

Key Updates

On June 23, the Centers for Medicare and Medicaid Services (CMS) [approved](#) Colorado's Section 1332 state innovation waiver, granting the state authority to launch its own state-specific public option Affordable Care Act (ACA) plan from 2023 through 2027. This marks Colorado as the first state to receive approval for a public option plan ([Fierce Healthcare](#), June 23).

On June 24, the Supreme Court ruled to uphold a Mississippi law restricting abortions performed 15 weeks after conception, while simultaneously overturning constitutional protections for abortion under *Roe v. Wade* and *Planned Parenthood v. Casey* ([Fierce Healthcare](#), June 24).

On June 24, the Centers for Disease Control and Prevention (CDC) endorsed Moderna's COVID-19 vaccine for emergency use in children ages 6 to 17 ([Inside Health Policy](#), June 24).

From June 22 to June 28, CMS approved one Appendix K waiver and 19 SPAs, seven of which are COVID-19 disaster relief SPAs.

Be on the lookout for a special edition of the Sellers Dorsey Digest this week. We are releasing a detailed summary that highlights key Medicaid and health care spending items for 24 states that enacted their budgets for FY2023.

Starting next week, July 7, the Sellers Dorsey Digest will be released on Thursdays instead of Wednesdays.

Federal Updates

On June 24, the American Hospital Association wrote to congressional leaders about the proposed Inpatient Prospective Payment Systems rule, which sets inpatient rates for next year.

State Updates

The state of Hawaii restored its adult Medicaid dental benefit. The restored benefit will go into effect in 2023.

Private Sector Updates

A recent analysis on health disparities conducted by Deloitte revealed that the American health system may incur \$1 trillion in annual health disparities cost by 2040.

Sellers Dorsey Updates

We'd love to hear from our dedicated readers. Tell us how we can improve by completing our super short survey.

FEDERAL UPDATES

News

- On June 28, the U.S. Government Accountability Office (GAO) released a [report](#) on state directed payments in Medicaid managed care to assist Congress with its oversight responsibilities. GAO analyzed previously approved state directed payment proposal documents, CMS guidance and regulations, and interviews with CMS officials to report on the condition of state directed payments and their oversight. Based on its findings, GAO claimed information gaps hinder the ability of CMS to provide the enhanced oversight of state directed payments it seeks. GAO referenced a recommendation it made to CMS in 2020 – that CMS collect comprehensive provider-specific information about Medicaid payments to providers – as a potential remedy for the information gap. GAO also announced plans to continue monitoring CMS's oversight process for these payments ([GAO](#), June 28).
- On June 24, the American Hospital Association (AHA) wrote to congressional leaders about the proposed Inpatient Prospective Payment Systems rule, which sets inpatient rates for next year. AHA is hoping lawmakers will pressure the Biden administration to change the proposed payment rates as facilities are facing major challenges, not just from the pandemic, such as a struggling workforce, drug costs, and supply shortages. CMS had proposed a market basket update of 3.2% to Medicare payments, on top of a 2.7% payment update in 2022, for the 2023 federal fiscal year. AHA contends that the market basket and productivity update do not reflect the major inflation jump and growth in expenses and wants Congress to press CMS to implement a retrospective adjustment for 2023 and remove the productivity cut for next year ([Fierce Healthcare](#), June 27).

