



*The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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Executive Director

**Board of the Commonwealth Health Insurance Connector Authority
Minutes**

Thursday, September 8, 2022
9:00 AM to 11:00 AM

Live Stream

<https://www.youtube.com/user/TheMAHealthConnector>

Attendees: Marylou Sudders, Nancy Turnbull, Michael Chernew, Matthew Veno, Rina Vertes, Dimitry Petion, Filaine Deronnette, Cassandra Roeder (who was sitting by designation on behalf of Secretary of Administration and Finance Michael Heffernan), and Martha Kwasnik (who was sitting by designation on behalf of Commissioner of the Division of Insurance, Gary Anderson)

The meeting was called to order at 9:02 AM.

- I. Minutes:** The minutes of the July 14 meeting were unanimously approved by roll call vote.
- II. Executive Director's Report:** Mr. Gutierrez began the meeting by welcoming Board members and reminding attendees of upcoming Open Enrollment season that begins on November 1, 2022, through January 23, 2023. He stated that this Open Enrollment is the time to take advantage of extended cost-savings that the federal government recently reauthorized for individuals to obtain more affordable health insurance coverage through the Health Connector (CCA). He noted that CCA continues efforts to connect with uninsured residents in the Commonwealth. He reviewed the progress on CCA work with the Department of Revenue (DOR) to conduct communications with tax filers who are interested in learning more about health insurance through CCA. He shared that more than 15,000 individuals have received CCA mail in response to this request through the simple sign-up program and noted the work ahead to bring these individuals into coverage. He stated that as part of the federal special enrollment period, CCA has proactively outreached nearly 6,000 individuals who would be eligible for a \$0 premium plan to inform them of their access to health insurance coverage. He informed the Board of where CCA is in the Open Enrollment preliminary eligibility process, noting that in comparison to prior years, significantly fewer members are being redetermined out of financial subsidy eligibility. He attributed this largely to successful data matching

between CCA and IRS data and reminded the Board that last year, CCA discovered and informed the IRS of data matching issues which were at that time.

He provided an update on customer service operations, noting that the contact center is a year into stable operations and informing the Board of expanded customer service channels, including virtual and live agent chat functionality. Customers can also access updates on their cases via text or email, allowing them to access useful information at their fingertips. He shared that IVR options have expanded as well, enabling customers to pay for both health and dental coverage through the same call.

In addition to the recently re-authorized expanded federal subsidies, the 2023 Seal of Approval takes steps to make access to health insurance coverage more affordable by eliminating cost-sharing for medications associated with certain chronic diseases for ConnectorCare members, and improving coverage and cost-sharing for mental health and substance use disorder services. He noted that these efforts continue the mission of CCA to make access to more affordable health insurance coverage options available to residents of the state, and all CCA staff remain committed to this mission in the daily work of the agency.

III. 2023 Health and Dental Plan Final Seal of Approval (SOA): The Presentation “2023 Health and Dental Plan Final Seal of Approval” was presented by Maria Joy Dawley, Samuel Adams, and Edith Calvao Boucher.

Ms. Dawley began the presentation by reminding Board members of the SOA process and the purpose of the final SOA presentation to provide a review of qualified health and dental plans that the Health Connector (CCA) recommends being offered for sale to members for the 2023 plan year.

Mr. Adams provided a review of the overall 2023 shelf noting that access to affordable, comprehensive coverage continues to be a priority during the process. He noted that ConnectorCare program design remains an affordable choice for members with household incomes under 300 percent of the federal poverty level (FPL) and stated that for individuals and families above 300 percent FPL there is a broad choice of carriers. He commented on the stable carrier shelf for 2023, informing the Board of the number of carriers and plans that would be offered through the Exchange. He provided a review of the average change in percentage of monthly premiums for individuals and families outside of the ConnectorCare program and the underlying premium changes in the ConnectorCare program. He stated that the total merged market premium increase is 6.6 percent and inclusive of plans sold through CCA.

Mr. Adams then provided a more detailed overview of the plan year 2023 product shelf, reminding the Board of the notable changes reviewed during the July Board presentation, including the Tufts and Harvard Pilgrim Health Care merger, rebranding by two carriers, and geographic changes of Health New England with in the ConnectorCare program. He provided details on the member experience as a result of the merger and changes and informed the Board that CCA is in communication with each carrier regarding specific messaging to members. He

concluded the overview with a reminder of the ConnectorCare zero cost-sharing for certain medications associated with chronic conditions.

