

# MEDICAID AT A CROSSROADS

A FEDERAL MEDICAID POLICY UPDATE

*Presented by*  
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Eyman Partners, LLC

**California Association of Public Hospitals**  
Annual Meeting  
December 5, 2024  
Napa, California

## TODAY'S DISCUSSION

- Current state of Medicaid
- Directed payments update
- Congress' lame duck session
- What's ahead in the next Trump Administration?



# EVOLVING MEDICAID PRIORITIES



- Coverage expansions
- Managed care
- Block grant veto



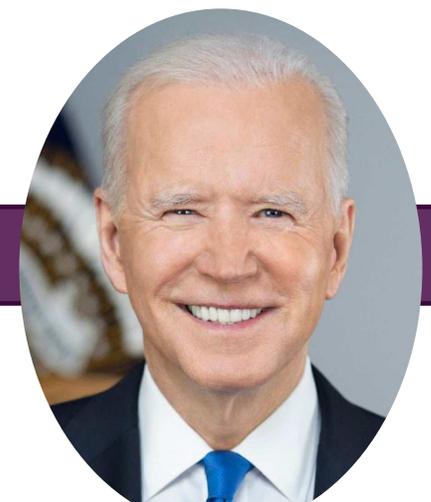
- “HIFA” waivers
- Safety Net Care Pools
- Regulatory cuts



- Obamacare
  - Medicaid expansion
  - CMMI
  - DSH cuts
- DSRIPs

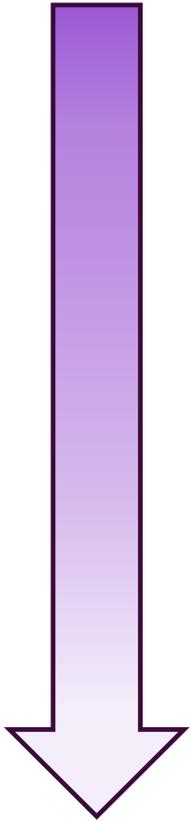


- Work requirements
- Block grants
- Personal responsibility
- Pandemic response



- Health equity
- Maintaining & expanding coverage
- Pandemic response & unwinding

# MEDICAID POLICY TOOLS



- Legislation
- Regulations
- Waivers
- Enforcement Actions
- Guidance
- Technical Assistance/Best Practices
- Executive Orders

**MEDICAID:  
THE CURRENT STATE**

# CMS IN THE BIDEN ADMINISTRATION

- Stability in leadership
- Unprecedented challenges
- Returning to [the new] normal
- Pursuing a strategic vision
- Marked focus on equity
- Partnerships and tensions with states
- Standardizing waivers
- Lawsuits, lawsuits, lawsuits



Xavier Becerra  
HHS Secretary



Chiquita Brooks-LaSure  
CMS Administrator



Dan Tsai  
CMCS Director

# CMS' STRATEGIC GOALS



## ADVANCE EQUITY

Advance health equity by addressing the health disparities that underlie our health system

**Health Equity Fact Sheet**



## EXPAND ACCESS

Build on the Affordable Care Act and expand access to quality, affordable health coverage and care

**2023 Marketplace Open Enrollment Data Snapshot**



## ENGAGE PARTNERS

Engage our partners and the communities we serve throughout the policymaking and implementation process



## DRIVE INNOVATION

Drive Innovation to tackle our health system challenges and promote value-based, person-centered care



## PROTECT PROGRAMS

Protect our programs' sustainability for future generations by serving as a responsible steward of public funds



## FOSTER EXCELLENCE

Foster a positive and inclusive workplace and workforce, and promote excellence in all aspects of CMS' operations

**Diversity, Equity, and Inclusion Strategic Plan**

## LEGISLATIVE ACCOMPLISHMENTS

- Mental health and SUD package (2024 appropriations bill)
- Limited coverage for incarcerated individuals
- Maternal health
- Continuous eligibility
- Pandemic unwinding (FMAP, 12-month redetermination process)
- DSH cut *cancellations* and postponements

## REGULATORY INITIATIVES

- Managed care rule
- Access rule
- Enrollment simplification
- Long term care staffing rule
- Mandatory core set reporting
- DSH 3<sup>rd</sup> party payer rule

