

# SELLERS DORSEY DIGEST

Issue 58 | November 4, 2021

## NAVIGATION

### Federal Updates

A federal court has ruled against the government on its efforts to require drug makers to provide 340B discounts to all contract pharmacies that work with hospitals.

### State Updates

The winning bidders for Louisiana's Medicaid contract are set to be announced on November 5. The plan will provide health care for nearly 1.6 million people and is worth an estimated \$21 billion.

### Private Sector Updates

Security Health Plan will expand its Medicaid contract with the State of Wisconsin to include the Medicaid Supplemental Security Income population, in addition to BadgerCare Plus eligibles.

### Sellers Dorsey Updates

Sellers Dorsey is proud to sponsor the upcoming HFMA Annual Conference.

## Summary of Key Updates

On October 28, President Biden released a \$1.75 trillion spending [framework](#) in another step towards finalizing the [Build Back Better Act](#). The framework significantly reduces the proposed comprehensive Medicare benefit coverage expansion but continues to prioritize closing the Medicaid gap and bolstering home and community-based services (HCBS) spending ([Inside Health Policy](#), October 28; [Health Payer Specialist](#), October 28; [Modern Healthcare](#), October 29).

Under the Hospital Readmissions Reduction Program, the Department of Health and Human Services (HHS) has penalized 47% of all eligible hospitals for unnecessary readmissions by reducing payments on average by 0.64% per Medicare patient stay from October 2021 through September 2022. The Centers for Medicare and Medicaid Services (CMS) estimates penalties will save the federal government \$521 million ([Kaiser Health News](#), October 28).

The Supreme Court has agreed to hear a protest to the "public charge rule," which, under the Trump administration, denied green cards to immigrants based on their likely use of public benefits, including Medicaid. The Department of Justice (DOJ) under the Biden administration has agreed not to defend the rule ([Inside Health Policy](#), October 29).

On November 2, the Centers for Disease Control and Prevention (CDC) authorized a lower dose of the Pfizer vaccine in children ages 5-11. Pfizer has already begun shipping vaccines to pediatrician offices, pharmacies, and children's hospitals and expects vaccine administration to begin as early as next week ([Inside Health Policy](#), November 2).

From October 28 to November 3, CMS approved one Section 1135 waiver, three 1915(c) Appendix K waivers, and 11 SPAs, two of which are COVID-19 disaster relief SPAs. The SPAs reflect approved documents uploaded to the CMS website as of November 3.

We are seeking talented individuals to join our growing team. If you know anyone in your networks who is seeking new career opportunities and wish to work in an open and supportive environment, please direct them to our [career opportunities page](#) to apply and learn more about our open positions!

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## Federal Updates

### News

- The Hospital Readmissions Reduction Program (HRRP) was created in 2010 by the Affordable Care Act (ACA) to counteract financial incentives in patient readmissions within 30 days of hospital discharge and penalize hospitals for excessive patient readmissions. This year, in its tenth annual round of penalties, Medicare is reducing its payments to 2,499 hospitals (47% of all facilities) by an average of 0.64% for each Medicare patient stay beginning in October 2021 through September 2022. Thirty-nine hospitals received the maximum 3% reduction, and 547 hospitals avoided penalties due to low readmission rates. Additionally, 2,216 hospitals are exempt from the program because they specialize in children, psychiatric patients, or veterans. Rehabilitation, long-term care hospitals, and critical access hospitals are also excluded from the program. Medicare estimates the penalties over the next fiscal year will save the federal government \$521 million ([Kaiser Health News](#), October 28).
- On October 20, CMS issued guidance on coordinating care provided by out-of-state providers for children with medically complex conditions in accordance with section 1945A(e)(1) of the Social Security Act. The guidance promotes delivering care through a person-centered service plan and recommends that states, managed care plans, and providers adopt interoperable electronic health records and other interoperability methods to advance patient and provider access to health data across state lines. The guidance also recommends that states develop standard agreements with other states governing out-of-state coverage and payment for services through state plan amendments, and it calls on states to expedite the screening and enrollment out-of-state providers to help ensure more timely access to care ([CMS](#), October 20).

