

SELLERS DORSEY DIGEST

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NAVIGATION

Federal Updates

CMS has determined not to extend the Next Generation Accountable Care Organization model for Medicare providers, which is now set to terminate at the end of 2021.

State Updates

North Dakota has delayed its previously planned announcement of its Medicaid managed care contract awards until June 7.

Private Sector Updates

JPMorgan Chase has formed Morgan Health, a new business focused on improving care through its employer-sponsored health plan.

Sellers Dorsey Updates

Gary Jessee, Managing Director and John McCarthy, Senior Strategic Advisor, participated in Mostly Medicaid's monthly Medicaid News Roundtable.

Summary of Key Updates

On May 25, the Senate confirmed (55-44) Chiquita Brooks-LaSure as the Administrator of the Centers for Medicare and Medicaid Services (CMS), making her the first Black woman to run the agency ([Modern Healthcare](#), May 25; [Politico](#), May 25; [U.S. Senate](#), May 25).

The Center for Medicare and Medicaid Innovation's (CMMI) decision to pause applications for the Global and Professional Direct Contracting Model (GPDC) could have important implications for the future of value-based care ([Modern Healthcare](#), May 21).

The Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMSHA) is providing \$3 billion in block grant dollars to states and territories to support behavioral health infrastructure, particularly community-based mental health services and substance use disorder prevention and treatment ([Modern Healthcare](#), May 20; [Modern Healthcare](#), May 18).

From May 18 to May 25, CMS approved two 1915(c) Appendix K waivers and 18 SPAs, one of which is a COVID-19 disaster relief SPA.

Sellers Dorsey is hiring for several positions to support the firm's Sales team. These positions will help manage the firm's relationships with strategic partners across the country to further Sellers Dorsey's sales goals. [Learn more about these positions and apply today.](#)

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Federal Updates

News

- On May 26, the Chairs of the House Committee on Energy and Commerce and the Senate Committee on Health, Education, Labor, and Pensions released a request for information (RFI) to solicit design considerations for legislation to create a public health insurance option. The overall goals for future legislation are to expand coverage (working toward achieving universal coverage), lower health care costs, and improve affordability for consumers. The RFI requests responses to questions related to program eligibility, access to care, federal versus state administration, benefit structure, premium assistance, and how the public option will interact with Medicare and Medicaid and address health equity. The RFI requests responses by July 31, 2021 ([House Committee on Energy and Commerce](#), May 26).
- On May 25, the Senate confirmed (55-44) Chiquita Brooks-LaSure as the Administrator of CMS, making her the first Black woman to run the agency. Brooks-LaSure's confirmation comes after Republicans on the Senate Finance Committee unanimously opposed her confirmation, forcing Senate Majority Leader Chuck Schumer to file a petition to discharge her nomination from the panel. Brooks-LaSure is a longtime health policy expert who has mentioned high drug prices, health equity, mental health, and rural health as main issues she wishes to work on with the Biden administration. One of her first priorities will be implementing the ban on surprise billing passed by Congress last year with regulations due July 1, 2021. Moving forward, the Biden administration is expected to quickly fill roles at CMS that do not require Senate approval ([Modern Healthcare](#), May 25; [Politico](#), May 25; [U.S. Senate](#), May 25).
- HHS Secretary Xavier Becerra continues to expand his team with Obama administration alumni to help address the agency's top priorities. Secretary Becerra has recruited Mary Wakefield, Josie Villanueva, Steven Lopez, Dawn O'Connell, and Steven Cha to advise on policies related to unaccompanied immigrant children, the intersection between human services and economic stability, public health and health access programs, COVID-19 issues, and the Food and Drug Administration (FDA). Stakeholders indicate Secretary Becerra is surrounding himself with policy experts in preparation to become even more involved in distributing aid as part of the country's pandemic recovery ([Politico](#), May 21; [HHS](#), May 27).
- The Center for Medicare and Medicaid Innovation's (CMMI) decision last month to pause applications for the Global and Professional Direct Contracting Model (GPDC) could have important implications for the future of value-based care. Experts have called for increased participation in value-based care for several years, with the GPDC model as an example of movement in that direction. There is now some concern that pausing the investment in specific models could undermine the transition from volume to value. Additionally, the pandemic has made it difficult for regulators to roll out value-based payment models because there has been no clear way to set benchmarks, define baseline periods or other crucial requirements. CMMI wants to continue to make evidence-based decisions to ensure the models improve quality and lower costs before making them permanent. The agency also has plans to focus on health equity and transforming the health care delivery system under the Biden administration ([Modern Healthcare](#), May 21).
- HHS' Substance Abuse and Mental Health Services Administration (SAMSHA) is providing \$3 billion in block grant dollars to states and territories to support behavioral health infrastructure, particularly community-based mental health services and substance use disorder prevention and treatment. SAMSHA received the \$3 billion as part of the \$1.9 trillion spending package in the American Rescue Plan Act (ARP). Similarly, HHS will invest more than \$14 million to expand telehealth-based mental health services for children and adolescents as a part of the Pediatric Mental Health Care Access program. This program will build pediatric mental health care teams to deliver teleconsultations, training, and technical

