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# Transcript of 3rd Quarter Advisory Committee Meeting

**Date:** September 24, 2024

**Case:** Health Benefit Exchange Advisory Committee Meeting

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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

Virginia Health Benefit Exchange  
Advisory Committee Meeting  
3rd Quarter Meeting  
September 24, 2024  
2:07 P.M. - 3:40 P.M.

Job No.: 553793  
Pages: 1 - 69  
Reported By: Natalie Steele

Transcript of 3rd Quarter Advisory Committee Meeting  
Conducted on September 24, 2024

1 Virginia Health Benefit Exchange Advisory  
2 Committee Meeting - 3rd Quarter Meeting held  
3 remotely via Microsoft Teams before Danny Terry,  
4 Notary Public in and for Virginia.

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1 A P P E A R A N C E S

2 Jabari T. Robinson  
3 Lead Commission Bailiff  
4 State Corporation Commission  
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6 1st Floor  
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8 Phone: 804-371-9946  
9 Fax: 804-692-0681  
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11 Ex Officio Members:

12 Scott White - Commissioner of Insurance

13 Appointed Members:

14 Sabrina Corlette - Chair, with Georgetown

15 University Health Policy Institute

16 Ikeita Cantu Hinojosa - Vice Chair, with ICH

17 Services, LLC

18 Lee Biedrycki - BeneFinder

19 Elizabeth Cunningham - Virginia Legal Aid Society

20 Douglas Gray - Virginia Association of Health

21 Plans

22 Sheenu J. Kachru - Optum Life Sciences

23 Kip Piper - Health Results Group, LLC

24 Lou Rossiter - Research Professor, William & Mary

25 Craig Connors - VA Hospital and Healthcare

Association

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1 Speakers:

2 Keven Patchett - Director of Virginia Health

3 Benefit Exchange

4 Holly Mortlock - Deputy Director - SCC External

5 Affairs and Policy

6 Zachary Baron - Guest Speaker - Georgetown

7 Law/O'Neill Institute

8 Rachel Becker - Senior Policy Advisor - Virginia

9 Health Benefit Exchange

10 Victoria Drescher - Administrative Manager -

11 Virginia State Corporation Commission

12

13 Additional Attendees:

14 Sarah Hatton - Director of Administration &

15 Coverage - Virginia Medicaid

16 Anjali Jarral - Special Assistant for the

17 Secretariat of Health and Human Resources

18 Mindy Diaz Mornay - Special Assistant - Office of

19 the Secretary of Health and Human Resources

20 Alicia Pullen - Policy Analyst - Virginia State

21 Corporation Commission

22 Shamelle Shabazz

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EVENTS

ON THE RECORD

MEETING CALLED TO ORDER

ROLL CALL

DIRECTOR'S UPDATE

REGULATORY & POLICY UPDATE

FURTHER DISCUSSION FOR HEALTH BENEFIT EXCHANGE

DISCUSSION OF ENROLLMENT METRIC CATEGORIES

VIRGINIA'S INSURANCE MARKETPLACE

DISCUSSION OF SUBCOMMITTEE REPORTS

OTHER BUSINESS

ADJOURNMENT

OFF THE RECORD

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1 MEETING CALLED TO ORDER

2 MS. CORLETTE: My name is Sabrina  
3 Corlette, and I serve as chair to the Advisory  
4 Committee to the Virginia Health Benefit Exchange,  
5 and I want to welcome you all to our 3rd quarterly  
6 meeting of the year.

7 I think we typically start with a role  
8 call; is that right?

9 MS. MORTLOCK: Yes, please. It should be  
10 right there on the slide.

11 MS. CORLETTE: Okay. If you could advance  
12 the slide for me. Could somebody advance the  
13 slide, please? Yes. Perfect. Thank you so much.

