The Hilltop Institute

analysis to advance the health of vulnerable populations

SCI Teleconference: Federal Health Reform Update

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UMBC

AN HONORS UNIVERSITY IN MARYLAND

Preview of Presentation

- Major Areas of House-Senate Agreement
- Minor Areas of House-Senate Disagreement
- Major Areas of House-Senate Disagreement
- Key Implications for States

Major Areas of House-Senate Agreement

Medicaid coverage

- Eligibility expansion to at least 133% FPL, beginning in 2013 or 2014
- Some form of maintenance of effort for eligibility beginning immediately

Insurance Market Reform

- Insurance market reforms (in 2010)
  - Community rating rules (both versions based on age; family size and NOT gender; Senate also permits based on tobacco)
  - Guarantee issue/pre-existing condition underwriting prohibition
  - No annual or lifetime benefit caps
  - No rescission
- National high-risk pool until exchange exists
- Children to at least 26 years on parent’s policy
- Medical-loss ratio of 85% for large group products

Individual Mandate

- Individual mandate effective 2014
- “Hardship” exemptions
- Requirement is to purchase benchmark product that offers “essential benefits”

Employer Mandate

- Large employers must offer coverage, or pay fine
- Small employers exempted from mandate

New Federal Savings

- Medicaid Rx rebates extended to MCOs
- Medicaid and Medicare DSH reduced
- Medicare Advantage savings

Dual Eligibles

- Creates a new “Center for Medicare and Medicaid Innovation” at CMS, which can approve 5 year demos to test many models of integration without a budget neutrality requirement
  - Federal reporting required
  - Evaluations required
- Extends SNPs

CLASS

- "Community Living Assistance Services and Supports" (CLASS) Act:
  - National, voluntary insurance program
  - Payroll deductions; requires opt-out
  - 5 year enrollment before vesting
  - If person becomes functionally impaired, cash payment of not less than $50/day for non-medical services and supports to stay in the community
  - Effective 2010 or 2011

Minor Areas of House-Senate Disagreement

Medicaid LTC

- Amend HCBS state plan option known as 1915i (Senate)
  - Allow financial eligibility to 300% SSI
  - Allow targeting of populations
  - Allow more than one
- Create “Community First Choice” option (Senate)
  - Enhanced FMAP (6%) for states that add attendant care to state plan
  - Sunsets after 5 years
  - Would apply to people meeting nursing facility level of care; must be statewide, all populations
- Mandate same spousal impoverishment rules in HCBS as NF (Senate)

Insurance Market Reform

- Children on parents' policy
  - House: to age 27
  - Senate: to age 26

Malpractice

- House: Incentive payments to states that enact medical malpractice reforms, provided the laws do not limit attorneys' fees or impose caps on plaintiffs' damages
- Senate: Award demonstration grants to create alternatives to lawsuits, such as patient safety programs and improved access for providers to liability insurance

Major Areas of House-Senate Disagreement

Medicaid coverage

- Maintenance of effort
  - House: All eligibility groups as of June 16, 2009
  - Senate: Children (until 2019); adults until exchange is operational
- Level of poverty
  - House: to 150%
  - Senate: to 133%

Other Medicaid

- FMAP for expansion populations
  - House: 100% for two years, then 91% thereafter
  - Senate: 100% for first three years, then 32.3% increase in base FMAP thereafter
- Primary care
  - House: phase-in rate increases to 100% Medicare over time
  - Senate: no such provision

Insurance Market Reform

- Community rating: age
  - House: spread from older/younger cannot exceed 2:1
  - Senate: spread from older/younger cannot exceed 3:1
- Community rating: tobacco
  - House: cannot rate based on tobacco use
  - Senate: spread from smoker/non-smoker cannot exceed 1.5:1
- Insurers' antitrust exemption:
  - House: repeals; only allows insurers to share historical loss data
  - Senate: retains

Individual Mandate

- Tax credits to 400% FPL
  - House: more generous to 300% FPL
  - Senate: more generous between 300-400% FPL
- Severity of penalty
  - House: 2.5% of income
  - Senate: low in 2014; by 2016, greater of $750/yr or 2% of income
- Young invincibles meet mandate:
  - House: no special product to meet mandate
  - Senate: such a product exists ("Catastrophic" coverage)

Employer Mandate

- Nature of sanction
  - House: Up to 8% of payroll (pay or play)
  - Senate: $750 per *all* employees, if one or more employees receive a credit through the exchange (i.e., between 133-400% FPL)
- Form of coverage
  - House: large employer's' benefit must meet federal benchmark (after five year grace period for transition)
  - Senate: no such requirement
- Small employer exemption:
  - House: payroll of $500,000 or less
  - Senate: 50 or fewer employees
- Definition of "employee" (to count the size of the group)
  - House: none (based on payroll $$)
  - Senate: 31 or more hours/week

Exchange

- Comparability
  - House: if an insurer offers a product inside the exchange, the same product must be available, at the same price, outside the exchange
  - Senate: no such provision
- Locus
  - House: national exchange
  - Senate: state exchanges (with federal back-up)
- Individual and small group markets
  - House: combined in national exchange
  - Senate: states may keep separate, or merge, at state discretion
- Undocumented aliens
  - House: could buy product through exchange with own funds
  - Senate: barred from participating
- Availability
  - House: eventually, larger groups allowed to use
  - Senate: limited to individuals and small groups forever

