

SELLERS DORSEY DIGEST

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NAVIGATION

Federal Updates

The Biden administration has nominated Dr. Robert Califf to serve as the Commissioner of the Food and Drug Administration.

State Updates

Amerigroup, BlueCare Tennessee, and United Healthcare Community Plan have been awarded the \$12.1 billion contracts for the TennCare, Tennessee Medicaid program.

Private Sector Updates

The American Health Care Association and National Center for Assisted Living released a report showing long-term care facilities are suffering the most from the labor crisis.

Sellers Dorsey Updates

Learn more about the services we offer health care investors and how we help them tackle challenges and priorities in Medicaid.

Summary of Key Updates

The Occupational Safety and Health Administration (OSHA) [announced](#) it has suspended the implementation and enforcement of the COVID-19 Emergency Temporary Standard requiring employers with 100 or more employees to mandate vaccines or weekly testing for employees ([National Law Review](#), November 15).

On November 12, the Centers for Medicare and Medicaid Services (CMS) announced Medicare members' monthly premiums for physicians and outpatient services will increase in 2022 ([CMS](#), November 12; [Modern Healthcare](#), November 12).

The Brookings Institution and the Urban Institute project that hospitals stand to make significant financial gains if the Build Back Better Act is passed into law. The most recent draft of the legislation includes a provision that would provide tax credits for marketplace plans in states that have not expanded Medicaid through 2025, which could yield billions in aggregate hospital margins ([Inside Health Policy](#), November 11).

From November 11 to November 17, CMS approved 15 SPAs, one of which is a COVID-19 disaster relief SPA.

Sellers Dorsey offices will be closed November 25-26 for the Thanksgiving holiday. Due to the holiday, there will not be a Digest issue next Thursday. We will resume the following week. Thank you for your understanding, and for those who celebrate, have a safe and happy Thanksgiving!

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Federal Updates

News

- On November 16, CMS Administrator Chiquita Brooks-LaSure and Deputy Administrator Daniel Tsai posted a blog in *Health Affairs* highlighting the strategic vision for Medicaid and CHIP under the Biden administration. CMS leadership identified three strategic priorities for the administration which are as follows:
 - Coverage and Access
 - Close the coverage gap for individuals below 100% federal poverty line (FPL) who are not eligible to receive Medicaid nor eligible for the Affordable Care Act (ACA) marketplace benefits by encouraging states to expand Medicaid eligibility under the ACA.
 - Strengthen and enhance Medicaid eligibility and enrollment processes to ensure continuous Medicaid/CHIP coverage and easy transition of care out of the programs. Focus will be on reducing administrative burdens, eliminating numerous documentation requirements as well as transition towards paperless/electronic enrollment and applications.
 - Define a federal “floor” of health care access through partnership with states and stakeholders. Ensure ease of access to enrollment, providers, and linguistically and culturally appropriate care in both fee-for-service and managed care delivery systems.
 - Expand home and community-based services (HCBS) by reducing barriers to and disparities in access and utilization of HCBS and strengthening the direct care workforce.
 - Equity
 - As a part of the Biden administration’s “whole-of-government equity agenda,” CMS will work with states to advance health equity across three areas:
 - Develop and improve measurement of health disparities by establishing a core set of metrics and health equity measures.
 - Identify and implement evidence-based and equity-focused interventions.
 - Close and/or reduce the health equity gap by linking existing and new federal funds towards progress on decreasing health disparities.
 - Innovation and Whole-Person Care
 - Promote innovations in value-based care, delivery system reform, and whole-person care. The latter includes partnering with states to ensure health systems consider all health-related needs including physical health, behavioral health, oral health, long-term service and supports, and health-related social needs.
 - Establish a new agency goal of transitioning most beneficiaries to accountable care arrangements by 2030.
 - Close the equity gap in behavioral health services and access and bring it on par with physical health.
 - Develop policy principles and guidelines for 1115 demonstration waivers to ensure federal Medicaid policies support equity and financial stewardship across states ([Health Affairs](#), November 16).
- On November 12, CMS announced Medicare members’ monthly premiums for physician and outpatient services will increase by nearly 15% in 2022. The increase is related to rising health care prices driven by COVID-19-related care, lawmakers’ efforts to lower 2021 premiums during the pandemic, and the potential for costly drugs to receive coverage. The standard monthly premium will rise to \$170.10 in 2022 (up from \$148.50 in 2021), and the annual deductible will grow by 14.7%, from \$203 to \$233.

