

Mintz Levin Health Law and ML Strategies Alert

Recent Developments in Massachusetts Health Policy

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Building on the momentum of early October hearings on the state's growing health care expenditures, the Health Policy Commission (HPC), the Joint Committee on Health Care Financing, Governor Charlie Baker, and others spent the past two weeks crafting new policies for the industry and its consumers. Included among the measures under consideration are those that would give the HPC a greater role in blocking transactions it deemed anticompetitive, require equal reimbursements for telemedicine, and place additional restrictions on opioids. Following this report on recent developments in health care is a [guide to the HPC's Annual Cost Trends Hearings](#).

HPC reports may gain legal weight

A bill that would give legal weight to HPC reports on proposed mergers between health care providers was the focus of discussion at last Wednesday's Joint Committee on Health Care Financing hearing. H3678, An Act relative to protecting health care consumers, is a joint effort between Attorney General Maura Healey and House Majority Leader Ron Mariano (D-Quincy). Under the legislation, the HPC's Cost and Market Impact Reviews on proposed mergers between providers would become a "rebuttable presumption" in a court case brought by the Attorney General, which the company would have to dispute. Both authors said the legislation would protect Massachusetts consumers from the decrease in market competition that can follow mergers and acquisitions, while letting beneficial transactions proceed. This is necessary because of a recent uptick in provider consolidation and the lack of case law in the area, Healey said. Mariano added that it furthers the legislature's intent in establishing the HPC, since they wanted to give the body more teeth but "punted" on the issue.

Representatives of Lahey Health, the Massachusetts Council of Community Hospitals, the Massachusetts Association of Health Plans, and the Greater Boston Interfaith Organization testified in favor of the bill. They praised the process's fairness, its protection of consumers, and its fulfilling of the legislature's intent. However, Tim Gens of the 90-member Massachusetts Hospital Association countered that the HPC should not create additional burdens for providers.

Massachusetts seeks to expand telemedicine

At the same Joint Committee on Health Care Financing hearing, proponents of telemedicine argued for a bill that would require Medicaid coverage of telemedicine, require equal reimbursement for these services, and create a central licensing process for telemedicine providers. The bill is H267, An Act advancing and expanding access to telemedicine services. At the hearing, bill sponsor Rep. John Scibak (D-South Hadley) said there is "no reason" that Massachusetts should be one of the nation's only three states without required Medicaid coverage for telemedicine. Telemedicine benefits rural populations, working parents, school-age children, and those with behavioral health needs, he said. Physicians and industry experts agreed it would help the state's hardest-to-reach patients, though some cited concern with the bill's logistics.

Five people affiliated with Boston Children's Hospital, including an 11-year-old-patient, said telemedicine can connect kids and parents to much-needed services and save them long trips to the doctor's office. Doctors said their hospital cannot expand its current telemedicine program statewide because participants must be certified anew at every hospital they work with, so the bill's centralized credentialing process is important. A Massachusetts Hospital Association panel also spoke in favor of the bill, noting that it does not mandate



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coverage of new services and is not tied to a fee-for-service payment model. Committee co-chair Rep. Jeffrey Sánchez (D-Jamaica Plain) probed the speakers for details, and said he was concerned about which provider would get reimbursed – a concern shared by the Massachusetts Association of Health Plans.

The HPC is also seeking to expand telemedicine statewide, with a year-long pilot program that will grant \$500,000 to selected community-based providers and telemedicine projects.

Baker files opioid bill

Last Thursday, Governor Baker filed his own bill to complement House and Senate measures designed to fight the state's growing opioid crisis. The bill focuses on education, prevention, and expanding access to treatment. It would require doctors to spend five hours a year on continuing education surrounding opiates, while athletes, parents, and various school staff members would receive training about opiate use and misuse as part of their annual head injury safety trainings. To reduce the supply of opiates in the state, the bill limits first-time opiate users to 72 hours' worth of pills, except in an emergency. Prescribers thinking of writing an opiate prescription will also be required to check the state's Prescription Monitoring Program, which records a patient's drug history for the preceding year. Insurance companies would also have to file opioid management policies with the Division of Insurance, detailing their efforts to encourage safe prescribing and alternative pain management.

