

ACA WG
10 27 2017
Notes

PRESENT

Jodi Kwarciany
Colette Chichester, Rob Metz
Maria Gomez
Laurie Kuiper
Katie Nicol
Patricia Quinn
Dania Palanker
Peter Rankin
Jnatel Sims
Margaret Singleton
Jenny Sullivan
Kevin Wrege, Kris Hathaway

ABSENT

Leighton Ku
Donna Alcorn
Dave Chandrasekaran
Carl Chapman
Louis Davis, Jr.
Bonita Pennino
Carolyn Rudd
Liam Steadman
Tammy Tomczyk

Kwarciany: (Vice Chair):

We are going to do a roll call. I note that Bonita Pennino of American Cancer Society has not attended any of our meetings, so for the purpose of voting we are removing her as a working group member.

Since we last meet, the IRS issued statement that it would not accept electronic tax filings and will hold paper filings where the taxpayer does not answer the question about whether they have minimum essential coverage or an exemption. This is a sharp turnaround from information released earlier this year. There is no certainty whether the IRS will be enforcing the individual responsibly requirements.

The other update that we have is regarding CSR payments. A bipartisan bill (Alexander-Murray) was introduced in the Senate with 24 co-sponsors, including 12 Republicans. It does have 60 votes to support passage. The bill would fund CSRs through 2019 and would provide greater flexibility to states that want to apply for 1332 state waivers. The bill would also reinstate funding for outreach and marketing efforts through 2019. The bill is not moving at this time because the president has not indicated whether he would sign it. Most people think it will likely be included in the end of year omnibus package.

Hatch-Brady alternative bill – Neither of these Congresspersons liked the Alexander-Murray bill so they proposed an alternative. This bill would end the individual responsibility requirement for five years, in addition to funding CSRs. Most insurers believe that the individual responsibility requirement is critical to maintain a stable health insurance marketplace. Democrats almost universally oppose this provision. Hatch-Brady is a backdoor way to undermine the ACA and it does not belong in a market stability package. It is not likely this would end up being passed because of the poison pill.

Kwarciany: Action item 1 - Review of working group recommendations

Purvee Kempf (HBX): You have a document titled Draft ACA working group recommendations. If you have been working with us, you have seen these recommendations before. Have not seen the introductory paragraph, so I will read this aloud for those that do not have it in front of them.

Debbie Curtis (HBX): For members of the public on the call, this document is posted on the HBX website.

Kempf:

The HBX ACA Working Group recommends the following policies in order to provide stability in response to actions, or inactions, at the federal level that are having a destabilizing effect on the local health insurance market and markets nationwide. A sustained and substantial commitment to these policies over multiple years can best achieve predictable premiums and consistent affordability. Such a commitment is also critical to support the operational investment necessary to implement these policies.

We have heard from stakeholders that there is a need that these policies be in place for the long term to ensure that there is not upheaval in the markets. We also included language to clarify that there are costs to implementing these proposals and it is important to make sure that the benefits make the costs worthwhile.

Gomez: Asked for explanation about why there is a need for inclusions of impact on nationwide markets.

Kempf: We do not live in a bubble. For example CSRs payments will wreak havoc nationally. This could have an impact on the viability of carriers in the local market, even though CRS are not a big factor in DC. However, the national impact could impact the DC markets. It is important to note that some of these policies are to support carriers in the region.

Curtis: One of the things we have discussed in the working group that is that DC wants to be an example and show other states what can be achieved.

Kempf: One other statement that a carrier wanted to address that is not in the document posted regards the APTC wrap. The question raised was whether this local subsidy would have tax implication for individuals receiving it. Could it be taxable income, and could it impact individuals' eligibility for federal APTC?

Curtis: We were modeling this on a program that Vermont has. Vermont does not report their premium assistance to the IRS, so this has not been an issue in Vermont. Also an overriding concept put forth by the IRS generally is that public assistance programs are not considered income for the individual. There is "magic" language that can be included in a statute to ensure that this benefit would not be treated as taxable income: "In drafting, this provision should be identified as a government benefit based on financial need in order to prevent any unintended tax consequences."

Deborah Freis (OCFO): Confirmed that the Office of Tax and Revenue (OTR) has heard the same thing with regards to the treatment of the program.

Curtis: Do people think this is value added? Any concerns with adding this language?

Chichester: Does not think that this fully answers their concerns about APTC. Thinks they will likely abstain from the vote today, based on the APTC issue. They are on board with the first three policies and thinks that there are unintended consequences to the APTC proposal and consensus about long term consequences of this program.

Kempf: What consequences are they concerned about?

Chichester: We sent some language over for you to consider. And we know that you tried to include in the draft, but we don't think that the changes fully addresses

Rob Metz: We understand this is a preliminary analysis. Want confirmation from federal government that this would not impact eligibility for federal subsidies. Also wants some language saying that amount of funding must be substantial to account for the costs that carriers and HBX would need to put in to run program, if not, funds should be put into reinsurance.

