Minutes

Market Stability Workgroup

Date of Meeting: May 15, 2018
Meeting Time: 8:00 am
Meeting Location: Institute for the Study and Practice of Nonviolence
265 Oxford St
Providence, RI 02905

Workgroup Members Present: Cristina Amedeo, David Burnett (on behalf of Peter Marino), Al Charbonneau, Ralph Coppola, Rosemarie Day, Jane Hayward, Peter Hollmann, Kim Keck, Chairman Joshua Miller, Janet Raymond, Samuel Salganik, Susan Storti, Teresa Paiva-Weed, Larry Warner, Bill Wray (co-chair)

Workgroup Members Absent: Mia Ackerman, Stephen Boyle (co-chair), Gayle Goldin, Joseph McNamara

Minutes

I. **Meeting was called to order** at 8:08am by Co-Chair Bill Wray.

II. **Minutes** from the May 8, 2018 meeting were approved unanimously.

III. **Opening Remarks/Feedback**

a. Co-Chair Bill Wray explained that the purpose of the meeting is to discuss the components of an individual responsibility provision (IRP) and how it could be implemented at the state level.

b. Rosemarie Day gave an update on the action items from last week's meeting. She said that two draft bills have been provided to the legislature; one addressing reinsurance and the other addressing Short-Term Limited Duration (STLD) plan regulation.

c. Rosemarie Day reviewed the topics for the remaining three meetings. She mentioned that the Workgroup is making a slight adjustment to the topic for next week's meeting because the insurance rates required to facilitate the presentation are not available yet. Rosemarie said that next week's meeting will instead focus on discussing the best market stability policies for RI.

d. Commissioner Marie Ganim gave an overview of the two draft bills that were provided to the state legislature last week. She said the first draft bill imposes new limitations on STLD plans. The second authorizes HealthSource RI to apply for a 1332 Waiver and implement a reinsurance program in RI, contingent on state funding and approval of the 1332 Waiver. Chairman Joshua Miller said he expected the two draft bills to be introduced today.
e. Co-Chair Bill Wray introduced the speakers for the day. He said that Jason Levitis would present first, followed by John Cucco.

IV. **Building a mandate and shared responsibility payment**

a. Jason Levitis introduced himself. He said that he is a principal at Levitis Strategies LLC, a healthcare consultancy focusing on the Affordable Care Act's (ACA) tax provisions and state innovation waivers. He said that during the Obama administration he led ACA implementation at the U.S. Treasury Department.
b. Jason Levitis explained why some states are considering implementing an IRP. A state-level IRP could replace the federal IRP, which would in turn keep premiums down and enrollment up. The IRP at the state level could prevent the exodus of healthier people from the market, which is known as the adverse selection death spiral. Jason Levitis said the CBO estimates that zeroing out the federal IRP penalty will reduce coverage nationally by 13M people if states do not act to institute IRPs. Additionally, Jason Levitis said that IRPs are fairly straightforward to implement, limit the sale of STLD plans because they are not MEC, could be restructured to avoid ERISA preemption, raise state revenue, could enable the state to receive more federal-pass through funds, and reduce the cost of uncompensated care.
c. Jason Levitis said that Massachusetts already has an IRP, and NJ, Washington DC, and Vermont are all considering implementing IRPs.
d. Jason Levitis explained that one potential approach to implementing an IRP at the state level is to mirror the federal rules. He said that states could consider using

the federal law as a baseline and default, and then tailor it to their preferences. Jason Levitis said the reasons states may want to consider mirroring the federal law is that it maximizes continuity and eases compliance, simplifies legislative drafting, and reduces litigation. Taxpayers, tax preparers and businesses would also benefit if states used the existing forms and taxpayer education tools because they are already familiar with these forms and attendant processes. Jason Levitis said that his organization prepared model IRP legislation, which is available at: http://shvs.org/resource/model-legislation-for-state-individual-mandate/.

e. Co-Chair Bill Wray asked if last year's elimination of the federal IRP penalty changed the forms that are being used. Jason Levitis said it did not. He explained that heaving health insurance is still the law of the land, although there is no associated penalty starting in 2019. Sam Salganik asked if 1095s will continue to be sent. Jason Levitis said yes. Sam Salganik asked if states would have access to IRS data to enforce an IRP, and Jason Levitis said they probably would not. Jason Levitis explained that IRC § 6103 generally restricts the IRS from sharing federal tax information unless specifically enumerated. For instance, the IRS can share federal tax information with marketplaces to verify income as part of the eligibility determination process.