Mr. Adams then provided a more detailed review of the average monthly premium rate increases. He informed the Board that the average change varies by metallic tier, and also shared a breakdown of average premium increases for each carrier and their respective share of the non-ConnectorCare, on Exchange, membership. In response to an interest from Ms. Turnbull to better understand why, despite strong carrier financials, there are substantial premium rate increases, Mr. Gutierrez deferred to other Board members given CCA does not conduct either rate review or financial analysis of carriers as part of its mandate. Ms. Vertes commented that while someone from the Division of Insurance (DOI) is best to answer this question, she reminded members that current carrier earnings are not necessarily an indicator of future premium trends and profitability. She explained further that most carriers are currently issuing medical-loss-ratio (MLR) rebates because they previously overshot their forecasts, but those excess funds are now being returned, and the question is what will the trends be in the future, as they will most certainly be higher than they are currently, but the question of at what magnitude is where the DOI analysis comes into play. Ms. Kwasnik commented that DOI observed that the increase in provider and pharmacy costs is the main attribution to these increases. She continued to note that DOI is considering some changes to the merged market rate regulations, some of which are intended to shine daylight on these exact kinds of questions, in addition to moving from a quarterly rate filing to an annual rate process. This process includes public comment sessions that will bring stakeholders to the table and DOI looks to use these as an opportunity to learn more about what is driving the rate increases among other items. Ms. Turnbull agreed that this will be a beneficial process, and commented that as a Board member there is a special responsibility when representing low-income individuals, especially given these circumstances where carriers are the best capitalized they have ever been and are simultaneously imposing a substantial premium increase in the unsubsidized market. She also raised the policy question, at what point does a carrier become so well capitalized that it raises concerns, and what can or should be done to prevent this.

In response to a question from Mr. Petion as to whether there has ever been a study on a possible correlation between federal dollars being put towards premium subsidies and rate increases, noting that as an outside observer sometimes it appears as though the more federal dollars are put into the system results in underlying rate increase for vulnerable populations these dollars are supposed to support, Mr. Gutierrez acknowledged that this is an important question worth studying.

Ms. Turnbull added that additional analysis of how health plans are doing generally, by overall capitalization and results by line of business would be telling and can be surprising. She noted that if rates continue to increase without parallel growth in wages, the progress that has been made in rates of insured moving forward will erode. Secretary Sudders agreed and noted that as the state emerges from the pandemic there is a need to look at the capitalization of health plans on a go forward and be aware of those outliers and that such an assessment would be beneficial for the Commonwealth and as a Board.

Mr. Veno commented that from the Group Insurance Commission (GIC) perspective, self-insured plans have had the benefit of being below budgeted amounts in recent years, but overall market trends are tracking closely with what the GIC is experiencing. He noted that there are rising provider prices, increases on prescription drugs, and pharmacy and medical benefits. He agreed that it has been a challenging time for all stakeholders to accurately project future medical trends given the extraordinary times. He acknowledged that the GIC has had two favorable years, similar to the carriers, but that there is a responsibility to set rates for the future as best as possible.

Dr. Chernew noted that he has similar concerns as Ms. Turnbull, and that this is an important area to understand. He raised the question of how well the competition, as promoted by the ACA is working, noting that Massachusetts has a rich set of carrier options in the state, though this may not be true in all aspects of the market. He noted that it is important that participation in the Exchange is appealing to a carrier while also promoting competition, so that the rich set of options remains, and recalled the long-standing and on-going question of how to promote competition and strike the right balance.

Ms. Vertes offered comments on the realities of rate increases, noting that the drivers- provider payments and pharmacy costs, are in part the underlying reasons for premium rate increases. She stated that forcing carriers to price to something differently will not solve the problem and that there is a need to understand the cost drivers in order to resolve the rising premium rates. Ms. Turnbull commented that there is a need for an alternative approach and that putting more pressure on carriers may be good motivation to get tougher on hospitals and providers. She noted that the 11 and 12 percent rate increases are not sustainable.

