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MTF Session Preview: Health Care

Notwithstanding action on several important health issues during the previous legislative session, health care remains poised to be a central issue for the Massachusetts legislature in 2023 and beyond. This session, unfinished business on pharmaceuticals, market regulation, and other items could come to the forefront, along with implementation of the new mental health law. Additionally, while many Massachusetts residents have moved on from the COVID pandemic, the health care sector continues to deal with its long-term impacts, as well as growing pressure due to workforce shortages and from increasing caseloads of other respiratory illness, especially among children. Legislative leaders will also be working with a new Governor with a strong history of health care oversight, which could bring additional health care issues to the foreground.

This health care preview summarizes key legislative activities from last session, outlines the larger policy environment, and poses several questions policymakers will need to answer in the upcoming legislative session.

Background

Massachusetts has long been a leader in health care reform. With nearly universal health insurance coverage among residents[1], in recent years, legislative efforts have focused on improvements to the market that would lower costs and improve access to care. Prior to the onset of the COVID pandemic, Governor Baker's health care agenda focused largely on legislation to increase spending on primary care and mental and behavioral health care by 30 percent over three years. If enacted, this requirement would have existed alongside the state's existing cost growth benchmark, requiring insurers and providers to reduce costs elsewhere to remain below the benchmark. In 2020, legislative attention turned to the pandemic response. In 2022, the Governor refiled and urged the legislature to take up his legislation, but legislative leaders opted to pursue their own health care priorities.

Though legislative leaders shared many of Governor Baker's interests, especially in improving mental health care, focus in 2020 and 2021 remained largely on COVID response. As federal COVID relief funds came to the state, legislators and administration officials worked to ensure the health care system could meet the needs of increasing numbers of COVID patients and provide access to tests and vaccines across the Commonwealth. Looking ahead, while the state has not left

[1] In 2021, uninsurance rate in Massachusetts was 2.4%. CHIA. https://www.chiamass.gov/massachusetts-health-insurance-survey/

the COVID pandemic entirely behind, we can expect a renewed focus on more traditional health care reform issues, colored by the lessons learned from the pandemic response.

Key Policy Actions, 2021-22

Mental Health – At the end of the last legislative session, both the House and Senate passed, and the Governor signed into law, the Mental Health Addressing Barriers to Care (ABC) Act. A Senate priority, this law includes a variety of reforms that aim to improve access to mental and behavioral health services. Key provisions include:

- Requiring health insurance coverage for an annual mental health wellness exam;
- Improving enforcement of mental health parity laws (which require health insurers to provide comparable coverage of mental and physical health services);
- Addressing the emergency department boarding crisis by providing real time data on available beds;
- Improving reimbursement for mental health providers to be on par with primary care providers;
- Creating an Office of Behavioral Health Promotion within the Executive Office of Health and Human Services, and more.

Implementation of these myriad new requirements will be a key task for the incoming administration, as the post-COVID behavioral health crisis continues to have considerable impact on Massachusetts residents and the health care system.

Pharmaceutical Cost and Oversight – A Senate priority that failed to advance in the prior session was pharmaceutical reform legislation. Passed in February 2022 by the Senate, the Pharmaceutical Access, Cost, and Transparency (PACT) Act aimed to reduce drug costs for consumers by capping the cost of insulin at $25 a month, requiring state licensure of pharmacy benefit managers (PBMs) and specialty pharmacies, and providing the Health Policy Commission with new authority over new drugs coming to market and significant price increases for existing drugs. Despite the Commonwealth's high insurance coverage rate, the out-of-pocket costs associated with prescription drugs are a consistent area of concern, especially for residents of color and low-income residents.

The Senate's pharmaceutical legislation did not advance in the House last session, but there was action at the federal level. As part of the Inflation Reduction Act, the federal government is now authorized to begin negotiating the prices of some drugs covered under Medicare Parts B and D beginning in 2026, drug companies will be required to pay rebates to Medicare if prices rise faster than inflation, out-of-pocket spending will be capped for Medicare Part D enrollees starting in 2024, and insulin cost sharing for Medicare beneficiaries will be capped at $35 a month.

