Federal Policy Updates

AUDREY MORSE GASTEIER
Chief of Policy and Strategy

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Policy Updates

The Health Connector continues to analyze and adapt to a dynamic health policy landscape, and is closely monitoring a number of potential challenges to health coverage and health reform in Massachusetts.

- Final Health Reimbursement Arrangement (HRA) rule
- Final Public Charge rule from the Dept. of Homeland Security (and ‘adjacent’ policymaking)
- Texas v. United States (ACA) case pending at 5th Circuit Court of Appeals
- Other rulemaking and federal actions & looking ahead
Health Reimbursement Arrangements (HRA)

A final rule on Health Reimbursement Arrangements has implications for State-Based Marketplaces, their consumers, and potentially for the merged market.

New federal HRA regulations were finalized on June 13th

- The new final HRA rule (effective January 2020) allows employers of any size to provide an HRA that can be used toward the premiums and cost-sharing of health insurance coverage
- If employers offer an HRA for individual coverage that meets an affordability threshold, employees may be barred from receiving federal Advance Premium Tax Credits (APTCs)
- An additional related rule clarifies how employers can satisfy the federal employer mandate with an HRA in some discrete circumstances

CCA preparations related to approaching HRA rule effective date

- CCA supporting and in coordination with DOI as they consider any guidance or policy responses needed to clarify or manage the final HRA rule’s interaction with existing rules in the Massachusetts marketplace
- Partnering with an outside technical assistance group (State Health and Value Strategies at Princeton University, funded by Robert Wood Johnson Foundation) and other state Exchanges on a consumer facing tool to determine APTC impact of HRA offer as stopgap until we can incorporate HRA functionality in HIX
- Exploring the development of high level information to employers, brokers, and individuals about the HRA rule, including its interaction with the Health Connector
- Included content in recent Navigator training about HRA offers and how they may affect individuals’ APTC eligibility so Navigators can best support consumers
Public Charge

The Department of Homeland Security (DHS) issued its final public charge rule in August.

The final public charge rule is scheduled to go into effect on Tuesday, October 15th

- As the Board knows, the rule significantly widens what criteria can be used to determine someone a “public charge”, to now include use of specific federal social and health programs in addition to cash benefits and long-term institutionalization

- Exchange subsidies like Premium Tax Credits are not included as a trigger for a public charge determination, but for states with a shared Medicaid/Exchange application, the rule’s provisions relating to whether someone has “applied for Medicaid” are not clear

Multiple legal challenges have been mounted against the final public charge rule, and decisions from courts could come down any day

- Last week and this week, hearings were held in response to multi-plaintiff challenges to the rule:
  - Thursday, October 3rd: Judge Rosana Malouf Peterson of the U.S. District Court for the Eastern District of Washington heard arguments from Washington, Virginia, Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, and Hawaii
  - Wednesday, October 2nd: Judge Phyllis Hamilton of the U.S. District Court for the Northern District of California heard arguments by California, Maine, Pennsylvania, Oregon, D.C., National Immigration Law Center and a coalition of health care providers and nonprofit organizations, and Santa Clara County and San Francisco
Public Charge (Cont’d)

The Health Connector is working with other agencies and external groups like Health Care for All to guide consumers with questions to appropriate legal support resources

Information, resources, and support:

- Navigator training, Massachusetts Health Care Training Forum (MTF) sessions, and other fora provide opportunities to make sure that those working with consumers can help guide them to experts that can assist them based on their individual circumstances

For continued monitoring and awareness – an array of public charge ‘adjacent’ policy-making aimed at legal immigrants and health care utilization:

- White House memo on how sponsorship income is counted
- DOJ public charge deportation rule pending at Office of Management and Budget
- 10/4 White House Executive Order on health care coverage and visa applicants
Texas v. United States Lawsuit

A decision could be issued any day from the 5th Circuit Court of Appeals on a lawsuit challenging the constitutionality of the Affordable Care Act.

- **Texas v. U.S.** challenges the entirety of the ACA, centering on an argument related to the removal of the federal individual mandate penalty.
- The case is being brought by 17 state Attorneys General, led by Texas. 21 Attorneys General, led by California and including Massachusetts Attorney General Healey, are intervening defendants in the lawsuit to defend the ACA. Defendants are now joined by the US House of Representatives.
- In December 2018, federal Judge Reed O’Connor of the Northern District of Texas ruled in favor of the plaintiff states, finding that the ACA is unconstitutional. The defendant states immediately appealed the decision.
- On March 25th, the U.S. Department of Justice indicated in a briefing memo to the court that it would cease to defend the constitutionality of the ACA, leaving the intervening-defendant states’ Attorneys General and the US House of Representatives as the law’s sole defenders in the case.
- The U.S. Court of Appeals for the 5th Circuit heard oral arguments about the constitutionality of the law on July 9.
- A decision is expected imminently.
Texas v. United States Lawsuit (Cont’d)

Implications for the Health Connector

- Implications of the ACA being struck down are foundational and significant for Massachusetts given how interwoven the law is with the health care and health insurance system
- At stake are billions of dollars of federal funding, including Exchange subsidies

Agency Preparedness

- It is unclear whether, in the event of an unfavorable outcome, a stay would be issued while the case advances potentially to SCOTUS
- CCA has previously analyzed legal, policy, and financial interdependencies between itself and the ACA in the face of multiple threats to the ACA, which would be leveraged in the event of the law being struck down
  - Many, but not all, of the ACA's coverage protections are present in Massachusetts law, and many other interdependencies exist
- Over the summer, CCA staff have worked with BCBS of Massachusetts Foundation as they conduct work with the Urban Institute and its Health Insurance Policy Simulation Model (HIPSM) to model impacts of Texas outcomes using various assumptions
Anticipated Forthcoming Rulemaking

**Final rulemaking:**
- Final Program Integrity rule expected in coming months
- Final ACA Section 1557 nondiscrimination regulation rule

**Proposed rulemaking:**
- 2021 Notice of Benefit and Payment Parameters – proposed rule arrived at the Office of Management and Budget on September 27
Looking Ahead

- The Health Connector will continue to seek out strategies to preserve the approaches to health coverage that have proven successful in Massachusetts.
- Staff will keep the Board of Directors apprised of new developments related to these regulatory and legal actions, and their impact to the Health Connector, the population it serves, and the health coverage landscape in the Commonwealth more broadly.