

# SELLERS DORSEY DIGEST

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## NAVIGATION

### Federal Updates

On September 15, the U.S. Department of Justice filed an appeal in federal court to block the Purdue Pharma bankruptcy settlement plan that was approved by Federal Judge Robert Drain on September 1.

### State Updates

Arizona's Attorney General, Mark Brnovich, has filed a lawsuit against the Biden administration's planned vaccine mandate.

### Private Sector Updates

The COVID-19 PHE has seen an increase in investment in and partnerships with virtual models of care for substance use disorder treatment, which payers believe can help with member retention.

### Sellers Dorsey Updates

Managing Director Gary Jessee will be moderating a panel with four state Medicaid directors at MHPA21 to discuss priorities in state policy and implications for Medicaid managed care plans.

## Summary of Key Updates

On September 20, the Centers for Medicare and Medicaid Services (CMS) issued a press release announcing the agency awarded \$15 million in American Rescue Plan Act [planning grants](#) to 20 states to support expanding community-based mobile crisis intervention services for Medicaid beneficiaries (CMS, September 20).

On September 17, CMS announced the Biden administration will be extending the open enrollment period for Marketplace coverage from November 1, 2021, through January 15, 2022, giving consumers an extra 30 days to review and choose health plans on HealthCare.gov (CMS, September 17).

On September 15, the House Committee on Energy and Commerce concluded its markup session of the [Build Back Better Act](#). All subtitles of the proposed legislation, as amended, were passed through to the House Committee on Budget, where they will undergo the next steps in the budget reconciliation process, except for [Subtitle E: Drug Pricing](#) (Alston & Bird, September 17; The Hill, September 15).

From September 15 to September 21, CMS approved two 1915(c) Appendix K waivers and seven SPAs, one of which is a COVID-19 disaster relief SPA.

States are looking to managed care organizations for a commitment to innovations that move the needle on health equity and health-related social issues. Our team of managed care experts is well-equipped to help with your needs in this critical area. Many of our experts are former state Medicaid and human services officials who bring years of experience, innovations, and best practices with a strong focus on better ways to provide services to Medicaid beneficiaries. [Learn more about how we can help.](#)

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## Federal Updates

### News

- On September 20, CMS issued a press release announcing the agency awarded \$15 million in American Rescue Plan Act (ARP) [planning grants](#) to 20 states (AL, CA, CO, DE, KY, MA, MD, ME, MO, MT, NC, NM, NV, OK, OR, PA, UT, VT, WI, WV) to support expanding community-based mobile crisis intervention services for Medicaid beneficiaries as authorized by Section 1947 of ARP of 2021 . The funds can be used to support states’ assessments of current services, strengthen capacity and information systems, ensure services are accessible, provide behavioral health care training for multi-disciplinary teams, and develop State Plan Amendments (SPAs), 1115 demonstration applications, and 1915 (b) or (c) waiver program requests under the Medicaid program. The performance period for this grant is September 30, 2021, through September 29, 2022 ([CMS](#), September 20).
- On September 17, CMS announced the Biden administration will be extending the open enrollment period for health insurance Marketplace coverage from November 1, 2021, through January 15, 2022, giving consumers an extra 30 days to review and choose health plans on HealthCare.gov. Additionally, CMS is expanding services provided by Federally Facilitated Marketplace (FFM) Navigators, who are experts that help consumers understand their benefits and rights, review options, and enroll in Marketplace coverage. CMS will also re-launch its “Champions for Coverage” program, which includes over 1,000 local organizations that actively provide outreach and education about the Marketplace and enrollment. These provisions include flexibilities for state partners, including the ability for state marketplaces, with their own eligibility and enrollment platforms, to be able to set their own annual open enrollment period end dates, as long as the dates are on or after December 15, 2021 ([CMS](#), September 17).
- In a September 15 report, the Urban Institute estimates nearly 90% of individuals expected to have gained Medicaid coverage during the COVID-19 pandemic could be dropped from the program at the end of the public health emergency (PHE) declaration. The Urban Institute’s data show Medicaid enrollment increased by more than nine million people from February 2020 to January 2021, and the researchers estimate a total of 17 million more non-elderly people will be enrolled in Medicaid by the end of 2021 than were enrolled before the onset of the PHE. Of the estimated 15 million people who could lose coverage in 2022, 8.7 million are adults and 5.9 million are children. The report posits that one-third of adults who lose coverage could qualify for subsidized private health insurance in Affordable Care Act (ACA) marketplaces, and nearly all the rest would have access to employer coverage through their families. The report urges CMS to encourage states to extend Medicaid coverage allowances made to their programs during the PHE. It also urges Congress to maximize the number of people eligible for tax credits under ACA marketplace plans by making permanent the enhanced tax credits provided under the ARP and extend the enhanced federal matching funds (FMAP) available to states throughout 2022. Enhanced FMAP is currently set to expire in March 2022 ([Urban Institute](#), September 15; [Modern Healthcare](#), September 15).
- On September 14, the Bipartisan Policy Center (BPC) released its [report](#), “Bipartisan Solutions to Improve the Availability of Long-term Care.” The report explores strategies for policymakers to improve access to long-term services and supports (LTSS) and strengthen the services’ financing, since the challenges associated with providing care to those who require LTSS include both the cost of care and the shortage of caregivers relative to need. While the report does not point to a single solution to address all LTSS needs, the BPC made recommendations for improvement that include policy changes, new proposals, and previous recommendations:
  - Expand access to home and community-based services (HCBS). Congress should make HCBS available for individuals with LTSS needs who are ineligible for Medicaid through fully integrated