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assistance for pediatric primary care providers with the aim of earlier diagnosis and treatment of mental health conditions ([Modern Healthcare](#), May 20; [Modern Healthcare](#), May 18).

- CMS has determined not to extend the Next Generation Accountable Care Organization (ACO) model for Medicare providers, which is now set to terminate at the end of 2021. CMS will provide an opportunity for providers to take part in its Global and Professional Direct Contracting model (GPDC) if they meet program qualifications. Applications for GPDC had been put on hold in April ([Modern Healthcare](#), May 21; [Fierce Healthcare](#), May 21).

Federal Legislation

- Senator Bernie Sanders (I-VT) participated in a Health, Education, Labor, and Pensions Primary Health and Retirement Security Subcommittee Hearing where he proposed the federal government invest in medical residency programs to address the national physician shortage. Senator Sanders plans to introduce legislation to authorize 14,000 new Medicare-supported residency programs over the next seven years, with special focus on residency slots to train primary care physicians. The Association of American Medical Colleges expects a 139,000 practitioner physician shortage by 2033, with nearly half in the primary care space. Other lawmakers also recognize the physician shortage as a priority and have introduced legislation accordingly ([Roll Call](#), May 20).

Federal Litigation

- On May 17, the U.S. District Court for the District of Columbia granted a motion for summary judgement in favor of several health centers that objected to a CMS regulation adjusting their Medicare Direct GME (DGME) calculation. The plaintiffs cited the U.S. Supreme Court's deference standard announced in *Chevron U.S.A., Inc. v National Defense Council, Inc.*, 467 U.S. 837 (1984), to successfully argue CMS is not able to change the weighting factors applied to physician residents and fellows, even if the calculations exceed a cap imposed under a 1997 amendment to the Medicare statute. Under *Chevron*, an agency and any judicial body must follow the Congressional intent of a statute so long as "Congress has directly spoken to the precise question at issue." Here, the court has determined that Congress unequivocally states the weighting factor applied to a resident shall be 1.0 and the weighting factor applied to a fellow shall be 0.5. In reducing the weighted FTE Average (a factor in calculating the DGME payment) to comply with the cap from the 1997 statutory amendment, CMS has also changed the individual weighting factors prescribed in the statute. In granting a motion in favor of the plaintiffs, the court also remands the appeal to HHS so that it may recalculate the plaintiffs' reimbursement payments ([Milton S. Hershey Medical Center et al., v. Xavier Becerra](#), May 17).
- Eli Lilly filed a temporary restraining order in federal court against HHS and requested a preliminary injunction from the court to stop the Health Resources and Services Administration (HRSA) from imposing fines over the company's action restricting discounts for 340B-covered drugs to contract hospitals and pharmacies. Eli Lilly's action comes after HRSA sent a letter to six pharmaceutical companies (AstraZeneca, Eli Lilly, Novartis, Novo Nordisk, Sanofi, and United Therapeutics), ordering them to restore 340B drug discounts by June 1 ([Fierce Healthcare](#), May 21; [Modern Healthcare](#), May 17; [Inside Health Policy](#), May 17).
- America's Health Insurance Plans (AHIP) filed an *amicus* brief with the Eighth Circuit Court of Appeals, in support of the Pharmaceutical Care Management Association (PCMA) in arguing two North Dakota laws regulating pharmacy benefit managers should be struck down. PCMA had won an appeal overturning the laws, but the case is now being reheard as a result of the U.S. Supreme Court ruling last year in *Rutledge v. PCMA*. In that case, the U.S. Supreme Court held that the Employee Retirement Income Security Act (ERISA) did not preempt an Arkansas law regulating prescription drug pricing methodology. In its brief, AHIP argues the North Dakota laws unlawfully flout preemption provisions of ERISA by requiring ERISA plan administrators states to structure plan designs in North Dakota under different standards and rules

