



Special Legislative Update ■ January 30, 2020

UCC is issuing a special legislative update today, our second of the week. A number of developments have occurred since our Monday publication that are worthy of reporting. Also, please note that due to staff travel, we will not be publishing a legislative update during the week of February 3.

County Groups to Governor: Let's Talk About Homelessness

UCC joined a number of other county-affiliated associations to communicate to Governor Gavin Newsom our shared commitment to working on solutions to the state's homeless crisis, including those outlined recently by the Governor's Council of Regional Homeless Advisors. The letter, attached, outlines a number of concerns about the Council's recommendation to include a constitutional mandate to address homelessness, but reiterates a willingness to participate in a dialogue with the state, local government partners, and stakeholders. As you'll recall, the UCC Board of Directors created a subcommittee to work through the various proposals to address homelessness and we anticipate that subcommittee to begin meeting shortly. More to come...

Court Ruling on Public Charge

On Monday of this week, the U.S. Supreme Court voted 5-4 to lift the nationwide injunction that has been in place for months on the "public charge" rule. This ruling will allow the Trump Administration to proceed with the new rule's implementation. It remains unclear what the implementation date of the rule will be.

In August 2019, DHS issued the final rule detailing how federal agencies determine the inadmissibility of immigrants likely to become public charges meaning those who have become or are likely to become primarily dependent on the government for subsistence. Prior to the rule, the only benefits considered in the public charge test included cash assistance such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and comparable state or local programs, as well as government-funded long-term institutional care. The final rule expands the programs affected to include Supplemental Nutrition Assistance Program (SNAP), most forms of Medicaid, and a variety of housing subsidies. Children's Health Insurance Program (CHIP) coverage is not affected by this rule. The rule does NOT include Medicaid for individuals under age 21, pregnant women, and emergency Medicaid. The Women, Infants and Children (WIC) program is also excluded.

This fall, five federal judges later issued injunctions blocking the rule from taking effect. Appellate courts lifted three of the injunctions in December 2019, but a nationwide injunction from the U.S.

District Court for the Southern District of New York and a statewide injunction from the U.S. District Court for the Northern District of Illinois remained in effect until this week.

The federal Department of Homeland Security (DHS) has not yet announced when the rule will go into effect or if they consider it already in effect. The nationwide injunction issued in New York postponed the effective date of the rule. The litigants in the injunction case have taken the position that applications submitted between October 15 and the new effective date of the rule should be evaluated under the 1999 Field Guidance, and that benefits used between October 15 and the new effective date of the rule should not be counted against applicants for adjustment of status. The litigation teams for the New York cases are seeking confirmation from the government that DHS shares this position and are seeking clarity regarding the details and dates of implementation.

SB 50 is Dead (for now...)

Senator Scott Wiener brought his high-profile, controversial housing production bill – [SB 50](#) – up for a vote on the Senate Floor yesterday – a vote made possible by Pro tem Toni Atkins who pulled the bill from the Senate Appropriations Committee last week where it faced a likely defeat. Despite that effort, the bill failed to garner a majority vote, and the measure died on an 18-15 vote with six members abstaining. The Senate debated the bill for close to three hours yesterday, and members from both sides of the aisle stood up in support and opposition to the bill. Senators Ben Hueso and Nancy Skinner sided with the author and pressed their colleagues to consider the bill as a work in progress but worthy of moving forward through the legislative process so additional refinements could be made. Senators Hertzberg and Stern also voiced support in concept for the measure but ultimately voted no based on the fact that the bill did not offer resolution to significant concerns with SB 50 (including mandatory upzoning in high fire severity zones where development should not likely occur).

Senator Wiener was granted reconsideration at the end of the vote, but the bill failed to get the votes this morning when it was brought up for a second time. At the conclusion of the debate/vote today, the Pro tem addressed the chamber, congratulating the body for a meaningful effort, but committing to bring a housing production bill to a successful conclusion during the 2020 session. She asked all members to bring their ideas and solutions, admonishing the body that it is time for all sides to step up. Governor Newsom also provided comment, stating that, "...if this falls short, we are not giving up. We are going to continue to work aggressively to address production in this state." The final vote tally can be seen [here](#). Senator Wiener has commented publicly that he is prepared to reintroduce legislation and has two housing placeholder bills at the ready.

Governor Appoints New DHCS Director

The Governor's Office announced this week that Brad Gilbert, M.D., will be the new director at the Department of Health Care Services (DHCS). He most recently served as chief executive officer at Inland Empire Health Plan (IEHP); he held positions of increasing responsibility at IEHP beginning in 1996 including medical director and chief medical officer. He was director of public health at the County of Riverside Health Services Agency from 1993 to 1996. Prior to that, Dr. Gilbert was director of public health at the San Mateo County Department of Health Services Division of Public Health.

UCC Submits Letter of Comment on Proposed MFAR Rule

UCC submitted a formal comment letter to the Centers for Medicare and Medicaid Services (CMS) this week on a proposed federal regulation overhauling rules governing funding for state Medicaid programs. The proposed rule is known as the Medicaid Fiscal Accountability Regulation (MFAR).

