Thoughts from Massachusetts: States Operationalizing Federal Coverage Changes

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Massachusetts has been working at coverage expansion and health reform for over a decade, starting with its state health reform law in 2006, continuing with implementation of the ACA, and is continuing to press forward, amidst an uncertain federal landscape.

- Massachusetts currently has 97.5 percent of its residents covered.
- The Massachusetts Health Connector, a state-based marketplace, covers over 250,000 enrollees and also maintains key policy and regulatory responsibilities, such as setting policy for the state’s ongoing individual mandate.
- The last decade in Massachusetts has been marked by coverage expansion inroads and general market stability.
- Recent federal uncertainty presents key challenges, however, and the state is seeking to position itself to protect the gains it has made under state and federal reforms.
Milestones in Massachusetts’s Health Reform History

1992 - 1996
• Massachusetts introduced consumer protections to the nongroup and small group market, including guaranteed issue and rating rules.

2006 - 2008
• Massachusetts enacted Chapter 58 of the Laws of 2006 (Chapter 58), comprehensive reforms that aimed to achieve near-universal health coverage, leveraging state and federal partnership.
• Key components of Chapter 58 and subsequent amendments included:
  o The creation of the Health Connector as an Exchange to assist individuals and small employers in accessing health insurance, as well as subsidies to promote affordable coverage for residents with incomes up to 300% FPL through the Commonwealth Care program.
  o Shared responsibility requirements for individuals and employers.
  o The merger of the nongroup and small group markets into a single risk pool.

2010 - 2014
• Massachusetts prepared to implement the ACA, opting to retain its state-based marketplace and merged market structure.
• Massachusetts enacted comprehensive cost-containment legislation.

2014 - 2017
• Massachusetts retained its state-based marketplace, the Health Connector, and transitioned Commonwealth Care enrollees to ConnectorCare, a new program for residents with income up to 300% FPL that includes new federal APTCs and CSRs plus “state wrap” to meet a state affordability schedule.
• Residents between 300-400% FPL are also eligible for premium tax credits.
Recent Developments of Note

Across the country, 2017 has brought a significant amount of uncertainty into play for Exchanges and other state health care programs that depend on the Affordable Care Act (ACA).

- Inauguration night EO and its signals
- Congressional repeal efforts
- Outreach defunding
- Mixed signals to states about state flexibility, 1332 waivers
- Contraceptive guidance

- Threat of and actual CSR payment cessation
  - HHS Market Stabilization Rules issued in the spring
  - EO on Association Health Plans, STLD Plans, and HRAs
  - Less formal signals suggestive of hostility towards the ACA
Guiding Principles for State Policy Making in Uncertain Environment

• Massachusetts remains committed to universal coverage as a principle and a public policy priority

• State has the ability to draw from a diverse coalition of stakeholders and relevant state agencies that is used to working together to hash out issues
  • Historically, we have used open meetings, working groups, public-private coalitions to reach consensus about how to organize our health care landscape.

• While MA full implemented the ACA, we still have policy tools from our state reform (and even earlier) that can help us navigate the path ahead
Tensions Inherent in Uncertain Times: Multivariate Policy Planning

How far can we get with creativity?

How to allocate resources between short-term solve and long-term strategy?

Practical parameters and political realities

Creative policy solutions and “moonshots”

Prioritization of short-term stability

Planning for long-term sustainability
Case Study: Cost Sharing Reductions
Background on Cost Sharing Reduction (CSR) Risk

Throughout much of 2017, our state and others sought to plan against growing uncertainty about continued federal payments, due to a pending lawsuit and uncommitted federal signals.

- In 2014, Republicans in the US House of Representatives sued the Obama administration, alleging that the US Department of Health and Human Services’ Cost Sharing Reduction (CSR) payments to carriers were unlawful because funding for them had not been properly appropriated in the ACA.