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Additionally, Medicare enrollees will receive a 5.9% year-over-year cost of living adjustment through their Social Security benefits, which will cover Medicare Part B monthly premiums ([CMS](#), November 12; [Modern Healthcare](#), November 12).

- The Biden administration has nominated Dr. Robert Califf to serve as the Commissioner of the Food and Drug Administration (FDA). Dr. Califf previously served as FDA Chief during the Obama administration. The FDA has been without a permanent head since President Biden took office in January and is currently being run by acting Commissioner Dr. Janet Woodcock ([White House](#), November 12; [CNBC](#), November 12).
- Analysts from the Brookings Institution and the Urban Institute project hospitals stand to make substantial financial gains should the [Build Back Better Act](#), the Biden administration's health and social spending reconciliation package, become law. The most recent draft of the [House version](#) of the reconciliation package includes a provision to close the "Medicaid gap" by providing tax credits for marketplace plans in states that have not expanded Medicaid through 2025, which the analysts contend will yield billions in aggregate hospital margins should the provision go into effect in 2023. The package also includes provisions disincentivizing state cuts to Medicaid coverage, including the exclusion of uncompensated care pool funding as part of 1115 Demonstration Waivers and a 12.5% reduction in Medicaid disproportionate share hospital (DSH) payments in states where individuals in the Medicaid gap could receive coverage through the marketplace under the proposed gap fix policy. Hospital associations have vocally opposed the proposed Medicaid DSH cuts, which would continue past the expiration of the Medicaid gap fix policy, due to the financial burden that will likely fall on hospitals should it pass. The Brookings Institution and Urban Institute analysts claim that hospitals' financial gains from the Build Back Better act will mitigate the potential losses incurred from the DSH cuts, but the American Hospital Association argues that these assumptions are based on flawed and incomplete data. The Build Back Better Act has yet to be finalized in both chambers of Congress, and further negotiations are likely to occur in the coming weeks ([Inside Health Policy](#), November 11).
- On November 10, CMS published an informational bulletin regarding revised federal funding methodologies for the Basic Health Program (BHP) years 2020 and 2021. The bulletin specifies updated values for factors needed to calculate the federal BHP payment rates for 2020 and 2021 as a result of the American Rescue Plan Act (ARP) and provides several questions and answers related to the states' implementation of the ARP provisions ([CMS](#), November 10).

Federal Regulation

- On November 12, the Biden administration repealed the Trump-era Medicare Coverage of Innovative Technology and Definition of Reasonable and Necessary (MCIT/R&N) rule, which allowed accelerated Medicare coverage for new, advanced devices. While CMS stated it continues to support increased access to new technologies, it was repealing the rule because accelerated device approval may cause unknown or unexpected risks to Medicare beneficiaries. CMS said it would work with the FDA, the Agency for Health Research and Quality (AHRQ), device manufacturers, and other stakeholders to ensure device approval processes that balance access with appropriate health and safety precautions ([CMS](#), November 12; [Fierce Healthcare](#), November 12).

COVID-19

- In response to a Fifth Circuit Court of Appeals [order](#) issued November 12, OSHA [announced](#) it has suspended the implementation and enforcement of the COVID-19 Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to mandate vaccines or weekly testing for employees. The Fifth Circuit's order states an OSHA ETS is an inappropriate vehicle for a federal vaccine mandate, claiming OSHA has not adequately demonstrated a "grave danger" that warrants an ETS order. Other challenges to the ETS pending in federal circuit courts will be consolidated and randomly assigned to one

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circuit court this week for further litigation. The order does not impact the Federal Contractor Mandate and the CMS Medicare Omnibus Staff Vaccine Mandate Interim Final Rule, which face separate legal challenges and have not been halted by federal court action at this time ([National Law Review](#), November 15).

