



**ACA Working Group
August 30, 2017
Notes**

Roll Call

PRESENT:

Leighton Ku
Jodi Kwarciany
Colette Chichester
Laurie Kuiper
Kevin Wrege
Dania Palanker
Jenny Sullivan
Nina Morn for Donna Alcorn
Katie Nichol
Carolyn Rudd
Tammy Tomczyk
Patricia Quinn
Margaret Singleton

ABSENT:

Liam Steadman
Bonita Penino
Carl Chapman
Donna Alcorn (did have someone listening in for her)
Louis Davis Jr.
Jnatel Sims
Maria Gomez

Introduction

Ku: Introduced Deborah Freis, Director of Fiscal and Legislative Analysis, OCFO who joined the meeting to provide input on feasibility of implementing a fallback individual responsibility requirement in the District.

Brief Update: CSR payments made for August. Uncertainty remains about future months.

Bipartisan Senate HELP Committee hearings are upcoming in early September. The goal is said to be legislation to provide stability in the marketplace, perhaps including appropriations for CSR payments, increased state flexibility on §1332 waivers, individual mandate, and reinsurance. The hope is to pass something in September by attaching it to a must-pass bill.

There are no bare counties in the country. At least one insurer has stepped in to cover people in those counties. That's great news.

Purvee Kempf, General Counsel & Chief Policy Advisor: This morning media reports say that Governors Kasich and Hickenlooper are going to propose a bipartisan idea for stabilizing the markets.

Ku: Issues for today: individual responsibility and CSR options. Schedule future meetings.

Individual Responsibility Fallback for DC

Freis: My office works with DC economist on budget. Either type of mandate would need a new law. Implementation of law would fall to Office of Tax and Revenue (OTR). Once legislation drafted, my office would conduct a full analysis, including costs of implementation. There would probably be systems costs for OTR and those need to be specifically budgeted for the first year and four succeeding years. Most systems costs would be in year one. Maintenance costs would occur every year, perhaps, depending on the systems changes.

Timing: mandate for 2018 – probably too late. Changes must be submitted to tax forms by August of the preceding year. 2018 is possible but it would be retroactive in the sense that it would be for the 2018 tax year, but not adopted until sometime after January 1, 2018.

Kempf: operational issues for OTR and education issues for consumers. Consumers do have knowledge that there is a federal mandate. A District fallback is if the federal mandate goes away.

Curtis: if something were passed by January 1, there is no retroactivity issue.

Freis: two different scenarios: based on federal penalty, or independent to the District. Implementation in either scenario would be the same for OTR. However, District residents can file their DC return before filing the federal return, so that may complicate things if the DC return is based on something in the federal return.

Ku: to clarify the two scenarios: 1) when filing DC tax form, question is asked, did you have insurance in the prior year, answer is no. Did you pay a penalty? Answer is no. In that case, you owe the penalty to DC. 2) The District has its own mandate and penalty. Some penalty is paid to the federal government and the remainder is paid to the District.

Curtis: our goal is to not double charge people. In the case of a taxpayer who files DC return first, that person would not know if s/he were paying a federal penalty and might wind up paying twice. I thought there were interdependencies between DC and federal tax returns.

Philip Barlow, Assistant Commissioner of Insurance, DISB: There are. You need to enter your adjusted gross income (AGI) from the federal return on the DC return.

Freis: It could be that filing a DC return before a federal return is limited to certain classes of taxpayers. I will discuss the subtleties again with OTR.

Handout on [data from 2015](#):

Curtis: It looks like the people in the \$0-\$24,999 AGI range are eligible for Medicaid (barring a barrier such as illegal immigrants). Most of the people in the \$25,000 - \$50,000 AGI range would likely be eligible for APTC. These are people who could really benefit from coverage through DC Health Link or Medicaid.

Kofman: There are exemptions from the penalty for affordability. A lot of these people would be eligible for the exemption. The data is surprising. Those people eligible need to be in Medicaid to avoid the penalty.

Sarah Bagge, Assistant Director of Individual Marketplace: Keep in mind the penalties are on a monthly basis – adds some wrinkles.

Kempf: Is there any data on the number of months for which the penalty was incurred?

Freis: No.

Kuiper: Would be interesting to track how many people were exempted from the penalty.

Ku: I have not seen that data.

Freis: OTR and compliance: OTR can put liens against people's property, etc. if there is a failure to pay. OTR does not think that option is available with respect to this particular penalty. Also,

the same lag in the IRS data will be the same for OTR. Cannot go back and check things for about 18 months.

Ku: We know President Trump said don't enforce. But it is unclear what the IRS will, or will not, actually do. Am I correct?

Bagge: The change is that if someone tried to file a return without answering the health insurance question, the IRS would reject that return. If someone answers the question saying/he did not have insurance, the penalty would be applied.