14 Before I do the role call, I first just  
15 want to acknowledge that since we last met in June  
16 we have had two Advisory Committee members cycle  
17 off. Their terms were up. That's Julie Bataille  
18 and Starla Kiser. So they are not with us today,  
19 but I do want to publically thank them for their  
20 service to the Advisory Committee and their  
21 support for the Exchange and all their great work  
22 that they have done over the last few years.

23 In their place, we have two new members  
24 that I do want to extend a warm welcome to.  
25 That's Sheenu Kachru. Sheenu, did I pronounce

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1 your name correctly?

2 MS. KACHRU: One hundred percent. Thank  
3 you so much.

4 MS. CORLETTE: Wonderful. Thank you.

5 And we also have new member Kip Piper.

6 Are you with us today, Kip?

7 MR. PIPER: Yes, indeed. I'm disembodied  
8 for the moment as I struggle with computers, but  
9 you will see me momentarily.

10 MS. CORLETTE: Well, welcome to both.

11 We're delighted to have you on the Advisory  
12 Committee.

13 So I will start with our standard role  
14 call, and we will start with the ex officio  
15 members.

16 Secretary Kelly, do we have you with us or  
17 a designee?

18 Director Roberts, do we have you with us  
19 or a designee?

20 Commissioner Williams?

21 Commissioner White?

22 COMMISSIONER WHITE: I am here.

23 MS. CORLETTE: Great. Thank you.

24 Dr. Shelton?

25 Okay. Ikeita?



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1 MS. CANTU HINOJOSA: I am here. And I'd  
2 also like to just say welcome to Kip and Sheenu.

3 MS. CORLETTE: Great.

4 Lee?

5 MR. BIEDRYCKI: Present.

6 MS. CORLETTE: Great. Do we have Scott?

7 Scott Castro?

8 Elizabeth Cunningham?

9 MS. CUNNINGHAM: Yes, present.

10 MS. CORLETTE: Hi, Liz. Welcome.

11 MS. CUNNINGHAM: Hi.

12 MS. CORLETTE: Doug Gray?

13 MR. GRAY: I am here.

14 MS. CORLETTE: Great.

15 We have already met Sheenu and Kip; so

16 thank you.

17 And Louis?

18 MR. ROSSITER: Present.

19 MS. CORLETTE: And Craig Connors?

20 MR. CONNORS: Present.

21 MS. CORLETTE: Wonderful. I think that  
22 completes our role call, and it seems like we do

23 have a quorum; so I'd like to call us to order.

24 Just a few meeting etiquette items to

25 remind folks of: Only committee members should

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1 have their cameras turned on. I encourage you, if  
2 you are a committee member, to turn your cameras  
3 on, if you can. Please stay muted until you are  
4 called on to speak. And we do have one guest  
5 speaker today; so I would just ask that you  
6 refrain from asking questions until he has  
7 completed his presentation.

8 A transcript of this meeting will be made  
9 available online at the marketplace website and  
10 the URL is here on this slide.

11 Next slide, please.

12 Great. With that, I think we can turn it  
13 over to Keven and his team for the update from our  
14 distinguished marketplace staff.

15 MR. PATCHETT: All right. Thank you,  
16 Sabrina.

17 Let me introduce myself for new members.  
18 My name is Keven Patchett. I am the director to  
19 the Virginia Health Benefit Exchange. It's a  
20 pleasure as always to be here with you. I want to  
21 join Sabrina in thanking Starla Kiser and Julie  
22 Bataille for their service on the Advisory  
23 Committee, and they both have been with us almost  
24 since the beginning. So I really appreciate all  
25 they have contributed as we have gone through this

1 journey of transitioning Virginia to its own  
2 state-based marketplace.

3 Along those same lines, for those of you  
4 who don't know, our wonderful board chair Sabrina,  
5 her term will be ending at the end of October, and  
6 she has decided to focus her efforts and attention  
7 elsewhere moving forward. So sadly this is likely  
8 to be Sabrina's last Advisory Committee with us.