### Federal Legislation

- On October 28, President Biden released a [framework](#) for the budget reconciliation package known as the [Build Back Better Act](#). The \$1.75 trillion budget proposal, scaled back from its initial value of \$3.5 trillion after weeks of negotiations, omits provisions in prior versions of the bill establishing Medicare dental and vision benefits and granting Medicare the authority to negotiate drug prices. The new framework, which has yet to be finalized and voted on in both chambers of Congress, includes the following health care provisions:
  - \$130 billion to extend Affordable Care Act tax credits and establish exchange tax credits to help those in non-Medicaid-expansion states purchase exchange plans through 2025, extending coverage options to a total of seven million Americans.
  - \$150 billion in Medicaid spending for HCBS to reduce waiting lists for services while improving wages and benefits for home health aides.
  - 12 months of continuous eligibility for children covered under Medicaid and CHIP.
  - Permanent funding for Medicaid in U.S. territories, including Puerto Rico.
  - 12 months of postpartum Medicaid coverage nationwide.
  - Permanent reauthorization of the Children’s Health Insurance Program (CHIP).
  - \$35 billion to establish a Medicare hearing benefit, excluding coverage for hearing aids.
  - \$145 billion in savings by repealing the Trump administration’s drug rebate rule ([Inside Health Policy](#), October 28; [Health Payer Specialist](#), October 28; [Modern Healthcare](#), October 29).

### Federal Regulation

- The Supreme Court has agreed to hear a case regarding the Trump-era “public charge” rule that denied green cards to immigrants based on their likely use of public benefits including Medicaid. The DOJ under

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the Biden administration announced that it will not defend the rule and intends to publish a new regulation in its place. A group of GOP attorneys general attempted to intervene in the case to defend the Trump-era rule but were denied by the Ninth Circuit. They requested and were granted Supreme Court review. The Supreme Court's case will focus on whether interested states should be permitted to intervene to defend a rule that the Biden administration has stopped defending in court ([Inside Health Policy](#), October 29).

- A federal district court has ruled against the government's effort to require drug makers to provide 340B discounts to all contract pharmacies that work with 340B participating hospitals. The ruling favors the pharmaceutical industry and is the latest decision in a series of legal actions involving 340B discounts. The lawsuit centers around an advisory opinion issued by HHS in December 2020 that mandated drug makers to give discounts all pharmacies that contract with hospitals in the 340B program regardless of how many contract pharmacies dispense those 340B drugs. Drug companies sued, challenging the validity of advisory opinion. The Health Resources and Services Administration (HRSA) subsequently withdrew the advisory opinion but stated it intended to still fine companies that violated it. The judge for the U.S. District Court for the Southern District of Indiana ruled both the advisory opinion and the violation letter threatening to fine drug companies are arbitrary and capricious under the Administrative Procedure Act ([Inside Health Policy](#), November 1).
- On October 28, HHS published a proposed rule to withdraw or repeal the Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) final rule, a Trump-era rule that would have required all health agencies to review their regulations every ten years or else sunset the rules. In proposing to rescind the rule, HHS stated that the rule is unworkable and would cause undue strain on agency resources. HHS claims the regulation would "significantly affect the operations of HHS and have considerable repercussions for a diverse array of stakeholders." Stakeholders commented the rule has an adverse impact on vulnerable populations that rely on HHS programs, such as children, seniors, people with disabilities, the poor, and racial and ethnic minorities. HHS also contends that the agency failed to properly consider the comments on the proposed rule, and should have more thoroughly examined the legal basis of the rule, and given greater weight to the potential harms it could cause before adopting the SUNSET final rule ([Federal Register](#), October 28; [Fierce Healthcare](#), October 28; [Inside Health Policy](#), October 29; [Modern Healthcare](#), October 28).

## COVID-19

- CMS issued an interim final rule with comment period requiring staff at health care facilities enrolled in Medicare or Medicaid to be fully vaccinated against COVID-19 by January 4, 2022. The rule applies to facilities regulated by CMS, including: ambulatory surgical centers, hospices, programs of all-inclusive care for the elderly, hospitals, long-term care facilities, psychiatric residential treatment facilities, intermediate care facilities for individuals with intellectual disabilities, home health agencies, comprehensive outpatient rehabilitation facilities, critical access hospitals, clinics (rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services), community mental health centers, home infusion therapy suppliers, rural health clinics/federally qualified health centers, and end-stage renal disease facilities. This rule comes after the Biden administration announced plans to use multiple policy levers to mandate COVID-19 vaccination in September 2021 ([Federal Register](#), November 4; [CMS](#), November 4; [Modern Healthcare](#), November 4).
- The Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard requiring covered employers to "develop, implement, and enforce a mandatory COVID-19 vaccination policy, unless they adopt a policy requiring employees to choose to either be vaccinated or undergo regular COVID-19 testing and wear a face covering at work." OSHA estimates the standard will apply to roughly two-thirds of the private sector workforce. The standard is effective January 4, 2022. The release of this standard comes after the Biden administration announced plans to use multiple policy levers to

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mandate COVID-19 vaccination in September 2021 ([Federal Register](#), November 4; [OSHA](#), November 4; [Modern Healthcare](#), November 4).

