

Key Updates

President Biden urged Democratic senators to quickly pass the economic package that is limited to provisions curbing prescription drug prices, extending Affordable Care Act (ACA) health insurance subsidies, and reducing the federal deficit ([Modern Healthcare](#), July 15).

On July 15, Department of Health and Human Services (HHS) Secretary Xavier Becerra announced the extension of the COVID-19 public health emergency (PHE) for another 90 days, until October 13 ([Fierce Healthcare](#), July 15).

On July 15, the Centers for Medicare and Medicaid Services (CMS) released its 2023 Outpatient Prospective Payment System (OPPS) proposed rule, which would increase OPPS rates for hospitals that meet quality reporting requirements by 2.7% in 2023 (compared to 2022), with provider payments estimated to increase by \$6.2 billion ([Becker's Healthcare](#), July 18; [Modern Healthcare](#), July 15).

From July 14 to July 20, CMS approved two Appendix K waivers and eight SPAs, two of which are COVID-19 disaster relief SPAs.

Wondering how Medicaid can help improve access and outcomes for rural hospitals? Check out our latest article, [Prioritizing Crucial Health Care in Rural Communities: Urgent Needs and Opportunities for Growth](#), from former Wisconsin Medicaid Director Michael Heifetz and learn what can be done to address key challenges and opportunities in rural health care.

Federal Updates

Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, announced his plans to retire before the end of President Biden's first term in January 2025.

State Updates

CMS approved Maine's State Innovation Waiver, designed for individual and small group markets, serving people who purchase marketplace insurance or employers with 50 or fewer employees.

Private Sector Updates

After a slow start in the first six months of 2022, health care mergers and acquisitions are showing indications of recovery.

Sellers Dorsey Updates

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FEDERAL UPDATES

News

- Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, announced his plans to retire before the end of President Biden's first term in January 2025. Dr. Fauci, an instrumental leader in the U.S. government's response to HIV/AIDS, Ebola, Zika, COVID-19, and other public health threats, has held the post since 1984 ([Modern Healthcare](#), July 18).
- In a recently published study in *Health Affairs*, researchers found the U.S. had a median health care spending effectiveness ratio of \$114,339 per disability-adjusted life-year (DALY) averted between 1996-2016 across all causes of health care spending and disease burden. Health care spending effectiveness is the ratio of an increase in spending per case of illness or injury to an increase in DALYs averted per case (controlling for changes in population size, age/sex structure, and incidence/prevalence of cases). The study noted if this value is compared to a standard value of \$150,000 per DALY averted, then the relative prices fell by 13% during that time, and much of the growth in health care spending over time has improved health in the country ([Health Affairs](#), July 15).

Federal Legislation

- President Biden urged Democratic senators to quickly pass the economic package that is limited to provisions curbing prescription drug prices, extending ACA health insurance subsidies, and reducing the federal deficit. The slimmed-down economic package comes after the Biden administration gave into Senator Joe Manchin's demands on limiting government spending and reducing the federal deficit, after months of negotiations starting from the much larger \$2 trillion Build Back Better Bill ([Modern Healthcare](#), July 15).

Federal Regulation

- On July 15, CMS released its Outpatient Prospective Payment System (OPPS) [proposed rule](#) for 2023. The rule would increase OPPS rates for hospitals that meet quality reporting requirements by 2.7% in 2023 (compared to 2022), with provider payments estimated to increase by \$6.2 billion, totaling \$86.2 billion. CMS also proposes removing 10 services from the inpatient-only list and intends to withdraw payment cuts for drugs acquired through the 340B program in 2023. CMS was not able to adjust its proposed continuation of cuts for next year due to the timing of the Supreme Court ruling on the 340B program, but plans to eliminate them in a final rule. The proposed rule includes a payment model for rural emergency hospitals where they would be paid for providing services at a rate that is equal to the OPPS rate, plus an additional 5% payment. Additionally, rural emergency hospitals would get monthly facility payments that increase annually based on the hospital market basket. CMS plans to release the final conditions of participation and payment policies for rural emergency hospitals in a single final rule this fall. The draft regulation also addresses reimbursements for behavioral telehealth services and outlines a potential pay increase to compensate hospitals for the extra cost of purchasing domestically produced N95 respirators ([Becker's Healthcare](#), July 18; [Modern Healthcare](#), July 15).