Most states pay their share of Medicaid costs through a combination of three sources: (1) general revenue, (2) taxes on providers, and (3) funds transferred from or certified by state and local government health care providers (called intergovernmental transfers, or IGTs, and certified public expenditures, or CPEs, respectively). The rule would force many states to curtail their use of provider taxes, IGTs, and CPEs. If states couldn't make up the funds, they would have to cut benefits and eligibility as well as provider payments, particularly payments to hospitals and nursing homes.

As currently proposed, the MFAR rule would severely impact California's Medi-Cal, jeopardizing access and coverage for millions of low-income Californians by unsettling the program's financial underpinnings. UCC's member counties, particularly those that operate county hospitals, would need to re-evaluate essential programs and services, likely limiting access to needed care. The letter urges CMS to rescind this proposed rule because of the negative and potentially life-threatening impacts to the low-income residents who rely on Medicaid.

UCC's letter outlines four concerns:

- 1) The rule would inappropriately restrict California's ability to finance the non-federal share of funding, and reverses longstanding policy.
- 2) Medicaid supplemental payments are an integral component to overall Medicaid compensation, and CMS should evaluate them as such. Supplemental payments help preserve access to critical safety-net services. States' ability to implement and maintain them should not be compromised, as proposed in this rule.
- 3) The proposed new definition of "Non-State government provider" is a matter of state, not federal, concern.
- 4) The rule imposes a new 24-month "final settlement" deadline for CPEs that could result in county providers not receiving federal funds for services provided.

Attached is UCC's comment letter, as well as the comment letters submitted by the Department of Health Care Services and the Department of Finance.

Trailer Bill Language Deadline Looms

As part of the annual state budget process, the Department of Finance is subject to a February 1 deadline to provide the Legislature with proposed statutory language – called trailer bill language (TBL) – necessary to carry out the provisions associated with the various elements in the Governor's spending plan. TBL for the 2020-21 budget will be posted [here](#) starting perhaps as early as tomorrow; typically it is grouped by subject matter area.

HBE will review the TBL, with a particular focus on proposals associated with UCC’s 2020 policy priorities and all other budget items that have a significant county impact. The TBL will provide greater insight into the specific approach the Administration is proposing on various budget items. Accordingly, we may be reaching out – where necessary – to assess potential local impacts and benefits (or, conversely, risks) associated with the proposed implementing language.

As for next steps, the Senate and Assembly budget subcommittees will begin meeting in late February to consider the Governor’s budget proposals and take public testimony. As a reminder, the budget subcommittees and their respective jurisdictions are as follows:

Senate Budget and Fiscal Review Subcommittees	Assembly Budget Subcommittees
No. 1 – Education No. 2 – Resources, Environmental Protection, Energy, and Transportation No. 3 – Health and Human Services No. 4 – State Administration and General Government No. 5 – Corrections, Public Safety, and the Judiciary	No. 1 – Health and Human Services No. 2 – Education Finance No. 3 – Resources and Transportation No. 4 – State Administration No. 5 – Public Safety No. 6 – Budget Process, Oversight and Program Evaluation

Medi-Cal Healthier California for All Updates

Based on discussions occurring during its public workgroup process, DHCS announced the following changes to the Medi-Cal Healthier California for All California proposals under consideration:

- **Annual Health Plan Open Enrollment.** The state has decided not to continue to pursue the Annual Health Plan Open Enrollment policy. This proposal will no longer be a topic of discussion in the Population Health Management workgroup meetings.
- **Targeted Case Management.** DHCS has clarified its policy regarding the proposal to discontinue Targeted Case Management for Medi-Cal managed care members. The state will no longer pursue the policy change but will be asking managed care plans to take steps to ensure that enrollees do not simultaneously receive Targeted Case Management and Enhanced Care Management services.
- **Long-Term Care.** A [Frequently Asked Questions](#) document has been released to address questions regarding the Long-Term Care Carve-In. Topics include Medi-Cal benefits, long-term care carve-in transition, rates, quality improvement, and oversight and monitoring.
- **Foster Care Model of Care.** In assessing the challenges faced by foster children and youth, DHCS and the Department of Social Services (DSS) will convene a Foster Care Model of Care workgroup of key stakeholders in 2020. The workgroup will consider whether California should develop a different model of care for children and youth in foster care,

including the former foster youth program and transitions out of foster care programs and services for individuals up to age 26.

The workgroup will include representatives from DHCS, DSS, Department of Developmental Services, Department of Education, state and county child welfare associations, health plans, behavioral health entities, juvenile justice and probation advocates, judicial entities, foster care consumer advocates, current or former foster youth, and parent and caregiver representatives.

DHCS and DSS will solicit participation in the workgroup in March and convene the first meeting in April. The workgroup will meet bimonthly throughout the year to formulate policy recommendations for the state to consider for implementation.