- On November 2, the CDC authorized a lower dose of the Pfizer vaccine in children ages 5-11. With the CDC signed off on the recommendations, Pfizer has already begun shipping vaccines to pediatrician offices, pharmacies, and children’s hospitals and expects vaccine administration to begin as early as next week. The pediatric vaccine will have a smaller dose, a third of the amount given to adults and teenagers. The vaccine was found to be nearly 91% effective at preventing symptomatic COVID-19 infections, based on 16 cases of COVID-19 among kids given placebo shots compared to just three who got vaccinated in a Pfizer study of 2,268 school children ([Inside Health Policy](#), November 2, [Inside Health Policy](#), October 29; [Modern Healthcare](#), October 29).
- On October 26, the Urban Institute released an [analysis](#) on the Provider Relief Fund (PRF), determining the fund has \$26.8 billion of the total \$178 billion (15%) waiting to be distributed to providers. Of the \$26.8 billion, \$7.1 billion is unallocated funding, which is likely to grow in the coming months as providers return unspent grant funds because they cannot meet terms and conditions (including the requirement that they spend the funding within a year). Providers have returned \$8 billion in grant funds thus far. Varying funding distribution methods made by HHS over the past few years have caused some concerns over allocation. Researchers have found that funds have largely been channeled to hospitals with strong financial standing, and that some health care providers hit hardest by the pandemic have not received any PRF grants. Additionally, some lawmakers have expressed concern that wealthier hospitals may have used the grant money to fund mergers and acquisitions rather than paying for patient care or maintenance of operations ([RevCycle Intelligence](#), October 28).

## Waivers

- Section 1115
  - On October 22, 2021, Ohio submitted an [application](#) to amend its Section 1115 demonstration for Substance Use Disorder Treatment. The amendment requests to prospectively increase the demonstration’s per member per month (PMPM) limit for the managed care Medicaid eligibility group (MEG) to account for increases in managed care capitation rates. The state requests that CMS consider this amendment as part of its corrective action plan (CAP) that is required by Special Term and Condition (STC) 66. CMS will accept public comments through November 27.
  - On September 7, 2021, Utah submitted an [application](#) to extend its Section 1115 demonstration, titled "Primary Care Network," through June 30, 2027. The application requests 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 period of the intensive program, and combine the four populations eligible to receive coverage under Utah’s premium Partnership for Health Insurance into one demonstration population. The state also requests to change intensive stabilization services staff references and remove references to services that are no longer provided under the demonstration. Due to a technical error with the closing date of the first federal public comment period, CMS has reopened the public comment period through November 27.
- Section 1135
  - On October 29, CMS [approved](#) Section 1135 flexibilities for state plan amendment (SPA) UT-21-0010, allowing modification of the requirement to submit the SPA by the last day of a quarter in order to obtain a SPA effective date during that quarter, modification of public notice requirements that would otherwise be applicable to SPA submissions, and modification of the required tribal consultation timelines specified in the Medicaid state plan.

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- Section 1915(c) Appendix K
  - Virginia
    - Temporarily provides a 12.5% rate increase for HCBS and a one-time staff supplemental payment of \$1,000 for personal care, respite, and companion providers using American Rescue Plan Act (ARP) funds.
  - Indiana
    - Temporarily provides a 3.9% rate increase for Assisted Living providers, COVID-19 related assisted living expenses, expanded self-direct options for Home Care service, an option to include foster children who are under the oversight of a separate state agency, an optional delay the submission of select reporting data, and increased flexibility for impaired hearing participants within the specialized medical equipment and supplies service under the Aged & Disabled and Traumatic Brain Injury waivers.
  - Montana
    - Temporarily provides supplemental payments for select services under Montana’s three HCBS waivers.

