ML STRATEGIES

Massachusetts Senate Releases Comprehensive Health Care Legislation

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On Tuesday, October 17, Massachusetts Senate leaders released comprehensive health care legislation containing a wide range of provisions significantly impacting industry stakeholders. The bill, titled "An Act Furthering Health Empowerment and Affordability by Leveraging Transformative Health Care," is the most sweeping health care legislation lawmakers have considered in years. It represents the latest in a series of proposals lawmakers and the Baker administration have made over the course of this legislative session aimed at lowering health care costs and improving the quality of care in the Commonwealth.

Below is a summary of notable provisions contained in the bill:

Pharmaceutical Drug Costs

The state has identified pharmaceutical drug costs as a significant driver of rising health care spending. The bill subjects drug manufacturers and pharmacy benefit managers (PBMs) to additional oversight from state agencies and authorizes an assessment to support this oversight:

- Pharmaceutical manufacturers and PBMs are required to report drug pricing information to the Health Policy Commission (HPC) and the Center for Health Information and Analysis (CHIA).
- A task force is established to investigate the impact to state agencies of joining a non-Medicaid, multistate prescription drug bulk purchase consortium.
- Drug companies and PBMs are required to provide early notice to the HPC of drugs expected to come on to the market.
- Pharmacists are required to inform consumers if a prescription's retail price is less than they would pay through insurance, and to charge them the lower price.
- Representatives of the pharmaceutical and PBM industries are added to the annual HPC Cost Trends hearing.
- The HPC is required to conduct an annual study of pharmaceutical manufacturing companies with certain drugs that may have a significant impact of state health expenditures.
- The HPC is authorized to establish an academic detailing program.

Hospitals

The bill aims to reduce unwarranted variation in prices among hospitals, out-of-network billing, and hospital readmissions:

- A target reimbursement rate is set for all hospitals, though no upper or lower limit is established. The bill creates a "Hospital Alignment and Review Council" composed of CHIA, HPC, and Division of Insurance officials tasked with reviewing the state's progress towards meeting the target. The council is granted the authority to regulate rates and penalize insurers and hospitals if the targets are not achieved.
- The HPC is directed to establish a statewide benchmark for reducing the rate of hospital readmissions; however, the bill requires the benchmark to be set at a rate of 20% for years 2017–2020. The HPC is required to identify providers with readmission rates above the benchmark and require those providers to submit performance improvement plans.
- Disincentives are provided targeting out-of-network billing. In particular, an upper limit is established for the non-contracted commercial rate for both emergency and non-emergency out-of-network services.

Masshealth

After rejecting the Masshealth reforms proposed by Governor Charlie Baker as part of the budget deliberations, the Senate proposes its own changes to the state's Medicaid agency:

- Employers whose workers qualify for Masshealth are permitted to coordinate with Masshealth to offer a Masshealth-similar type plan with costs assumed by the employer.
- Employers are required to provide the state with more information about employees who apply for Masshealth coverage.
- The Executive Office of Health and Human Services is required to enroll Masshealth-eligible consumers in the Executive Office of Elder Affairs home care program into the Masshealth Senior Care Options program.

- Masshealth is required to permit member access to urgent care facilities for emergency services without requiring a referral or prior authorization.
- Masshealth is permitted to claim expenditures necessary to establish mobile integrated health care programs as an allowable expenditure under the delivery system reform incentive program.
- Masshealth is required to submit a plan outlining the agency's method for collecting, maintaining, and sharing data with providers for the purposes of ensuring compliance with benchmarks associated with the Masshealth accountable care program.

Commercial Insurance Market Tiering

- Carriers are required to provide in at least two geographic areas at least one of the following plans: (i) a plan with a reduced or selective network of providers with at least a 19% premium discount; (ii) a plan that is tiered and member cost-sharing is based on the tier plan with at least a 19% discount; (iii) a plan where the premium varies based on the primary care provider selected at the time of enrollment; (iv) a plan with a separate cost sharing differential that is applied to shoppable health care services among the network of providers; or (v) a plan with reduced or eliminated cost-sharing differentials for high-value health care services.
- Providers are limited in their ability to opt out from a health insurance plan that establishes separate tiers for shoppable health care services.
- Carrier websites are required to conform to the uniform methodology for a provider's tier designation developed by CHIA.
- Insurance carriers are required to certify annually whether the carrier's coverage includes certain mental health home and community based services for children and adolescents under the age of 26.

Other Provisions

- The Massachusetts eHealth Institute is required to partner with the health care and technology community to accelerate the creation and adoption of digital health.
- EOHHS is directed to apply for a federal waiver of the Medicare hospital readmissions fine and to allow passive enrollment of persons eligible for Medicare into the MassHealth senior care options program.
- Insurers are required to directly pay an ambulance service provider regardless of whether the provider is in-network or not. Ambulance service providers are required to accept the default out-of-network rate. Municipal ambulance service providers are permitted to apply for a waiver of the default out-of-network rate.
- The Department of Public Health is permitted to establish application fees to be deposited into the Mobile Integrated Health Care Trust Fund.
- The HPC and other agencies are required to develop a "Health Care Trailblazer" designation. Health Care Trailblazers are organizations that have developed innovative practices that can be translated to similar organizations or impact the health care delivery system. The HPC is allowed to solicit health care payment and service reform ideas from Trailblazers for grants from the Healthcare Payment Reform Fund. Expenditures from the Distressed Hospital Trust Fund may support a provider in implementing innovations developed by a Trailblazer.
- Expands access to telemedicine. The bill requires telemedicine covered through the Group Insurance Commission and commercial health insurance plans to meet certain criteria and permits the Board of Registration in Medicine to allow physicians to obtain proxy credentialing and privileging for telemedicine services. The authorization lacks coverage parity, which has been implemented in the vast majority of states that allow the use of telemedicine.
- A certification process is created for mid-level dental therapists.
- A licensing procedure is established for behavioral health urgent care centers.
- The scopes of practice for nurse practitioners, podiatrists, optometrists, certified nurse anesthetists, and psychiatric clinical nurse specialists are expanded.
- The Prevention and Wellness Trust Fund is reauthorized.

Senate Ways and Means Committee Chairwoman Karen Spilka said that the Masshealth reforms would generate approximately $114 million in savings in the year FY2020. She also said that savings on the commercial and private side could total between $475 and $525 million.

The legislation is based on the recommendations made in **a report** released alongside the legislation that is the result of a year of research conducted by Senators in conjunction with the Millbank Memorial Fund on policies other states have adopted to curb rising health care costs.

A hearing on the legislation hosted by the newly created Special Senate Committee on Health Care Cost Containment & Reform has been scheduled for Monday, October 23 at 11:30 am. The Senate is expected to vote on the bill before the holiday recess begins on November 15. If the bill receives an endorsement from the full Senate, the debate would move to the House of Representatives, which would likely make significant changes.

Authors

Brian Dempsey

Julie Cox



Steven A. Baddour, Executive Vice President & Director of Operations

Steve Baddour is a seasoned strategist and former Massachusetts State Senator and Assistant Attorney General with over three decades of experience in law, government, and public policy. His innovative approach to lobbying helps clients turn obstacles into opportunities by crafting tailored solutions that get results where others stall.



Daniel J. Connelly, Senior Vice President and Compliance Officer

Dan Connelly is a lawyer and lobbyist with over two decades of experience guiding clients through the legislative, regulatory, and political landscape. In addition, he counsels clients on lobbying registration and disclosure requirements, offering tailored guidance in complex compliance environments.

Caitlin Beresin

Maxwell Fathy