Kempf: To clarify, the IRS was going to begin this year rejecting the return if the question was not answered; it had not been done previously. Now under the Executive Order the IRS changed the policy to be as it has been in the previous years. A taxpayer may be subject to follow up questions from the IRS about the question, but it is unclear if the IRS will actually follow up.

Kofman: I want to emphasize we know nothing. Anything that is not explicit in IRS materials is unclear.

Let's return to the local conversation. Why would the process at OTR require the same level of effort irrespective of the local method.

Freis: I will follow up.

Kofman: I wonder how MA handles this matter. Does it have an 18 month lag as well? We would be doing a MA lookalike option.

Freis: OTR would be required to cross check the federal return. The options seem similar to me, and I think OTR would see it the same way.

Ku: Consumer education will be needed as it will create a confusing situation for consumers if two penalties are in play.

Quinn: The optics of two penalties is not optimal.

Unintelligible

Kempf: The question is do we have any kind of estimate on how much it would cost?

Freis: Based on past experience, probably somewhere between \$1 million and \$2 million for IT systems changes.

Multiple persons: Some discussion of administering exemptions. MA has its own; DC uses the federal exemptions administered by it. Kofman acknowledged that if a local option were adopted some dedication of resources at HBX would be needed to administer exemptions.

Wrege: Have you thought about other alternatives to individual responsibility requirement?

Kofman: We are looking at the penalty because of the Trump Administration's ambiguity. All the repeal and replace bills had different approaches to incentivizing coverage, but the problem is all of them let people fall through the cracks and lose coverage. The working group can look at anything, but I wanted the group to look at this specifically.

Ku: We would like a recommendation from this group by the end of September. We won't be voting today, but if we can get a focus staff can draft a proposal. One option is the federal government did not collect any penalty and it would be owed to DC; the second option is an offset when a federal penalty is paid but there is an amount still owing due to a local penalty.

Any time there are tax changes people get nervous.

Quinn: According to Deborah, the implementation will be about the same for both options. I think the second option is better from an optics perspective. Not that DCPCA can say today that either option is great and the way to go.

Ku: The other part we have not discussed explicitly is that presumably taxpayers would be filing something with the District about their insurance coverage for the prior year, another form attached to the DC Return.

Unknown: Talking about the penalty and exemptions, we have to budget for that somewhere. Within HBX?

Kofman: we will try to get data from feds about how many DC exemptions it processes for us. We would then need to analyze our staff resources.

Ku: How would OTR feel about another agency processing tax information? Might be uncomfortable.

Kofman: HBX would only be making exemption determination, not processing any tax forms.

Discussion of the 18 month lag time. Pointed out that some people will be paying the penalty when filing; others who did not originally report accurate information might be swept up later in a reconciliation-type process.

Quinn: One thing that will be helpful is a timeline. When would laws have to be changed for what tax year? And what is the revenue/cost? A lot has to happen in sync with filing deadlines and changes to forms. There are a lot of problematic details and timelines for not a whole lot of return.

Curtis: Staff can work with Deborah to produce something.

Remember, we are in this discussion not because we want people to be penalized; we want them to be insured. The most effective outcome of all is that we get no revenue for the District. According to the carriers, at least, the weakened mandate has a significant impact and it makes them very nervous. CBO and Joint Taxation says having the mandate is important. It is not really a tax conversation in the normal sense of a tax conversation.

Quinn: It will be to the taxpayer. If we go forward some of the messaging and aggressive sell of this issue will be as Debbie just stated.

Ku: My suggestion for now is to have staff prepare a timeline and other feasibility issues, and to try drafting something that corresponds to the first option. Something that people can react to.

Kuiper: please clarify the options.

Curtis: 1) DC would have an individual responsibility requirement whose penalty mimics federal law. If you did not pay the federal penalty, you will pay it to DC. 2) DC would have an individual responsibility requirement but the penalty would differ, and it would net out the difference.

Chichester: What is the intended goal for any revenue collected? A reinsurance program?

Freis: Unless specified, it would go to the General Fund.

Kofman: My wish list for that money would be reinsurance. We are scheduled to discuss that topic later. I am putting it on the table. While it may not be a lot of dollars, it is something. We would need other funding for a robust reinsurance program.

I am concerned that with a lack of enforcement on the federal level, the first people presently insured that will give it up are the healthier population.

Kempf: We will move the CSR payments discussion to the next meeting.

Ku: Correction to the record: the correct amount of CSRs paid in the District is about \$150,000 – a small amount.

Next issue to discuss: 2-3 more meetings in September. We would like to discuss with the Board on October 11. Dates were discussed and tentatively set for September 14, 22 and 28 at 10 a.m.

Chichester: Are we going to discuss other market stability options? DISB Commissioner Taylor mentioned a fully merged market as a stability option at the recent rate hearing. Her company is interested in that discussion.

Ku: Good point. Let's stick with what we are discussing now. We can discuss broader issues later, not as a front burner issue. But if you have anything explicit you want to put forward, please send it to Debbie.