f. Kim Keck asked for Jason Levitis's perspective on whether the amount of the IRP penalty improves enrollment. Jason Levitis said that there is not a lot of great data on this. Economic intuition is that a higher penalty may be more helpful. He suggested sticking to the current federal IRP penalty amounts because it's what taxpayers are accustomed to.

g. Teresa Paiva-Weed asked Jason Levitis to confirm that the federal IRP penalty will be zeroed out starting on January 1, 2019. Jason Levitis confirmed this to be true.

h. Jason Levitis explained the components of IRP legislation. He said that the legislation needs to define qualifying coverage, exemptions, and penalty calculation. There also needs to be a reporting requirement. He explained that there are a couple of legal authority issues that apply to states that make imposing

reporting obligations more difficult than for the federal government. For instance, states do not have the authority to require Medicare to report to them. Additionally, there are ERISA preemption issues. Massachusetts maneuvered around the preemption issues by imposing the reporting obligation on individuals, employers, and other state health programs, but not on self-insured health plans. Sam Salganik asked how states could verify whether some individuals had qualifying coverage without data from Medicare, for instance. Jason Levitis responded that tax filers could provide an attestation or states could do a random sampling.

i. Jason Levitis described the potential policy adjustments that states could make if they decided to mirror the federal IRP. He said that while it is unlikely that the federal penalty will ever be reinstituted, states should be careful to avoid double penalizing residents if it ever were reinstituted. Massachusetts avoided this by reducing the amount of the state penalty by the amount residents paid towards the federal penalty. Additionally, states could consider using penalty revenue to improve affordability by implementing state subsidy programs, reinsurance programs, and individual accounts.

   He said that changes could also be made to improve the waiver process. The IRS waiver process had some unintended consequences that caused taxpayers with low incomes to pay substantial penalties that they did not necessarily owe.

j. Jason Levitis discussed the IRP activity underway in other states. Massachusetts enacted an IRP in 2007 and uses the revenue to support affordability measures. New Jersey's proposal is modeled on the ACA IRP, and is awaiting the governor's signature. In New Jersey, the revenue would be used to support a reinsurance program. Washington D.C.'s pending legislation is also modeled on the ACA IRP. It has been introduced as part of the Mayor's Budget, to be considered by City Council in late May. The revenue would support affordability measures. Vermont recently passed legislation that would appoint a working group to decide whether to recommend a penalty starting in 2020. Maryland's legislation instructs an advisory commission to consider IRP. Maryland also

proposed to allow individuals to use their penalty as a down payment on health insurance.

k. Teresa Paiva-Weed asked Jason Levitis to elaborate on Maryland's proposal. Jason Levitis said that the proposal did not advance but if it had that taxpayers would have been able apply their penalty payment towards their health insurance premiums during the next year.

l. Sam Salganik mentioned that the federal penalty had been phased in, and asked if the increasing penalty levels had an impact on enrollment. Jason Levitis responded that while it's hard to know specifically what drove increased enrollment, imposition of the increasingly large penalty was probably a factor.

m. Ralph Coppola asked whether any states have considered automatic enrollment if health insurance premiums are lower than the penalty amount. Jason Levitis said that states have considered automatic enrollment, however states can't unilaterally enroll individuals into coverage nor project possible tax credit eligibility on their behalf. He said that Maryland's proposal was one legal option. It required the individual to sign up for coverage and then the State would apply the penalty payment to the individual's premium.

V. State-level mandate considerations

a. Co-Chair Bill Wray introduced John Cucco, Director of Strategy and SHOP at HealthSource RI, as the next speaker.

b. John Cucco reviewed some of the common questions that people have when deciding whether implementing an IRP is advisable.

c. John reviewed a graph with the Workgroup that depicts Massachusetts enrollment data during its phased IRP rollout in 2007. The graph splits out the population by those who are chronically ill and healthy, and shows a disproportionate enrollment among the healthy population. The graph also supports the proposition that healthy individuals would be more likely to enroll if an IRP was in place.

d. To demonstrate the effectiveness of an IRP, John Cucco described the results from the RI Health Insurance Survey (RI HIS) in 2012 and 2015. The survey

showed that before the ACA was implemented in 2012, 13,610 Rhode Islanders over 400% FPL were uninsured. By 2015, after the ACA had been implemented, that number decreased to 6,485.

e. To further demonstrate the effectiveness of an IRP, John Cucco described the results from a Commonwealth Fund Survey that was conducted in May 2018. The survey polled adults ages 19-64 and asked them if they planned to drop out of coverage after the federal IRP penalty is repealed in 2019. 9.3% of individuals and 4.5% of employers polled said that they planned drop coverage once the federal IRP penalty is repealed.