# POLICYMAKING THROUGH WAIVERS

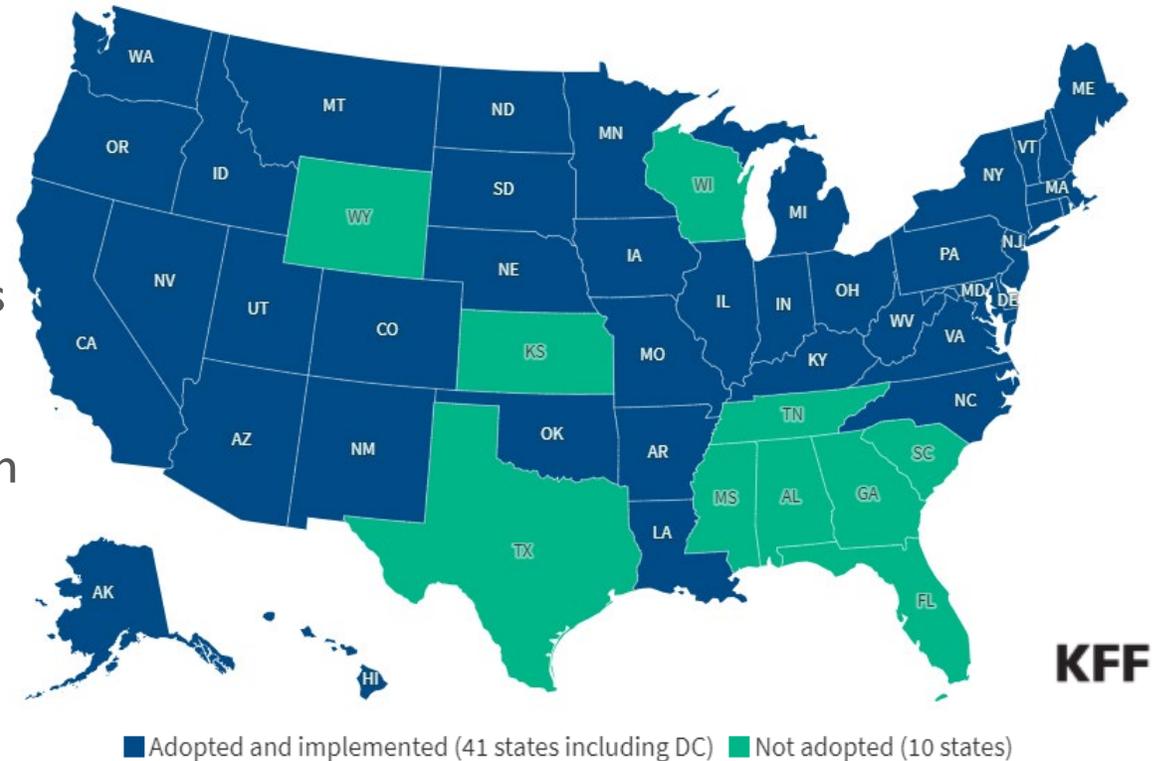
- **Health Related Social Needs (HRSNs)**
  - Approved in **10** states, including California
  - Guidance released in December 2022
- **Pre-Release Coverage for Incarcerated Individuals**
  - **25** states with approved or pending requests (including California)
  - Guidance released in April 2023
- **Continuous Coverage for Children (up to 6 years)**
  - Approved in **8** states (**1** state with pending application) (excluding California)
- **Substance Use Disorder/Behavioral Health**
  - Approved in **27** states (including California) (**42** states with approved or pending “IMD” waivers)

# WAIVER POLICY CHANGES

- Budget Neutrality
  - Flexible approach to ensuring that waivers do not increase federal spending
- “Designated State Health Program” (“DSHP”)
  - Allowing states to draw down federal funding on existing state-only programs
  - Strict guardrails imposed
- Strings attached
  - Minimum provider payment rates (primary care, behavioral health, OB/GYN)
  - Required state maintenance of effort
  - Rigorous reporting and evaluation requirements

# MEDICAID EXPANSION

- 4 states added during the Biden Administration
  - Oklahoma, Missouri, South Dakota, North Carolina
  - All but North Carolina through ballot measures
- 10 still to go
  - Despite 5% matching rate enhancement through ARPA
- Georgia expanded up to 100% FPL (but without enhanced federal match)
  - Court overturned CMS' rescission of work requirement



# COVID-19 RESPONSE

- State flexibilities
  - Coverage
  - Waivers
  - Directed payments
  - Quality
  - Etc.
- FMAP increase
- Maintenance of eligibility requirements

**Medicaid.gov**  
Keeping America Healthy

## Guidance and FAQs

- [COVID-19 FAQs for State Medicaid and CHIP Agencies \(Updated 1/6/2021\)](#)
  - [New COVID-19 FAQs for State Medicaid and CHIP Agencies \(FAQs contained in this document are available in the COVID-19 FAQs for State Medicaid and CHIP Agencies\) \(Posted 1/6/2021\)](#)
- [COVID-19 FAQs on implementation of Section 6008 of the Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security \(CARES\) Act \(Posted 1/6/2021\)](#)
- [COVID-19 FAQs on implementation of Section 6008 of the Families First Coronavirus Response Act \(Updated 4/13/2020\)](#)
- [Medicaid, Children's Health Insurance Program \(CHIP\), and Basic Health Program \(BHP\) Related Provisions in the American Rescue Plan Act of 2021](#)
- [CIB: COVID-19 Vaccine Update](#)
- [State Health Office Letter: Planning for the Resumption of Normal State Medicaid, Children's Health Insurance Program \(CHIP\), and Basic Health Program \(BHP\) Operations Upon Conclusion of the COVID-19 Public Health Emergency \(Posted 12/22/2020\)](#)
  - [Medicaid and Children's Health Insurance Program COVID-19 Health Emergency Eligibility and Enrollment Pending Actions Resolution Planning Tool \(Posted 1/15/2021\)](#)
  - [General Transition Planning Tool for Restoring Regular Medicaid and Children's Health Insurance Program Operations after Conclusion of the Coronavirus Disease 2019 Public Health Emergency \(Posted 1/15/2021\)](#)
- [SMDL: COVID-19 Public Health Emergency Section 1115\(a\) Opportunity for States](#)
- [CIB: Medicaid Substance Use Disorder Treatment via Telehealth, and Rural Health Care and Medicaid Telehealth Flexibilities Guidance](#)
- [CIB: Nursing Home Strategies for COVID-19 Only Isolation of COVID-19 Residents](#)
- [CIB: Medicaid Managed Care Options in Responding to COVID-19](#)
  - [COVID-19 Managed Care Delivery System and Provider Payment Initiatives](#)
- [Operationalizing Implementation of the Optional COVID-19 Testing \(XXIII\) Group Potential State Flexibilities guidance](#)
- [Coverage of Monoclonal Antibody Products to Treat COVID-19](#)