Dr. Chernew clarified that rather than directly advocating for competition, he recognizes the reality that the CCA exists within the environment of the ACA that promotes competition. Mr. Veno also clarified that he was not suggesting that competition is the only solution, nor the best solution, and pointed to market dysfunction on the provider side, advocating for new ways to approach this challenge and stating that changing the way that carriers are regulated or viewed may be distracting from the affordability topic. Ms. Turnbull noted that among market dysfunctions one may consider the ability of large, self-insured organizations to negotiate more advantageous agreements for themselves and commented on the need to work more collaboratively.

Ms. Kwasnik added that in the spirit of this conversation regarding cost-drivers, one of the intentions of the DOI regulatory listening sessions referenced earlier is to provide a space for carriers to discuss the challenges that they are facing, including provider and pharmacy costs. She noted that the sessions are not strictly focused on what a carrier is filing, rather an opportunity to address underlying issues they are facing with the hopes this will lead to greater transparency which may be helpful to this process in the future.

Ms. Dawley then reviewed the ConnectorCare program design for 2023. She highlighted the exit of the carrier, Health New England from Worcester County and explained that members will be mapped into the lowest cost carrier in the region. She noted that members will also receive renewal notices with information about the other plans available in their regions, and

members will, as always, be encouraged to make sure any new plans cover their necessary providers. She informed the Board of the continued work of staff to bring all carriers participating through CCA into ConnectorCare by 2024. She continued with review of the ConnectorCare carrier positioning and enrollee contribution for 2023, noting that the methodology used is consistent with 2022 design and all ConnectorCare members will have access to at least one ConnectorCare plan at the affordability schedule-defined monthly cost.

At this time, in the webinar chat functionality and what appears to be a continuation of the earlier conversation regarding competition and increases in rates, Dr. Chernew commented that two carriers, Tufts Direct and BMC / WellSense, would be the two carriers that would remain on the Exchange. Ms. Turnbull noted that Massachusetts is unique to other states in that there is a state law that requires participation on the Exchange by carriers who cover at least 5,000 lives within the state. Dr. Chernew continued with his assessment of the competitive environment of the Exchange potentially resulting in the two aforementioned carriers having two-thirds of the on-Exchange enrollment, recognizing what appears to be their competitive behavior in this space. He expressed his interest in understanding if the policies of the Exchange discourage lower bids and how the rate review process works for these carriers. He continued to note that solutions to this underlying issue are likely larger than the scope of CCA, and may include provider price regulation and profitability and prescription drug costs. He noted that these are issues the Health Policy Commission (HPC) should and believes, is, looking into.

Ms. Dawley the provided a review of dental plans for plan year 2023 noting that the product shelf remains stable from plan year 2022 with no carrier or plan changes. She stated that there is an average decrease in premiums of a tenth of a percent for the upcoming year.

Ms. Dawley explained the next steps for the 2023 SOA process and beyond, including that the request for Board approval would allow staff to proceed with the use of the qualified health and dental plans for testing and OE preparation activities, including sending renewal notices and opening shopping on November 1st. She stated that the Early SOA 2024 planning is underway and will be released in March 2023, and will continue to build upon health equity initiatives and expanding ConnectorCare carrier participation.

Ms. Turnbull thanked staff for the briefing and expressed her concerns about the amount of time that was given to Board members to review detailed information prior to conducting a vote on this topic. She noted the helpful practice of participating in Board-prep calls in advance of the meeting, but stated that the density, complexity and importance of this topic warrants that the information be shared further in advance so member can understand the dynamics and ask questions about the rates, especially when the rate increases are this large and carriers are making a lot of money. While she has great confidence in DOI to conduct rate review and acknowledged the difficulty of the past few years, she expressed her own lack of comfort voting on this topic without being given the time to be more familiar with the material and requested more time for Board material in the future. Mr. Gutierrez recognized Ms. Turnbull's comments and committed to modifying future Board practice to ensure that members have adequate time to review material in advance of meetings. Secretary Sudders acknowledged the density and importance of this topic and stated that in the future more time will be given to

review items. Ms. Turnbull concluded by asserting her respect for all CCA staff and recognizing all the work that they take on, but reiterated the need for additional time to review.