Health Care Market Regulation – In the House, Speaker Mariano led on legislation to expand the Health Policy Commission's authority to conduct cost and market impact reviews by changing the criteria the Commission uses to determine whether a health care provider's expansion plan

would impact the Commonwealth's ability to meet the health care cost growth benchmark. The bill also:

- Directed the state's health planning council to develop a state health plan that lays out the Commonwealth's anticipated health care needs, existing health care resources, and the projected resources required to meet future needs;
- Required the Department of Public Health (DPH) to use the state health plan to guide its decisions related to Determinations of Need (DoN), the process by which DPH reviews applications by health care providers to substantially change their services or make significant capital expenditures; and
- Required DoN applications that overlap with the service areas of existing community hospitals to include a letter of support from the community hospital's CEO and board chair.

After passing the House in November of 2021, this bill did not advance any further and was never signed into law.

Step Therapy – One piece of health care legislation that did make it to the Governor's desk during last year's informal session was legislation to restrict the use of step therapy. Step therapy is a practice used by health insurance companies to require some patients to demonstrate lack of effectiveness of one course of treatment before trying a costlier alternative. The new law prohibits insurance carriers from requiring beneficiaries to use medications that are not likely to be clinically effective, and establishes a clear process for patients to seek exceptions and appeal insurer decisions. The final bill requires insurers to respond to appeals within three business days, or within 24 hours for emergencies.

COVID Pandemic Response – In response to the pandemic, the state legislature has also acted twice to provide relief funding to the health care sector. Governor Baker signed the first COVID relief bill into law in December 2021, which included $4 billion of spending to support broad economic recovery efforts. For the health care sector, the bill included:

- $400 million for addiction and behavioral health services and workforce supports;
- $260 million for financially distressed hospitals;
- $200.1 million for local and regional public health; and
- $50 million for nursing facilities to be used for workforce retention, loan repayment, recruitment, and capital improvements.

In November 2022, Governor Baker signed a $3.76 billion economic development bill into law which included spending of additional federal COVID relief dollars. For the health care sector, the bill included:

- $350 million of for fiscally strained hospitals;
- $225 million for human service rate costs;
- $200 million for the state's ongoing COVID response;
- $165 million for nursing facility rates and supplemental payments;
- $80 million for community health centers;
- $30 million for rest home equipment costs and rates; and

- $17.5 million to support access to reproductive care and family planning services.

Reproductive Rights Protections – In July 2022, in response to the Supreme Court's decision in Dobbs vs. Jackson Women's Health Organization, which states that the Constitution of the United States does not confer the right to an abortion, Governor Baker signed into law An Act Expanding Protections for Reproductive and Gender-Affirming Care. This law prohibits the Massachusetts executive branch from assisting other state investigations into persons or entities for receiving or delivering health care services that are legal in Massachusetts. The law also protects Massachusetts providers from licensure or other disciplinary consequences based on charges from other states. It also expanded access to health insurance coverage for abortion and emergency contraception. Due to the actions of other states to severely restrict or eliminate access to abortion altogether, Massachusetts and other states are expected to have increases in out of state patients seeking abortion care.

Policy Context

Several factors will affect how policymakers approach health care issues in the coming session:

Medicaid 1115 Waiver

In September 2022, the Centers for Medicare & Medicaid Services approved Massachusetts' Section 1115 Medicaid Waiver, which allows the Commonwealth to make changes to the way it operates MassHealth. The five-year, $67 billion agreement builds on prior waivers to continue and bolster the state's Accountable Care Organizations (ACOs), which provide integrated, value-based care to MassHealth members.

Notable elements of the waiver include:

- Providing a path for new investments in primary care, behavioral health, and pediatric services, including a $43 million investment in loan repayment and residency training programs with the goal of strengthening and diversifying the health care workforce.
- Making it easier for vulnerable residents to access and maintain MassHealth coverage by creating a simplified process for adults with disabilities to enroll, introducing 3-month retroactive eligibility for pregnant individuals and children, and allowing at least 12 months of continuous eligibility for those experiencing homelessness or who have been recently released from a correctional facility.
- Creating a new $2 billion initiative that will hold ACOs and ACO-participating hospitals accountable for reducing health disparities. This initiative will require hospitals and ACOs to improve their data collection and reporting on demographic factors and implement interventions to improve quality and access. These entities will be eligible to receive incentive payments for successfully reducing disparities.