# POST-PANDEMIC UNWINDING

- Gradual phase-down of FMAP enhancement
  - Apr. 1, 2023-Dec. 3, 2023
- End of maintenance of eligibility requirements
- Compliance with federal redetermination processes

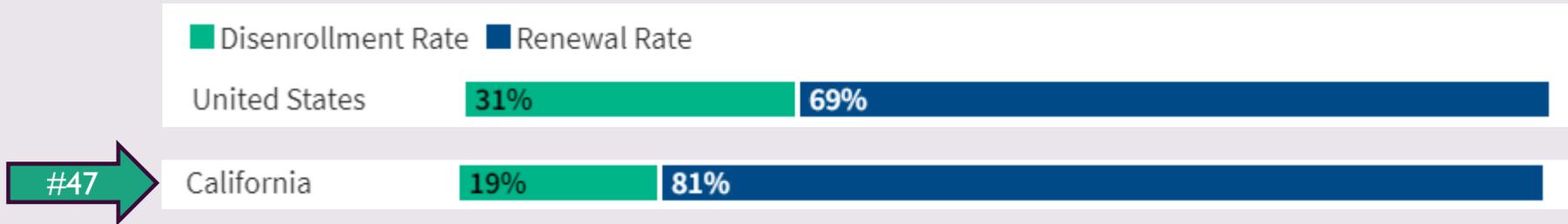
## Unwinding and Returning to Regular Operations after COVID-19

### Guidance (SHOs, CIBs, and FAQs)

- [CIB: Financial Eligibility Verification Requirements and Flexibilities](#) (Posted 11/20/2024)
- [CIB: Use of Unwinding-Related Strategies to Support Long-Term Improvements to State Medicaid Eligibility and Enrollment Processes](#) (Posted 11/14/2024)
- [CIB: Notice of Technology and Process Upgrades for Account Transfer Functionality for States Served by Marketplaces on the Federal Platform](#)
- [CIB: State Compliance with Medicaid and CHIP Renewal Requirements by December 31, 2026](#) (Posted 9/20/2024)
- [CIB: Guidelines for Achieving Compliance with Medicaid and CHIP Eligibility Renewal Timeliness Requirements Following the Medicaid and CHIP Unwinding Period](#) (Posted 8/29/2024)
- [CIB: Ensuring Continuity of Coverage for Individuals Receiving Home and Community-Based Services](#) (Posted 8/19/2024)
- [SHO: Continuation of Certain Medicaid and CHIP Eligibility Processing Data Reporting](#) (Posted 5/30/2024)
- [CIB: Ensuring Timely and Accurate Medicaid and CHIP Eligibility Determinations at Application](#) (Posted 5/09/2024)
- [CIB: Extension of Temporary Unwinding Related Flexibilities](#) (Posted 5/09/2024)
- [CIB: Conducting Medicaid and CHIP Renewals During the Unwinding Period and Beyond: Essential Reminders](#) (Posted 3/15/2024)
- [Slide Deck: Illustrative Examples of Processes Not Permitted Under Medicaid and CHIP Renewal Requirements](#) (Posted 3/15/2024)
- [Ensuring Eligible Children Maintain Medicaid and Children's Health Insurance Program Coverage](#) (Posted 12/18/2023)
- [Frequently Asked Questions to Support the Return to Normal Eligibility Operations for Transitional Medical Assistance and Medical Support](#) (Posted 11/22/2023)
- [Extension of 1915\(c\) Home and Community-Based Services Waiver Appendix K Expiration Dates](#) (Posted 08/02/2023)

# THE MESSY REDETERMINATION PROCESS

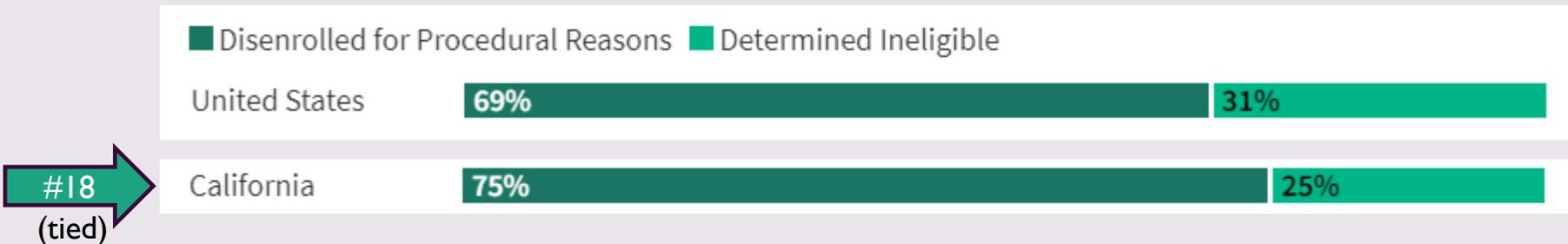
## The Share of People Who Were Disenrolled from Medicaid or had Coverage Renewed During the Unwinding