- Ten states filed a [lawsuit](#) in the U.S. District Court for the Eastern District of Missouri against the Biden administration over the national mandate for staff at health care facilities to be vaccinated against COVID-19 as a condition of participating in Medicare and Medicaid. CMS currently requires health care facilities to have a policy in place ensuring that staff receive their first dose of the vaccine by December 5, 2021 and to complete all the vaccination series by January 4, 2022. In the filed complaint, states outlined how widespread workforce shortages already affect providers in their states. The states argue the decision to enact a vaccine requirement should be left to individual states' discretion and highlighted incongruities with other federal vaccination requirements from OSHA ([Fierce Healthcare](#), November 11).

Waivers

- Section 1115
 - On November 1, Oregon submitted a [request](#) for a new Section 1115 Waiver Demonstration, titled "Project Independence and Family Caregiver Assistance Program." The five-year demonstration, beginning July 1, 2022 and preceded by a planning period spanning several months, proposes a federally matched program of Oregon Project Independence, an in-home personal care program, and a Family Caregiver Assistance Program for adults aged 65 and older and adults with physical disabilities who are not currently accessing Medicaid programs. These programs provide limited services and supports to individuals at risk of entering the Medicaid long-term services and supports system, with the intent to assist individuals in either avoiding or delaying entering the Medicaid system. CMS will accept public comment on the proposed demonstration through December 16.

SPAs

- Administrative SPAs
 - North Dakota ([ND-21-0017](#), effective October 1, 2021): Amends the state plan to update pages related to cooperative arrangements with the state vocational rehabilitative agency and Title V (Maternal and Child Health) grantee.
- COVID-19 SPAs
 - Indiana ([IN-21-0002](#), effective March 1, 2020): This time-limited COVID-19 SPA has the following provisions:
 - Expands telehealth.
 - Allows 90-day refills of maintenance drugs.
 - Expands prior authorization for medications to allow automatic renewals.
 - Allows a 4.2% per diem nursing home rate increase between March 2020 and March 2021, and a 3% per diem nursing home rate increase between April 2021 and June 2021.
 - Provides reimbursements to certain assisted living providers for COVID-19 related expenses.
 - Increases therapeutic leave for individuals with intellectual and developmental disabilities living in intermediate care facilities.
 - Reimburses in-state EMS providers for COVID-19 related expenses, reimbursement and coverage for treat/no transport is effective for dates of service through June 30, 2021.

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- Indiana Medicaid pays federally qualified health centers and rural health clinics for COVID-19 vaccine administration fees in addition to (but billed separately from) the prospective payment system rate effective for dates of service on or after January 18, 2021 through June 30, 2021.
 - Indiana Medicaid pays for COVID-19 vaccine administration fees at a higher rate than the rate methodology stated in the Indiana state plan.
 - Indiana Medicaid pays for COVID-19 treatment administration fees at a higher rate than the rate methodology stated in the Indiana state plan, and waives automatic discharge from ICF after 30 hospital stay days.
 - This time-limited COVID-19 SPA has provisions that terminate between June 1, 2020 and July 10, 2021.
- Payment SPAs
 - Florida ([FL-21-0005](#), effective July 1, 2021): Updates the Florida Title XIX outpatient hospital services reimbursement plan.
 - Florida ([FL-21-0007](#), effective July 1, 2021): Updates the Florida Title XIX County Health Department reimbursement plan.
 - Hawaii ([HI-21-0011](#), effective July 1, 2022): Implements a new inpatient reimbursement model under an All-Patient Refined Diagnosis Related Group (APR-DRG) based payment for Hawaii Quest-Integration.
 - New Hampshire ([NH-21-0039](#), effective July 1, 2021): Continues the suspension of direct graduate medical education, indirect graduate medical education, and catastrophic aid hospital payments for state fiscal years ending 2022 and 2023.
 - New Hampshire ([NH-21-0041](#), effective July 1, 2021): Increases the intermediate care facility for individuals with intellectual disabilities (ICF/IID) reimbursement rate by 5%.
 - New Hampshire ([NH-21-0033](#), effective July 1, 2021): Updates the nursing facility reimbursement rate budget adjustment factor to 25.16% and the nursing facility Class Line 504 account amount to \$222,124,804 for state fiscal year 2022.
 - New Jersey ([NJ-21-0006](#), effective July 1, 2021): Updates weekday and weekend hourly rates for fee-for-service personal care assistant services to \$22.00 per hour.
 - New York ([NY-21-0057](#), effective September 1, 2021): Amends Early Periodic Screening, Diagnostic, and Treatment (EPSDT) Tuberculosis TB and Interpreter Rates.
 - New York ([NY-21-0052](#), effective July 1, 2021): Updates the Ambulatory Patient Group for outpatient hospital services
 - Ohio ([OH-21-0025](#), effective July 1, 2021): Updates the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies fee schedule.
 - Ohio ([OH-21-0024](#), effective July 1, 2021): Updates the Medicine, Surgery, Radiology and Imaging, and Additional Procedures fee schedule.
 - Tennessee ([TN-21-0005](#), effective September 1, 2021): Updates the TennCare reimbursement rates for ground ambulance services.
 - Washington ([WA-21-0026](#), effective July 1, 2021): Increases the reimbursement rates for individual providers, agency providers, and adult family homes, and raises the nursing facility budget dial and swing bed rates.

