DC Health Benefit Exchange Authority

ACA Working Group
August 2, 2017
Notes

Roll Call

PRESENT:

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ABSENT:

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Introduction

Ku: There is uncertainty around the ACA at federal level. Looks like no major changes at this point, but that can change. Important to review District law and policy to maintain stability of our marketplaces. Our focus will not be on Medicaid, but on the exchange.

Insurance rate has fallen by half in the District since ACA implemented. Depending on survey, number 1, 2 or 3 in the nation.

Begin a discussion of the issues today. A wide variety of stakeholders who want the system to work well. Transparent – this is a public meeting.

<u>**Process and Charges**</u>

Mila Kofman, HBX Executive Director: From the beginning, we have worked through advisory working groups to develop major policy recommendations. Every stakeholder member of the working group has a vote. If you do not feel comfortable with voting, you can be a non-voting member of the working group.

We hope to achieve consensus on policy recommendations. To date, the Executive Board has adopted the policy recommendations of working groups. Several meetings will occur with in-depth discussions. If consensus is not possible, that is fine; it will be reported to the Board as non-consensus and the Executive Board Insurance Committee will proceed on those topics.

The charges are posted on the website:

> 1. **Identify local policy options to strengthen the ACA protections assuming that the ACA is not repealed (or replaced).** The ongoing Administration actions are jeopardizing the stability of our health insurance marketplace, e.g. not enforcing the individual responsibility requirement, no commitment to reimburse cost sharing reductions. The focus here is affordability, consumer protections, and market stability.
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> 2. **If the ACA is repealed: identify local policy options.** The focus primarily is private health insurance (small group and individual marketplace) – affordability, consumer protections, and market stability.

Charge #1 is focused on the Trump Administration's actions and potential future actions that are contributing to instability in the marketplaces, i.e. not enforcing the individual responsibility mandate, and not committed to funding CSRs. Affordability, consumer protections and market stability are the focus. In the future, staff will present options and what other states are doing to make coverage more affordable.

This working group will be asked to opine on a general cleanup bill; the DC Code needs to be tweaked to clean up on issues surrounding the ACA and maintain good consumer protections.

Charge #2 is about if the ACA is repealed. At this point charge #2 is not in play. But if it changes, the working group will be asked to focus on policy interventions.

Federal Administrative Actions

Purvee Kempf, HBX General Counsel & Chief Policy Advisor: a chart was included in the packet that will help guide the discussion today.

Cost-Sharing Reductions: are those payments made directly by the federal government to carriers for people who qualify within a band of non-affordability. In the District it is a relatively small group of individuals since the Medicaid FPL level is so high. CSR-eligible customers have lower cost-sharing payments than other individuals in those plans. (e.g. a lower deductible). The carriers must offer these reductions, and the federal government reimburses the carriers for the extra expenses. There is litigation as to whether these CSR payments are being made appropriately. (Obama had issued an executive order to make the payments; some members of Congress sued.) In 2016, a federal judge ruled that the payments were inappropriate and should be stopped. The injunction to stop payments was stayed pending appeal. The Trump Administration did not abandon the appeal. Several State Attorneys General moved to intervene, to protect their consumers. I doing so, the judge said 17 states and DC are being allowed to intervene. Therefore, even if the Trump Administration pulled out of the lawsuit, the lawsuit would continue.

In the meantime, all CSR payments have been made through July. There have been tweets from the President saying these payments are an “insurance company bailout” and might not continue. Not having these payments made would result in premiums increasing, the rate of uninsured increasing, and the costs of accessing health care going up.

CBO estimated that nationally, CSRs would cost $9 billion in 2017 and $16 billion by 2026.

Ku: preliminary rates have been filed. When could carriers change their rates if CFRs stop?

Howard Liebers, DISB: We can fast-track any pricing assumptions that would change if CSR payments were stopped. We are flexible and would work with the carriers.

Chichester: Purvee did a good job of laying it. While relatively small in DC, writ large it is extremely important that they be reimbursed.

Kuiper: We agree. Some states have allowed carriers to file two sets of rates, one with and one without CSRs. CSRs are important, even in DC with the smaller numbers.

Debbie Curtis, HBX Senior Deputy Director: Everything is in flux. The Administration needs to decide by August 16 if it will make the August CSR payments.

Kofman: I am hoping to hear from this group your ideas about a local solution that could provide stability. There is an attempt to try to work something out on a bipartisan basis in the Senate, but that effort might be too late.

Ku: Do we have options at HBX to cover any gap? Or could the District fund it? I understand that at HBX we could not use our administrative funds for this purpose?

Kofman: No we cannot. Our operations are funded by an assessment on carriers, and the use of those funds is governed by statute. Subsidizing premiums is not one of the approved category of expenditures.

Chandrasekaran: Can the District make a statutory change to that provision?

Kofman: we would need to research any federal limitations that exist. Also, we are assessing carriers, and then we would be paying them back – it seems contrary to the purpose of the CSRs.