Federal Litigation

- On June 24, the Supreme Court ruled 6-3 to uphold a Mississippi law restricting abortions performed 15 weeks after conception, while simultaneously overturning constitutional protections for abortion under *Roe v. Wade* and *Planned Parenthood v. Casey* in a 5-4 ruling. For decades, these two cases protected the federal right to abortion as an extension of the right to privacy. The decision allows states to restrict access to abortion, with some states already restricting access to some or most abortions, on or after the date of the Supreme Court decision as a result of so-called “trigger laws” or preexisting statute ([Fierce Healthcare](#), June 24).
- In a 5-4 ruling, the Supreme Court sided with the Department of Health and Human Services (HHS) in a case regarding disproportionate share hospital (DSH) payments. In 2005, HHS changed a formula for calculating safety-net payments to comply with what the agency considers an appropriate interpretation of Medicare law. The change in payments was the subject of a lawsuit by Empire Health Foundation challenging the fiscal year 2008 reimbursements, arguing that the rule's treatment of Medicare beneficiary patient days not covered by Medicare did not conform to the law. The case made its way up through the courts, eventually reaching SCOTUS. In its majority opinion, SCOTUS states Medicare law is explicit that everyone who meets the basic statutory criteria is entitled to hospital benefits under Medicare Part A, and thus HHS correctly interpreted the Medicare law and the regulation. Under this ruling, hospitals did not lose money, but they cannot receive additional funding they claimed using a different safety-net payment formula ([Modern Healthcare](#), June 24).
- After initially declining to intervene, SCOTUS will soon hear a case to determine whether the federal government has the authority to dismiss a False Claims Act whistleblower lawsuit, thus allowing the relator to proceed with the action. In 2019, the Department of Justice (DOJ) moved to dismiss a whistleblower case that alleged hospital billing fraud at UnitedHealth Group. The DOJ claimed the case would be too costly to pursue and the matter was dismissed by the District Court and the District Court's ruling was upheld by the U.S. Court of Appeals for the Third Circuit. Circuit courts have long been divided over what grounds the government can use to dismiss False Claims Act cases ([Modern Healthcare](#), June 23).

Federal Regulation

- On June 27, the Internal Revenue Service (IRS) held a public meeting on a proposed rule addressing an Affordable Care Act (ACA) provision known as the “family glitch.” The provision in question bases premium subsidies for ACA plans offered through employers on the cost of insuring only the employee and not the employee’s family members. The proposed rule would redesign affordability determinations based on costs for both employees and eligible family members in time for the 2023 enrollment year, beginning November 1. The proposed rule has mostly received praise from stakeholders, but some employers’ groups allege the proposed rule constitutes overreach on behalf of the Biden administration ([Inside Health Policy](#), June 22).
- CMS released a proposed rule that outlines changes to the 2023 Home Health Prospective Payment System and updates rates for home health agencies. The proposed rule decreases Medicare payments to home health agencies by 4.2%, or \$810 million, for 2023 compared with 2022. The significant decline in reimbursements originates from a 2018 spending law that required CMS to “better align payments with patient care needs, especially for clinically complex beneficiaries that require more skilled nursing care rather than therapy.” Under the 2018 law, CMS is required to create new assumptions about behavioral changes in home health and to change the payment rate from a 60-day unit to a 30-day period. As such, CMS is implementing a re-pricing methodology that determines the impact of behavior changes for estimated aggregate expenditures ([Fierce Healthcare](#), June 22).
- On June 21, the Office of Information and Regulatory Affairs released the Spring 2022 Unified Regulatory Agenda, providing a roadmap of planned agency regulatory actions. CMS’ agenda includes several items of note, including upcoming proposed rules related to Medicaid managed care, including additional guidance around in-lieu-of services and directed payment programs; access to care for Medicaid and CHIP beneficiaries; streamlining Medicaid and CHIP eligibility and enrollment processes; updates to DSH payment hospital specific limit calculations; and updates to Medicaid and CHIP Core Set quality measures ([Office of Information and Regulatory Affairs](#), June 21).

COVID-19

- Researchers from the Imperial College London published a study in the journal *Lancet Infectious Diseases* that used data from 185 countries to estimate that vaccines prevented 4.2 million COVID-19 deaths in India; 1.9 million in the U.S.; one million in Brazil; 631,000 in France; and 507,000 in the United Kingdom. The research estimates that nearly 20 million lives were saved by COVID-19 vaccines during their first year, but an additional 600,000 deaths would have been prevented if the World Health Organization target of 40% vaccination coverage by the end of 2021 had been met. The researchers excluded China because of uncertainty around the pandemic’s effects and its large population. Researchers also did not include how the virus could have mutated in the absence of vaccines or factor in how lockdowns or masks might have changed if vaccines were unavailable ([Modern Healthcare](#), June 24).
- On June 24, the CDC endorsed Moderna’s COVID-19 vaccine for emergency use in children ages 6 to 17. Moderna recommended extending the duration between first and second doses of the vaccine from four to eight weeks due to the vaccine’s link to heart inflammation, or myocarditis, in adolescent and young-adult males. Both Moderna and Pfizer’s COVID-19 vaccines have been linked to myocarditis, though greater risk is associated with the Moderna vaccine. Moderna suggests a longer period between doses may reduce myocarditis risk ([Inside Health Policy](#), June 24).