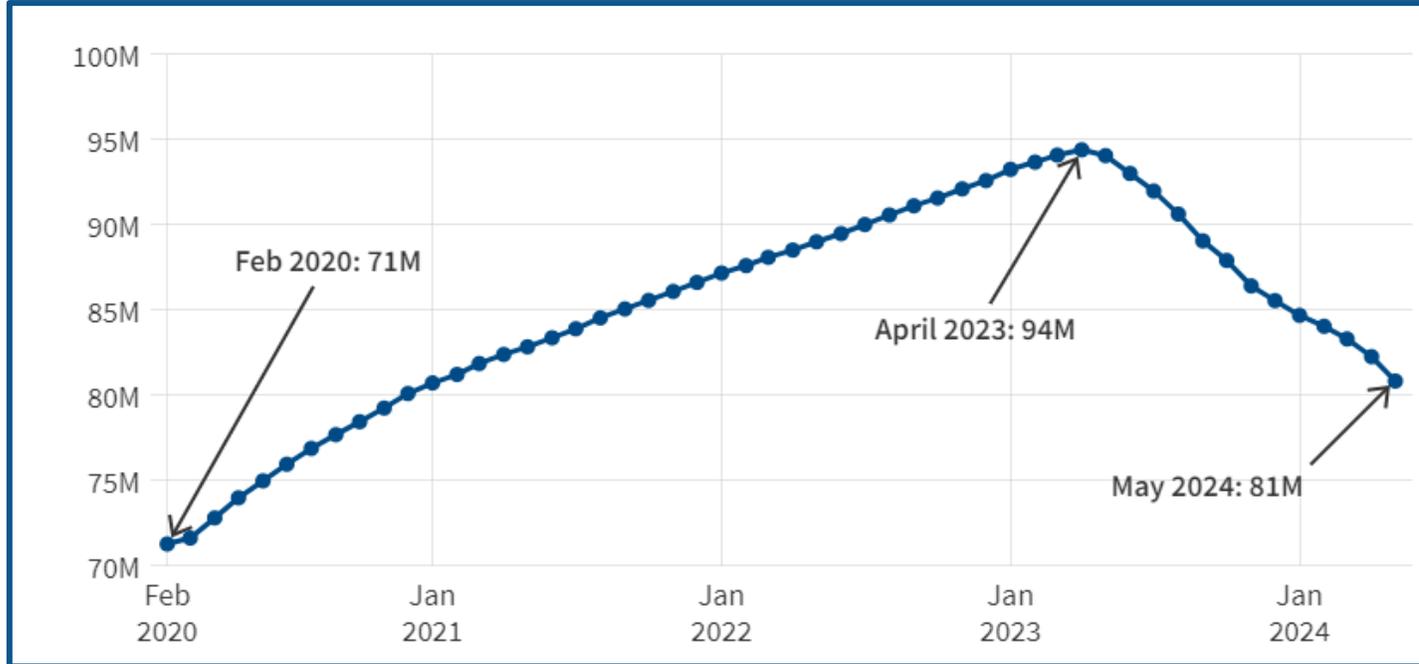
Source: KFF Medicaid Enrollment and Unwinding Tracker

KFF

## Of Those Disenrolled, the Share Disenrolled for Procedural Reasons vs. the Share Determined Ineligible



# MEDICAID ENROLLMENT 2020-2024



Source: KFF analysis of CMS, Medicaid & CHIP: Monthly Application and Eligibility Reports, last updated August 30, 2024

State	Feb 2020	Mar 2023	Jul 2024	% Change: Feb 2020-Mar 2023	% Change: Mar 2023-Jul 2024	% Change: Feb 2020-Jul 2024
United States	71,357,705	94,255,312	79,560,396	32%	-16%	11%
California	11,590,601	14,285,643	13,442,757	23%	-6%	16%