9 So I wanted to take a moment on behalf of the  
10 Virginia Health Benefit Exchange as well as  
11 personally thank you, Sabrina, for all of the  
12 work, the insights, the advice, and perspective  
13 that you have offered as really one of our  
14 nation's leaders in health policy. It has been  
15 truly a privilege to work with you and have you as  
16 part of this Advisory Committee since the  
17 beginning. It has been really quite a journey; so  
18 thank you so much for your service. And we are  
19 certainly going to miss you.

20 MS. CORLETTE: Thank you, Keven. It has  
21 been a real pleasure to work with you, and I am  
22 proud to have been involved in this effort. It  
23 has been really an exciting thing to see. So  
24 thank you very much.

25 MR. PATCHETT: All right. Well, it is

1 really hard for me to believe that it has been  
2 three months since we last met. It feels much  
3 more like three weeks in terms of the amount of  
4 time that has passed and maybe more like nine  
5 months in terms of the amount of work that we have  
6 been doing at the Exchange since then. That's  
7 sort of the new time warp that a lot of us are  
8 living in these days, where time moves so quickly  
9 and yet there is so much that gets done and has to  
10 get done in these short periods of time.

11 I wanted to just focus on a couple of  
12 things that are recent updates for us here at the  
13 marketplace since our last meeting. I am excited  
14 to report that we have awarded a new round of  
15 grants to our Navigator organizations for the  
16 upcoming fiscal year and also very excited that we  
17 have added a new Navigator entity this year. It's  
18 always very exciting to see the growth in this  
19 area. Our navigators provide an essential service  
20 for Virginia consumers. They are one of our main  
21 resources in having live in-person and one-on-one  
22 service for consumers who are going through the  
23 enrollment process who are making -- especially  
24 those who are making the transition from Medicaid  
25 to commercial insurance products that are sold on

1 the marketplace. Along those same lines, we have  
2 updated our training and certification program  
3 this year, and we already have over 2700 assisters  
4 who have completed that, which is about 60 percent  
5 of all of our certified assisters. Among those,  
6 of course, are our agents who are the other really  
7 main group of on-the-ground, in-person, one-on-one  
8 assisters who are helping consumers navigate those  
9 transitions and the never simple waters of health  
10 insurance. And I want to offer my appreciation  
11 and the Exchange's appreciation to all of our  
12 agents, navigators, and assisters who work so hard  
13 to help consumers in Virginia.

14 One of the things that has been in the  
15 news, for those who follow these things, is the  
16 unauthorized enrollments that have been happening  
17 at the federal level. We have been very fortunate  
18 in Virginia, that has not been an issue for us.  
19 We have monitored it closely. I think we have got  
20 a very good group of agents and assisters who are  
21 committed to helping consumers, and it's something  
22 that we're very fortunate here in Virginia.

23 The last thing in terms of recent updates,  
24 we have implemented a new provider directory. One  
25 of the pieces of feedback that we heard from the

1 last open enrollment is that in certain regions of  
2 Virginia, our provider directory was -- was just  
3 very out-of-date and not providing a useful tool  
4 for consumers as they were shopping for coverage  
5 to be able to look and make sure that their  
6 provider was going to be in-network for the plans  
7 they were looking at. When we took a look at the  
8 third-party service that was providing that  
9 directory for us, we -- you know, we really just  
10 had very limited ability to influence how  
11 frequently that database was updated, what codes  
12 were being used, what the lexicon and architecture  
13 looked like. So we made the decision to bring  
14 that in-house to our platform vendor and have much  
15 more opportunity to collaborate with our carriers  
16 in timely updating provider networks. As many of  
17 you know, these networks of providers change  
18 pretty frequently, and so it's difficult to ever  
19 approach perfection, but we think we're going to  
20 be able to get a lot closer. And so far, the  
21 reports have been positive as we have worked and  
22 tested. And on the early days of having this  
23 live, it is certainly not a one-and-done effort.  
24 This is something that will continue to evolve and  
25 improve over time. And we are looking forward to

1 working with our carriers and our agents and our  
2 assisters for ongoing feedback in ways that we can  
3 improve that experience for consumers and provide  
4 the most reliable and accurate information about  
5 our provider networks.