   Kim Keck asked John Cucco to confirm that the survey was done on a national level and therefore the numbers could be different in every state. John Cucco confirmed and concurred that the numbers could be vary across each state.

f. John Cucco described the IRS data on the total payments made by Rhode Islanders to the IRS towards IRP penalties from 2014-2016. In 2014, Rhode Islanders paid $4.3M. In 2015, Rhode Islanders paid $8.6M. Official data for 2016 is not yet available, but the preliminary data for 2016 shows that Rhode Islanders likely paid about $9.7M.

g. John Cucco explained that people who are uninsured and nonexempt are required to pay the federal IRP penalty. He said that the majority of these individuals are under 400% of the FPL. Ralph Coppola asked if the individuals under 139% of the FPL would be eligible for coverage at no cost. John Cucco responded that many would likely be eligible for coverage at no cost, though not necessarily all. Cristina Amedeo said that some of the individuals may not meet the 5-year bar for Medicaid eligibility, but that they could still qualify to purchase private health insurance with tax credits if they were legal residents.

h. John Cucco reviewed a graph depicting the annual income/annual amount that would qualify an individual for the federal affordability exemption. He said that eligibility for the affordability exemption depends on a number of factors, including the lowest cost bronze plan, age, annual premium, and annual income.

Generally, those in the Medicaid range qualify for an affordability exemption. He said that hardship exemptions are also available to those who qualify.

i. John Cucco reviewed the income data on the individuals who paid the federal IRP penalty in 2015. Sam Salganik asked if it was safe to conclude from the data that the majority of people paying the penalty have a household income of less than $75,000 annually. John Cucco responded that this accurate, and added that because the penalty is tiered, those who earn less pay a lower penalty.

j. John Cucco said that the timeline for action is short and limited by the rate filing and legislative calendars. He said that the benefit of acting now is that people won't drop out. It's more difficult to get people to come back in after than to keep them enrolled. Co-Chair Bill Wray asked if is practical to think that the Workgroup can do anything in this session to get an IRP. Chairman Joshua Miller said that the case needs to be made that there is unity, and that the proposal is supported by both math and politics. He said that it's clear from his perspective that the math works but it may not be enough to neutralize the politics.

VI. Other Continuous Coverage Requirements

a. Jason Levitis discussed the other continuous coverage requirements. He said that as part of the "repeal and replace" efforts, various proposals were set forth that included substitutes for the individual mandate to incentivize the insured population to stay enrolled. The AHCA proposed a 30% premium surcharge for a year, if an individual had a gap in coverage within the last 12 months. Other proposals include coverage lockout and health underwriting. Jason Levitis said that while these continuous coverage policies were considered at the federal level, states may not have the authority to implement them due to the federal guaranteed issue and community rating requirements, which cannot be waived through a 1332 waiver.

Co-Chair Bill Wray asked whether the constitutionality of the ACA would be relitigated in light the repeal of the federal IRP penalty. Jason Levitis said that

there is already ongoing litigation concerning the legality of the ACA without the penalty in effect, but that most litigators do not believe the case will be successful. He said there is not much of a chance that the ACA will be determined unconstitutional because of the repeal of the federal IRP penalty. Teresa Paiva-Weed asked about the chances of Medicaid expansion being repealed, and Jason Levitis said there was almost no chance of that happening in the foreseeable future.

VII. **Wrap-Up Discussion**

a. Rosemarie Day led the wrap-up discussion. Co-Chair Bill Wray said that the Workgroup should focus the discussion on the IRP. He said that continuous coverage policies are low on the list because they cannot be conceivably implemented at the state level. Jason Levitis said that this issue hasn't been litigated, but that the general legal thinking is that continuous coverage policies cannot be implemented at the state level because CMS probably wouldn't even consider allowing it through a waiver.

b. Rosemarie Day turned the Workgroup's attention to the easel pad and asked if there were any additional pros and cons that needed to be added regarding IRP. Sam Salganik said the pro that the State keeps the money is so important that it should get a larger font.

