



**ACA Working Group  
September 7, 2017  
Notes**

**Roll Call**

**PRESENT**

Leighton Ku  
Jodi Kwarciany  
Dave Chandrasekaran  
Katie Nichol  
Tammy Tomczyk  
Colette Chichester  
Laurie Kuiper  
Dania Palanker  
Liam Steadman  
Donna Alcorn  
Patricia Quinn  
Jenny Sullivan  
Louis Davis, Jr.  
Jnatel Sims  
Margaret Singleton  
Kris Hathaway, Kevin Wrege  
Maria Gomez

**ABSENT:**

Carl Chapman  
Bonita Pennino  
Carolyn Rudd

**Introduction**

**Ku** – last week we began serious discussions of the issues this group needs to address. What might happen at the federal level is still a mystery. There is some talk of a fix it package before end of year.

Today we will return to tax backstop for a short conversation. Then, we move on to CSRs. Also, we will discuss a policy option to prohibit back payment as condition of issuance of a new health insurance policy.

### **CSR Fallback Options**

**Purvee Kempf (HBX):** Should there be a District fallback if the federal government does not make the CSR payments? There are about 300 people in DC at any given time get the benefit of the CSRs. It is a narrow band of income in the District since Medicaid goes above 200% of the federal poverty level (FPL) and people are eligible for CSRs if they have up to 250% FPL. Our estimates are that about \$150,000/year is reimbursed to carriers. Since the amount is so low, it has minimal effect on actual premiums in the District, unlike other jurisdictions. In August, the Administration made the payments, but made no commitment to future payments. The Senate and House are discussing appropriating CSR payments as part of the overall discussion for stability and affordability. The stated goal of Sen. Alexander and Sen. Murray of the Senate HELP Committee is bipartisan legislation. Does the District want to take a step to have a fallback in place should the federal government cease making the payments?

**Debbie Curtis (HBX):** The way law works, carriers are required to reduce the cost-sharing for eligible individuals regardless of payment by the federal government. If the feds don't pay, consumers will not see CSRs go away – but the effect of carriers having to absorb those payments will be a negative impact on premiums for the entire market.

**Gomez:** Has the City weighed in yet?

**Curtis:** No, we are starting the discussion. The premium impact in the District is negligible, but there is a much higher impact in Maryland and northern Virginia.

**Ku:** We are assuming for this discussion no major changes to ACA. If that changes, the discussion changes and we have a lot more work.

**Hathaway:** Thanks to exchange for taking this step. The task is harder in other states due to high cost, but it makes a great statement.

**Kuiper:** I agree with Ms. Hathaway. We support the fallback position that the District have a fallback if the federal government fails to make the CSR payments.

**Chichester:** The carriers are in agreement. There is a minimal impact here, but the signal that this is important to the community for market stability is big. Commissioners who testified

yesterday and Governors testifying today in the Senate all agree that CSR payments need to be made in 2018 and 2019, and a reinsurance mechanism is needed.

**Gomez:** Any opportunity to present testimony, get stories, etc. we are open to helping you.

**Ku:** We discussed last time, how long to get legislation through, it can be a year. Can this be done on an emergency basis through Mayor or Council to get rapid action?

**Deborah Freis (OCFO):** There may be existing budget authority through one of the agencies. You could also ask the Mayor through programming.

**Curtis:** Yes it could be done on emergency basis if Council wants to. We have seen emergency legislation in the past.

**Kempf:** You could make it retroactive to months that were missed.

**Freis:** If structured as a grant, that could work.

**Kempf:** We put in the group's packet, "How a Bill Becomes a Law." We need a recommendation from working group to do something, then staff works with local folks to figure out how it gets structured.

**Ku:** No vote yet but I am hearing consensus that the District have a fallback.

**Palanker:** Important to make sure does not cost a lot to administer. Only \$150,000 you do not want a \$100,000 cost to administer.

**Curtis:** Great point. We will work language into the recommendation that it be administered efficiently as possible. We can take what the carriers already do for the federal government and provide it to the District. Our goal is to make the payment with little administrative burden.

**Chandrasekaran:** Medicaid MCOs, we have a good relationship – do we have existing mechanisms where we fund the carriers? If not, we may need legislative authority to do that.

**Alice Weiss (DHCF):** You need the authority to fund the payment.

### **Individual Responsibility Requirement**

**Kempf:** Staff put together a summary of what we discussed as options last week; points around operation and implementation steps, and a timeline. "How a Bill Becomes a Law" goes into more detail about emergency legislation, the Congressional review process, etc.

Option 1. Mirrors the federal individual responsibility requirement and only collects money at the local level if the federal requirement is not enforced.

Option 2. Is similar to the MA requirement – has a different penalty amount and different criteria, but deducts from collection the amount an individual has paid to the federal government under the federal ACA individual responsibility requirement.

There were operational and implementation issues we discussed. The Office of Tax and Revenue (OTR) would need to make IT changes and develop instructions, and make changes to the paper tax form, which are printed in August. Legislation would require an identified funding source for these operational costs over 4 years. Costs are estimated at \$1-\$2 million.

**Freis (OCFO)**: I was unable to verify that figure before the meeting. I have a meeting set for Thursday afternoon of next week. She also clarified that you can still bring legislation forward without an identified funding source. The legislation would then be subject to appropriations.