With no additional discussion, the Board voted through roll call vote award the PY 2023 Final Seal of Approval to all qualified health and dental plans recommended throughout the presentation as proposed by carriers. Ms. Turnbull abstained from the vote, citing lack of advance time to review the Board vote material.

IV. Open Enrollment 2023 Readiness: The Presentation “Open Enrollment 2023 Readiness” was presented by Jason Lefferts, Nelson Teixeira, and Marissa Woltmann. Ms. Woltmann began the presentation by highlighting topics of special interest for the upcoming OE period beginning on November 1, 2022 that runs through January 23, 2023. Ms. Woltmann referenced the recent stability offered by the extension of enhanced federal subsidies, the monitoring of the potential end of the federal public health emergency, and member and public-facing communications as areas of focus for CCA. She provided a review of the OE timeline, noting that preparations begin over the summer to be ready for the November 1, opening date. She shared CCA’s expectations for the upcoming OE, noting that member activity will likely be similar to that of OE 2022, with high member retention but lower than usual new enrollments. She informed the Board that these expectations are due in large part to the Medicaid protections offered through the federal public health emergency, and that members who CCA would normally see enroll or move over to CCA coverage during the OE period are instead likely retaining their MassHealth coverage. She stated that because of the lack of notification by the federal government otherwise, it is expected that the federal PHE will extend beyond mid-October, and CCA will be looking in mid-November for news about a potential January 2023 end date.

Mr. Teixeira reviewed the timeline for OE and the contact center hours of operation for OE, pointing out extended weekday contact center hours and weekend hours leading up to critical payment deadlines. In response to a comment from Secretary Sudders regarding language access and interpreter services, Mr. Teixeira stated that they are in the process of hiring bilingual agents, who are able to provide support in English and Spanish as well as regular staffing for other language supports. He noted that CCA leverages the language line when needed to provide additional support in other languages, but given that the number one language spoken by members after English is Spanish, CCA is gearing up to be able to provide as much live agent support as possible.

In response to a question from Ms. Turnbull regarding the new chat and text features previously mentioned, and the language capacity, Mr. Teixeira reviewed the details of the new virtual and live agent chat features and noted that they will be available in English and Spanish. He elaborated on what those features include, noting that there is an opportunity to access high level information via virtual chat agent, and work with a chat live agent to access support with eligibility, enrollment, and payment inquiries. He stated that members can access the chat functionality through the member portal, or access on their phones through the IVR functionality.

Mr. Teixeira then provided details on the new text and email functionality, stating that members can newly elect to receive updates on member cases through these mediums, and updates may also include helpful resources relevant to their cases. He stated that CCA is exploring opportunities to expand on text messaging functionality, but that this is a great new way to help members interact with the contact center. Ms. Turnbull applauded CCA for this new functionality, highlighting the ways that young adults expect and prefer to interact, noting that this is a great new option to continue to engage with young people who continue to be among those most likely to be uninsured.

Mr. Teixeira highlighted enhanced interactive voice response (IVR) services, which are also available in Spanish and English, that will enable members to hear their balances on their current plans and future plans, a feature that will be especially helpful during OE as individuals are required to make payment for their current 2022 plan, and can also now access information about their new 2023 plan. He noted that an additional feature is the ability to make both health and dental payments on the same call while only inputting account payment information once, a feature that was not previously available. In response to a question from Mr. Petion regarding percentage of consumers who reach our services require support in Spanish, Mr. Teixeira noted that roughly 20 percent of callers require support in Spanish.

Mr. Lefferts then provided updates on outreach and education approaches for the upcoming OE taking into consideration that the federal PHE remains in effect, and this will factor into enrollment expectations. In addition to the goal of bringing in new members, he commented on the opportunity to use the OE period to build strong brand awareness among those who are likely to experience gaps in coverage in the future, including with the end of the PHE or other life transitions. He added that while the OE period serves to bring people into coverage in the immediate, it also doubles as an opportunity to provide long-term awareness for individuals who may not need CCA coverage yet. He provided a review of the in-person community - based activities scheduled for the OE period, noting that last year's planned in-person activities were modified once there was another rise in COVID cases. He highlighted a return to the Card to Culture promotion which originally began in early 2020 and provides free or discounted admissions to local cultural institutions for ConnectorCare members, and noted planned expansion in the social media space, including through Cameo endorsements. Mr. Lefferts then shared the excitement around the scheduling of the World Cup games and the once in a lifetime alignment with OE. He shared that this is a unique and great opportunity to raise awareness among one of the largest groups of uninsured, young Latinos, and shared that CCA would be participating in sponsorship events of the World Cup and hosting watch parties. He explained the details of the advertising that would run through Telemundo and Fox, noting that in addition to pregame and post-game awareness raising, there would be opportunities for in game displays about OE in front of a captive audience.