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than in other states where the plans operate. The Chamber of Commerce filed a similar *amicus* brief in the case ([Health Payer Specialist](#), May 24; [Chamber of Commerce](#), May 18).

COVID-19

- On May 25, HRSA announced its plan to allocate \$4.8 billion in ARP funding towards its COVID-19 Uninsured Program (Program) to reimburse health care providers for testing uninsured individuals for COVID-19. As of May 19, the Program has provided an estimated \$4 billion in testing repayments to providers ([HHS](#), May 25).

Waivers

- 1915(c) Appendix K
 - [Arkansas](#)
 - Maintains enhanced daily rate for assisted living facility providers through the end of the public health emergency (PHE), rather than phasing out as the state initially planned.
 - [Montana](#)
 - Adds self-direction for behavior intervention assistant and life coach services.

SPAs

- Traditional SPAs
 - Guam ([GU-21-0003](#)): Grants the option to provide Medicaid eligibility without a five-year waiting period to otherwise eligible individuals who lawfully reside in Guam in accordance with the Compacts of Free Association (COFA) between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. This SPA has an effective date of January 1, 2021.
 - Idaho ([ID-21-0010](#)): Updates the resource limits related to the 2021 Cost of Living Adjustments (COLA) and incorporates language that does not need to be updated annually when the COLA figures change. This SPA has an effective date of January 1, 2021.
 - Kentucky ([KY-20-0008](#)): Revises the school-based services reimbursement. This SPA has an effective date of July 1, 2020.
 - Maine ([ME-20-0028](#)): Provides a special supplemental wage allowance to nursing facilities for increases in contract labor and allowable wages and associated benefits and taxes in the direct care and routine care cost component. This SPA has an effective date of July 1, 2020.
 - Mississippi ([MS-21-0002](#)): Removes a list of specific CPT codes. This SPA has an effective date of January 1, 2021.
 - New Hampshire ([NH-20-0050](#)): Revises the quarterly nursing home supplemental payment amount, also known as MQIP, for the service period of October 1, 2020 through December 31, 2020. This SPA has an effective date of October 1, 2020.
 - New Hampshire ([NH-21-0024](#)): Authorizes a premium as a condition of eligibility to the optional eligibility group described at section 1902(a)(10)(A)(ii)(XIII) of the Social Security Act. This SPA has an effective date of February 1, 2021. CMS noted in the approval notes that the imposition of the premium for an existing eligibility group imposes a new condition of eligibility during the public health emergency period in violation of the maintenance of effort (MOE) requirement in Section 6008(b)(1) of the Families First Coronavirus Response Act. Therefore, in order for the state to comply with the MOE requirement and claim the enhanced FMAP, the state must wait to assess the premium until the end of the calendar quarter after the Secretary of HHS declares the PHE has ended.