c. Kim Keck said that an IRP potentially imposes a burden on HealthSource to do public outreach. Director Zachary Sherman said that he viewed this as an opportunity for Healthsource RI, and would not consider it a burden.
Co-Chair Bill Wray added that the philosophical opposition con is mitigated because the IRP would be instituted at the state level instead of the federal level.
Ralph Coppola said that generally all opposition to a state level IRP is unpersuasive because the public is already paying for everyone to have health care regardless of whether they are insured.

d. Chairman Joshua Miller added that increased enrollment not only keeps costs down for the individual market but for the entire market due to the reduction of

uncompensated care. Co-Chair Bill Wray said that he theoretically agreed with this conclusion but is unsure that it is well supported by the data. He asked for Jason Levitis to weigh in. Jason Levitis said that increased enrollment yields various benefits, including a reduction in uncompensated care and helping the sick, which are both good for the economy.

e. Larry Warner pointed out that health insurance does not equal health care access and health care access does not equal health insurance. He explained that insurance does not mean that insureds will necessarily access health care. He said that he wants to focus on how to set up a health care system so it's user friendly. Larry Warner said that he also wanted to add a pro and a con. He said that a state level IRP would give more flexibility to tweak the areas that that the federal IRP missed in order to protect the low-income people who were mostly paying the IRP penalty. He said that while he's in favor of a state-level IRP, a potential con is that under the federal IRP, low income individuals are far more likely to be stuck paying the penalty, so he wants to be mindful of ways to mitigate that impact at the state level.

f. Teresa Paiva-Weed said that the number one pro is that IRP keeps premiums down across the board; providers and government aren't the only ones who will assume the cost of uncompensated care when the federal IRP penalty is repealed. The private sector will also take a hit. She analogized this to car insurance, explaining that every driver needs to have car insurance or all drivers will pay higher car insurance premiums to make up the cost of damages caused by uninsured drivers.

g. Co-Chair Bill Wray agreed with Teresa Paiva-Weed's point, and asked the Workgroup if recommending a state level IRP is something that they want to do in the near term. He asked if the Workgroup wants to recommend that the IRP be instituted immediately so that it takes effect next year or if the Workgroup wants to follow Vermont's approach and wait a year.

h. Rosemarie Day asked the Workgroup whether a state level IRP meets the MSW's three goals. Kim Keck said yes to all three, but that the question is to what extent.

There was consensus among the Workgroup members that a state-level IRP achieves all three goals. The Workgroup decided to give one really big check under the goal of creating a balanced risk pool. For the goal of creating an attractive market, the Workgroup gave 2+ checks for carriers and 3 checks for providers.

Cristina Amedeo said that whether a state-level IRP creates an attractive market for consumers depends on how complicated the rules are. Co-Chair Wray recommended one check for consumers because the benefits are nuanced. Rosemarie Day added that having insurance can save individuals from financial catastrophe, which is a benefit that makes IRP more attractive to consumers. Teresa Paiva-Weed pointed out that there are a lot of individuals in the hospitality industry who would rather pay a penalty than overcomplicate their tax filings. She said that consumer outreach and education would be essential to a successful state-level IRP implementation. Chairman Joshua Miller added the quality of the health plan is also a factor that consumers consider when deciding whether to purchase insurance or pay a penalty. He explained that many consumers who purchased high deductible insurance plans are concluding that it really does not make a difference because they never reach their out of pocket limits. He said this leaves consumers wondering why they bothered to purchase the plan in the first place.

i. David Burnett said that a question from Sam Salganik at the last meeting is even more relevant this week. Sam Salganik's question last week was around how reinsurance impacts low income individuals. If premiums go down with reinsurance for those above 400% FPL, David Burnett wants to know what effect it would have on low income individuals, especially in light of the impact that a state-level IRP may have on them.

j. Co-Chair Bill Wray asked the Workgroup whether it would support recommending a state-level IRP. The Workgroup agreed that no one was violently opposed to the idea of a state-level IRP except that Sam Salganik noted that he

felt it was critical to see the IRP as a part of a whole package before deciding. Co-Chair Bill Wray said that the Workgroup will discuss the details of what the mandate should look like at the next meeting. Teresa Paiva-Weed asked that a summary of Vermont's approach be sent over the weekend.

VIII. **Public Comment**

a. No public comment offered.

IX. **Adjourn**

a. The meeting was adjourned at 10:03am.