The bill also addresses those already addicted to opioids. Rather than being involuntarily committed by courts – which have set business hours and are coping with an influx of substance abuse cases – a person suffering from opiate addiction can be committed to a treatment facility by a physician, psychologist, or other specialist. These patients must have a chance to voluntarily commit themselves within 72 hours, but the facilities can petition courts for a commitment order if a patient refuses. This measure is part of a policy shift toward treating opiate addiction as a public health problem rather than a criminal one, and is complemented by a 2014 bill that mandated insurance coverage of two weeks of addiction treatment.

To find out more about the legislature's action on opiates, [read Mintz Levin's recent alert](#).

“Performance Improvement Plans” now fall under HPC's authority

Last Wednesday, members of the HPC's Cost Trends and Market Performance Committee discussed a new way of containing spending growth: Performance Improvement Plans, or PIPs. Starting this year, the HPC has the authority to require these plans of certain payers and providers whose spending threatens the 3.6% growth benchmark due to factors within their control. The HPC can fine entities that do not make a good faith effort to implement their PIP up to \$500,000.

The committee discussed how to take on this new authority in a way that is fair and transparent to providers. The current process begins with a confidential report from the Center for Health Information and Analysis (CHIA) that lists payers and providers with the highest cost growth, as measured by total medical expenses. The HPC can require listed organizations to submit a PIP to address their cost growth, if an analysis of CHIA's list shows this is warranted for a given entity. Over two dozen factors will go into the HPC's analysis– including spending trends, pricing trends, utilization, size and market share, populations served, cost-reduction initiatives, and which factors an entity can control – so the committee asked for language around which factors matter most. Commissioner David Cutler repeatedly expressed concern that the statute gives the HPC too much leeway in the process, as much cost growth is outside entities' control. The committee plans to discuss the matter further, and is not required to ask for any PIPs at all.

HPC to fund \$6 million in “validated innovation”

The second HPC committee to meet last Wednesday was the Community Health Care Investment and Consumer Involvement Committee, whose members discussed the launch of a new \$6 million program to fund innovations in health care. Titled the Health Care Innovation Investment Program, this competitive grant program will invest in payers and providers proposing “validated innovations,” or new ideas with evidence of success. Similar programs around the nation have brought an average of 45% cost savings within three years. Griffin Jones, the program's manager, proposed a preliminary slate of eight priority areas, largely centered on high-

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needs patients. Commissioners Rick Lord and Ron Mastrogiovanni approved, saying helping this population is likely to yield the highest return on investment. The program is funded from gaming licensing fees, so it may grow if the state chooses to award a third casino license.

The Health Policy Commission's Annual Cost Trends Hearings

Under the requirements of Massachusetts' 2012 health care reform legislation ("Chapter 224"), the HPC conducted an annual Cost Trends Hearing on October 5 and 6, 2015. The hearing offered an opportunity for Massachusetts' health care political and industry leaders to engage in a wide-ranging discussion of the Commonwealth's health care system and the costs thereof. The hearing took place in the context of growth in total health care expenditures in 2014 in the Commonwealth exceeding the 3.6% growth benchmark established under Chapter 224. Overall, total health care expenditures grew 4.8% last year.

The two-day hearing featured panels and speeches from Governor Charles Baker, House Speaker Robert DeLeo, Senate President Stanley Rosenberg, Attorney General Maura Healey, and numerous academic and industry leaders. Though speakers agreed there is no "silver bullet" for containing the industry's rising costs – and disagreed on some of the potential solutions – they touched on nearly every facet of the changing health care system. Below is a list of the topics covered and highlights of points made on each.