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care models. Congress should also develop a transitional program to support the expansion and development of integrated delivery models and build caregiver capacity.

- Address disparities in the delivery of HCBS. Congress should direct the Department of Health and Human Services (HHS) to collect data and issue an annual report on disparities in access to HCBS.
- Create a caregiver tax credit. Congress should establish a refundable tax credit for caregivers to help with out-of-pocket costs for paid LTSS-related care.
- Improve the viability of private long-term care insurance. Congress should standardize and simplify private long-term care insurance through retirement long-term care insurance (LTCI) and incentivize employers to offer retirement LTCI and auto-enroll certain employees.
- Establish a public education campaign for long-term care through the Financial Literacy and Education Commission and partnering federal agencies (BPC, September 2021).

### Federal Legislation

- On September 15, the House Committee on Energy and Commerce concluded its markup session of the [Build Back Better Act](#). All subtitles of the proposed legislation, as amended, were passed through to the House Committee on Budget, where they will undergo the next steps in the budget reconciliation process, except for [Subtitle E: Drug Pricing](#). Opponents of the proposed drug pricing reform cautioned that the legislation could stifle innovation from drug companies and pushed a scaled-back rival measure, which failed to advance to the Budget Committee. The House Committee on Ways and Means also concluded its [markup session](#) of the Build Back Better Act on September 15, advancing all subtitles, as amended, to the House Committee on Budget. Despite the Energy and Commerce Committee's decision not to move forward with drug pricing reform, the Ways and Means Committee advanced a drug pricing provision in its markup to keep drug pricing reform in play for future Build Back Better negotiations ([Alston & Bird](#), September 17; [The Hill](#), September 15).

### Federal Regulation

- On September 15, CMS announced its decision to delay enforcement of the payer-to-payer data exchange provision of the May 2020 [Interoperability and Patient Access final rule](#) until future rulemaking is finalized. The provision, which requires insurance companies that do business with CMS to exchange data at patients' requests and incorporate data they receive from other payers into members' health records, was originally scheduled to go into effect on January 1, 2022. The rule did not establish technical specifications for exchanging data and required payers to accept data in any format, prompting criticism from affected insurers. CMS continues to encourage insurers that have already deployed application programming interfaces—protocols that connect various types of software to one another—that use the Fast Healthcare Interoperability Resources (FHIR) standard to support payer-to-payer data exchange to move forward with implementation. The delay of the provision does not impact the implementation of other provisions in the final rule, two of which are already in effect ([CMS](#), September 15; [Modern Healthcare](#), September 16).