**Chandrasekaran**: Does this have an effect on the business mandate?

**Kempf**: No, individual market only.

We heard at the last meeting that DC residents do not always have to complete their federal forms before filing their DC taxes.

**Ku**: Still most people file them together.

**Freis (OCFO)**: I will follow up on that. In addition, can I comment on the next bullet? It says new federal monitoring for compliance will be necessary. That is not the case. Compliance monitoring would be done at the District level. We would need to interact with feds but compliance is local.

**Kempf**: Is compliance more than answering the question, whether a person had insurance and paid a federal penalty?

**Freis (OCFO)**: OTR can run a match against federal tax data. There can be additional follow up if you want, contacting people. Policy decision can be made in budgeting, implied when you do legislation.

I have a general question about implementation. We talked about the form taxpayers receive from carriers. Most taxpayers file electronically. We can ask taxpayers to key in information. Is there any role for DISB – obtaining information from carriers as to who was covered?

**Ku:** We will need a separate technical group at a staff level to figure out the details.

**Curtis:** That is correct. The working group is developing recommendations and then staff implements them once adopted. We have never put legislative language through a working group.

**Kempf:** The last bullet on the operational side: the DC fallback that is similar to Massachusetts, HBX would have to handle exemptions process. HBX has requested information from CMS on the number of exemptions provided to District residents annually. We still do not have that information.

**Curtis:** We were coalescing around Option 1 – do we even want to keep Option 2 on the table?

**Kempf:** The draft recommendation staff put together is framed as a fallback. Members of the working group thought it more palatable politically to talk about a fallback rather than a new tax. The draft is as follows:

The District will implement and collect an individual responsibility requirement penalty for taxpayers where the federal government fails to enforce the federal Affordable Care Act individual responsibility requirement and the taxpayer owes a federal penalty under the ACA. If the ACA penalty is paid at the federal level, no penalty is assessed on District taxes.

Any funds received through this tax will be placed in an account dedicated to an HBX fund to help finance a reinsurance program for the individual market.

We need your feedback to ensure the language reflects what you are recommending, when it comes to a vote.

**Sullivan:** The draft assumes the ACA individual responsibility requirement exists. Do we want to broaden it?

**Kempf:** This discussion is taking place within context of the federal law existing. The law exists, but the Administration is not enforcing it. We would be having another discussion entirely if repeal and replace were on the table.

**Ku:** My only comment is in the second paragraph on reinsurance

**Curtis:** Reinsurance is ideal. There is not enough money from this effort, but every penny helps.

**Ku:** There are two other possible uses – CSR payments, and administrative costs for OTR.

**Curtis:** We can put the ideas on the table for next meeting's discussion.

**Chichester:** My understanding was we trying to make sure these funds do not go back into General Fund; they should go to a stability fund. A stability fund can cover different types of payments.

**Curtis:** We will redraft to add something to that effect and bring a revised version to the next meeting.

### **Back Payment of Premiums**

**Curtis:** This issue came from market stabilization regulation that came out in April. It allows a carrier, if permitted by state law, to condition issuance of new policy on payment of back premiums.

We understand carriers can go to collection. To require back payment establishes a barrier to coverage. People terminate when they can't afford premium. They are punished already because they lose coverage. Our market is young – we want them to get coverage. The Standing Advisory Board recommended -- and the Executive Board adopted a resolution -- encouraging Council action if necessary, but since this working group will be making recommendations on legislation, we wanted the working group to weigh in.

**Sims :**Does the regulation apply in the individual or small group market?

**Curtis:** It applies to both.

**Ku:** One thing that makes the District different from other marketplaces is that all policies are sold on the exchange. There is no outside market for individual or small group coverage, so there is nowhere else to go for coverage.

**Wrege:** Have we always contemplated it applies to both?

**Kempf:** The regulation applies to both, and both inside and outside the exchange. The option you do have is to go to a new carrier. It is more difficult in individual market since we only have two carriers. There are more options in group market.

**Hathaway:** Other issue to look at is gaming the system. People get covered for three months, get a lot of services, terminate. Can it be audited every year? Can there be an out for carriers when this is happening to them?

**Curtis:** We analyzed our market based on age. SEP people are younger. That analysis gave us confidence that gaming not occurring in our market. Also, we think the provision conflicts with law by changing open enrollment. To us it is a no-brainer.

**Ku:** I have to sign off. Vice-chair Jodi Kwarciany will wrap up the meeting.

**Wrege:** My question is directed at carrier representatives – do you have reasonable ways to track this issue from an operational perspective? Do you have systems in place to identify trends related to gaming?

**Chichester:** I will check.

**Curtis:** I will also verify with plan management but do not think it has been raised locally at all.

**Kwarciany:** Thanks for joining today's call. Our next meeting is scheduled for Thursday, September 14<sup>th</sup>. We will move into the affordability discussion at that meeting. That means specifically looking at a District reinsurance policy and consideration of District enhancements to the federal APTC payments.

Because of our discussion and consensus around CSR policy, staff will redraft and circulate that next week. Votes on policies will be held until the September 22<sup>nd</sup> meeting so Working Group members will have time to review the proposals with their organizations.