In response to a comment from Ms. Turnbull regarding the expanse of the World Cup's appeal beyond males, Mr. Lefferts agreed that this opportunity is by far the best opportunity to reach the greatest number of people that CCA could have ever reached.

At this time, in the webinar chat functionality, and what appears to be in response to an earlier comment from Dr. Chernew regarding policy solutions beyond the scope of CCA, including

provider price regulation, Mr. Veno commented that identifying different categories of solutions to premium rate increases is a worthy conversation and, while potentially outside of the scope of CCA, an opportunity for the Board to shape the broader debate. He noted that he expected the findings from the DOI review and listening sessions will also help shape this conversation.

Mr. Lefferts shared that CCA would use multiple platforms to inform residents of reliable health plans and the enhanced cost-savings that continues to be available. In addition to the World Cup sponsorships, he reviewed the paid and earned media opportunities CCA will average in the coming months, highlighting the use of ethnic media to reach non-English speakers and provide resources and raise awareness in advance of major deadlines. He informed the Board of Navigator involvement in these efforts as well, often having Navigators participate in radio interviews in multiple languages. He then shared additional information about the recent Navigator procurement that concluded in the Spring and will see the return of many Navigator organizations. He updated the Board on the training and recertification that is underway so that the Navigators are fully staffed and prepared for OE when it begins on November 1st. He noted the importance of Navigator involvement not only during OE, but also being prepared to work with members and be in their communities when the end of the federal PHE does occur. He then informed the Board of a publication that week for an additional request for Navigator proposals in the greater Boston area to increase in-person presence in large and diverse communities.

In response to a question from Ms. Turnbull regarding Navigator capacity with the pending end of the federal PHE, Mr. Gutierrez replied that the annual Navigator budget accounts for increased costs and referred the additional Navigator procurement in Boston and another region that responds to the need for more in-person assistance based on geographic spread. He agreed that it is important to assess needs and expectations for the Navigator community to ensure we are providing them and our members with the supports needed. Ms. Turnbull commented on her interest in learning more as CCA continues to assess. Secretary Sudders added that Massachusetts is in a fortunate situation with the functioning integrated eligibility system and explained the redetermination process and collaboration between MassHealth, CCA and Health Care For All in preparation for the end of the PHE. She recalled the Board meeting months prior when MassHealth joined to provide updates to the Board on the work that was already underway at that point. The Secretary stated that the goal is to make sure that all individuals end up in the right coverage and that Navigators will be just one piece of this process, sharing that a lot of work is happening at MassHealth around the redetermination process. Secretary Sudders commented that once the end of the PHE is announced it will be beneficial to reconvene with updates on the final plans for the end of the PHE. Ms. Turnbull agreed that the Navigators are just one piece of the ecosystem and confirmed her support for and belief in the strong network currently in communities, while recognizing the importance of the in-person relationships. Mr. Veno commented on activities being conducted by other organizations that may be doing similar work to Navigators, while not being Navigators, citing his experience as a Board member for a health center and being aware of their parallel preparations and activities in this space. Mr. Petion commented on the Navigator coverage in Boston, which appears to be light, and recognized that there are likely organizations doing similar work that may be stretched thin or short staffed and could benefit from Navigator

grants. He recommended that organizations like these aren't excluded from this process so that they continue to do the work that they do. Mr. Veno commented on the Navigator list, noting that he believes the MassHealth Accountable Care Organization, C3, which is likely doing similar activities and may have broader reach. Secretary Sudders appreciated the comments and noted that there are many pieces of this process, with Navigators as just one of the trusted voices for residents.