Beyond the Benchmark: A Deeper Look at Cost Trends

Áron Boros, Director of the Center for Health Information and Analysis (CHIA), which compiled the data on health expenditures, said the overall increase was partially driven by a 19% growth in MassHealth enrollment. Commercial spending rose just 2.9%, though the 4.8% growth rate represents real spending that outpaces economic growth.

Massachusetts Attorney General Maura Healey examined the numbers as well. While about 96% of the state's residents have health insurance, this falls below 90% in certain cities, specifically Everett and Lawrence. Additionally, the low average growth in insurance premiums hides the fact that premiums in the merged individual and small business market are set to grow 6.3% next year.

Rising Drug Costs

Senate President Stanley Rosenberg said Massachusetts' life sciences and pharmaceutical industries are very important, but rising drug prices must be addressed. He cited Washington and Oregon as examples of states with a successful approach of using formularies to purchase drugs jointly, saving 40%. Massachusetts should explore a similar approach. Massachusetts Biotechnology Council president and CEO Robert Coughlin countered that rising drug costs are not responsible for systemic cost increases, as a 20% decrease in pharmaceutical spending would only correspond to a 1.5% decrease in overall health care spending.

Value-Based Payment Reform

Participants focused on moving from the current fee-for-service payment model to alternative payment methodologies (APMs) that promote value. Governor Charlie Baker and others were skeptical of APMs' success, although providers and insurers generally supported some type of value-based payment. Some participants asserted that so far payment reform efforts have seen mixed success.

Dr. Amitabh Chandra, Director of Health Policy Research at the Harvard Kennedy School of Government, called APMs a "massive publicly financed R&D" with an as-yet undetermined result.

Michael Sheehy, acting Chief Medical Officer of Reliant Medical Group, said global payment models are helpful but will not achieve their maximum benefit until there is a critical mass of participating providers. Normand Deschene, CEO of Wellforce, Lowell General Hospital, and Circle Health, noted that a more accessible system

with a different payment model could see reduced hospital readmission rates and use of emergency rooms as “doctors of last resort.” This could also help struggling community hospitals, added Howard Grant, president and CEO of Lahey Health.

Andrew Dreyfus, President of Blue Cross Blue Shield of Massachusetts, said his organization will join Lahey Health, Mt. Auburn Cambridge IPA, Partners HealthCare, and Steward Health Care in a new value-based payment reform effort beginning on January 1, 2016.

Kate Walsh, president and CEO of Boston Medical Center, promoted the use of accountable care organizations as “the only way to go” for value-promoting reform. Yet Kate Spivak of Mount Auburn Cambridge IPA cautioned that these models currently reward specialists and not primary care providers.

Disparities in Reimbursements

Attorney General Maura Healey and Assistant Attorney General Courtney Aladro discussed disparities in provider prices. The current disparities in the prices providers receive for the same services are harmful and not tied to value. They favor high-cost providers and cause lower-priced ones to lose market share. Global risk arrangements only reflect historic payment differentials, and consumer-facing initiatives like transparency and tiered network insurance products have not succeeded in reducing disparities either.

The HPC should find a method of more consistently implementing incentives and penalties, such as by accounting for differences in providers’ efficiency. The dysfunctional system may also merit direct regulation of the levels of allowable variation in pricing, she said.

The Value of Transparency

Governor Baker said he will get “a lot more aggressive about the transparency stuff” next year. He stressed that low-cost, high-quality care may depend more on an organization’s culture than on its payment methodology, citing Lowell General Hospital as an organization with a culture of providing this type of care.

Amy Whitcomb Slemmer, Director of Health Care for All, presented her organization’s study of consumer price transparency tools among the state’s largest insurers. Payers received an overall C-, indicating room for improvement.

David Seltz, the HPC’s Executive Director, noted that consumers need better information on high-deductible health plans, which are increasingly common yet often surprise consumers. Others, though, argued that transparency is not a cure-all. Commissioner Richard Lord noted that transparency tools will not help in rural areas with limited choices, and Commissioner Carole Allen observed that consumers will still have other concerns, like convenience. Dr. Chandra warned that, as a remedy, transparency may be comparable to “snake oil,” promising something for nothing; instead, he favors a competitive market as a solution.

