

Legal Trends under the Affordable Care Act

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Michigan Society of Healthcare Planning & Marketing

Litigating the Cost of Health Care

- ☐ Consumer premium/cost subsidies and tax reform
- ☐ Consumers and out-of-pocket protectionism
- ☐ Monopolies, market power, cost efficiencies and quality enhancements
- ☐ Medicaid expansion

The Court Has Spoken

Constitutional Mandate (*NFIB v. Sebelius*, 2012)

Commerce Clause

States' Rights

Religious Conscience (*Hobby Lobby v. Burwell*, 2014)

Testing the Limits

Constitutional Authority (*King v. Burwell*, 2015)

Administrative Interpretations

Congressional Authority (*U. S. House of Reps v. Burwell*, 2015)

Commerce Clause

Competition

Is the ACA Driving Competition?



CIGNA

Anthem[®]

BlueCross BlueShield



Aetna[®]

Humana[®]



Affordable Care Act: Stakeholder Perspective, Lessons Learned and Future Issues

Rhonda Fossitt, CPCU
Senior Deputy Director
September 25, 2015

DIFS: Who We Are

The Department of Insurance and Financial Services (DIFS) regulates Michigan's insurance and financial industry.

We are fee-funded by industry and do not require public tax dollars to operate.

DIFS Role in the Affordable Care Act

- Consumer Assistance & Outreach
- Plan Management



**Health Insurance
Got You Confused?**



We can help.



michigan.gov/HICAP

DIFS Health Insurance Consumer Assistance Program (HICAP) can help you:

- Find out about your coverage options
- Learn about your rights under ACA
- Resolve a complaint against an insurer
- Appeal a denial of service or treatment



DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Federal-State Partnership

Michigan provides:

Plan
Management

Federal-State Partnership

DIFS – Plan Management Responsibilities

Federally
Supported
Website

Plan Management
Partnership
Components

Plan Management Partnership Components

- Builds on the traditional state role to regulate insurance market
- HHS uses DIFS' expertise to efficiently operate functions of the Exchange
- DIFS certifies plans for the Exchange with federal oversight
- DIFS is an effective review state and has authority to approve/disapprove rates

Plan Management

- Licensure and Accreditation
- Network Adequacy
- Forms
- Rates

2016 Marketplace Certification Individual Market

- 21 Issuers
- 256 Qualified Health Plans
- On and Off Marketplace

2016 Marketplace Certification Small Group Market

- 22 Issuers
- 771 Qualified Health Plans
- On and Off Marketplace

Lessons Learned

- Federal Government Issues
 - Not timely with information
 - Policies & Procedures change annually
 - Constant turnover of staff
 - Multiple federal agencies involved & don't communicate with each other
 - Political landscape affects policy
 - Troubleshooting on individual policy issues is cumbersome & slow

Lessons Learned

- DIFS Addresses By:
 - Putting out our own Bulletins to the Industry
 - Communicate regularly with the Industry
 - Participate in weekly calls & quarterly meetings with NAIC to review issues
 - Share perspectives with Industry & NAIC
 - Advocate on consumer's behalf when caught in troubleshooting loop

Future Issues

- Political Landscape (election year, new president)
- Preventive Services
 - Constantly evolving by design
- Legislative Changes
- Push for More Comprehensive Benefits Without Rate Increases
- Consumers lack of understanding of Narrow Networks

Small Business Association of Michigan

- ▶ Only statewide and state-based association serving the needs of the Michigan small business community
- ▶ 24,000+ diverse small business members ranging in size from 1 - 500 employees in every industry
- ▶ On behalf of our members, we promote entrepreneurship, leverage buying power and engage in political advocacy
- ▶ www.sbam.org



Advocacy Update: Affordable Care Act - Where do we go now?