6 All right. Let's talk about some of the  
7 things that we have upcoming. We are in the  
8 process of testing and preparing to roll out a  
9 mobile app for our agents to use. The primary  
10 functionality in this mobile app is going to be  
11 for book of business management and as a  
12 communication tool. It's not a -- it's not an  
13 enrollment tool, at least not yet. But we're  
14 excited to enhance the toolset that's available to  
15 help agents as they work with their consumers  
16 especially during the really, really busy season  
17 of open enrollment.

18 APTC rebalancing is a feature that we made  
19 the decision over the last couple of months to  
20 implement and have just finished testing it and it  
21 should be live here in the next coming days. What  
22 this allows us to do as part of the enrollment  
23 platform is consumers update their income and  
24 other information, household information, for  
25 example, during the year. That may change the

1 amount of advanced premium tax credits that they  
2 are eligible for. Previously, we -- we didn't  
3 have the capability to make mid-year adjustments.  
4 What that meant is that in some cases consumers  
5 weren't getting all of the APTCs they were  
6 eligible to help reduce their premiums in the  
7 ladder half of the year. Or in some cases,  
8 consumers were receiving more APTCs which could  
9 have an adverse impact on their tax filings. So  
10 this allows us to have an automated calculation  
11 that adjusts the APTC amount moving forward as  
12 consumers make those changes in their account in  
13 realtime. So we're looking forward to that. I  
14 think that's going to be a real benefit to many of  
15 our consumers.

16 MS. CORLETTE: Keven, can I ask a question  
17 about that?

18 MR. PATCHETT: Sure.

19 MS. CORLETTE: Just so I understand it.  
20 So for plan year 2024, if a consumer reports to  
21 the Virginia Marketplace, say, in June that their  
22 income has gone up, you would not be able to  
23 adjust their APTCs to the amount they are actually  
24 eligible for, putting them at risk of having to  
25 pay extra taxes during reconciliation?



1 MR. PATCHETT: It's a little more nuanced  
2 than that.

3 MS. CORLETTE: Okay.

4 MR. PATCHETT: So previously it was very  
5 linear. So we would -- the options were to not  
6 adjust at all or to adjust based on the new  
7 income. The functionality now allows the platform  
8 to take into account both past and future.

9 MS. CORLETTE: I see.

10 MR. PATCHETT: And make a much more --  
11 that's why we say rebalancing.

12 MS. CORLETTE: Got it. Got it. Yeah.

13 MR. PATCHETT: To make that a more  
14 comprehensive calculation.

15 MS. CORLETTE: Okay. Thank you.

16 MR. PATCHETT: Absolutely.

17 And then the last thing I will talk about  
18 on this front is our facilitated enrollment  
19 program. This is actually the program that was  
20 passed by the legislature a few years ago that was  
21 implemented in phases. Starting in January of  
22 next year, we will be in the next phase of  
23 facilitating enrollment, which means that the  
24 Virginia State Income Tax form will now have a box  
25 that consumers can check to say that they want to

1 share information with either the Department of  
2 Medical Assistance Services or Medicaid  
3 eligibility or the Virginia Health Benefit  
4 Exchange to determine health coverage eligibility.  
5 For those consumers who elect to share that  
6 information, there are some additional forms that  
7 they will fill out as part of their return. But  
8 ultimately, we will have their information sent  
9 directly to our enrollment platform where we can  
10 pre-populate accounts for those folks, and they  
11 will be able to then come -- we will do some  
12 outreach, and they will be able to come directly  
13 to the marketplace and look to see their  
14 eligibility both for qualified health plans and  
15 advanced premium tax credits. So it's a  
16 collaborative effort that we're working with the  
17 Department of Taxation, DMAS and DSS, as well as  
18 our platform vendor to make sure all the pieces of  
19 this fit together. But we think this is going to  
20 be a real benefit for consumers who are just  
21 unsure where the best place to go for health  
22 coverage.

