

Massachusetts Health Care Laws Are Bellwethers of National Trends Two Years into the Pandemic

WRITTEN BY

Virginia Bell Flynn | Christopher M. Brolley | Amanda L. Genovese | Oliver Hamilton | Leah Greenberg Katz

As states begin to pivot away from the emergency health measures implemented at the beginning of the COVID-19 pandemic, state governments are now grappling with addressing traditional health care concerns, while simultaneously addressing the lasting impacts of the pandemic.

On April 11, Governor Charlie Baker testified before the Joint Committee on Health Care Financing about the comprehensive health care legislation, “An Act Investing in the Future of Our Health” (Act), he introduced last month. The Act comes on the heels of an earlier health care reform law passed in 2021,^[1] which increased insurance coverage for telehealth services; expanded the scope of practice for nurse practitioners, other specialized nurses, and optometrists; and addressed steps to protect consumers from surprise medical bills.^[2]

The intended goal of the current Act is to gap-fill by further addressing issues of health care access and affordability, as well as stimulating investment in primary care and mental health.^[3] The provisions of the Act underscore many of the cross-cutting trends across the health care sector, which may pose potential challenges for various participants, including providers, payors, and pharmaceutical manufacturers.

Increasing Primary Care and Mental Health Expenditures for Providers and Payors

As Gov. Baker noted in his testimony, the Act aims to systematically reform the way health care prioritizes and invests in primary care and behavioral health. To that end, the Act establishes a primary care and behavioral health spending target designed to reorient the way payors and providers invest in these models. This target would require providers and payors to increase primary care and behavioral health expenditures by 30% over three years, while requiring that overall health care spending remain under the state’s health care cost growth benchmark. This investment requirement is intended to result in a rebalancing of funds, which would yield a systemwide investment of \$1.4 billion into primary care and behavioral health.^[4] Notably, the Act does not prescribe any particular methodology for achieving the spending target, but Gov. Baker testified that payors might increase reimbursement rates to behavioral health providers and expand behavioral health networks.

Continued Effort on the State Level to Address Surprise Billing and Pharmaceutical Manufacturers

As noted in previous alerts, there is a concentrated push on the state and federal level to address [surprise billing](#) and high drug prices.^[5] Regarding surprise billing, the Act makes modest adjustments to the existing law by establishing a default payment rate of reimbursement that payors must pay to out-of-network (OON) providers for unforeseen OON services. This default payment rate is consistent with the “Qualifying Payment Amount” in the

federal “No Surprises Act” that is the subject of current [litigation](#).^[6]

Likewise, the Act increases accountability for drug manufacturers — holding high-cost drug manufacturers accountable through similar measures used for high-cost payors and providers, imposing penalties on excessive drug price increases, and establishing new oversight authority for pharmacy benefit managers.

Flexibility for Telehealth Services Will Likely Increase Claims to Payors

The Act builds upon the robust telehealth provisions included in the prior 2021 Massachusetts health care bill, which permanently established the availability of telehealth services beyond the COVID-19 emergency measures. The previous health care bill required payors to cover telehealth services, as long as the same service would have been covered in person, and telehealth services were appropriate. Moreover, the 2021 bill instituted rate parity for copays and deductibles for in-person and telehealth services.

The pending Act further expands patient access to telehealth by lifting restrictions on providers authorized to render telehealth services. In particular, the Act allows any provider, whether located in Massachusetts or out of state, to provide telehealth services, as long as the provider is compliant with federal and state licensing requirements, and the patient is located within Massachusetts. If adopted, claims for telehealth services may further increase as the pool of eligible providers is expanded beyond state borders. Moreover, this flexibility will likely cause new compliance challenges for payors already dealing with the complex patchwork of telehealth laws across the United States.

Troutman Pepper will continue to monitor the Act’s progress and provide updates as new developments arise.

^[1] See “[An Act Promoting a Resilient Health Care System That Puts Patients First](#).”

^[2] S.B. No. 2774, 2021 Leg., 192nd General Court of the Commonwealth of Massachusetts (MA 2022) (available [here](#)).

^[3] *Id.* at 1-4.

^[4] *Id.*

^[5] See Troutman Pepper, “[Surprise! Along with COVID Relief, Congress Delivers Long-Anticipated Changes to Medical Billing with the ‘No Surprises Act](#).’”

^[6] See Troutman Pepper, “[Providers Prevail in Challenge to No Surprises Act Interim Final Rule](#).”

RELATED INDUSTRIES + PRACTICES

- [Health Care + Life Sciences](#)

- Health Care Insurance
- Managed Care Payor Disputes, Investigations + Regulatory Counseling