Many of these new investments can be made due to significant changes to the hospital assessment in the FY 2023 state budget, including more than doubling the assessment amount to $880 million. Importantly, the assessment dollars collected are eligible for federal matching payments, significantly increasing the total revenue available to make investments in health equity and clinical quality incentive payments and improving payment rates for acute hospital services. The

budget also made changes to the hospital assessment structure, dividing hospitals into five groups based on their share of commercially insured patients, with each group paying an assigned rate.

Ongoing COVID Recovery and Response

While many have embraced the "new normal" of life since the beginning of the COVID pandemic, health care providers and insurers continue to deal with the ongoing impacts. COVID has reshaped our health care system in a number of ways, and much of the way it currently operates relies on flexibilities put in place in response to COVID.

Federal Public Health Emergency (PHE)

The Biden Administration most recently renewed the COVID PHE on January 11, 2023 and later that month announced that the administration plans to terminate the PHE effective May 11, 2023. The end of the PHE will mean the end to a number of policies put in place to support the pandemic response. However, many policies will continue, at least temporarily, due to Congressional action. For example, pursuant to the PHE declaration, the Centers for Medicare & Medicaid Services made health care services provided via telehealth broadly available to Medicare beneficiaries. Prior to the PHE, coverage for telehealth services was severely limited, and beneficiaries had to meet strict geographic and originating site requirements to be eligible. Most of these flexibilities will remain in place until the end of 2024 due to an extension provided by Congress in the FY 2023 omnibus appropriations bill. It would take additional Congressional action to make these flexibilities permanent. Policies that are currently set to expire on May 11 include the requirement that health insurers cover COVID tests and treatments with no cost-sharing, telehealth prescribing of controlled substances, and enhanced Medicare reimbursement for the treatment of people hospitalized with COVID.

Of particular importance to the Commonwealth's fiscal picture is the 6.2 percentage point increase in the federal match rate for Medicaid payments, which was passed alongside a maintenance of effort and continuous coverage requirement for the Medicaid program pursuant to the PHE declaration. As part of the FY 2023 omnibus appropriations bill passed by Congress at the end of 2022, states will be allowed to begin to redetermine who is eligible for Medicaid in April 2023, regardless of the status of the public health emergency declaration. The enhanced federal match will be phased down over the course of 2023. Also of note, children will continue to be eligible for Medicaid coverage regardless of the redeterminations process for one year beginning in April.

State Telehealth Actions

For those who are insured via most employer-sponsored coverage or MassHealth, access to telehealth is governed by state law and regulations. The Massachusetts legislature passed Chapter 260 in late 2020, requiring insurance companies to provide coverage for telehealth services. The law also provided permanent payment parity for in-person and telehealth behavioral health services, and two years of payment parity for in-person and virtual primary care and chronic care management services. As of the start of 2023, the state's Division of Insurance has still not issued final implementing regulations for the state's telehealth law, leaving providers and insurers to act based on their best interpretation of the statute. Currently, the Division of Insurance requires health

insurance carriers that want to amend their telehealth reimbursement policies to submit implementation plans for review by the Division. Both patients and providers have expressed high satisfaction with the use of telehealth since the onset of the pandemic, but future reductions in reimbursement could cause a shift toward more in person care.

Health Care Workforce

A recent report from the Massachusetts Health & Hospital Association found that there are an estimated 19,000 open positions at Massachusetts' acute care hospitals.[2] The COVID pandemic had far reaching impacts on workers across the country, but the disruption to the health care workforce is both unique and persistent. Working in the high-stress environment has led to intense levels of burnout across the sector, with many workers leaving the health care field altogether. This has resulted in health care access issues in the Commonwealth. Perhaps most notably amidst the ongoing mental health crisis, nearly 20 percent of inpatient psychiatric beds in Massachusetts are not currently available to patients because there are not enough workers. Additionally, health care organizations are facing intense financial pressures from lack of available staff, often needing to employ highly compensated temporary and traveling professionals, especially nurses, to meet patient needs. Another recent report from the Blue Cross Blue Shield of Massachusetts Foundation and Manatt identified "mitigating critical health care workforce shortages" as one of five key health care priorities for the new administration and legislative leaders.[3] This report spotlights the need to bolster the long-term services and supports and behavioral health workforce, including through ensuring these workers are paid a living wage.