- ▶ Political landscape: Repeal vs reform
- ▶ Greater State Flexibility: 2nd Medicaid Waiver
- ▶ Potential waivers in the future?
- ▶ Growing cost of Medicaid expansion: Demonstrated savings?
- ▶ Small Business Wellness Challenge



Advocacy Update: Health Care Cost Containment

- ▶ Scope of Practice
- ▶ Certificate of Need
- ▶ Health Endowment Fund



Changing Landscape

- ▶ Consolidations and the ability to set cost
- ▶ Pharmaceutical costs
- ▶ Long-term care and demographic shifts



ACA & Health Care Reform Perspectives

MSHPM Fall Conference
September 25, 2015

RICHARD DOUGLASS
AARP – MI EXECUTIVE COUNCIL

Introduction

- AARP Constituency
- My perspectives
 - Academic
 - Advocacy

ACA Highlights To Date

- Expanded Medicaid
- Increased individual insurance coverage
- Reduced bad debt to hospitals and other providers due to reduced medical indigence
- Increased fiscal opportunity to innovate, expand, and improve the infrastructure

Issues of Specific Importance

- A. Cumulative burden of chronicity
- B. The near-old, working poor (50-64 y.o.)
- C. Boomers not old / chronically sick enough yet to inform us of their health care needs
- D. Redundancy of plans: Spousal employer-based insurance with Medicare
- E. Rural insurance improvement limited if physicians won't locate in rural areas

Issues of Specific Importance

- F. Consumer education must be ongoing, up-to-date, and credible
- G. Encourage the policy makers to use the national “natural experiment” to measure effectiveness of quality, cost, adequacy, availability, efficiency, fairness, and other metrics with the quality-based data that is being collected, by state or even by census tract, for the first time.

Beaumont

Lessons Learned and the Future Impact of the ACA

MSHPM Fall Conference

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About Me...

- Vice President, Planning, Beaumont Health
- 15+ Years Healthcare Experience
- MBA-Leadership Studies
- BBA--Marketing
- Fellow, American College of Healthcare Executives (ACHE)
- Member, Midwest Chapter of the American College of Healthcare Executives (MCACHE)
- Member, Society for Healthcare Strategy & Marketing Development (SHSMD)
- Member, Michigan Society for Healthcare Planning & Marketing (MSHPPM)

About Beaumont Health...

- Beaumont + Botsford + Oakwood
- Officially Formed September 1, 2014
- 8 Hospitals
- 160+ Outpatient Sites
- 5,000 Physicians
- 35,000 Employees
- 3,500 Volunteers

Lessons Learned – Drivers of Change

Macro Changes		Impact on Providers
1. Aging population, more susceptible to complex and chronic illnesses, increasingly insured in the (lower paying) government sector		<ul style="list-style-type: none">• Increased pressure for efficient episodes of complex care• Gradual price compression
2. Confluence of higher deductibles with technology-enabled price transparency for low acuity/elective procedures		<ul style="list-style-type: none">• Price elasticity of demand for low acuity services• Premium low cost/easy access for routine care
3. Technology accelerating migration from inpatient to outpatient settings while introducing expensive diagnostic/treatment modalities		<ul style="list-style-type: none">• Threat of vacant inpatient capacity• Difficulty recouping outpatient investments in an increasingly price-sensitive market
4. A move from strictly volume-based reimbursement toward value-based payment methodologies		<ul style="list-style-type: none">• Increased risk of payment reductions for performance shortfalls• Prospective (e.g. bundled) payments penalize avoidable variation
5. Provider consolidation via mergers, acquisitions and alliances with persistent, avoidable variation in care processes		<ul style="list-style-type: none">• Unrealized economies of scale and service line consolidation• Pressure to increase adherence to evidence-based standards

Challenges

- Volume based reality to a value based future
- Shrinking utilization
- Shifting payor mix
- Reimbursement reductions
- Patients becoming consumers
- Rising bad Debt
- Increasing Regulatory burdens
- Emergence of new competition

Future Impact

- Align the cost model - Consolidation
 - Reimbursement reductions
 - Expanded access, Shifting payor mix
- Investments in Technology – Disruptive innovator
 - Better Outcomes, accelerating migration from Hospitals to Ambulatory centers
 - Consumer facing - Access, Convenience, Choice, Transparency
 - Big Data focus for Population Health
- Clinical alignment for value based care – Population Health Management
 - Wellness focus with shared incentives