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- Pennsylvania ([PA-21-0002](#)): Reauthorizes and continues a series of additional classes of disproportionate share hospital (DSH) payments and two targeted supplemental payments for qualifying private acute care hospitals. This SPA has an effective date of February 28, 2021.
- Pennsylvania ([PA-21-0008](#)): Continues the authority to make supplemental payments to qualifying nonpublic nursing facilities in a county of the eighth class. This SPA has an effective date of February 28, 2021.
- South Carolina ([SC-19-0004](#)): Updates the base year used to determine payments for the Supplemental Teaching Physician (STP) program using the Average Commercial Rate method (excludes Greenville, Richland/USC). This SPA has an effective date of April 1, 2019.
- Texas ([TX-21-0016](#)): Updates the durable medical equipment, prosthetics, orthotics, supplies fee schedule. This SPA has an effective date of March 1, 2021.
- Texas ([TX-21-0019](#)): Updates the physician's and other practitioner's fee schedules. This SPA has an effective date of March 1, 2021.
- Washington ([WA-21-0005](#)): Updates reimbursement rates for individual and agency personal care service providers. This SPA has an effective date of January 1, 2021.
- Washington ([WA-21-0006](#)): Updates the fee schedule effective dates for several Medicaid programs and services. This SPA has an effective date of January 1, 2021.
- Washington ([WA-21-0009](#)): Authorizes additional limitations on prosthetic devices provided under the Code of Federal Regulations at 42 CFR §440.70. This SPA has an effective date of April 1, 2021.
- West Virginia ([WV-21-0003](#)): Authorizes an exception from the Medicaid Recovery Audit Contractor (RAC) requirements. This SPA has an effective date of January 1, 2021.
- Wisconsin ([WI-21-0008](#)): Modifies the income limits for the Optional State Supplement Beneficiaries to reflect the Social Security COLA. This SPA has an effective date of January 1, 2021.
- COVID-19 Disaster Relief SPAs
 - Wisconsin ([WI-21-0002](#)): Increases the cap for supplemental DSH payments to qualifying hospital providers. This time-limited COVID-19 response SPA has an effective date of July 1, 2020, and a termination upon the end of the PHE.

State Updates

- North Dakota has delayed its previously planned announcement of its Medicaid managed care contract awards until June 7. The state intended to award three-year Medicaid managed care contracts to two managed care plans and for those managed care plans to begin covering Medicaid enrollees on January 1, 2022. According to the request for proposal (RFP), the state is looking for managed care plans that can provide services including the newly mandated home and community-based behavioral health care and more diagnostic testing and preventative medicine ([Health Payer Specialist](#), May 24).
- Alabama failed to pass a bill that would have used taxes from [gambling revenue](#) to fund health care programs for low-income and rural residents. The state's \$2.5 billion budget approved earlier this month did not include provisions for expanding Medicaid, leaving state legislators attempting to find ways to fund its state-sponsored health care without the expansion. It is unlikely that Governor Kay Ivey (R) will

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call a special session on the matter. Alabama lawmakers will now wait until the next session in January to vote on bringing the gambling proposal to constituents ([Health Payer Specialist](#), May 24).