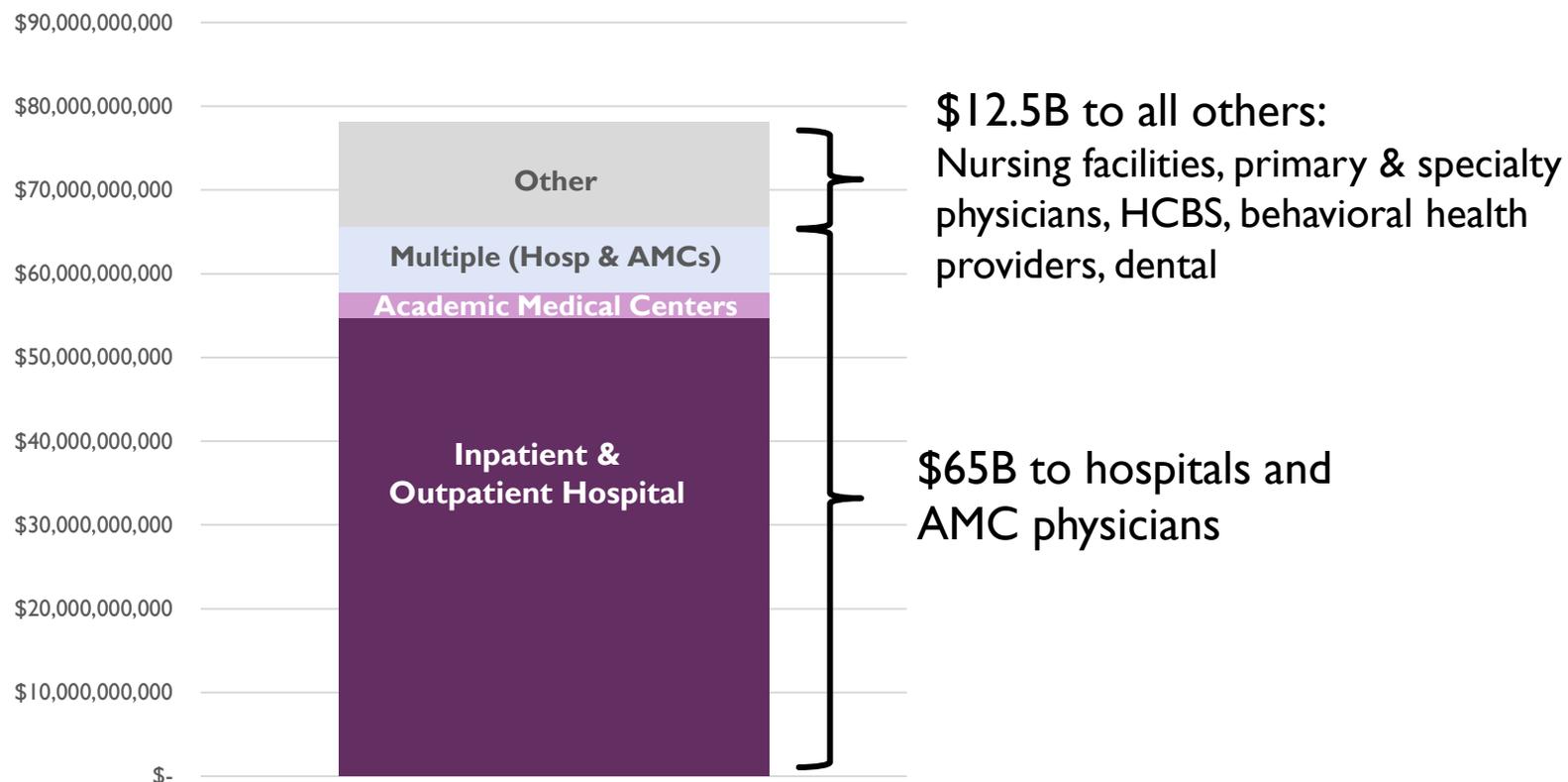
**KFF**

# **DIRECTED PAYMENTS UPDATE**

# “STATE DIRECTED PAYMENTS” (SDPs) IN MEDICAID MANAGED CARE

- First authorized in 2016
- States may require Medicaid plans to enhance payments made to specified classes of providers
- **Accountability**
  - Linked to state quality goals
  - Evaluation requirements
  - New reporting requirements
  - Annual renewals
- Alternative to other supplemental payments (DSRIP, “pass-through payments,” DSH)
  - Often funded with intergovernmental transfers or provider taxes
- Significant new tool to support Medicaid policy priorities

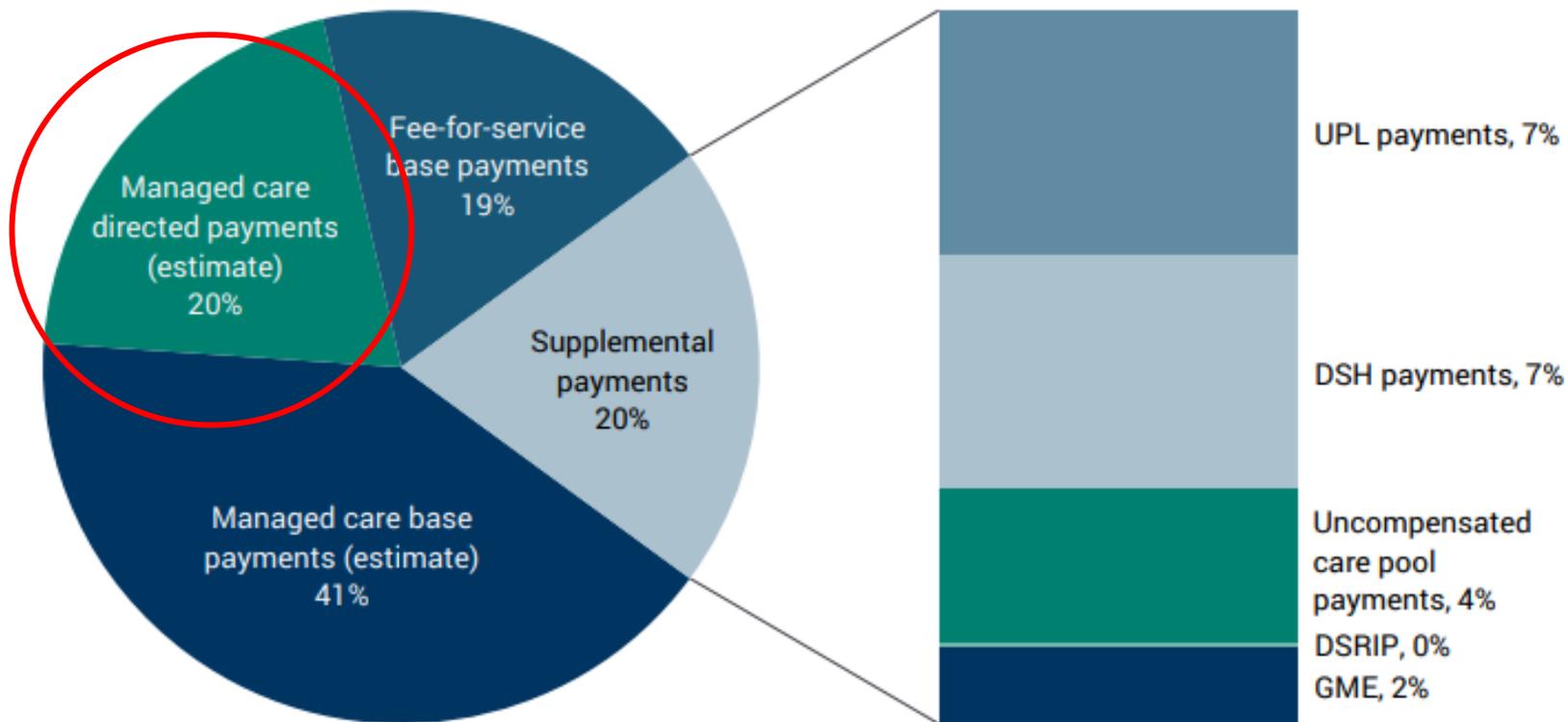
# WHO IS RECEIVING SDP FUNDING?