Ku: There are challenges but options are worth considering.

Kofman: If there is a surplus, would the District be willing to use local funds to pay the carriers?

Curtis: That could be a fallback.

Sullivan: What is the alternative if CSRs cannot be funded. What happens to the people who have the CSRs?

Curtis: Carriers have to pay them, so the CSR people would not be impacted per se.

Kofman: If carriers are not reimbursed, they will add it to premiums across the board. Premiums will increase.

Liebers: Carriers can decide to allocate the costs to silver plan variations rather than across the entire pool.

Kofman: No matter how the increase is sliced and diced, it will have a premium impact on all of our consumers.

Tomczyk: DC does not have an off-exchange market. In other states, carriers are being encouraged to load everything on one exchange silver plan, and offer off-exchange silver plans without any load.

Ku: Carriers will make that decision. Since our carriers also operate in Maryland and Virginia, they are looking at a larger picture.

Kofman: Perhaps we can be a problem-solver for the tristate area.

Individual Responsibility Requirement

Kempf: Also known as the individual mandate, and penalty for not having health insurance, started in 2014. Specific categories of exemptions are available. The coverage must meet minimum essential coverage (MEC) and most private health coverage, Medicaid, and Medicare qualify as MEC. Limited benefit plans, or "excepted benefits" under HIPAA, do not qualify as MEC, as well as mini-med plans. At the beginning of the new Administration, President Trump issued an executive order telling executive branch agencies to grant "relief" from the ACA. Thereafter the IRS announced that if the line item asking about health coverage was not filled out, the tax return would not be considered incomplete and would be processed. The Administration has also threatened non-enforcement of the individual mandate. On the legislative side, the failed attempts at "repeal and replace" included a zero dollar penalty for not having MEC.

The trickle down effects of the Administration's stance may be that younger and healthier people do not purchase coverage, leading to rate increases as the remaining pool of those with insurance through the individual market has a less healthy profile. The individual responsibility requirement is one of the pillars of the ACA; it is part of a three-legged stool, along with guaranteed issue without any preexisting condition exclusion requirements, and an affordability provision. The question is whether the District wants something in local law that would provide the third leg of the stool should the individual responsibility requirement go away at the federal level.

Presently, the penalty is 1) $695/adult, $347.50/child, with a maximum of $2,085, or 2) 2.5% of household income, with a maximum of average national price of a bronze plan sold through an exchange, whichever is higher.

Massachusetts has a separate individual responsibility requirement that predates the ACA.

Jenny Libster, Associate General Counsel & Policy Advisor: There is a document in the packet with an overview of the MA requirement. The requirement only applies to people 18 and above. There is an affordability exception for those under 150% of the federal poverty level (FPL).

After passage of the ACA, MA clarified that a person is not subject to both the full federal penalty and the full MA penalty. If you are subject to the federal penalty, the amount of your penalty will be deducted from the amount you might owe MA.

Kofman: do we know how much revenue MA has collected from the penalty?

Kempf: In 2012, MA collected about $22 million annually. We will try to update that figure.

Ku: So, IRS is not monitoring whether taxpayers owe a penalty. The taxpayer still owes the money, and may be liable if audited.

Kofman: Carriers have to make certain assumptions in their rate filings. Reports nationally indicate that some carriers are loading anywhere up to 20% onto the rates for non-enforcement of the requirement. For the next meeting, we can have someone from the Department of Tax and Revenue explain to us whether a District requirement is feasible operationally if the working group is interested.

Chichester: We are willing to have that discussion. The individual responsibility requirement is a high priority for my company.

Federal Outreach and Enrollment

Curtis: Federal outreach has been very important in getting consumers to DC Health Link through healthcare.gov. The Administration has ended two contracts for entities that did a lot of work in the federal marketplace space that helped enrollment. Other negative actions may be contemplated by the Administration. We need creative ideas to help on this issue.

Market Stabilization Regulation and Limits on Guaranteed Issue Protection

Curtis: We brought policy questions with regard to implementing the federal market stabilization regulation to our Standing Advisory Board and then the Executive Board. The one provision that stood out that we could not address through Board action was prohibiting implementation of a provision in the regulation that would permit carriers to charge back premiums to those who were terminated for nonpayment of premium during the prior year before issuing coverage during open enrollment, or during any special enrollment period. We think that will have a negative and chilling effect on our market because our market is relatively young and those people may not have the money to pay back premiums. The Executive Board passed a Resolution (in the packet) that asks DISB, or potentially Council, through legislation, to prohibit the practice. Carriers do have the right to take people through the collection process for outstanding bills. In this case, people have already been penalized because they do not have coverage.

<u>Conclusion and Next Steps</u>

Ku: It is worth trying to schedule two more meetings. Conference calls are fine. One meeting in late August, then at least one more in September.

Thank you for your participation. Please direct any comments, questions or suggestions to Debbie Curtis.