## SPAs

- Administrative SPAs
  - Louisiana ([LA-21-0018](#), effective August 6, 2021): Extends the exception from participation in the Recovery Audit Contractor program.
  - North Carolina ([NC-21-0012](#), effective July 1, 2021): Approves a template that will authorize the state to enter value-based purchasing rebate agreements with drug manufacturers for drugs provided under the Medicaid program.
- COVID-19 SPAs
  - Connecticut ([CT-21-0004](#), effective March 1, 2020, except as otherwise noted): This COVID-19 SPA is superseded by CT-20-0021.
    - Effective December 11, 2020 through the termination of the public health emergency (PHE), implements coverage of COVID-19 vaccine administration when provided by pharmacists, pharmacy interns, and pharmacy technicians, to the extent authorized pursuant to the PREP Act; and establishes reimbursement for COVID-19 vaccine administration at 100% of the Medicare rate for the pharmacy providers referenced above and on the applicable fee schedules (physician, home health agency, hospice, medical clinic, dialysis clinic, and family planning clinic).
    - Effective from January 1, 2021 through February 28, 2021, implements a 2% rate increase for chronic disease hospitals.
    - Effective from January 1, 2021 through February 28, 2021, implements a 5% rate increase for nursing homes.
    - Effective from March 1, 2021 through March 31, 2021, implements a 10% rate increase for nursing homes.
    - Effective March 1, 2020 through the termination of the PHE, adds clarifying language that the coverage flexibility for laboratory services under 42 CFR 440.30(d) does not include self-collected COVID-19 tests for home use and that each laboratory testing code is priced at 100% of the applicable Medicare rate that is in effect on the date of service.
  - Oklahoma ([OK-21-0045](#), effective July 1, 2021): Allows SoonerCare adults expanded access to independently licensed psychologist services from only crisis services authorized in SPA OK-20-

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0032 to all services within licensed psychologist's scope of practice under state law. This time-limited COVID-19 SPA terminates at the end of the PHE.

- Payment SPAs
  - Colorado ([CO-21-0019](#), effective July 1, 2021): Updates the supplemental payment pool amounts for the Rural Family Medicine Residency Development Payment, Family Medicine Residency Program Payment, State University Teaching Hospital Payment, and the Pediatric Major Teaching Payment. In addition, it reinstates the Urban Safety Net Provider Payment that was previously suspended in October 2014.
  - Iowa ([IA-21-0011](#), effective July 1, 2021): Implements the increase in fee schedule rates for Psychiatric Medical Institutions for Children effective for dates of service beginning July 1, 2021.
  - Montana ([MT-21-0019](#), effective July 1, 2021): Updates the bundled composite rate for services provided in an outpatient maintenance dialysis clinic. The Dialysis Clinic reimbursement rate will be increased by 1%.
  - Texas ([TX-21-0037](#), effective September 1, 2021): Updates the fee schedule for ambulatory surgical centers.
- Service SPAs
  - Connecticut ([CT-21-0014](#), effective October 1, 2020): Adds medication-assisted treatment 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. The benefit is effective until September 30, 2025.
  - Texas ([TX-21-0011](#), effective September 1, 2021): Expands the community-based provider agency options for Medicaid recipients, who have been found through the Preadmission Screening and Resident Review process, who need specialized add-on services to include Intellectual or Developmental Disabilities (IDD) waiver providers. Providers must be licensed or certified by the Texas Health and Human Services Commission to provide program services for a specified waiver program. Additionally, the SPA amends behavioral support and day habilitation services descriptions to be consistent with state administrative rule language and updates language about setting locations.
  - Vermont ([VT-21-0011](#), effective July 1, 2021): Limits the provisions of medical nutrition therapy to registered dietitians.

## State Updates

- The winning bidders for Louisiana's Medicaid contract are set to be announced on Friday, November 5. The contract will provide health care for nearly 1.6 million people and is worth an estimated \$21 billion. The procurement process began in 2019, but due to protests from several bidders, restarted in June 2021 at the decision of the Louisiana Department of Health. Once the announcement is made on Friday, health plans have 14 days to protest the award decision ([Health Payer Specialist](#), November 1).
- The Texas Medical Association (TMA) has filed a lawsuit in the U.S. District Court for the Eastern District of Texas challenging a recent interim final rule (IFR) on surprise billing, claiming it conflicts with the congressional intent of the No Surprises Act (NSA) and its rulemaking process violated the Administration Procedure Act as the administration did not provide a notice and comment period for the rule. The NSA effectively prohibits providers from billing patients for out-of-network (OON) emergency services or for services performed by OON clinicians at in-network facilities. Further, the NSA creates a new independent dispute resolution process with an arbitrator to address billing conflicts between patients and providers if the parties are otherwise unable to agree. TMA claims instructions for the arbitrators create bias rather than allowing arbitrators to weigh all relevant factors and select the reimbursement

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rate that most accurately reflects fair market reimbursement and individual circumstances. The American Hospital Association and the Federation of American Hospitals have also voiced similar criticisms of the IFR (*Texas Medical Association v. United States Department of Health and Human Services*, October 28; *Inside Health Policy*, October 29; *Modern Healthcare*, October 29).