- Three Missouri residents have filed a lawsuit against the state health department in an attempt to force the agency to expand the state Medicaid program as mandated by the voter-approved constitutional amendment from August 2020. The lawsuit, filed in Cole County, MO, comes after the Governor's decision to not expand Medicaid eligibility under the Affordable Care Act (ACA) ([St. Louis Post-Dispatch](#), May 20; [Modern Healthcare](#), May 20; [Inside Health Policy](#), May 21).
- Tennessee Attorney General Herbert Slatery has filed a motion to intervene in a federal lawsuit currently challenging the state's [TennCare III Medicaid block grant waiver](#). The block grant was approved in the final weeks of the Trump administration and signed into law by Governor Bill Lee (R) in January 2021. The federal lawsuit was filed on behalf of 13 Medicaid recipients and claims the block grant is unlawful in its restrictions on access to prescription drugs, elimination of three months' retroactive coverage, and requirement for beneficiaries to enroll in managed care plans. The state is denying the claims, and the response from the plaintiffs is due June 28 ([Becker's Hospital Review](#), May 24; [The Center Square](#), May 21).
- Wisconsin Governor Tony Evers (D) has called a special session for the state Legislature to consider expanding Medicaid under the ACA, and in return pledged to use \$850 million in federal funds for a range of economic development projects. Medicaid expansion in Wisconsin would make about 91,000 more residents eligible for BadgerCare Plus ([Associated Press](#), May 19).
- Colorado health officials are paying hospitals and health systems to shut down free-standing emergency rooms (ERs) because of their high costs. The trend of free-standing ERs began a decade ago in hopes of reducing congestion at hospital ERs and filling the geographic need of ER care where no hospitals are nearby. However, these stand-alone ERs were primarily established in affluent areas often with many hospitals nearby competing for ER services and were mainly utilized for services that did not qualify as emergency care but were billed at expensive ER rates. Currently, there are 44 free-standing ERs in Colorado, and 34 are owned by hospitals ([Kaiser Health News](#), May 21).

Private Sector Updates

- Amazon and Best Buy both have new initiatives in the health care industry. Amazon announced a new mental health benefit, "Resources for Living," that offers counseling for employees and their families. The benefit will also include an interactive self-assessment program and stress resource center, as well as a crisis and suicide prevention support. Best Buy is now offering a smart phone developed for senior citizens and linked to its recently launched health services unit called "Lively Health and Safety Services." The smart phone provides seniors access to around the clock emergency care and a fall detector ([Health Payer Specialist](#), May 24).
- JPMorgan Chase has formed Morgan Health, a new business focused on improving care through its employer-sponsored health plan. The business plans to focus on and study mental health care, health equity, and ways to improve the treatment of chronic illnesses. Since many employers have struggled for years to manage the cost of a health benefit, Morgan Health leaders hope to make models for care improvements that other employers can follow ([Associated Press](#), May 20).
- A group of insurers has formed a coalition called the HRA Council to lobby the Biden Administration to maintain regulations allowing employers to subsidize employees' purchase of insurance through the individual market, rather than offering a group health insurance plan. Individual Coverage Health Reimbursement Arrangements (ICHRA) were enabled by Trump-era regulations that became effective at the beginning of 2020, but the Biden administration is considering repealing or changing the program ([Modern Healthcare](#), May 21).

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- Contract disputes between hospitals are becoming increasingly common as hospitals consolidate, with about 90% of current acute-care markets in metro areas. Policy experts have begun to look at a range of solutions to restore competitive balance and prevent anticompetitive transactions, including strengthening the Federal Trade Commission and Department of Justice so they can review more transactions. Additional recommendations consist of requiring federal regulators to report small deals that fall under the current threshold, revising old policies currently incentivizing consolidations and market imbalance, implementing site-neutral policy, repealing the Stark Law (which bans physician self-referrals and favors corporate-owned enterprises), and developing a national health care database on spending, utilization, prices, and ownership models ([Modern Healthcare](#), May 19).

Sellers Dorsey Updates

- As the health care landscape moves from volume to value, states and managed care organizations (MCOs) continuously seek ways to improve access to care for Medicaid and Medicare recipients. Our team of managed care experts assists states and MCOs with drafting and responding to state procurements and RFPs. [Here's an example](#) of how our team helped a managed care plan respond to an RFP related to long-term services and supports.
- Gary Jessee, Managing Director and John McCarthy, Senior Strategic Advisor, participated in Mostly Medicaid's monthly Medicaid News Roundtable. They covered recent news including HHS nominations, Medicaid contracts, and state waivers. [Check it out here](#).
- Sellers Dorsey is hiring for several positions to support the firm's Sales team. These positions will help manage the firm's relationships with strategic partners across the country to further Sellers Dorsey's sales goals. [Learn more about these positions and apply today](#).



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