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State Updates

- Amerigroup, BlueCare Tennessee, and United Healthcare Community Plan have been awarded contracts for the \$12.1 billion Tennessee Medicaid managed care program, TennCare. The three-year contracts are scheduled to be signed on December 22 and will cover approximately 1.5 million enrollees, about 20% of the state's population. Unsuccessful bidders were able to file a protest until November 16 ([Health Payer Specialist](#), November 15).
- On November 15, the Arizona Health Care Cost Containment System (AHCCCS) announced expanded contract awards to Arizona Complete Health, Care1st Health Plan, and Mercy Care. The three AHCCCS Complete Care (ACC) health plans' goal of expansion is to provide integrated physical and behavioral health services to Medicaid members who have Serious Mental Illness designation. These contracts, also known as Regional Behavioral Health Agreements, expand the existing ACC contracts by geographic service area. The expansion and contract requirements are effective October 1, 2022 ([AHCCCS](#), November 15).
- The Missouri Department of Health and Senior Services published an emergency rule on November 12 that allows nursing and intermediate care facilities to close for up to two years if they are short-staffed because of the vaccine mandate. The rule gives nursing homes a legal pathway to temporarily shut down in response to the Biden administration's mandate for health care workers to be vaccinated against COVID-19. Facilities can reopen without having to start the license process over again once the mandate has been lifted. Missouri's nursing homes have some of the lowest COVID-19 vaccination rates across the nation, and State Attorney General Eric Schmitt sued this week as a part of a coalition of 10 states seeking to block the vaccine mandate ([Modern Healthcare](#), November 12).

Private Sector Updates

Providers

- The American Health Care Association and National Center for Assisted Living (AHCA/NCAL) released a [report](#) showing nursing homes and other long-term care facilities are suffering the most from the labor crisis, with a loss of 221,000 jobs or 14% since the beginning of the COVID-19 pandemic. Burnout from the pandemic, chronic Medicaid underfunding, and the inability to attract and retain qualified caregivers are some of the main workforce challenges employees cite as reasons for leaving. A September 2021 [survey](#) showed the labor crisis is only worsening and impacting access to care for vulnerable seniors ([AHCA/NCAL](#), November 10).

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- Sellers Dorsey had a wonderful week at the National Association of Medicaid Directors (NAMD) Annual Conference! The conference offered a wonderful opportunity to meet with clients, states, and hear highlights from the administration. We'd like to thank the organizers of the event, the Medicaid directors for their critical work, and the health care organizations that enable Medicaid programs across the U.S. to serve individuals.
- We are uniquely positioned at the intersection of industry and government and can help translate health care policy trends into sound business decisions for private equity and companies who serve them. Our talented team delivers highly specialized research and advisory capabilities in Medicaid. Learn more

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about the [services we offer health care investors](#) and how we help them tackle challenges and priorities in Medicaid.

- Value-based care is a critical area of our work. With deep industry expertise and experience in assisting state Medicaid programs, we help state Medicaid agencies, providers, and managed care organizations develop and implement value-based arrangements. [Read about how we helped two physician practice plans design and implement a value-based supplemental payment program](#), bringing in additional funds to help them address population health and care coordination issues.



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