## Private Sector Updates

### Providers

- Jefferson Health announced it has purchased Temple University Health System's 50% ownership stake in Health Partners Plans for \$305 million. Jefferson Health now owns a health plan that covers nearly 290,000 Medicare Advantage, Medicaid, Dual Eligible Special Needs Plans (D-SNP), and CHIP beneficiaries. Jefferson Health obtained 25% of Health Partners Plans when it acquired the Aria Health system in 2016 and another 25% when it merged with Einstein Healthcare Network in October. Additionally, the company formed a digital health alliance with private equity firm General Catalyst in October and established a social determinants of health partnership with Novartis Pharmaceuticals in September that enables Jefferson Health to improve care and reduce care for underserved patients (*Modern Healthcare*, November 1).
- According to a [report by Kaufman Hall](#), September was a difficult month for hospitals due to a confluence of lower volumes and rising expenses. U.S. hospitals saw a median operating margin decline of 18.2% between August and September. Volumes were down by almost every measure in September with declines in adjusted discharges (5.1%), adjusted patient days (3.7%) and emergency room visits (6%). These declines coincide with total expenses and labor costs growing by 2.2% and 1.4%, respectively. Many healthcare providers across the country continue to struggle with rising labor costs, especially among nurses, as well as challenges keeping the billing and collections departments fully staffed (*Modern Healthcare*, November 1).

### Insurers

- Neighborhood Health Plan of Rhode Island (Neighborhood) has long relied on social determinants of health data to inform decisions and implement initiatives to improve the health of its members. Neighborhood is adding four additional benefits to its 2022 INTEGRITY Medicare-Medicaid Plan, a plan that serves some of Rhode Island's most medically fragile and economically disadvantaged seniors. Papa Pals is a health resource for companion and assistance services that is designed to combat social isolation, loneliness, and other social barriers. The three other benefits being added to the plan include home-delivered meals from Mom's Meals after a hospital stay or surgery; a Healthy Food Savings Card that provides members with a monthly allowance to spend on health foods; and a wellness benefit that includes a gym membership at six of the YMCA of Greater Providence locations. Members can use the new benefits starting on January 1, 2022 ([Neighborhood Health Plan of Rhode Island](#), October 6).
- Security Health Plan will expand its Medicaid contract with the State of Wisconsin to include the Medicaid Supplemental Security Income (SSI) program, in addition to BadgerCare Plus, starting January 1, 2022. Security Health Plan will administer this program to individuals in the Aged, Blind, Disabled population who live in a 12-county catchment area throughout central and northcentral Wisconsin ([Security Health Plan](#), October 28).
- Blue Cross Blue Shield Association, Cancer Treatment Centers of America, and Northwell Health join dozens of others in committing to a new [Health Equity Pledge](#). The Health Equity Pledge was developed over the past year by the Health Evolution Forum (a collective of payer, provider, and science leaders) with the goal of creating a baseline in analyzing disparities based on "REaLS"—race, ethnicity, language, and sex. The data is not currently standardized, but the pledge includes a commitment to collecting REaLS data on at least 50% of a patient or member population over the next three years. The data will

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regularly be shared with peers through the Health Evolution Health Equity Learning Lab in order to shape best practices ([Fierce Healthcare](#), October 28).

## Sellers Dorsey Updates

- We are seeking talented individuals to join our growing team. We are looking for an accounting manager, financial data analyst, consultants, executive assistant to the CEO, associates, and more. If you know anyone in your networks who is seeking new career opportunities and wish to work in an open and supportive environment, please direct them to our [career opportunities page](#) to apply and learn more about our open positions!
- The HFMA Annual Conference is right around the corner, and Sellers Dorsey is proud to be a sponsor. Our team is excited to attend and learn more about the latest technology and payment innovation that will continue to improve our health care system. See you there!
- Our Medicaid finance experts help clients identify, develop, and implement innovative strategies to fund and strengthen their Medicaid programs. Our work has yielded billions in new federal Medicaid funding that has been used to expand health care services to better serve Medicaid populations, and our innovative equity-focused initiatives leverage value-based care principles to target social determinants of health and critical population health issues. [Check out examples of our work](#), including how we helped bring supplemental Medicaid funding to a hospital through a managed care directed payment program.



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