Federal Litigation

- On July 14, Texas Attorney General (AG) Ken Paxton (R) sued the HHS over guidance released July 18 that mandates hospitals to provide abortions to patients who need them to protect their lives or health under the Emergency Medical Treatment and Labor Act of 1986 (EMTALA). AG Paxton contends the guidance is an abortion mandate, infringing on the state's authority to restrict abortion access and that EMTALA does not guarantee the right to abortion. AG Paxton requested the U.S. District Court for the Northern District of Texas to set aside the July 18 guidance ([Modern Healthcare](#), July 14; [Fierce Healthcare](#), July 15).

COVID-19

- New data from the Centers for Disease Control and Prevention (CDC) [COVID-19 Data Tracker](#) shows a steady increase in COVID-19 related hospital admissions in recent weeks. The CDC attributes the uptick to the highly transmissible BA.5 Omicron variant, the most contagious and immune-evasive COVID-19 variant

to date. CDC forecasting models predict new daily hospital admissions of anywhere between 3,200 and 13,800 by August 5 ([Fierce Healthcare](#), July 18).

- On July 15, HHS Secretary Xavier Becerra announced the extension of the COVID-19 PHE for another 90 days, until October 13. HHS maintains it will provide states a 60-day notice if the PHE will not be extended again ([Fierce Healthcare](#), July 15).
- A recent [report](#) by the CDC found the COVID-19 pandemic amplified cases and deaths associated with antimicrobial resistant (AMR) health care-acquired infections (HAI). As of 2017, dedicated infection prevention and control efforts in the U.S. contributed to reduce deaths from AMR infections by 18% overall and by nearly 30% in hospitals. However, the pandemic has reversed much of this progress. In the first year of the pandemic, there was “at least” a 15% increase in both cases and deaths attributed to AMR HAIs. The report also stated hospitals saw significantly higher rates for four out of six types of HAIs in 2020. The CDC Director noted the increase in AMR HAIs is attributed to a “significant increase in antimicrobial use [and] difficulty in following infection prevention and control guidance during the early days of the pandemic.” Almost 80% of patients hospitalized with COVID-19 between March 2020 and October 2020 received an antibiotic ([Fierce Healthcare](#), July 14).

STATE UPDATES

Waivers

- Section 1115
 - On June 30, Arkansas submitted a [request](#) for a five-year extension of the section 1115(a) demonstration titled, “Tax Equity and Fiscal Responsibility Act (TEFRA-like).” The state seeks an extension of all the existing demonstration authorities, which provide services to disabled children eligible for Medicaid under section 134 of the Tax Equity and Fiscal Responsibility Act (TEFRA), also known as Katie Beckett waiver. CMS will accept public comments through August 13.
 - On June 30, Montana submitted a [request](#) for a five-year extension of the section 1115(a) demonstration titled, “Montana Waiver for Additional Service and Populations.” The demonstration provides expenditure authority for 12-month continuous eligibility and coverage of health care services for lower-income individuals aged 18 or older who are not otherwise eligible for Medicaid, with a diagnosis of severe disabling mental illness of schizophrenia, bipolar disorder, major depression, or another severe disabling mental illness. The demonstration authorizes the provision of dental treatment services above the state plan dental treatment services annual limit of \$1,125 for certain categorically eligible beneficiaries. CMS will accept public comments through August 13.
- Section 1915(c) Appendix K
 - [Arkansas](#)
 - Extends existing Appendix K amendments to six months after the end of the PHE for the Community and Employment Supports waiver and the Autism waiver.
 - [Ohio](#)
 - Temporarily authorizes quarterly value-based supplemental payments to home- and community-based service providers in Individual Options waiver, Level One waiver, and Self-Empowered Life Funding waiver.