Ms. Woltmann then reviewed a timeline of the activities for the months ahead as it relates to OE and noted that CCA will then be ready to pivot to support members if the end of the PHE is ended mid-January. Secretary Sudders commented that if the end of the PHE is mid-January, it may not be surprising if there is an extended OE, or special enrollment period to support the transition, and noted on that timeline the first MassHealth members would likely begin to be join Connector coverage around March. Mr. Gutierrez thanked the Secretary for that comment, recognizing that an extended OE or enrollment period of some sort will be beneficial for members migrating from MassHealth to the Health Connector.

- V. **Policy Updates:** The Presentation "Policy Updates" was presented by Audrey Gasteier. Mr. Gutierrez began the presentation noting the great news of passage of the Inflation Reduction Act (IRA) which included the extension of enhanced ACA premium subsidies. He shared that Exchange Directors across the country worked with Congressional staff throughout the year to make sure they had information about how important this matter was to states. He noted that had the IRA not passed, CCA would be going into a very different and difficult OE with different messaging and more significant rate impacts. He reviewed the other items that Ms. Gasteier would be touching upon, including the end of the PHE, preparedness for and implementation of the family glitch fix, and a pending lawsuit, *Kelley v. Becerra* which could have impacts in Massachusetts.

Ms. Gasteier informed the Board of the passage of the IRA that extended the enhanced premium subsidies, acknowledging that CCA staff and Board members were all anxiously awaiting this action. She reiterated that importance of the extension and the on-going work to make sure that the federal government was aware of the significant savings that these expanded subsidies provided to CCA members as well as to the state. She noted that if the extension had not occurred CCA would have expected that approximately 200,000 CCA member to experience an increase in their premium contributions, outside of annual medical trend premium increases. She noted that eventually, not only would current CCA members have felt this burden, but those who eventually would migrate over to CCA from MassHealth at the end of the PHE would have been faced with increased premiums. She noted that the subsidies are now extended through 2025 and will be bringing millions of dollars of health care relief and savings into the state. She stated that the savings vary based on plan type, but that the most significant savings is for individuals who are over 400 percent of the FPL, who previously would not have had access to federal subsidies. In addition, within this group, the extended subsidies are particularly helpful for residents over 55 and live in higher cost regions of the state, and she reviewed their continued monthly savings. She emphasized the importance of this extension given the rising costs of other items, and the hopes that these savings will not require members to make painful choices between health care and other needs.

Ms. Gasteier then explained the family glitch, a long-standing ACA issue that requires Exchange applicants for subsidies to use the cost of “self-only” employer sponsored insurance to determine if the entire family is eligible for subsidies. After years of families potentially being found ineligible for subsidies despite having an unaffordable offer of family insurance through an employer, there is a pending regulation that would resolve this issue. Ms. Gasteier explained that in Massachusetts roughly 44,000 residents would be newly eligible for federal tax credits as a result of the fix. She informed the Board that CCA has been working with the HIX team and Optum on an implementation approach so that when the pending rule is finalized that CCA is ready to turn the functionality on and allow families across the Commonwealth to access the subsidies they have become newly eligible for. Secretary Sudders commented on the length of time that the family glitch has been being discussed as a problem, and paused to welcome a moment to process and celebrate the proposal.

Ms. Gasteier then provided a review of a proposed rule that would reinstate civil rights protections under the ACA non-discrimination regulation for patients and consumers following significant limitation of these protections under a 2020 regulatory change, especially for LGBTQ+ populations. She stated that CCA stands ready to implement the enhanced protections in the proposed rule and remains committed to non-discriminatory policy, plan design and services. Ms. Gasteier then provided an update on the federal PHE extension beyond mid-October 2022. She stated that because CMS has committed to providing 60-day notice in advance of the end of the PHE, and in the absence of this notice, CCA is assuming that the PHE will continue until at least January 2023. She stated that CCA continues to work closely with colleagues and MassHealth and with Health Care For All and other stakeholders to plan for the eventual end of the PHE.