Kwarciany: I understand this would be a significant investment for carriers. But this is specifically intended to target consumers under 400% FPL, and there is no guarantee that reinsurance would target this population. It is important to target them as they have higher uninsured rates in the District.

Kempf: Read passage from carrier email:

Before enacting such a program, the District must receive assurances from CMS and the Department of Treasury that the local subsidy will not impact individuals' eligibility for the federal APTC program. In addition, such a program should be both permanent and substantial to justify the significant expenditures required by DC, HBX and carriers for operationalization. If the funding stream cannot be made permanent or substantial, there would be a greater consumer benefit in directing the funding toward the reinsurance program.

Sullivan: I have a question about the language you just read. What does substantial mean?

Metz: Greater than what we would have to look at for implementation costs for carriers and HBX. We want to make sure that what is being provided benefits the consumers. If it is not more than the implementation costs, it makes more sense to use that money for reinsurance. Does that make sense?

Sullivan: Yes.

Curtis: Reading from draft: "A sustained and substantial commitment to these policies over multiple years can best achieve predictable premiums and consistent affordability. Such a commitment is also critical to support the operational investment necessary to implement these policies." When I read those two sentences it sounds like what you said.

Chichester: It sounds like a suggestion and aspirational, not recommendations.

Metz: It is targeted at APTC recommendation. It is easier to turn on and off a reinsurance program.

Curtis: Wouldn't it be problematic to have a one year reinsurance program and then turn it off.

We took your point and make a statement to propose long term commitment to all of these programs, to propose stability. It needs to be a substantial and ongoing investment.

Wrege: “Should be” is perhaps the right language.

Metz: Substantial concerns about the APTC program at his organization. So they want stronger language on that piece

Sullivan: Question to understand what CareFirst is proposing here? You want assurances that subsidies would not impact APTC eligibility. Is there reason to believe that this could be a problem based on other state experiences?

Metz: We don't have any experience in Vermont or what went on there. We just want assurances that this would not impact consumer eligibility for APTC.

Curtis: That is why we added that new language. Does this language address that piece of your concern?

Quinn: DCPCA does not have an objection to CareFirst proposal. We have to ensure that it would not impact consumers' eligibility for APTC.

Kempf: Their point gets at it one way and our drafting gets at it another way. CareFirst proposal is we must receive assurance from CMS and Treasury. I will be very honest and say that I would not expect any note from CMS or Treasury in any official way. It is not an achievable goal. What is achievable is to get an official reading from OGC or tax office in DC.

Quinn: Is this something I can look at?

Kempf: CareFirst language was not sent around.

Quinn: The language that you propose that is better, where is it?

Curtis: It is not in the draft. We just raised new language now in response to CareFirst concerns.

Quinn: Hard to compare because I cannot see either now. But I understand concerns that requiring something from Feds is not likely. I would want to look at the language to see if there is a way to address the concerns.

Kempf: I understand that there is not a way to address both concerns. But is there language that would address this first concern about unintended consequences to the taxpayer. Is there

something we can add that would strengthen the language, which would not require federal confirmation. What if we require a local agency such as OCFOO to review and provide confirmation?

Freis: I think that you are suggesting that OCFO opine on something, but aren't there two pieces tax consequences and APTC eligibility?

Curtis: CareFirst can speak to this but those are really both the same issue. If the local subsidy counted as income, what people get for APTC would be less. That is not what we intend.

Kempf: What if we added language that says that if the DC subsidy would supplant federal dollars it would not be implemented.

Nicol: Maybe be more specific about eligibility. Want to make sure that this would not impact APTC eligibility.

Quinn: A person could still be eligible but receive a reduced amount.

Palanker: This is both APTC and PTC. I agree that we would not get something from this administration. I think that if there was legal analysis done by the District, I would trust that this is what federal law says. If the federal government acts against that, it would be possible grounds for litigation. Not saying we need the words, but saying that District dollars would not supplant federal dollars.

Curtis: I have here "IRS Publication 525." It is saying that taxable income does not include government benefits. Some kind of similar language should take care of it.

Kempf: How about "[t]his provision would not be implemented if it would lower APTC or PTC for an individual."

Metz: This gets to the first of the two issues, yes.

Kempf: Would like to make sure we are all on the same page. I think this improved that. It does not take care of all your concerns, but it would be helpful if everyone agreed that this language addresses this one concern.

Curtis. Okay we will add this provision as part of recommendation.

Kwarciany: The sentence that would be removed is the last sentence under local subsidy.

Kempf: It would now say, “This provision would not be implemented if it would lower APTC or PTC for an individual.”

Deborah, does this sound at all reasonable?

Freis: I would have been concerned if it said that OCFO would make that determination.

Kempf: It is safer not to say who would make that determination, but to make the goal clear.

On the second issue, is it whether the investment is substantial to operationalize over one year, or year to year, or what?