### Federal Litigation

- On September 15, the U.S. Department of Justice (DOJ) filed an appeal in federal court to block the Purdue Pharma bankruptcy settlement plan that was approved by Federal Judge Robert Drain on [September 1](#). DOJ argued in its filing that the bankruptcy plan “takes away the rights of those with a valid legal claim against the Sackler family without their knowing and informed consent, adequate notice or an opportunity to be heard.” The bankruptcy settlement, among other things, releases the Sackler family from future legal liability in exchange for a \$4.3 billion financial contribution from the family's own fortune ([New York Times](#), September 16; [NPR](#), September 16).

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## Waivers

- Section 1115
  - On September 7, Utah [requested](#) to extend its Section 1115 demonstration titled "Primary Care Network," which provides health care coverage for various low-income populations for five years. The state requested to change the name of the demonstration to "Utah's Medicaid Reform 1115 Demonstration Waiver," extend the period of intensive stabilization services from the first eight weeks to the entire duration of the intensive program and combine the four populations eligible to receive coverage under Utah's premium Partnership for Health Insurance (UPP) into one demonstration population. The state also requested to change intensive stabilization services staff references and remove references to services that are no longer provided under the demonstration. CMS will accept comments on the application through October 21.
  - On September 3, Montana requested an [amendment](#) to its Section 1115 demonstration titled "Montana Health and Economic Livelihood Partnership" (HELP). The state seeks to remove expenditure authority for 12-month continuous eligibility from its demonstration and extension application in accordance with new state law. CMS will accept comments on the amendment through October 20.
  - On September 3, Florida requested an [amendment](#) to its Section 1115(a) demonstration titled "Managed Medical Assistance" (MMA). The state seeks to modify the low-income pool to include non-profit licensed behavioral health providers, extend the postpartum coverage period from 60 days to 12 months, and make permanent provisions around retroactive eligibility and essential provider contracting. CMS will accept comments on the amendment through October 19.
  - On September 3, Florida requested an [amendment](#) to its Section 1115(a) demonstration titled "Florida Medicaid Family Planning." To align with the state's extension of postpartum Medicaid coverage from 60 days to 12 months, the amendment changes eligibility for the Family Planning waiver to allow coverage to begin 12 months postpartum, or after the extended Medicaid coverage has lapsed. The amendment will also allow women who have undergone a sterilization procedure to be eligible for the demonstration. CMS will accept comments on the amendment through October 19.
- Section 1915(c) Appendix K
  - [Colorado](#)
    - Temporarily modifies the qualifications for individuals responsible for developing person-centered service plans or conducting level of care evaluations and re-evaluations.
  - [Maine](#)
    - Temporarily increases reimbursement rates for Family Centered Support services by 5.84% pursuant to a special session of the Maine state legislature.
    - Extends timeframe for submission of CMS 372 reports.
    - Suspends some data collection during the COVID-19 PHE.

## SPAs

- Administrative SPAs
  - Washington ([WA-21-0011](#), effective October 1, 2021): Makes conforming changes to the Personal Care Services, Community First Choice (1915(k)), and applicable reimbursement pages of the state plan in accordance with CMS' approval of a 1915(b)(4) selective contracting waiver application, which allows the state to transfer the administrative functions and responsibilities of

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personal care and respite Individual Provider (IP) management from the Department of Social and Health Services (DSHS) and Area Agency on Aging (AAA) staff to a single contracted consumer-directed employer vendor, the Consumer Direct Care Washington, LLC.