STATE UPDATES

Waivers

- Section 1115(a)
 - On June 3, Wisconsin submitted a Section 1115(a) demonstration waiver [application](#) to expand postpartum Medicaid coverage from sixty (60) days to ninety (90) days for birthing people in

Wisconsin whose household income is above 100% of the federal poverty level (FPL). CMS will accept public comments through July 21.

- Section 1915(c) Appendix K
 - Louisiana
 - Provides a one-time rate increase for Support Coordination services.
 - Provides temporary funding to Support Coordination Agencies and Direct Support Providers to stabilize the direct support workforce.
 - Modifies the Specialized Medical Equipment and Supplies and Assistive Devices service definitions to include Technology Supports with Remote Features.
 - Modifies the service definition for Assistive Devices to add Remote Technology Consultation.
 - Modifies the service definition for the Personal Emergency Response System service.
 - Increases the number of individuals that may be served under three home-and community-based services (HCBS) waivers.

SPAs

- COVID-19 SPAs
 - California ([CA-22-0021](#), effective July 1, 2020 – June 30, 2022): Increases the reimbursement rate for the Newborn Metabolic Screenings.
 - Colorado ([CO-22-0013](#), effective February 26, 2022): Revises the percentage of net invoice cost paid for Outpatient Hospital Physician Administered Drugs and temporarily increases payments for various other provider types. This time-limited COVID-19 SPA terminates at the end of the public health emergency (PHE).
 - Delaware ([DE-22-0004](#), effective January 1, 2021): Locks-in the calendar year (CY) 2020 School-Based Wellness Center Clinic Services per-visit rates for the entire CY 2021 and CY 2022; and provide for rates for the first-year nursing facility, Polaris, to be based on rates from its estimated cost report from CY 2020 for CY 2021 and CY 2022. This time-limited COVID-19 SPA terminates at the end of the PHE or December 31, 2022, whichever is earlier.
 - Missouri ([MO-22-0014](#), effective August 1, 2022): Modifies face-to-face visit requirements, telephone “verbal” signatures, and training requirements for Personal Care and Personal Care Assistance. This time-limited COVID-19 SPA terminates at the end of the PHE.
 - Nevada ([NV-22-0010](#), effective March 1, 2022): Provides a short-term quarterly supplemental payment to providers of Home Health Care, Personal Care Services, and Adult Day Health Care. This time-limited COVID-19 SPA terminates at the end of the PHE or March 31, 2023, whichever is earlier.
 - Wisconsin ([WI-22-0010](#), effective March 11, 2021): Provides coverage and suspends copayments and cost sharing for COVID-19 vaccine administration, testing, and treatment for and related to complications from COVID-19. This time-limited COVID-19 SPA terminates at the end of the PHE.
 - Wyoming ([WY-22-0002](#), effective October 1, 2021 – March 31, 2022): Eliminates the "Deprivation" requirement related to dependent children living with individuals who seek Medicaid on the basis of being parents and other caretaker relatives. Please note this eligibility change will be incorporated into the state plan effective April 1, 2022.
- Payment SPAs
 - Hawaii ([HI-21-0012](#), effective September 11, 2021): Clarifies pharmacy services under the other licensed practitioner benefit and identifies the reimbursement rate and methodology for these services.
 - Iowa ([IA-22-0007](#), effective July 1, 2022): Rescinds COVID-19 Relief Rate payments to nursing facilities.