The Debate over Mergers and Competition

Various speakers recommended encouraging competition as a way to contain costs, for both the insurance market and for hospitals. Dr. Chandra said states can reduce costs by encouraging competition among hospitals, providers, and insurers. Dr. Leemore Dafny, professor of health care economics at Northwestern University’s Kellogg School of Management, agreed that

hospital mergers and hospitals’ acquisition of physicians lead to higher prices and lower quality. She noted that financial consolidation is not the same as integration of care. Antitrust enforcers have rarely gotten involved, as they are constrained by narrow laws, outdated precedents, and the desire to pursue only winnable cases. She recommended increased regulation, a broader reading of antitrust laws, a cap on out-of-network payments, and increased individual choice in health plans.

A subsequent panel of stakeholders defended the cost-cutting results of recent mergers. Lahey Health’s Dr. Grant said his organization has saved money by joining a larger network of hospitals in an ACO. Group Insurance Commission Executive Director Dolores Mitchell said mergers help smaller organizations gain market power. Partners HealthCare president and CEO David Torchiana said the Attorney General’s opposition to

Partners' acquisition of three suburban hospitals hindered the organization's ability to lower costs outside of Boston.

Transforming Care Delivery: Minute Clinics, Telemedicine, and Nurse Practitioners

HPC Executive Director David Seltz noted that the number of retail clinics and urgent care centers in Massachusetts has exploded since 2008, but the state still has a higher emergency department utilization rate than the rest of the United States.

Faced with concerns about fragmentation, panelists representing urgent-care and "minute clinics" noted their commitment to support primary and acute care facilities and to offer convenient treatment options. CVS Minute Clinic's Chief Medical Officer Nancy Gagliano said many patients they see do not have primary care physicians. Shaun Ginter, president and CEO of CareWell Urgent Care, added that urgent care can be seamlessly integrated into the health delivery system.

Christine Schuster, president and CEO of Emerson Hospital, said telemedicine can also help with cost and accessibility. Only 75 out of 10,000 medical billing codes are reimbursed for telemedicine, but increasing this number could help hospitals lower readmission rates and unnecessary emergency room utilization.

David Auerbach, the HPC's deputy director of research and cost trends said Massachusetts should reexamine who it authorizes to deliver care under its "scope of practice" laws. He argued that these laws burden the state's 5,000 nurse practitioners. They must maintain a collaborative agreement with a physician, which can cost thousands of dollars each month, in order to see patients and write prescriptions. Yet studies show they are more likely to treat vulnerable populations in urban and rural settings, at around 35% lower cost than a doctor and with no difference in quality of care. Removing restrictions on nurse practitioners would likely increase access to preventative care, he said, as well as possibly the quality, outcomes, and cost.

Preventing Health Care Fraud

State Auditor Suzanne Bump argued that MassHealth may not be doing enough to prevent fraud. It could save millions by devoting more resources to the effort and strengthening its internal controls. For example, her staff recently found that, over two years, one transportation provider "cheated" the system out of \$17 million by charging the wheelchair van rate for taking clients without wheelchairs to doctors' appointments. MassHealth has since replied that it discovered this fraud first.

Integrating Behavioral Health

Various insurer and provider participants agreed that behavioral health should be integrated into physical health. Commonwealth Care Alliance CEO Robert Master said seriously mentally ill patients are challenging for his organization, and they too often end up in psychiatric hospitals unnecessarily. Boston Healthcare for the Homeless CEO Barry Bock agreed, saying the situation is complicated by unequal reimbursements for mental health and a lack of available data on mental health care utilization.

Serving High-Cost Patients

In his address to the Commission, Governor Charlie Baker said the system is designed for the majority of the population that is reasonably healthy and only gets sick occasionally, not the chronically ill. Dr. Timothy Ferris of Partners HealthCare said standards for cost trends specifically within the high-cost patient subset would be a useful benchmark.