Key Questions for the Upcoming Session

What is the plan to address the health care workforce crisis?

A shortage of health care professionals in a variety of fields results in higher costs and worsening access and quality. Solving the workforce problem cannot happen overnight, but several immediate strategies are required. First, the state needs to create a coordinated pipeline for health care positions that do not require post-secondary training. Some of the biggest needs for staff are in home health aide and medical tech positions. Investing in scalable training programs for these types of positions is an important step in addressing long-term shortages. In the near-term, the state also needs to reassess scope of practice limitations and requirements for out of state medical professionals to receive Massachusetts licensure. The state has to reduce all unnecessary hurdles to maximize its potential health care workforce now.

What is next for health care reform in Massachusetts?

Prior to the pandemic, two landmark pieces of health care legislation had borne fruit in maximizing health care access and limiting health care cost growth to under 3.6 percent annually, between FY 2013 and FY 2019. The pandemic upended the state's health care system and continues to send

[2] https://mhalink.informz.net/mhalink/data/images/An%20Acute%20Crisis%20-%20MHA%20Workforce%20Report.pdf

[3] https://www.bluecrossmafoundation.org/sites/g/files/csphws2101/files/2022-12/HealthCarePriorities_Dec22_v03_FINAL.pdf

shockwaves that have taken the state backwards in terms of both access and cost. The question is how to proceed?

In the last session, there was a consensus among policymakers that provider financial subsidies were necessary in the near-term, but little else was agreed and each branch pursued a different strategy. Governor Baker continued to focus on shifting spending toward primary care and behavioral health and away from other areas. The Senate aggressively pursued limiting cost growth related to pharmaceuticals, while the House focused on the health care impacts of system expansion. Entering the new session, there is no real starting point for the next round of reform, but growing realization that action is necessary to prevent system closures and spiraling costs.

What are Governor Healey's health care priorities?

Governor Healey created a transition committee titled "Safe and Healthy Communities for All Ages" which examined policies to "build safe communities and increase access to critical community health resources, including mental health supports and substance use recovery services," but the new Governor has not tipped her hand as to specific health care priorities. If her time as Attorney General is any guide, it is likely that health inequities in communities of color and improving access to mental and behavioral health care will be an early focus. As MTF has documented, the health disparities have a huge cost to Massachusetts residents and the larger economy. MTF has also put forward a plan to better track those health disparities to inform policy action.

How will health equity be prioritized?

Since the racial reckoning that began in 2020, health equity has been touted by leaders across the Commonwealth and the nation as a key priority. Racial inequities in health status, access to health care, and the social determinants that underlie health have real consequences for individuals, as well as the state's health care system.

To close this gap, MTF published a report recommending improved data collection and reporting requirements across health agencies to ensure inequities are identified and addressed. Late last year, the Baker administration released its health equity measure accountability framework and a set of data standards for use by all payers and providers across the Commonwealth.

A new gubernatorial administration and legislature presents an opportunity for re-centering health equity and ensuring that legislation on health care and related social issues puts equity front and center. Governor Healey has stated that she will direct every state government agency to conduct a "full equity audit," but what may be done with that information and how it may compete with other pressing priorities in the health care space remains a question.

Where do last session's unfinished health care bills go from here?

Two major health care bills, the Senate's drug cost bill and the House's system oversight bill, stalled without any action in one branch last session. Both issues will remain leadership priorities in the new session, but these issues could emerge in a different form in the next two years.

In order to bridge the gap between the chambers' differing priorities, it could be time for the House and Senate to return to omnibus health care legislation. In the last two sessions, both the House and Senate moved away omnibus bills and instead passed targeted legislation designed to address thematically linked topics. This approach has had success (i.e., the Mental Health ABC Act), but makes it difficult to make any progress in areas where there is not broad consensus on how to move forward. An omnibus bill could create a way to forge compromise on differing House and Senate priorities.

Any such approach would likely need buy-in from the health care sector, but a broader approach that provides benefits would likely also require sacrifices from insurers, providers, and pharmaceutical companies. Omnibus bills can incorporate an array of provisions that make the most meaningful change and allow for the widest variety of compromises.