Data Source: CMS Estimates, Medicaid and CHIP Managed Care Access, Finance and Quality Rule, May 10, 2024

# INCREASING IMPORTANCE OF SDPs AS A COMPONENT OF SAFETY NET FUNDING

Base and Supplemental Hospital Payments FY 2022



MACPAC, Medicaid Base and Supplemental Payments to Hospitals, April 2024

# SDPs ARE MAKING A DIFFERENCE

- Rate adequacy
- Workforce
- Access
- Equity
- Quality
- Infrastructure
- Accountable care
- Delivery system reforms
- Behavioral health
- Maternal health
- Value based payment
- Preventative care
- Dental services
- Social determinants
- Financial stability
- Medical debt
- Etc.



## MEDICAID STATE DIRECTED PAYMENTS: CLOSING THE PAYMENT EQUITY GAP FOR ESSENTIAL HOSPITALS

JULIE KOZMINSKI MPH

The Medicaid program is intended to give the nation's most financially disadvantaged people health care access on par with that available to those of greater means. To achieve this goal, statute requires that Medicaid payment rates be sufficient to ensure access.<sup>1</sup> However, structural barriers to financing Medicaid payments often have limited the ability of states to value care for Medicaid patients at the same rate as that for patients covered by other payers.

In fee-for-service (FFS) payment systems, states can make supplemental payments to providers to directly offset low payment rates. But in Medicaid managed care, states have historically lacked control over how managed care organizations (MCOs) pay providers. Because most Medicaid beneficiaries now are enrolled in managed care, low managed care payment rates are an increasing threat to the financial stability of safety net providers—including essential hospitals, which are committed to serving all people, regardless of income or insurance status.

Medicaid state directed payments (SDPs) are a new option to overcome these challenges by permitting states to direct MCOs to pay providers according to specific rates or methods. This brief examines how states are using this new authority to begin closing the payment equity gap for essential hospitals and improve access to care for Medicaid beneficiaries.

### BACKGROUND

In the 2016 Medicaid managed care rule, the Centers for Medicare & Medicaid Services (CMS) permitted states to establish several different types of SDPs, each of which is subject to its own rules and regulations. The three categories used in CMS' standard application form (referred to as a preprint) are:

- Minimum fee schedules
- Uniform rate increases
- Value-based payments

Most minimum fee schedules require MCOs to pay no less than the Medicaid FFS payment rate. Because CMS already has approved those

rates as part of the Medicaid state plan, the agency no longer requires prior approval for minimum fee schedules based on state plan approved rates or those that are less than what Medicare would have paid.

Uniform rate increases require MCOs to increase payments to providers by a predetermined amount to help close the gap between Medicaid rates and the average commercial rate (ACR). Because this gap is so large, these SDPs often are the largest and most important for maintaining the financial viability of hospitals that provide safety net care. CMS closely monitors these SDPs before and after approval, including requiring states to evaluate how these SDPs advance the state's access and quality goals.

Value-based payment (VBP) SDPs require MCOs to implement state-defined pay-for-performance incentives, shared savings arrangements, or other alternative payment models. These arrangements are less common because it often is difficult for essential hospitals to take on risk when payment rates are not sufficient. However, when VBP arrangements are used together with

# NEW SDP RULES FINALIZED IN MAY

- Codifies average commercial rate (ACR) as SDP limit
  - Allows use of statewide ACR
  - Grounded in notions of equity
- Prohibition on “separate payment terms” (eff. 2028)
- Prohibition on interim payments with reconciliation (eff. 2028)
- New reporting requirements
- New timeframes for preprint submissions
- More robust evaluation requirements
- Disapproval and appeals processes
- Provider tax hold harmless attestation requirement



41002

Federal Register / Vol.