Public option

- House: a public option would be available as a choice in the exchange; it would be run by HHS, and it would negotiate provider rates

- Senate: no public option; the federal Office of Personnel Management (OPM) would contract with national carriers to offer a plan in every state’s exchange

Abortion coverage

- House:
  - Abortion coverage may not be included in the public option plan
  - Subsidies (150-400% FPL) may not be used to purchase any plan that includes elective abortions
- Senate:
  - Abortion coverage may be included in plans, but the person must pay separately (with own funds) for premium associated with this benefit

New Revenue

- "Cadillac" excise tax (in Senate)
  - 40% tax on benefits that exceed $8,500 for individual or $23,000 for family
- Tax income tax surcharge (in House)
  - New marginal rate of 5.4% on income above:
    - $500,000 for individual
    - $1 million for couple

New Revenue (con't)

- Medicare payroll tax rate increased for high earning individual (in Senate)
- New tax on health insurers (self-insured exempted) (in Senate)
- Various new taxes on manufacturers of medical devices (variations between House and Senate)

New savings

- Medicare Advantage
  - House: bring rates to parity with FFS (estimated savings: $170 billion)
  - Senate: require competitive bidding (estimated savings: $120 billion)
- Both versions have quality bonus

CHIP

- Whither CHIP?
  - House: Repeals; children below 150% FPL would get Medicaid; children 150% FPL and up would get coverage through exchange
  - Senate: Retains CHIP; if a state hits its allotment cap, “overflow” children would get tax credits to buy coverage in exchange

Medicare Part D Doughnut Hole

- House: Phase out by 2019 (revenue from Rx rebates)
- Senate: Drug manufacturers must give 50% discount on drugs purchased in the doughnut hole

Medicare Payment Reform

- House: Study implications in regional variation in payment
- Senate: Establish new, Independent Payment Advisory Board (IPAB) that could reduce payments in expedited fashion (with limited Congressional intervention or amendment, ala Base Realignment and Closure process)

Key Implications for States

Preview of Selected Potential Implications

- Medicaid Eligibility
- Other Medicaid
- Exchange
- Insurance Code
- Insurance Programs
- Public Option
- IT Implications
- Long-Term Care and Dual Eligibles

Medicaid Eligibility

- Substantial increase in enrollment
  - Eligibility caseworkers and staff needed
  - Expansion of all internal infrastructure (provider enrollment, program administration, fair hearings, call centers, etc.)
  - Amendments to various existing contracts (managed care organizations, actuaries, U/R agents, etc.)
- Eligibility MOE as of date of enactment

Other Medicaid

- Financing of “expansion” eligibles to require state match (at better rate than usual FMAP, but still)
- Wraparound Medicaid services for people eligible to secure products in Exchange (e.g., SFC version would guarantee Medicaid benefits to 133% FPL, but let people from 100-133% get Exchange product with wraparound Medicaid)
- Screening and enrolling for other state-administered programs (e.g., food stamps)
- Family planning program permitted without waiver
- Anticipate demands from providers for fee increases as volume increases
- Medicaid Rx rebates to apply inside capitated managed care

Exchange

- If state-administered, need to establish Exchange
  - Create organization
  - Contract with eligible health plans
  - Establish basic benefits and cost sharing
  - Outreach
  - Web portals; plan comparisons
  - Enrollment process; rosters
- Eligibility process needed to calculate whether people qualify for subsidies, and amount of subsidies
- Data link to Medicaid, to screen and enroll eligibles into and to handle transitions as incomes rise and fall
- Risk of high risk pool death spiral, due to (a) people getting hardship exceptions from individual mandate or (b) choosing to pay fine

Insurance Code

- Adopt new community rating rules that conform with federal reform
- Adopt new insurance reforms (annual and lifetime caps; rescission prohibition; guarantee issue and renewability; pre-existing condition prohibition; dependents to at least age 26)
- Mandated benefit laws that exceed federal benchmarks: applicable only to non-exchange products? Pre-empted? Need to be modified?
- Interstate sales compact allowed and approved? Implications on products and consumer rights.
  - A federal benefit floor may mitigate the risk of “skinny” policies being sold in states with extensive mandated benefits.
  - Yet, the legislation might not address consumer protection issues.

Insurance Code (con't)

- Possibly revise insurance code or tax code to reduce or unwind various assessments and fees on commercial insurance products (used to subsidize those state-run high-risk and small employer pools)

Insurance Programs

- Short-term: new national high-risk pool likely to affect enrollment in existing state-based high-risk pools
- Unwind (or integrate into exchange) existing state-subsidized insurance pools (e.g. small employer)?
- High likelihood of new selection dynamics, such as:
  - House version: drop existing coverage to come into exchange
  - Senate version:
    - Individuals or groups select OPM plan inside exchange, which may be less expensive than other exchange-based products because it is exempt from stricter state insurance codes
    - Insurers offer different products inside and outside exchange, to segment market
    - Insurers price individual and small group products to segment risk

IT Implications

- Creation of new eligibility category in eligibility system
- Tracking of various eligibles, by eligibility category, for FMAP reporting
- Interface between Medicaid eligibility system and Exchange-subsidy system
- Maybe some link to other programs for which a person might qualify (e.g., food stamps)

Long-Term Care and Dual Eligibles

- Changes in Medicare Advantage will have implications to dual eligible programs
- Newly-available dual eligible waivers
- HCBS reforms (in Senate version)
- Enhanced FMAP for new HCBS?

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