23 All right. I am --

24 MS. CORLETTE: Sorry, Keven. Sabrina  
25 again with a question.

1 MR. PATCHETT: Please.

2 MS. CORLETTE: So on that front, are you  
3 all or is the Department of Taxation planning to  
4 do any consumer testing of the language that is  
5 going to appear on the form to try to make sure  
6 that it's, you know, optimal language to encourage  
7 uptake of, you know, the people checking that box?

8 MR. PATCHETT: That is a great question.  
9 So for this year, we had very -- we had a very  
10 tight window we had to work in and very limited  
11 real estate on the form, but that is something  
12 that we are going to be working on going forward  
13 with the Department of Tax and with DMAS as we  
14 figure out how do we make this clearer for  
15 consumers and how do we provide this in a way that  
16 is understandable.

17 MR. ROSSITER: Keven, another question is,  
18 well, is it true that this would not have been  
19 possible with the federal platform?

20 MR. PATCHETT: That's a great question. I  
21 do not think it would have been possible with the  
22 federal platform. I don't -- I was not involved  
23 in whether or not there were conversations to try,  
24 but what I do know about the federal platform  
25 making changes for -- to ingest one state's

1 information uniquely has been an impossibility.  
2 So I do think this is a benefit that is unique to  
3 having our own state-based marketplace.

4 MR. ROSSITER: Thank you.

5 MR. PATCHETT: Any other questions before  
6 we move on?

7 MS. CANTU HINOJOSA: Yes. This is Ikeita.  
8 This opt-in option currently exists for  
9 Medicaid, correct?

10 MR. PATCHETT: Correct.

11 MS. CANTU HINOJOSA: And do we know what  
12 the percentage of uptake is or how many folks  
13 currently opt-in for Medicaid or what the success  
14 rate is for that?

15 MR. PATCHETT: I don't have that off the  
16 top of my head. And DMAS may have that, but I  
17 haven't seen those numbers.

18 MS. CANTU HINOJOSA: Okay. Just curious.  
19 Thanks.

20 MR. CONNORS: Hi, Keven. This is Craig  
21 Connors. I have a quick question.

22 The new enhanced provider directory, how  
23 do consumers access that?

24 MR. PATCHETT: I'm sorry. How do  
25 consumers access that?

1 MR. CONNORS: Yes.

2 MR. PATCHETT: Yeah. So as part of the  
3 application and enrollment process and even  
4 through the anonymous shopping process, when a  
5 consumer goes into the platform and has put in  
6 some information about what they are looking for,  
7 they will then be given a couple of different  
8 options to check to see if their provider is in  
9 network for certain plans. And also -- so they  
10 can search by provider, they can search by  
11 facility, so it's --

12 MR. CONNORS: It's not available to the  
13 general public for someone who may be considering  
14 enrolling in a plan in the marketplace? You have  
15 to start the enrollment process before you access  
16 it?

17 MR. PATCHETT: You do not have to start  
18 the enrollment process. You can access it through  
19 what we call our anonymous shopping process. So  
20 when you first go into the marketplace platform,  
21 you can choose to put in some just basic anonymous  
22 information and essentially, you know, browse and  
23 window shop. So you should be able to access the  
24 provider directory as part of that process without  
25 creating an account or providing any personal

1 information.

2 MR. CONNORS: Great. Thank you.

3 MS. CORLETTE: Sorry. I just have one  
4 more question. Keven, thank you for this.

5 Going back to the Navigator grant, you  
6 mentioned you added a third grantee. I'm just  
7 curious, was that -- were you able to grow the  
8 amount that you're giving in Navigator grants in  
9 total, or did you have to redistribute funds from  
10 the two existing grantees to the new one?