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES

Centers for Medicare & Medicaid  
Services

42 CFR Parts 430, 438, and 457  
[CMS-2439-F]

RIN 0938-AU99

Medicaid Program; Medicaid and  
Children’s Health Insurance Program  
(CHIP) Managed Care Access, Finance,  
and Quality

**AGENCY:** Centers for Medicare &  
Medicaid Services (CMS), Department  
of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule will advance  
CMS’s efforts to improve access to care,  
quality and health outcomes, and better  
address health equity issues for  
Medicaid and Children’s Health  
Insurance Program (CHIP) managed care  
enrollees. The final rule addresses  
standards for timely access to care and  
States’ monitoring and enforcement  
efforts, reduces State burdens for  
implementing some State directed  
payments (SDPs) and certain quality

# OFFICIAL SDP SPENDING ESTIMATES QUICKLY ESCALATING

GAO, June 2022	\$20B approved for July 2021 <i>ff</i>
MACPAC, June 2022:	\$25B in 2020
GAO, March 2024:	\$38B in 2022
CMS Final Rule, May 2024:	\$52.2B in 2022
	\$78.1B in 2023
	\$99B in 2029 (est'd)
MACPAC, October 2024:	\$69.3B in 2023
	\$110.2B in 2024

## OVERSIGHT BODIES INCREASINGLY INTERESTED

- GAO 2024:
  - Weak fiscal guardrails
  - No consideration of payment outcomes when renewing
  - Gaps in transparency
- MACPAC
  - Growth in spending
  - Similarity to supplemental payments
  - Lack of transparency
- Concerns in final rule
  - Growth in number
  - Growth in spending
  - CMS oversight
  - SDPs driven by nonfederal share funding source, not quality strategy
- Pending OIG Audit (due 2025)

## ON A RELATED NOTE ...

- MACPAC interest in analysis of *net* payments to providers, accounting for IGTs, provider taxes, CPEs
  - Requires more transparency around provider contributions to nonfederal share
- Recommending mandatory state annual reports, to be made public, on:
  - Methods of financing nonfederal share
  - Breakdown of state spending by source of nonfederal share
  - Provider-level database of IGTs, CPEs and taxes, including administrative fees



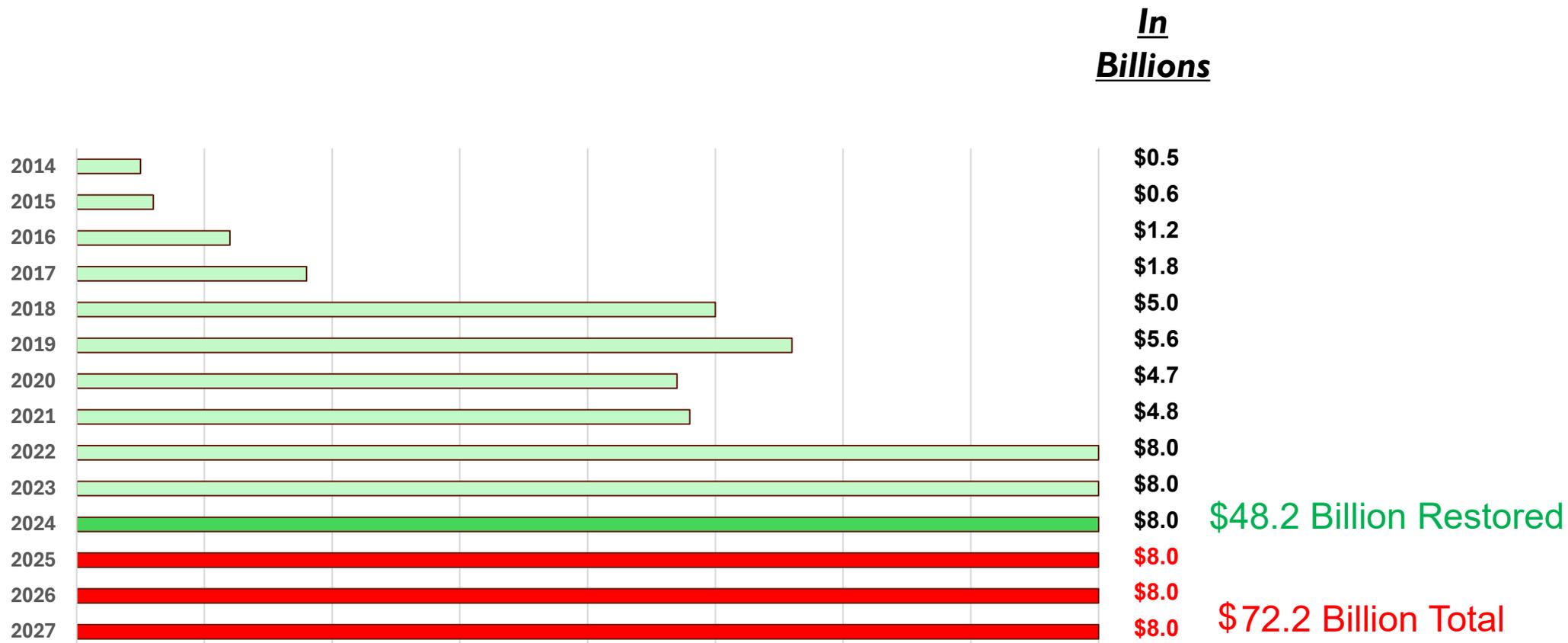
### Report to Congress on Medicaid and CHIP

