

SELLERS DORSEY DIGEST

Issue 43 | July 22, 2021

NAVIGATION

Federal Updates

The budget reconciliation package being considered by Congressional Democrats contains significant new spending impacting the healthcare sector.

State Updates

Florida Governor Ron DeSantis (R) is requesting an additional \$1.1 billion in federal Medicaid dollars over the next two years to bolster home and community-based programs (HCBS).

Private Sector Updates

Ten health payers operating small group and individual health plans in Connecticut requested larger rate hikes in 2022 than they did the previous year.

Sellers Dorsey Updates

Penny Thompson and Gabe Roberts discuss vital topics in Medicaid including lessons learned from the COVID-19 pandemic.

Summary of Key Updates

The budget reconciliation package being considered by Congressional Democrats contains significant new spending impacting the healthcare sector, according to aides familiar with the contents of the framework. ([Modern Healthcare](#), 7/15)

In a July 19 [report](#), the Government Accountability Office (GAO) recommended that the Department of Health and Human Services (HHS) provide Congress with expected time frames for spending the remaining COVID-19 relief funds appropriated through the American Rescue Plan Act (ARP). Congress appropriated approximately \$484 billion between six relief laws to HHS, the first five of which required HHS to provide updated spending plans to Congress every 60 days. ([Government Executive](#), 7/19).

The American Health Care Association (AHCA) held a press conference on July 12 to again request HHS distribute the remaining \$24 billion of unallocated provider relief funds with \$10 billion specifically for nursing homes. AHCA and National Center for Assisted Living [warned of potential closures](#) when asking for more provider relief with advocates and 50 lawmakers. ([Inside Health Policy](#), 7/15)

U.S. District Judge Carlton Reeves has ordered that an independent monitor be established to oversee Mississippi's mental health care system. The monitor will verify data submitted by the state and analyze the success of its mental health services. ([AP News](#), 7/15)

Ten health payers operating small group and individual health plans in Connecticut requested bigger rate hikes in 2022 than they did the previous year. Anthem proposed an average 12.3% increase for its individual plans and an average 11.5% increase for its small group plans, whereas Aetna and UnitedHealthcare requested an average 14% increase for their small group plans. ([Health Payer Specialist](#), 7/16).

Key takeaways: From July 14 to July 20, CMS approved seven SPAs, none of which are COVID-19 disaster relief SPAs.

Dr. Andy Baskin Joins Sellers Dorsey as Senior Clinical Advisor. Before joining the firm, Dr. Baskin worked at Aetna/CVS Health for more than 20 years, most recently as National Medical Director, Clinical Policy and Quality. Read our announcement with more information about Dr. Baskin [here](#).

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.

Subscribe to this newsletter here: www.sellersdorsey.com/about/newsletter.

Federal Updates

News

- The budget reconciliation package being considered by Congressional Democrats contains significant new spending impacting the healthcare sector, according to aides familiar with the contents of the framework. Potential new initiatives under consideration include: new Medicare dental, vision, and hearing benefits; expanded home and community-based services; extending the Affordable Care Act (ACA) expansion included under the American Rescue Plan Act (ARP), otherwise closing the coverage gap for states that choose not to expand Medicaid under the ACA; and reducing the cost of prescription drugs. While Senate Majority Leader Schumer (D-NY) has indicated there may be an initial vote on a reconciliation instruction bill before the August recess, committees will not begin to draft the actual components of the reconciliation bill until the fall. ([Modern Healthcare](#), 7/15)
- President Biden's July 9 [Executive Order](#) on promoting competition across the economy may have a dampening impact on consolidation in the healthcare sector. First, if the Federal Trade Commission (FTC) prevents hospital consolidation, the larger systems more able to withstand cash flow volatility common in the rural markets may be less likely to enter those markets. Second, [the order instructs](#) the FTC to "ban unnecessary occupational licensing restrictions that impede economic mobility." Depending on how the FTC enforces this provision, it may force a change in physician and other medical occupational licensing. Provider licensing is mostly state-driven today, and therefore, and currently can complicate benefits delivered across state lines, such as care delivered via telehealth. Third, the order also directs the FTC and Department of Justice to more rigorously enforce antitrust law, with a particular focus on healthcare markets and hospital consolidation. This could create opportunities for private equity firms to buy up smaller ancillary providers. ([Modern Healthcare](#), 7/15)
- On July 14, the Urban Institute published a [report](#) that posits employing a public option to close the Medicaid coverage gap which would save the federal government \$5-6 billion as compared to projections using marketplace benchmark premiums. The total savings would come from broader coverage (as opposed to those still excluded from premium subsidies under the other system) and more contained healthcare spend (as the public option would likely tie its rates to Medicare). Expanding coverage remains a federal priority as twelve states continue to holdout against Medicaid expansion under the ACA. ([Urban Institute](#), 7/14; [Fierce Healthcare](#), 7/15)
- Stakeholders believe the Biden administration's plan to enhance the ACA exchanges will only work if states have enough flexibility to spend money under 1332 waiver programs. The administration has "sent a signal to states that it's going to be less flexible regarding alternative benefit designs" that ultimately lower state spend through narrower plans or higher-cost sharing. In order to support the more robust coverage and premium subsidies, states will likely need additional federal support. However, the Biden administration might not approve waivers asking for significant dollars due to budget neutrality concerns. Ultimately, states would like more clarity from the Centers for Medicare and Medicaid Services (CMS) before taking on the financial risk associated with broader coverage. ([Modern Healthcare](#), 7/16)
- HHS announced that the Health Resources and Services Administration (HRSA) will distribute approximately \$103 million from the ARP to reduce burnout and promote mental health in the healthcare workforce. HRSA will distribute these funds over a three-year period and the money will primarily go towards building resiliency among healthcare workers in healthcare organizations serving rural and/or medically underserved communities ([Modern Healthcare](#), 7/16; [Cardiovascular Business](#), 7/16).

