indicated he would use every “legal tool available to regain the assistance Texans need.”
  - Some stakeholder groups, including Every Texan, praised CMS for upholding the public comment process. Every Texan was one of three groups that penned a [December 2020 letter](#) to CMS, cited in CMS’ rescission notice, opposing Texas’ request for an exemption from the waiver public comment process (CMS, April 16; *Washington Post*, April 16; *Governor Greg Abbott*, April 16; *Attorney General Ken Paxton*, April 16; *Every Texan*, April 17; *State of Reform*, April 19).

*If you are a client and have questions, we advise you to consult with your Sellers Dorsey account or project contact.*

*If you are not currently working with Sellers Dorsey, please email [info@sellersdorsey.com](mailto:info@sellersdorsey.com).*

*Subscribe to this newsletter here: [www.sellersdorsey.com/about/newsletter](http://www.sellersdorsey.com/about/newsletter).*

- Section 1135
  - Colorado
    - Waives Requirement to Obtain Beneficiary and Provider Signatures of HCBS Person-Centered Service Plan
  - Maine
    - Waives Clinic Facility Requirement to allow clinic services to be provided via telehealth.
  - Tennessee
    - Modifies the submission deadline for the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT Act) Section 1006(b) Medically Assisted Treatment (MAT) State Plan Amendment (SPA).
- Section 1915(c) Appendix K
  - Texas
    - Extends waiver end date to the end of the PHE.
    - Clarifies and incorporates a previously used temporary rate for day habilitation.
  - Nebraska
    - Temporarily increases payment rates for assisted living providers.

## SPAs

- Traditional SPAs
  - District of Columbia ([DC-21-0001](#)): Continues a physician supplement payment for fiscal year 2021.
  - Ohio ([OH-21-0005](#)): Rescinds the temporary implementation of the telehealth originating site fee and associated billing code that was previously approved ([OH-20-0012](#)) to help providers set up infrastructure to implement and expand telehealth services in response to the PHE. This SPA has an effective date of January 5, 2021.
- COVID-19 Disaster Relief SPAs
  - Colorado ([CO-20-0040](#)): Authorizes all providers licensed to administer vaccines to administer pediatric immunizations if the vaccine product was free of cost by the Federal government. Confirms coverage of the administration of COVID-19 vaccines and tests in accordance with the PREP Act. This time-limited COVID-19 response SPA has an effective date of December 11, 2020, and an expiration upon termination of the PHE.
  - Delaware ([DE-21-0002](#)): Creates an add-on per diem payment to a nursing facility that has a dedicated isolation unit for treatment of COVID (COVID Unit). This time-limited COVID-19 response SPA has an effective date of December 1, 2020, and an expiration upon termination of the PHE.
  - Kentucky ([KY-20-0012](#)): Provides approval of vaccine administration reimbursement for COVID-19 vaccines approved for Emergency Use Authority. Confirms coverage of the administration of COVID-19 vaccines and tests in accordance with the PREP Act. This time-limited COVID-19 response SPA has an effective date of December 1, 2020, and an expiration upon termination of the PHE.
  - Kentucky ([KY-21-0001](#)): Provides assistance to nursing facilities that have seen a decline in resident occupancy and do not meet the 95% or greater occupancy rate to qualify for the 75% reimbursement rate (as opposed to the 50% reimbursement rate level) for bed reserve during the PHE. This time-limited COVID-19 response SPA has an effective date of April 1, 2020, and an expiration upon termination of the PHE.

*If you are a client and have questions, we advise you to consult with your Sellers Dorsey account or project contact.*

*If you are not currently working with Sellers Dorsey, please email [info@sellersdorsey.com](mailto:info@sellersdorsey.com).*

*Subscribe to this newsletter here: [www.sellersdorsey.com/about/newsletter](http://www.sellersdorsey.com/about/newsletter).*

## State Updates

- Sellers Dorsey has created a chart of all 50 states' budget cycles. Going forward, we will regularly update this chart, and each week we will highlight important updates for specific states.
- Rhode Island has removed its interim CEO, Jennifer White, as well as its Chief of Medical Services, Chief Medical Officer, and Chief Nursing Officer of Eleanor Slater Hospital after a no-confidence vote was passed by its nurses. The vote was conducted amid a controversy that the state-run psychiatric hospital was highly compensating its administrators while simultaneously carrying a major cost-cutting drive that included the layoff of frontline doctors ([The Providence Journal](#), April 13; [Becker's Hospital Review](#), April 13).

## Private Sector Updates

- UnitedHealth Group set a strong tone for the first quarter of 2021 with improvement in all areas of performance and with an 8% increase in revenue comparatively to Q1 of 2020. Most of the growth comes from new government customers in Medicaid and Medicare Advantage. Medicaid reached 6.9 million members (up 18% year-over-year), and Medicare Advantage reached 6.3 million members (up 13% year-over-year). UnitedHealth Group credited Medicaid managed-care customers for the majority of its growth, specifically a new contract in Oklahoma ([Health Payer Specialist](#), April 15; [Modern Healthcare](#), April 15).
- Private equity's estimated health care spending has halved in the first quarter of 2021. As of March 2021, private equity health care deals totaled \$20.2 billion, substantially less than December 2020 when private equity spent \$41 billion on health care deals. Analysts believe this drop is due to the chaotic pace during the fourth quarter of 2020, where many firms hurried to close deals postponed due to the pandemic before the new year. The drop in health care investments is in line with a broader dip in private equity deals across all industries in the first quarter. However, health care deals remained more resilient than other sectors, comprising of 15% of all investment within the first quarter, which is a trend that is expected to continue ([Modern Healthcare](#), April 15).
- Ride-sharing company Lyft has launched Lyft Pass for Healthcare, which allows individuals to schedule nonemergency medical transport (NEMT) covered by health organizations including commercial health plans, Medicare, and Medicaid. Lyft Pass users will be able to schedule rides to medical appointments, vaccinations, and prescription pickups. Health organizations utilizing Lyft Pass can customize the program's budgets, approved locations, and scheduling windows while helping diminish transportation as a barrier to access health care ([Fierce Healthcare](#), April 16).
- Kaiser Permanente, Harvard Pilgrim, and Priority Health have introduced telehealth-heavy health plans with premiums up to 20% lower than other products. These offerings were spurred on by the pandemic, which increased the use of telehealth exponentially. While these payers have found success so far, stakeholders suggest that regulatory issues could provide challenges with the expansion of telehealth plans ([Health Payer Specialist](#), April 16).

## Sellers Dorsey Updates

- This week's Staff Spotlight Q&A is with one of our talented Senior Strategic Advisors, Dave Ulsh. Dave is the first Sellers Dorsey employee and recently celebrated his 19<sup>th</sup> year anniversary with the firm! [Learn more about Dave](#) and how his work has changed during his time at the firm.
- On April 20, the trial for the murder of George Floyd came to an end. The verdict is a significant message of accountability, and a reminder of the work still to be done to address racist violence and systemic racism. At Sellers Dorsey, we reaffirm [our strong and unwavering stand against racist violence and](#)

*If you are a client and have questions, we advise you to consult with your Sellers Dorsey account or project contact.*

*If you are not currently working with Sellers Dorsey, please email [info@sellersdorsey.com](mailto:info@sellersdorsey.com).*

*Subscribe to this newsletter here: [www.sellersdorsey.com/about/newsletter](http://www.sellersdorsey.com/about/newsletter).*

systemic racism, and pledge to continue efforts to deepen our own awareness and empower all employees to act with empathy and respect.



Follow Sellers Dorsey to stay up to date.