ML Strategies Alert

2017 Health Care Policy Debates Ramp Up in Massachusetts

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With the unveiling of Governor Charlie Baker's FY2018 budget, the commencement of the 2017-2018 legislative session on Beacon Hill, and a new presidential administration underway in Washington D.C., the Massachusetts health care industry is facing the prospect of significant policy changes in the coming year. Policymakers in the Commonwealth are set to debate major reforms aimed at controlling health care costs that will affect a wide range of industry stakeholders, including employers, providers, payers, and pharmaceutical companies, among others.

In order to discourage avoidable enrollment in MassHealth and slow rising costs in the state's Medicaid program, which now accounts for nearly 40 percent of state spending, Baker has proposed in his budget a $2,000 per employee "fair share" assessment on Massachusetts employers with 11 or more full-time equivalent employees (FTE), or employees that work 35 hours per week, whose health coverage does not meet certain requirements. The Baker Administration has argued that some of the increase in MassHealth spending is driven by employed individuals enrolling in MassHealth rather than employer-sponsored insurance, and Baker's proposal aims to reverse this trend.

Under the proposal, Baker sets a minimum employer contribution rate of $4,950 per year from employers to employee health insurance. Massachusetts employers must also have an 80 percent "uptake rate", meaning that at least 80 percent of their employees be must enrolled in employer offered insurance that meets the minimum contribution rate. Employers will receive the $2,000 per employee assessment noted above under one of two circumstances: (1) if the employer does not meet the 80 percent uptake rate, the employer is assessed for each FTE employee that falls between the employer's enrollment rate and 80 percent; or (2) if the employer contributes less than the $4,950 minimum, the employer is assessed $2,000 per FTE employee.

The business community has strongly opposed this assessment. It argues that the 80 percent uptake rate threshold is too high and specifically points to how employees not covered by employer sponsored plans count as unenrolled even if they are enrolled through alternative coverage, such as a spouses' plan, a parents' plan, Medicare, or a veterans' plan. Additionally, critics argue that the assessment fails to address the underlying drivers of rising Medicaid enrollment and will force employers to scale back hiring.

Additionally, the Governor's budget proposes the establishment of permanent tiered caps on the rate of growth for all acute hospitals and professional service providers, except behavioral health and primary care providers. Providers would be placed into three tiers using a to-be-determined methodology based on relative costs developed by the Division of Insurance (DOI) and the Center for Health Information &

Analysis (CHIA). DOI is permitted to review and revise the growth caps every three years. The lowest-cost providers would face no cap, while growth in the middle tier would be limited to 1 percent over the current year rate, and no growth would be allowed for the highest tier. This new system of growth capping differs slightly, by allowing a higher than 1 percent growth rate for providers with certain alternative payment contracts, accountable care organizations, or other value based payment arrangements with carriers.

Providers and the hospital community at large are opposed to the proposal, arguing that the caps will not help providers control medical expenses. Rather, they point to rising pharmaceutical prices and surging MassHealth enrollment as the primary reasons the state has missed its health care cost benchmark.

The budget proposal includes several other notable provisions. It caps Group Insurance Commission (GIC) payments to providers at 160 percent of the Medicare rate; establishes a new assessment on non-acute hospitals, including inpatient chronic, rehabilitation, and psychiatric facilities; and imposes a five-year moratorium on new health insurance mandates in the commercial market.

With pharmaceutical spending a continuing driver of health care costs, several bills have been introduced in the legislature this session aimed at increasing transparency around drug pricing. Senator Mark Montigny filed legislation requiring CHIA to collect data on the most expensive drugs the state is paying for and any new medicines that cost more than $10,000. Senator Linda Dorcena Forry and Representative Christine Barber introduced legislation backed by insurers that calls for a review of drug pricing that increased 50 percent or more over the past five years, or by 15 percent in the last year, and requires drug manufacturers to justify decisions to raise prices by more than 10 percent in filings with the Health Policy Commission (HPC).

In response to the mounting pressure to increase transparency around drug pricing, certain sectors of the industry have thrown their support behind a bill introduced by Representative Jen Benson and Senator Joseph Boncore that calls for drug companies to make pricing information public if a drug's price exceeds 15 percent in a year. It also requires insurers and pharmacy benefit managers that purchase drugs in bulk to disclose rebates and discounts they negotiate.

Massachusetts' health care commissions are also set to weigh into the state debate with new recommendations. On February 8th, the HPC outlined its plan to focus on several policy priorities identified in the 2016 Cost Trends Report, including the adoption of Alternative Payment Methods (APMs), alignment and improvement of APMs, community-appropriate care, unnecessary hospital use and other institutional care, pharmaceutical spending, health care equity and affordability, and provider price variation, among others. Additionally, this spring the HPC will consider for the first time modifying the state's 3.6 percent annual health care cost growth benchmark.

The legislature's Special Commission on Provider Price Variation, which has been meeting since last September, will provide its own set of recommendations in March on actions to narrow unwarranted price variation among providers. The Commission has already received the conclusions of its subcommittees on factors that do (patient acuity, high-cost outliers, and quality) and do not (socioeconomic status, research, market power, brand, and geographic isolation) warrant price variation, as well as actions to address out-of-network billing and increase transparency for small employers.

Meanwhile, the health care debate in Massachusetts may be heavily affected by the sweeping changes President Donald Trump and the Republican-led Congress have proposed for federal health care policy. President Trump's treatment of the five year, $53 billion federal Medicaid waiver Baker agreed to with the Obama Administration will have a significant impact on the future of MassHealth. The Trump Administration could alter the waiver, but the Baker Administration has expressed hope that the deal will be preserved. This Thursday, in Washington, the Senate Finance Committee will hold a

confirmation hearing for Seema Verma, President Trump's nominee to lead the Centers for Medicare and Medicaid Services (CMS), the agency which oversees Medicaid waivers. This will be an opportunity to gain insight into how one of Trump's top health care officials sees various aspects of Medicare and Medicaid. Given her previous work with waivers in Indiana, the topic will certainly be discussed.

Furthermore, repeal of the Affordable Care Act (ACA) would deeply impact the Massachusetts Health Connector, which is administratively and financially intertwined with the national health care law. The Baker Administration recently announced that 53,000 people enrolled in plans through the Health Connector during the open enrollment period that ended on January 31st, bringing the total enrollment in the state exchange up to 246,000. With Secretary Tom Price now confirmed to lead the Department of Health and Human Services, Trump is one step closer to having his top health officials in place, setting the stage for substantive policy discussions on the future of the ACA.

In Massachusetts, the legislature will likely quickly respond to the challenges and opportunities noted above. The budget process now moves to the House of Representatives, which will develop its own spending plan and debate this version by around mid-April. The Senate will then draft and finalize its budget by the end of May. The final budget must be signed into law by the beginning of the next fiscal year, July 1st, 2017. Additionally, legislative leaders will be announcing committee chairs and membership in the coming weeks, so all legislative proposals will soon be the target of extensive vetting at the State House.

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ML Strategies will continue to monitor and periodically report on discussions among political and industry leaders as they work to curb health care costs in the Commonwealth.

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