- A May 2016 ruling by a federal judge in favor of the House would have ceased the payment of CSRs, but the Obama administration appealed the ruling. The case, now known as *House v. Price*, has continued in an unresolved status since the outset of the Trump administration.

- The Trump administration continued to make monthly payments to issuers through 2017, but on the evening of Thursday, October 12, the Trump Administration announced it would immediately halt CSR payments.

- CSR payment cessation announcement was days, and in some cases hours, after many states had finalized 2018 rates.
State Approaches to Address CSR Risk

*States have spent 2017 to address the uncertainty the CSR risk is causing in their markets using a range of tactics as carriers development and file of rates for plan year 2018.*

- **Process considerations**
  - In Massachusetts, we met on a weekly basis with our carrier community and with our Division of Insurance as we considered options throughout late spring, summer, and early fall.
  - Sought to keep market and stakeholders calm, informed, and engaged of the process for considering options.

- **Approaches that were considered**
  - Proactive adjustment of 2018 rates, even before CSR decision made vs. hold steady
  - Pursuing state funding or market assessment as a stop-gap
  - 1332 waiver approach

- **Additional questions**
  - Which plans should have a load to account for CSR exposure? Just silver plans or just silver QHPs or all plans? Just on-Exchange or both on-and-off Exchange? (Plus special considerations for merged market in MA)
Impact of State CSR Decisions

These regulatory decisions carry significant implications for Exchanges’ and non-group markets’ enrollment, finances, operations, and market stability, including considerations related to:

• Member experience and continuity of coverage
• Subsidized and unsubsidized enrollment mix
• Operational and IT capacity to administer a late rate or re-rate
• Administrative fee/surcharge revenue
• State-specific programs or plan designs
• Carrier positioning
• Broader risk pool, including small groups if in merged market
• Medium and long-term function and role of Exchanges
Massachusetts submitted a 1332 waiver application on Sept. 8th to stabilize 2018 premiums in the face of CSR withdrawal, but to date it has not gained traction at a federal level.

- Massachusetts requested authority to waive Cost-Sharing Reductions and instead establish a state Premium Stabilization Fund to eliminate instability in the market, thereby lowering premiums and consequently federal premium tax credit liability.

- Massachusetts seeks a “pass-through” of federal premium tax credit savings (similar to Alaska-style reinsurance waiver), with these funds seeding the Premium Stabilization Fund, which in turn supports issuers. 1332 application sought to waive requirements to reduce cost-sharing [42 USC § 18071] and pass through of available funds to a state [permissible under 42 USC §18052(a)(3)].

- Because the state would not waive the requirement that issuers provide CSR-enriched plans, there would be no consumer-facing changes to coverage costs or benefits.

- Massachusetts prefers a Congressional solution to market instability, but submitted this waiver with a request for “fast-track” review, as a potential solution if federal action did not materialize prior to 2018 rate finalization.

- Given recent CSR announcement, evaluating possibility of revising waiver application for future use (e.g., 2019 rates).
Where Did Massachusetts Land?

Reversing a prior decision to load unadjusted rates, Massachusetts has increased rates for silver, on-Exchange QHPs by 18 percent as compared to what rates would have otherwise been for 2018.

- The Health Connector announced on the afternoon of October 12th that it would proceed with unadjusted rates.
- The Trump Administration’s decision came within hours of us loading lower rates.
- We announced on October 19th that we would instead switch to use the higher silver-tier rates, adding an 18 percent load.
- Our energies now turn to shepherding the <80K individuals in unsubsidized silver plans into new coverage.

**Outstanding questions:**
- 2017 funding gap for last three months of CSR payments
- Ability to protect <80K individuals from falling out of coverage
- How to best protect medium and long-horizon market stability
- How would state react to CSRs starting to be paid again during plan year 2018 per court action or passage of the Alexander-Murray bill? To what extent could damage be restored and how would that work?
Important Reminder for State Health Policy Professionals

Source: Comedian Demetri Martin, *This is a Book.*
Questions?

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