Ms. Gasteier then provided Board members with a review of the *Kelley v. Becerra* lawsuit in Texas, which challenges the ACA’s preventative services mandate and could have significant impacts on Massachusetts. She stated that because of the preventative services requirements it is estimated that 150 million people nationally have access to \$0 cost sharing for preventative services, stating that over 75 services have been identified as falling under this requirement. She informed the Board that just the day before the judge in the case ruled that the mandates are unlawful because of the way that the Preventative Services Task Force members were appointed. She stated that CCA has reviewed existing state statute to determine if state laws provide protections and noted that while there is a subset that require \$0 cost sharing for some preventative services, the full range is not protected by state law. The judge also ruled that the requirement that employers provide coverage for PrEP drugs, which prevent HIV transmission, violates the employer’s religious freedom, though it has not been determined if the judge will enforce this nationwide. Ms. Gasteier stressed that there is likely a long way to go before any final rulings are made, as appeals are expected, but wanted to bring this item to the attention of the Board, given the potentially significant impact it could have in the country and in Massachusetts.

In response to a question from Ms. Turnbull regarding the specific challenge to PrEP and if that means that contraception would also be challenged, Ms. Gasteier stated that the plaintiffs did challenge on the ground of religious violations and that did result in a rule against the ACA’s PrEP coverage mandate yesterday, but CCA will need to examine the final ruling

further. Mr. Cannella added that the question is still largely outstanding and that the decision the day before was limited, as the judge explicitly stated that they are not addressing the claims by the plaintiffs that speak to the unlawfulness of the contraceptive requirements. He continued that it does leave one to wonder where this will go, but given previous cases, and the way the judge analyzed the Religious Freedom Restoration Act in this case, it is suggestive that they would reach a similar ruling when considering contraception.

In response to a question from Dr. Chernew regarding the possibility of a federal fix that resolves the appointment of the task force, or creates a different committee, Mr. Cannella reviewed the analysis of the judge holding that the authority of the task force was unlawful because the members had not been nominated by the President and subject to the advice and consent of the Senate, and that the judge had not issued a remedy in their decision. Mr. Cannella noted that any federal fix will depend on the remedy chosen by the judge and the ability of Congress and the President to respond to the impact of that remedy. He noted that the easiest solution would be to have the task force members go through advice and consent appointment and then ratify their past decisions on preventative services identified after March 2010, when they had been adopted in statute by Congress. Because any remedy is likely to require action through the federal legislative or appointments process it is unclear if and when an appropriate remedy will be implemented to address the final decision in *Kelley v. Becerra*.

Ms. Gasteier continued with review of the Simple Sign-up program, which provides tax filers with an opportunity to check a box to request information or outreach from CCA about health insurance coverage options available through the CCA. Ms. Gasteier informed the Board that more than 15,000 tax filers checked this box, and notices went out to the majority of these households on August 29. She stated that roughly 45 percent of those who checked this box are known within the HIX system, meaning they have interacted with CCA or MassHealth previously, and the remainder are new, unknown households. She noted that CCA is eager to learn more as this process plays out in its first year.

While Ms. Gasteier provided the update on the Simple Sign-up program, Dr. Chernew submitted a question in the chat regarding the *Kelley v. Becerra* lawsuit, asking if the USPSTF is able to identify the preventative services and CMS could define and then authorize them, essentially in a similar way to how quality measures work, and thus removing the question of authority from the task force. He also asked if an Executive Order could be issued to protect the preventative services. As these questions were in the chat, they were not seen and addressed during the meeting.

In response to a question from Ms. Turnbull regarding the timeline for the Texas case, Ms. Gasteier stated that the Judge requested responses from the parties about what the remedies would be, so presumably there would be time needed to review the responses before issuing guidance on how the ruling should be interpreted. Mr. Cannella agreed with that timeline and noted that it is also possible that some of the responses might be piecemeal but in either case, CCA can review and report back, but noted it could be a multi-iterative process as the judge could resolve the plaintiff's various legal claims over the course of several months.

Mr. Veno thanked Mr. Gutierrez and the staff for always keeping a close eye on these policy developments and providing such useful updates, recognizing that these developments play an important role not only in the work CCA and the Board conducts, but also with respect to his own work with the GIC and broader landscape.

Before adjourning, Secretary Sudders committed to striving to do better with respect to the timing of material being shared with Board members, and accepting responsibility for the lack of time to review as well.

With no further discussion or agenda items before the Board, the Board motioned and unanimously voted through roll call to adjourn at 10:37 AM.

Respectfully submitted,

Erin E. Ryan