SPAs

- Administrative SPAs
 - Massachusetts ([MA-22-0017](#), effective June 1, 2022): Updates the state plan to add mandatory coverage of routine patient costs furnished in connection with participation in qualifying clinical trials.

- Montana ([MT-22-0013](#), effective April 1, 2022): Addresses third party liability and related Medicaid payments associated with prenatal care, preventive pediatric services, and medical child support to comply with the requirements of the Bipartisan Budget Act of 2018 and the Medicaid Services Investment and Accountability Act of 2019.
- Nebraska ([NE-22-0008](#), effective January 1, 2022): Updates part of the Alternative Benefit Plan required for the adult Medicaid expansion population as it relates to coverage of routine costs associated with qualifying clinical trials under the Consolidated Appropriations Act of 2021.
- Wyoming ([WY-22-0001](#), effective July 1, 2022): Adds School-Based Services, which allows the state Medicaid Agency to reimburse local education agencies for providing health related services to Medicaid eligible students in a school-based setting.
- Wyoming ([WY-22-0003](#), effective January 1, 2022): Addresses compliance with mandatory Medicaid coverage of routine patient costs furnished in connection with participation in qualifying clinical trials.
- COVID-19 SPAs
 - Massachusetts ([MA-21-0022](#), effective November 1, 2020): Updates rates for vaccine and monoclonal antibody administration, vaccines administered by certain types of clinicians, and certain acute inpatient hospital and psychiatric inpatient hospital supplemental payments. This time-limited COVID-19 SPA terminates at the end of the PHE.
 - Massachusetts ([MA-21-0044](#), effective October 1, 2021): Revises payment methods for Chronic Disease and Rehabilitation hospitals. This time-limited COVID-19 SPA terminates at the end of the PHE.
- Eligibility SPAs
 - Wyoming ([WY-22-0004](#), effective April 1, 2022): Eliminates the “deprivation” requirement relating to dependent children living with individuals who seek Medicaid in Wyoming based on being parents or other caretaker relatives.

News

- CMS approved Maine’s State Innovation Waiver, designed for individual and small group markets, serving people who purchase marketplace insurance or employers with 50 or fewer employees. On average, the new approach will keep premiums 8% lower in the individual market, and 6% lower in the small group market. The State Innovation Waiver combines the two programs into one single pooled market starting in 2023. Maine is the first state to obtain approval under the 1332 waiver program, included in the Affordable Care Act ([Health Payer Specialist](#), July 18; [Office of Governor Janet T. Mills](#), July 15).

PRIVATE SECTOR UPDATES

- Despite warnings from the Medicare Payment Advisory Commission (MedPAC) and the Medicaid and CHIP Payment and Access Commission (MACPAC), payers see high growth potential and profitability in dual eligible special needs plans (D-SNPs). MedPAC and MACPAC expressed concern over measuring quality of care, risk assessment manipulation, and poor state-run Medicare-Medicaid integration in D-SNPs. Payers, despite the benefits to business and a market ripe for penetration, face other challenges in the D-SNP space – the menu of D-SNP types from which to choose, varying D-SNP regulation from state to state, and challenges reaching potential D-SNP beneficiaries are hurdles that must be overcome for payers to capitalize on the potential of the budding D-SNP market ([Health Payer Specialist](#), July 18).
- After a slow start in the first six months of 2022, health care mergers and acquisitions are showing indications of recovery. There were 12 hospital transactions announced in the second quarter of 2022, with federal COVID-19 support assisting health systems in working through problems caused by the pandemic ([Modern Healthcare](#), July 18).
- Rural hospitals across the country are struggling with caring for pregnant Medicaid beneficiaries. Maternity care deserts are growing as Medicaid delivery reimbursement are falling below costs and salaries for

providers. A study from the University of Minnesota found rural hospitals need to perform at least 200 births a year to maintain patient safety and financial viability. In 2021, about 42% of rural hospitals surveyed in the study did not perform enough deliveries to be profitable. Hospitals are attempting to partner with academic medical centers to maintain services but are hoping for greater policy change to address the growing issue ([Modern Healthcare](#), July 18).

SELLERS DORSEY UPDATES

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