Chichester: We are looking for longevity and some security that if it is not robust enough or duration is not long enough, the funds would go into reinsurance.

Sullivan: The argument makes sense in terms of permanence and substantial amount. But we have not talked about the relationship between these programs. Concerned about taking things in the direction that you could sub X for Y. I am interested in how it would affect people 200% 400% FPL if you did reinsurance and not the local subsidy. Taking things down a different path than we have talked about.

Curtis: Any further discussion on these four?

Kempf: I’m not seeing language to hit that dividing line, so moving forward to the other two. Nothing else has changed around reinsurance, CSR fallback or individual market fallback.

Kwarciany: Are we ready to take a vote?

Quinn: Are we saying CareFirst we have not met your needs to vote on these today. Do we feel like we are not within a couple of days.

Chichester: This would take more back and forth over a couple of days. Longevity and substantial amount of the program. Would not want this language to be suggestive. I’m not trying to prolong the process and understand that people are trying to get us on board.

Quinn: Sounds like we are not there but we can get there.

Wrege: Colette, for clarification purposes. I understand the permanence and substantial nature of the programs for APTC. Is the proposal that if the fallback CSR will not work those dollars would go to reinsurance, is this a critical part of the proposal?

Kempf: If it was not substantial enough, are we saying that you take funding for reinsurance and put in to APTC. You could say that. The problem is that both programs achieve different goals. IF we do the default, we do not achieve the affordability goals we are trying to reach. I think that if the defaults are not there, we could work on language for a couple more days. If the default is there, not sure that we could get agreement.

HBX timing. We have a board meeting in about a week and a half. But a lot of prep work goes into that. It's really important. It has been a hallmark of HBX. We try to pull everyone together and try to get agreement. In other places they don't try to reach agreements. If it's possible to get to agreement we should try. But Tuesday is the drop dead date. If we can have CareFirst go back and look into default piece in particular. If there is space there, we can send around new language and possibly post. Can try for a check in on Monday or Tuesday and see where we are.

Quinn: I think it's worth a shot. If not, we take the vote in a couple of days and more forward.

Wrege: We would do vote by telephone?

Kempf: Yes. We can schedule a time for next week and try to have a brief discussion. We would have the vote on Tuesday.

Curtis: If they hear that they are a no go, let us know.

Kwarciany: We will have a check in on Monday.

Kempf: After this meeting we will send around the language you sent so people can start thinking about this issue. Check in will allow us to hear whether there are tweaks to the language we can talk through. If there are not, we will cancel the Monday meeting and just hold the Tuesday vote.

We will do noon on Monday. Tuesday we will lock in so we can do the vote. Since we are here and expecting a vote. If people want to put in their vote now. Don't want to make a situation where people here today and expecting to vote do not get the opportunity to vote.

Curtis: We will allow electronic vote if you cannot make the Tuesday vote.

Kempf: The Tuesday vote will be at 9:30. If you are not able to make it at 9:30 on Tuesday, please email your vote.

Kwarciany: I want to remind everyone that on the kick off meeting Mila said that HBX would combine these proposals with technical clean ups to the DC Code to preserve the ACA in DC and the prohibition on requiring payment of past due premiums.

Kempf: Titled Draft Legislative Package Summary. Idea is to let you know what would be included in the package if it goes up. DC implemented the ACA provisions into DC law, including establishing HBX in 2012, over time. Idea is that a new agency always does a legislative review. We have started that process but have not gotten far into that review. Will be talking to other folks such as OGC to make sure of everything. I just wanted to let everyone know what is in the district code. Looking to see if it's fine and whether or not any fixes are needed.

Chichester: Will HBX be responsible for drafting the legislative language that goes up?

Kempf: Interesting question. Sometimes an office in OGC does the drafting sometimes the agency does the drafting. We will talk to them to see if they want the agency to take a stab at a first draft. Regardless, we will be fully engrained in the process. The actual technical process, cannot be sure.

Next, there was federal guidance that came out saying that if someone has an outstanding amount due to a carrier when they are terminated, the carrier can require payment on past due premiums before allowing the consumer to enroll again. Under this language states were permitted to prohibit this practice. This would not change any other rights that carriers have to go after consumers who owe them money.

Last one. We have our stability recommendations and hopefully it's not just me drafting it. There always are. People will weigh in from all over DC to make sure it's drafted correctly.

Kwarciany: Any questions about the package?

Next I want to talk about the working group report. Working groups do a final report, including appendices. HBX staff will complete that report as soon as possible after the vote. Will be circulating the group for review. Any feedback working group members might have needs to be provided quickly to HBX staff. HBX will provide a deadline for comments. Please be mindful the deadline.

The last point I want to make. As everyone knows, open enrollment begins next Wednesday Nov 11th. The mayor and HBX are hosting a kick-off event at Carlos Rosario at 10:30 on November 1st. Hoping that folks can join in. Doors open at 10. Debbie will follow up with an invitation after this meeting.