11 MR. PATCHETT: Yeah. We increased our  
12 overall Navigator grant this year by about  
13 13 percent.

14 MS. CORLETTE: Oh, that's great. Thank  
15 you.

16 MR. PATCHETT: And I will say about the  
17 provider directory, we continue to get feedback  
18 from a couple of different sources and -- and so I  
19 know one of the areas that -- that can sometimes  
20 present challenges is the -- especially the  
21 facility search. One of the challenges that we  
22 have is sometimes the same facility might be  
23 listed by one provider as a hospital whereas  
24 another might list that same facility a little bit  
25 differently.

1           One of the things that we're constantly  
2 open to working on is, you know, are there ways to  
3 improve the hierarchy, the lexicon, you know -- is  
4 NPI the best way to identify facilities; so we are  
5 very interested in feedback and ideas as we move  
6 forward and figure out how to enhance this and  
7 make it better for consumers and for providers.

8           All right. With that, I'm going to pass  
9 it over to Holly to talk about a few regulatory  
10 and policy updates, as well as our updated  
11 marketing plan as we get ready for open  
12 enrollment.

13           Holly.

14           MS. MORTLOCK: Good afternoon, everyone.  
15 Thank you, Keven. I am excited to be here with  
16 you all today.

17           So a few updates we wanted to --  
18 developments we wanted to share with you. So as  
19 many of you know, this year -- so we -- CMS is  
20 resuming their requirement to enforce the filing  
21 requirement for individuals who receive premium  
22 tax credits. So previously individuals were  
23 required to -- well, they are -- they have been  
24 required to file annually since they have gotten  
25 their -- since the inception of the ACA. During

1 COVID-19, CMS paused the enforcement of failure to  
2 reconcile -- or of reconciliation requirements.  
3 And they are resuming the enforcement of those  
4 requirements of this year with a modification that  
5 individuals instead of being -- losing their  
6 eligibility for tax credits at the one-year point,  
7 they will -- CMS is extending that to two years.  
8 So what that does require of state-based  
9 marketplaces is that we, one, make sure that we  
10 are notifying consumers when they do have -- when  
11 they are in a one-year status. And so we are  
12 preparing now to send out those notifications.  
13 And then at the two-year mark, we are required to  
14 remove subsidies for individuals who have failed  
15 to reconcile for two years. But we also wanted to  
16 see this as a really important opportunity for  
17 consumer education in that we are updating our  
18 notices and our consumer outreach materials to  
19 really support consumers in the understanding of  
20 the importance of reconciliation and to help  
21 improve their health insurance literacy and the  
22 obligations that they have in order to keep their  
23 coverage. So we are definitely using that as an  
24 opportunity to do that.

25 Sabrina, I see you have a question.



1 MS. CORLETTE: Yeah. I'm just curious, do  
2 you have any sense of what proportion of your  
3 current enrollment are not -- are in that FTR  
4 status?

5 MS. MORTLOCK: So I know we are doing some  
6 work on that now, and I don't have those numbers  
7 at my fingertips, but I do know we have outreach  
8 programs ready to conduct that outreach to  
9 individuals who may be in that situation. So that  
10 is something that we can look into, but it's not  
11 something that I have at my fingertips at this  
12 time.

13 MS. CORLETT: Thanks.

14 MS. MORTLOCK: And the next development  
15 that I will share is that -- is -- so Keven had  
16 touched briefly on the issue that you all have  
17 heard on the news about unauthorized enrollments.  
18 And just first of all wanted to say -- I think we  
19 may have touched on this a little bit at the June  
20 meeting. So this is not a trend that we are  
21 seeing in Virginia. We have not observed that so  
22 far. So consider ourselves fortunate and just a  
23 great testament to the excellent work of our  
24 insurance agents and their work with our  
25 consumers. But knowing that it has been an issue

1 nationally, we have taken some proactive steps to  
2 strengthen our agent agreement, our standards of  
3 conduct, and our ability to take enforcement  
4 actions should that become an issue in Virginia.  
5 So just wanted to make the committee aware of  
6 that, knowing the attention that that has received  
7 nationally. And we do continue to keep an eye on  
8 it and make sure that we have processes in place.  
9 Should we start to receive reports of unauthorized  
10 enrollments, we are ready to go and have been  
11 paying close attention to that. But so far, I'm  
12 not observing anything of concern in Virginia.