JUNE 2024

**LAME DUCK**

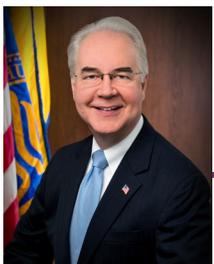
# STILL WHITTILING AWAY AT DSH CUTS

- Medicaid DSH — cuts restored through Dec. 31, 2024



**LOOKING AHEAD:  
MEDICAID IN THE 2<sup>ND</sup>  
TRUMP ADMINISTRATION**

# PAST IS NOT NECESSARILY PROLOGUE, BUT... MEDICAID LEADERSHIP: TRUMP I



Tom Price  
Feb–Sep 2017



Eric Hargan  
(Acting)  
Oct 2017–Jan 2018



Alex Azar  
Sep 2017–Jan 2021



Seema Verma  
Sep 2017 – Jan 2021



Brian Neale  
2017



Tim Hill (Acting)  
Jan–Oct 2018



Mary Mayhew  
Oct 2018 – Jan 2019

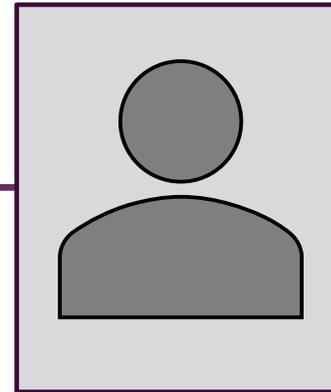
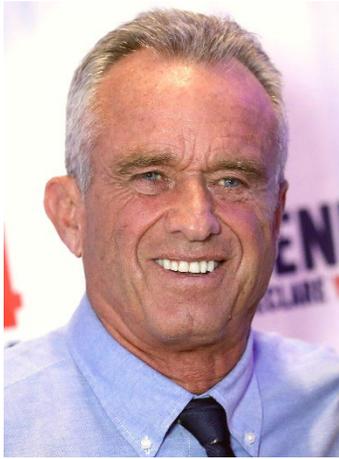


Chris Traylor (Acting)  
Jan 2019–May 2019



Calder Lynch  
May 2019–Jan 2021

# MEDICAID LEADERSHIP: TRUMP II



# EVEN WITH QUICK NOMINATION, CONFIRMATION TAKES TIME

Administration	Nominee	Nomination Date	Confirmation Date
Trump II	Mehmet Oz	November 19, 2024	TBD
Biden	Chiquita Brooks-LaSure	February 19, 2021	March 27, 2021
Trump I	Seema Verma	November 29, 2016	March 14, 2017
Obama	Don Berwick*	April 19, 2010	July 7, 2010
GW Bush	Tom Scully	March 22, 2001	May, 2001

\**Recess appointment*

## MEDICAID POLICY PRIORITIES: TRUMP I

- “Community Engagement” waivers (aka work requirements)
- Personal responsibility (premiums, copays, HSAs, healthy behavior incentives)
- “Healthy Adult Opportunity” waivers (aka block grants)
- Medicaid Fiscal Accountability Regulation (“MFAR”)
- Mental health/substance use disorder
- Some attention to social determinants
  - Guidance issued January 2021
  - North Carolina Health Opportunities pilot waiver

## MEDICAID POLICY PRIORITIES IN TRUMP II

- Cost-cutting
- Chronic disease?
- Healthy behavior?
- State flexibility?
- Program integrity?
- Personal responsibility?
- Other? It depends...

# DEPARTMENT OF GOVERNMENT EFFICIENCY (DOGE)

- Three types of reforms:
  1. Regulatory rescissions
  2. Administrative reductions
  3. Cost savings
- Executive action over legislation

## WSJ | OPINION

### *Elon Musk and Vivek Ramaswamy: The DOGE Plan to Reform Government*

Following the Supreme Court's guidance, we'll reverse a decadeslong executive power grab.



Source: The Royal Society, CC BY-SA 3.0

Source: Gage Skidmore

# REGULATORY RESCISSIONS

- Congressional Review Act
- Supreme Court rulings
  - Major questions doctrine
  - Deference to agency expertise
- Non-enforcement
- Delayed implementation
- Rescission through notice & comment rulemaking

## REGULATORY INITIATIVES

- Managed care rule
- Access rule
- Enrollment simplification
- Long term care staffing rule
- Mandatory core set reporting
- DSH 3<sup>rd</sup> party payer rule

# ADMINISTRATIVE REDUCTIONS

- Reductions in Force
- Modifications of civil service rules
- “Incentives” to resign
- Impact on CMS/Medicaid
  - 6,000+ employees
  - Approval backlogs
    - Waivers
    - State Directed Payments
    - Oversight?
  - Hiring freeze recently lifted

# COST SAVINGS

## Administrative Actions

- Waivers
  - Work requirements, block grants, copays & premiums, employer sponsored insurance, benefit restrictions
  - Revisit HRSN, climate policies
  - State flexibility to make unilateral changes
  - Limit use of “expenditure authority”
  - Reinstitute budget neutrality restrictions
  - 10-year approvals
- Non-federal share financing restrictions (MFAR-ish)
- Changes to SDPs
  - Average commercial rate
  - SDP spending caps

## Legislative Measures

- Use “budget reconciliation” to avoid filibuster
- Let ACA premium subsidies lapse
- Capped federal Medicaid spending (per capita or aggregate caps, block grant, hybrid)
- Work requirements
- FMAP changes
  - Elimination of 90% match for expansion population
  - Removing/lowering the 50% floor
- Reduce income limit for adults to 100% FPL
- Supplemental payment cuts/“reforms” (DSH, SDPs)

## SOME THOUGHTS TO REDUCE THE STRESS...

- Finding areas of collaboration: chronic disease, wellness initiatives, maternal health, behavioral health, substance use disorder
- Bipartisan reliance on state directed payments, DSH and other safety net funding arrangements
- MFAR failure may inject caution into financing initiatives
- State flexibility principle could make room for innovation
- There may be a few John McCain's out there
- Broader Medicaid constituency
  - Rural, working class, disabled, elderly, children, parents...



# Questions?



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