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.

Subscribe to this newsletter here: www.sellersdorsey.com/about/newsletter.

Federal Regulations

- On July 19, CMS released for public inspection the Calendar Year 2022 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule. The rule will be published in the *Federal Register* on August 4. Regulatory updates included in this year's payment rule include an increase in fines for hospitals that fail to comply with the hospital price transparency rule, which requires hospitals to make pricing information accessible on a public website. According to a recent [Patient Rights Advocate study](#) that looked at a sample of 500 hospitals, less than 6 percent were compliant with pricing transparency requirements. In addition to strengthening enforcement of pricing transparency rules, the CY 2022 payment rule also halts the planned elimination of the "inpatient-only" list, increases outpatient prospective payment and ambulatory surgical center rates, makes changes to the planned Centers for Medicare and Medicaid Innovation radiation oncology model, and solicits stakeholder feedback on program flexibilities put in place during the COVID-19 PHE that should be made permanent. ([Federal Register](#), 7/19; [CMS](#), 7/19; [Modern Healthcare](#), 7/19)
- On July 13, CMS released for public inspection the Calendar Year 2022 [Physician Fee Schedule \(PFS\) proposed rule](#). CMS aims to expand access to Medicare telehealth services beyond the COVID-19 Public Health Emergency (PHE). Some of the telehealth expansion/extension plans included in the proposed rule are:
 - Extending certain Medicare telehealth services to the end of 2023.
 - Mandate an in-person and non-telehealth service be provided by the physician that provides mental health telehealth services within six months prior to an initial telehealth service.
 - Allow Rural Health Clinics and Federally Qualified Health Centers to report and receive payment for telehealth mental health visits.
 - Allow audio-only telehealth services for the diagnosis, evaluation, or treatment of mental health disorders provided to established patients in their homes.
 - Allow audio-only telehealth interactions for delivering counseling and therapy services by opioid treatment providers, when audio/visual communication is not available to the beneficiary ([CMS](#), 7/13; [Inside Health Policy](#), 7/13).

Federal Legislation

- On July 21, a group of bipartisan Representatives unveiled a [bill](#) that aims to boost participation by Medicare's Accountable Care Organization (ACO) program by enabling healthcare providers to regain a greater share of cost savings and carry smaller risk from their efforts. The bill intends to reverse modifications made by the Trump administration, which allowed providers to keep a smaller share of cost savings and exposed them to greater risk if savings were not achieved. There are currently 477 Medicare ACOs serving 10.7 million beneficiaries across the nation. Under the House members' proposal, new ACOs could receive between 50-60% of savings generated (an increase from the 40% rate under the Trump administration) and could operate for three years before having to take on any risk. Stakeholders are supportive of the proposed legislation and believe reforms will ensure that value-based care models continue to be successful. ([Modern Healthcare](#), 7/21)

COVID-19

- In a July 19 [report](#), the Government Accountability Office (GAO) recommended that HHS provide Congress with expected time frames for spending the remaining COVID-19 relief funds appropriated through the ARP. Congress appropriated approximately \$484 billion between six relief laws to HHS, the first five of which required HHS to provide updated spending plans to Congress every 60 days. The ARP, the sixth relief law, does not require HHS to provide regularly updated spending plans to Congress. HHS partially agreed with the GAO recommendation, indicating it would include time frames for specific grants to states in reports to Congress, but it declined to provide updates for all plans due to

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.