- Missouri ([MO-22-0011](#), effective January 1, 2022): Adds coverage of the routine patient costs furnished in connection with participation in clinical trials as outlined in Section 1905(gg) in the Social Security Act.
- Oklahoma ([OK-22-0010](#), effective January 1, 2023): Updates the state's Supplemental Rebate Agreement's applicable date of the new Sovereign States Drug Consortium rebate agreement.
- Service SPAs
 - Alabama ([AL-22-0002](#), effective January 1, 2022): Adds coverage of COVID-19 testing, vaccines, administration and treatment to the State Plan in accordance with the American Rescue Plan Act.
 - Arizona ([AZ-22-0003](#), effective March 11, 2021): Attests to the state's coverage of COVID-19 testing as required by statute.
 - Arizona ([AZ-22-0004](#), effective March 11, 2021): Attests to the state's coverage of COVID-19 treatment as required by statute.
 - Kansas ([KS-22-0011](#), effective May 1, 2022): Removes age limits from mobile crisis services.
 - Michigan ([MI-22-0004](#), effective April 1, 2022): updates the Medicaid State Plan language pertaining to the coverage of medically necessary organ and tissue transplant procedures and related services.
 - Montana ([MT-22-0005](#), effective April 1, 2022): Removes coverage of the Nurse Advice Line from the state plan as the result of low call volume and increased access to primary care advice through telehealth.
 - New Jersey ([NJ-22-0009](#), effective March 11, 2021): Attests the state covers and reimburses COVID-19 vaccine administration, testing, and treatment as required by statute.
 - North Dakota ([ND-22-0005](#), effective March 11, 2021): Attests to the state's coverage of COVID-19 vaccines, vaccine counseling, testing, and treatment as required by statute.

News

- The state of Hawaii restored its adult Medicaid dental benefit. Hawaii was one of several states to restrict or eliminate its adult dental benefit due to budgetary constraints during the Great Recession (end of 2007 through June 2009). The restored benefit will go into effect in 2023 ([Health Payer Specialist](#), June 27).
- On June 23, CMS [approved](#) Colorado's Section 1332 state innovation waiver, granting the state authority to launch its own state-specific public option plan from 2023 through 2027. Based on state law, the Colorado Option plan, sold on ACA exchanges, must lower premiums by 5% in 2023, 10% in 2024, and 15% in 2025. CMS will pass through federal government savings to the state, which the state will then use to offer subsidies to further lower the cost of health care. Colorado is the first state to receive CMS approval for a public option plan ([Fierce Healthcare](#), June 23).

PRIVATE SECTOR UPDATES

- A recent analysis on health disparities conducted by Deloitte revealed that the American health system may incur \$1 trillion in annual health disparities cost by 2040. This would be three times larger than present costs and would account for nearly 12.5% of health care spending. Currently, there is an annual excess cost of \$320 billion for health services delivered due to health disparities and these costs are expected to increase by 6.2% every year. In comparison, total health care spending is expected to rise by 5.3% annually through 2040. The analysis determined the cost of socioeconomic, racial, and gender disparities among several high-cost diseases, including breast cancer, diabetes, colorectal cancer, asthma, and cardiovascular disease ([Modern Healthcare](#), June 23).
- Providers are warning that the Supreme Court's (SCOTUS) recent overturning of *Roe v. Wade* will have major consequences for the health care system. Providers anticipate congested abortion clinics in states where the procedure remains legal, harmful consequences from unsafe practices in states that outlaw abortion, and legal risks for health care providers. The SCOTUS ruling will make it hard for providers to

counsel pregnant patients on their options, and providers will be faced with difficult decisions on not being able to properly care for patients who want or need abortions. Providers who perform abortions where it is deemed illegal will risk their medical licenses and possibly face criminal charges ([Modern Healthcare](#), June 24).

SELLERS DORSEY UPDATES

- Be on the lookout for a special edition of the Sellers Dorsey Digest this week. We are releasing a detailed summary that highlights key Medicaid and health care spending items for 24 states that enacted their budgets for FY2023.
- As you work to navigate the complex Medicaid landscape and stay up to date on the latest news and events, we hope you continue to find the contents of the Sellers Dorsey Digest valuable. [Tell us how we can improve by completing our super short survey.](#)
- [Check out our recent staff spotlight Q&A with Director Tanya Boone.](#) Her profound policy expertise in Medicaid and extensive experience with stakeholder engagement are instrumental in helping our clients move the needle in health care.