- COVID-19 SPAs
  - Mississippi ([MS-21-0001](#), effective December 1, 2020): Sets FDA-approved COVID-19 vaccine administration reimbursement rates for all Mississippi Medicaid pharmacies, physicians, and non-physician practitioners at 100% of the Medicare rate. Sets the FDA-approved COVID-19 vaccine administration reimbursement rate for Federally Qualified Health Centers (FQHCs) and Rural Health Centers (RHCs) outside of the prospective payment system rate at 100% of the Medicare rate only if there is no corresponding encounter. If there is an encounter, administration of the COVID-19 vaccine will be reimbursed as part of the encounter rate. This time-limited COVID-19 SPA will terminate at the end of the PHE.
- Service SPAs
  - California ([CA 21-0028](#), effective July 1, 2021): Adds Medication Therapy Management (MTM) to licensed pharmacist services under the Other Licensed Practitioner (OLP) benefit; removes the Treatment Authorization Request requirement from licensed pharmacist services; and updates the rate methodology for licensed pharmacist services by adding rates for MTM.
- Payment SPAs
  - Illinois ([IL-21-0007](#), effective April 1, 2021): Increases FQHC encounter rates to the following: 1) Encounter rates for dates of service April 1, 2021, through June 30, 2021 will be set at a level 25.9% above the rates in effect on March 31, 2021; 2) Encounter rates for dates of service beginning July 1, 2021 and after will be set at a level 11.5% above the rates in effect on March 31, 2021; and, 3) At the end of each calendar year, rates will be trended annually, effective January 1 of the next year by the Medicare Economic Index published by CMS for the most recent year.
  - Massachusetts ([MA-21-0018](#), effective June 1, 2021): Increases rates for certain covered hearing services by 9.66%, incorporates certain cochlear implant device-related services, and increases these rates by 9.66%, and establishes service-specific codes and rates for bone-anchored hearing aid services.
  - Massachusetts ([MA-21-0019](#), effective June 1, 2021): Updates the methods and standards used by Massachusetts to determine rates of payment for renal dialysis clinic services. Adds a cost adjustment factor (CAF) of 5% to the portion of the bundled rate for dialysis procedures only, resulting in the proposed bundled rate of \$185.18.
  - Virginia ([VA-21-0016](#), effective July 1, 2021): Increases rates for psychiatric services by 14.7% to the equivalent of 110% of Medicare rates, increases practitioner rates for anesthesiologists to reflect the equivalent of 70% of the 2019 Medicare rates, and increases supplemental physician payments at freestanding children’s hospitals providing services to children in planning district 8.

## State Updates

- Arizona’s Attorney General, Mark Brnovich, has filed a lawsuit against the Biden administration’s planned vaccine mandate that will require employers with at least 100 workers to ensure their employees are either vaccinated or tested weekly for COVID-19. Brnovich claims the mandate “is an infringement on individual liberties” and alleges it is unconstitutional. Following the Arizona lawsuit, Attorneys General from 24 states signed a [letter](#) on September 16 to the Biden administration threatening litigation against the mandate. The vaccine mandate, which will be implemented through Occupational Safety and Health

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Administration (OSHA) rules, could affect 100 million workers ([USA Today](#), September 14; [Modern Healthcare](#), September 14).

## Private Sector Updates

- The COVID-19 PHE has seen an increase in investments in and partnerships with virtual models of care for substance use disorder treatment, which payers believe can help with member retention (or employee retention in the case of employee-sponsored plans) and reduce some emergency department costs. Highmark Health in Pittsburgh, for example, has formed a new partnership with virtual alcohol use disorder provider Ria Health, providing virtual care for alcohol use disorder to more than six million members. Ria Health also contracts with Anthem, UnitedHealth Group's Optum, Beacon Magellan, and others. On September 14, Anthem announced it has partnered with Portland-based Boulder Care to offer digital opioid addiction treatment to members in Ohio ([Modern Healthcare](#), September 14).

## Sellers Dorsey Updates

- We are proud sponsors of the MHPA2021! Managing Director Gary Jessee will be moderating a panel with four state Medicaid directors tomorrow, September 24, at MHPA to discuss priorities in state policy and implications for Medicaid managed care plans. [Find more information here on our website.](#)
- Next week, Senior Strategic Advisor and former MCO executive Janice Fagen will be speaking at North Texas State of Reform Health Policy Conference on social determinants of health. Sellers Dorsey is also a proud sponsor of this event, one of [many in which we are participants in the coming months.](#)
- States are looking to managed care organizations for a commitment to innovations that move the needle on health equity and health-related social issues. Our team of managed care experts is well-equipped to help with your needs in this critical area. Many of our experts are former state Medicaid and human services officials who bring years of experience, innovations, and best practices with a strong focus on better ways to provide services to Medicaid beneficiaries. [Learn more about how we can help.](#)
- Our website allows you to easily filter [Medicaid Matters](#) (coverage of key issues in Medicaid and thought leadership) and [Firm Highlights](#) (news about our firm and colleagues). [Let us know](#) if there is a subject you would like our experts to address in an article or video discussion.



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