Subscribe to this newsletter here: www.sellersdorsey.com/about/newsletter.

the dynamic nature of COVID-19. As of May 31, approximately \$75 billion (47%) of the \$160 billion ARP funds were obligated and \$3 billion (2%) were expended as compared to the 78% of funds obligated and 52% of funds expended under the other five laws. ([Government Executive](#), 7/19).

- The AHCA held a press conference on July 12 to again request HHS distribute the remaining \$24 billion of unallocated provider relief funds with \$10 billion specifically for nursing homes. AHCA and the National Center for Assisted Living [warned of potential closures](#) when asking for more provider relief with advocates and 50 lawmakers. AHCA recently found that only 24% of long-term care facilities are confident they can stay afloat until 2022. On top of Medicaid underfunding, nursing homes are dealing with increased costs and reduced revenue. ([Inside Health Policy](#), 7/15)
- On July 15, the FDA announced that it could grant emergency use authorization (EUA) of the COVID-19 vaccines for children between 6 months and 12 years by winter of this year. This comes as both Pfizer and Moderna plan on applying for the EUA for children under 12 years in September. The FDA will require four to six months of safety follow-up data for the COVID-19 vaccine trials involving children under 12 as opposed to the two months of follow-up data required for adults ([Becker's Hospital Review](#), 7/16).
- On July 16, Pfizer and BioNTech announced that the FDA has granted a priority review process on their application for the full approval of their COVID-19 vaccine for patients ages 16 and older. Pfizer/BioNTech submitted a biologics license application to the FDA in May and could get the full approval of the vaccine by January 2022. Currently, their vaccine is only available in the United States under EUA which was granted in December 2020 ([Inside Health Policy](#), 7/16).

Waivers

- 1115
 - On June 30, California submitted an [application](#) to CMS to renew its Section 1115 demonstration waiver, retitled CalAIM, for five years. The waiver has a proposed effective date of January 1, 2022. The state submitted its 1115 renewal application concurrently with a 1915(b) waiver application and proposes to transfer most authority necessary to operate its managed care delivery system to the 1915(b) waiver. In addition to moving authority for some programs to an 1915(b) waiver and sunseting some initiatives, such as the Dental Transformation Initiative and Public Hospital Redesign and Incentives in Medi-Cal (PRIME), the renewal application requests authority for new initiatives to provide targeted Medi-Cal services to eligible justice-involved populations 90-days pre-release from incarceration; expenditure authority to support CalAIM implementation capacity at the community level, including payments for provider and community-based organizations (CBO) infrastructure and capacity building; authority to establish an "equity pool" as part of the Global Payment Program to help hospitals address health inequities; and authority to establish new peer support specialist services. CMS will accept comments on the renewal application through August 15.
 - On June 30, Maryland submitted an [application](#) to CMS to renew its Section 1115 demonstration waiver, HealthChoice, for five years. The waiver is proposed to be effective January 1, 2022. In addition to continuing the states existing managed care model, the renewal application seeks to expand two community health pilot programs and modify requirements for existing coverage of residential treatment for adults with substance use disorder. The application also proposes to add new programs for expanded IMD services for adults with serious mental illness, maternal opioid misuse, and an emergency triage, treat, and transport model. CMS will accept comments on the renewal application through August 18.
- 1915(c) Appendix K

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.

Subscribe to this newsletter here: www.sellersdorsey.com/about/newsletter.

- Colorado
 - Temporarily allow provision of residential services in out-of-state settings for the HCBS-DD waiver

SPAs

Payment SPAs

- Illinois ([IL-21-0003](#), effective February 1, 2021): Updates reimbursement methodology for inpatient per diem rate increases for Children's Specialty Hospitals.
- Kansas ([KS-21-0009](#), effective April 1, 2021): Increases rates for therapeutic phlebotomy under the outpatient hospital and physician services benefit.
- Pennsylvania ([PA-21-0006](#), effective May 17, 2021): Provides supplemental payments to qualifying, nonpublic nursing facilities located in a county of the first class (i.e., Philadelphia County), with more than 395 beds, and a Medicaid acuity of 1.14 as of August 1, 2019.
- Pennsylvania ([PA-21-0011](#), effective April 25, 2021): Reauthorizes an additional class of Disproportionate Share Hospital (DSH) payment to facilities providing a high volume of services to Medicaid and low-income individuals. Includes an additional class of supplemental payment to hospitals providing Medicaid services to individuals with ocular conditions.

