

Special Commission on Provider Price Variation

November 29, 2016

Agenda

- ▶ Welcome
- ▶ Subcommittee Updates
- ▶ Presentation: Professor Gwendolyn Roberts Majette
- ▶ Discussion
- ▶ Next Steps

Presentation

Health Care Contracting & Market Forces

Gwendolyn Roberts Majette, JD, LLM
Associate Professor
Cleveland-Marshall College of Law
Center for Health Law & Policy



Review of Payer/Provider Contracts

▶ Division of Insurance*

- ▶ If a carrier intends to pay “similarly situated” providers different rates, the carrier must provide a detailed description of the bases for the different rates, with reference to 1) quality of care delivered; 2) mix of patients; 3) geographic location at which care is provided; and 4) intensity of services provided.” (211 CMR 66.09(3)(1)) [Small Group Health Insurance]

▶ Office of the Attorney General

- ▶ The attorney general may require a provider to produce documents, answer interrogatories, and provide testimony under oath about health care costs and cost trends in the Commonwealth. (M.G.L. Ch. 12 Section 11N)

*The Division of Insurance also regulates premiums, plan surplus, network adequacy and ensures plans are financially stable.

Separate (“Component”) Contracting

- ▶ Separate (component) contracting: Provider locations within a multi-location health care system negotiate with insurers individually and independently.
- ▶ Elements required for separate contracting:
 - ▶ Separate provider negotiating teams: Each provider location has its own team to negotiate contracts with insurers.
 - ▶ Firewalls: Negotiating teams cannot share confidential information among themselves (i.e., terms and conditions of individual contracts).
 - ▶ Insurer chooses in-network provider location(s): Insurer contracts with any or all provider locations within the health system.

Component Contracting - Considerations

- ▶ **Operational/administrative**
 - ▶ Some providers have indicated that it would be administratively burdensome to establish separate contracting teams.
- ▶ **Rules and regulations**
 - ▶ Which entity(ies) would enforce the law and how?
- ▶ **Clinical and financial integration**
 - ▶ Consider definitions of components (i.e. hospitals, ACOs).
 - ▶ Should there be an exception for a tightly-integrated group of providers?

Out-of-Network Billing

- ▶ **Out-of-network bill:** Charge arising when an insured individual receives care from an out-of-network provider.*
- ▶ **Regulating out-of-network billing may:**
 - ▶ Reduce impact on payers who have full or partial hold-harmless policies
 - ▶ Facilitate the creation and uptake of limited- and tiered-network products
- ▶ **BCBS and others suggest a three-pronged solution:**
 - ▶ Default rate for out-of-network services
 - ▶ Consumer notice and price transparency
 - ▶ Protection from balance-billing

*Kaiser Family Foundation, *Surprise Medical Bills* (Mar. 2016).

Review of Current & Proposed Provider/Provider Contracts

- ▶ In Massachusetts, several entities review current and proposed provider/provider contracts.
- ▶ Health Policy Commission
 - ▶ Registration of Provider Organizations
 - ▶ Material Change Notice & Cost and Market Impact Review
- ▶ Office of the Attorney General
 - ▶ May investigate providers referred to it by the Health Policy Commission, following a Cost and Market Impact Review.

Enhance the Material Change Notice/Cost and Market Impact Review Process

- ▶ Under current law, a provider/provider organization must submit a **notice of material change (MCN)** to the Health Policy Commission (HPC).
- ▶ HPC may choose to conduct a **cost and market impact review (CMIR)**.
- ▶ HPC may refer the final CMIR report to the Attorney General's Office (AGO).

MCN/CMIR Process (cont.)

Stakeholders have suggested various ways to enhance the MCN/CMIR process. For example:

- ▶ Apply the law to additional providers/provider organizations
- ▶ Additional/more stringent standards regarding how HPC approves the material change and conducts the CMIR
- ▶ Additional/more stringent standards regarding CMIR referrals and legal proceedings
 - ▶ Ex: Additional criteria under which HPC *must* refer a CMIR
 - ▶ Ex: CMIR must be given evidentiary weight in an action to halt the material change.
 - ▶ Ex: The proposed material change cannot move forward while legal action is pending.
- ▶ State monitoring, following approval of the material change

Acquisitions & Mergers of/by Physician Organizations

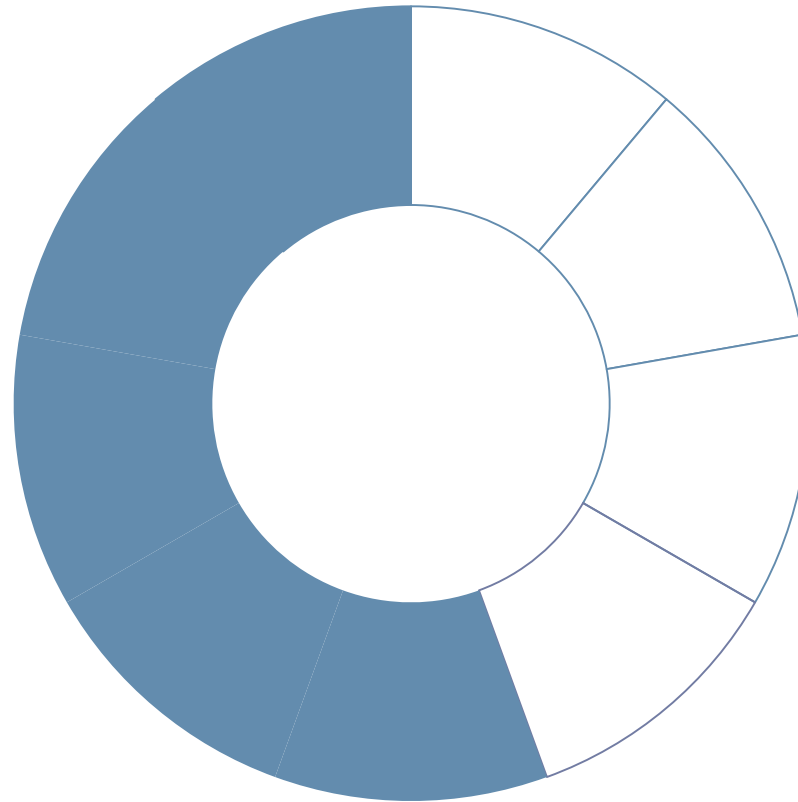
- ▶ There has been an increase in physician organization (PO) consolidations.
- ▶ There is concern that the state does not adequately monitor or regulate PO acquisitions and mergers.
- ▶ Proposed solutions include:
 - ▶ Regulating physician rates and/or regulating growth in physician rates, following PO acquisition by a higher-priced provider
 - ▶ Reporting to the state
 - ▶ Ex: MCN/CMIR process for lower-revenue PO mergers
 - ▶ Prohibiting certain facility fees

Next Steps

- ▶ Upcoming Commission Meeting
 - ▶ December 13, 2016
 - ▶ 11:00am – 2:00pm at State House, Room 428

- ▶ Upcoming Subcommittee Meetings
 - ▶ Market Forces Subcommittee
 - ▶ December 6, 2016
 - ▶ 11:00am, location TBD
 - ▶ Transparency Subcommittee
 - ▶ December 15, 2016
 - ▶ 11:00am, location TBD
 - ▶ Market Forces Subcommittee
 - ▶ January 5, 2017
 - ▶ 11:00am, location TBD

The Commission's Report is due in...



106
days

5
meetings

6
subcommittee
meetings