Service SPAs

- Mississippi ([MS-20-0023](#), effective October 1, 2020 – September 30, 2025): Adds Medication Assisted Treatment (MAT), associated counseling and behavioral health therapies to treat opioid use disorders as a mandatory benefit in the Medicaid state plan, pursuant to 1905(a)(29) of the Social Security Act and Section 1006(b) of the SUPPORT Act.
- Arizona ([AZ 21-0005](#), effective October 1, 2021): Expands coverage for school-based services and makes clarifications about personal care services and specialized transportation benefits.
- Oregon ([OR-21-0008](#), effective July 1, 2021): Establishes an Indian Managed Care Entity that will provide case management services on behalf of American Indian and Alaska Native (AI/AN) Oregon Health Plan members.

State Updates

- Florida Governor Ron DeSantis (R) is requesting an additional \$1.1 billion in federal Medicaid dollars over the next two years to bolster home and community-based programs (HCBS). The state submitted a proposal to CMS that, if approved, will direct \$191 million to enroll more individuals into Florida's HCBS Medicaid waiver program, "iBudget", for individuals with intellectual and developmental disabilities. Roughly 20,000 people are currently on the waiting list for the iBudget program. The additional federal Medicaid funding Florida is requesting is available under ARP, which allows the state to draw down a 10-percentage point increase in federal funds for HCBS. ([Tampa Bay Times](#), 7/13)
- U.S. District Judge Carlton Reeves has ordered that an independent monitor be established to oversee Mississippi's mental health care system. The monitor will verify data submitted by the state and analyze the success of its mental health services. Furthermore, the monitor will determine if the state is preventing unnecessary hospitalizations by treating people in their communities. This order comes 10 years after the federal government issued a letter in 2011 stating that Mississippi was not providing enough mental health services outside of mental hospitals. The Department of Justice ultimately sued the state in 2016, where Judge Reeves ruled that Mississippi was in violation of the Americans with Disabilities Act. The independent monitor role will be appointed by the court, and the Department of

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.

Subscribe to this newsletter here: www.sellersdorsey.com/about/newsletter.

Justice attorneys believe the monitor should be in place for at least three years to ensure the programs the state implements moving forward are sustainable. ([AP News](#), 7/15)

Private Sector Updates

- Ten health payers operating small group and individual health plans in Connecticut requested larger rate hikes in 2022 than they did the previous year. Anthem proposed an average 12.3% increase for its individual plans and an average 11.5% increase for its small group plans, whereas Aetna and UnitedHealthcare requested an average 14% increase for their small group plans. Last year, the average increase for individual plans was .01% with an average request of 6.29%. For small group plans, the average increase was 4.1% with an average request of 11.28%. The payers attributed the requests to rising health care costs, delays in accessing care during the pandemic, and a projected increase in prevalence of behavioral health disease in 2022. The Connecticut Insurance Commissioner will announce a final decision for 2022 premiums in September 2021 ([Health Payer Specialist](#), 7/16).

Sellers Dorsey Updates

- Check out this recorded conversation: [Medicaid Issues that Deserve Attention Now: A Conversation with Medicaid Leaders Penny Thompson and Gabe Roberts](#). Penny Thompson is a former Deputy Director for the Center for Medicaid and CHIP Services and Director of Program Integrity at CMS, and she is a current member of the Board of Directors of Sellers Dorsey. Gabe Roberts is a Senior Strategic Advisor at the firm, and he is a former Director of TennCare, Tennessee's Medicaid program. Penny and Gabe discussed vital topics in Medicaid including lessons learned from the COVID-19 pandemic. [Check out the recording of this important one-on-one conversation!](#)
- Dr. Andy Baskin Joins Sellers Dorsey as Senior Clinical Advisor. Before joining the firm, Dr. Baskin worked at Aetna/CVS Health for more than 20 years, most recently as National Medical Director, Clinical Policy and Quality. [Read our announcement with more information about Dr. Baskin here.](#)
- Working with providers is a specialty of Sellers Dorsey. State budgets create pressure on Medicaid program spending, and vice versa. Movement to value-based care is increasing in pace and complexity. Access to supplemental funding requires technical, policy, and political abilities providers do not have in house. Medicaid managed care requires navigating evolving complexities and requirements. Working at the intersection of industry and government, our Medicaid experts help hospitals, physicians, ambulance, and other providers increase access, quality, and the impact of their health care services in Medicaid. [More information here.](#)



Follow Sellers Dorsey to stay up to date.

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.

Subscribe to this newsletter here: www.sellersdorsey.com/about/newsletter.