13 And the next key -- just go back one slide  
14 just for a moment.

15 And the next issue that I wanted to touch  
16 briefly on is the final rule for Differed Action  
17 for Childhood Arrivals and extended eligibility  
18 for premium tax credits. So as many of you  
19 know -- so CMS this year finalized a rule  
20 modifying the definition of lawful presence to  
21 include individuals who are -- have a DACA  
22 recipient status. It also includes a few other  
23 categories of lawful presence. Those are -- those  
24 with special immigrant status, and there was a  
25 large -- I'm sorry -- special immigrant juvenile

1 status -- and several other smaller categories of  
2 individuals who were previously excluded from the  
3 definition of lawful presence. We are ready -- so  
4 the rule goes into effect as of November 1. So we  
5 are prepared and ready to receive individuals who  
6 apply through the marketplace. We also are  
7 adjusting our marketing and outreach plans to  
8 account for that new population to make them aware  
9 of the opportunities that they would have with the  
10 marketplace.

11 Okay. Next slide. Great. Okay. So I  
12 wanted to share with you an update on our  
13 marketing plan for plan year 2025. And leading up  
14 to our second open enrollment, Virginia's  
15 insurance marketplace is conducting a  
16 comprehensive and diverse brand awareness and open  
17 enrollment campaign to further amplify Virginia's  
18 awareness of its new state-based marketplace and  
19 to help build its use as a household name. So  
20 based on some of the research and data that we  
21 have done, we have several areas of focus this  
22 year including young adults, especially those who  
23 are reachable through video game streaming  
24 platforms and sports advertising modalities; young  
25 single men; families; individuals impacted by the

1 unwinding, of course; residents of rural areas and  
2 different communities of color; various age  
3 groups, including middle and late adulthood. So  
4 we're really trying to, with a robust marketing  
5 campaign, touch on all of these really key  
6 demographic areas for Virginia. So these groups  
7 were based on data to target them and those  
8 individuals and these segments that are in greater  
9 need of insurance coverage. And really the goal  
10 of our campaigns are to further build Virginia's  
11 marketplace as a trusted public service. So some  
12 of our new investments I have listed on the slide  
13 here. So that's the brand awareness campaign. So  
14 those are -- you can see the channels that we have  
15 chosen there, but we will call your attention  
16 really to our open enrollment campaign.

17           So we can go to the next slide, please.  
18 So you can see really the comprehensive list of  
19 strategies that we have here. So we have linear  
20 and connected TV. So these will be 30-second  
21 television ads running throughout the  
22 Commonwealth. The station selection will be  
23 focused on indexing networks for rural, low  
24 income, and uninsured audiences. And we will  
25 include channels like sports, religion, comedy,

1 country, history, and discovery. We are also  
2 using Twitch to index young adults ages 18 to 35.  
3 We have, of course, our social media strategies  
4 with site banners and videos on promoted platforms  
5 like Facebook, Instagram, and YouTube. We have  
6 high impact display, premium ad display units that  
7 are interactive and encourage site engagement  
8 through multiple touch points. We also have --  
9 through Google search, we have text ads promoted  
10 on Google search results. We will have 15- and  
11 30-second audio spots on radio stations throughout  
12 Virginia. And, of course, we have digital out of  
13 home and programmatic display and video.

14 But another strategy that we did last year  
15 that we are bringing back this year is the  
16 satellite media tour. So that is a series of  
17 back-to-back television and radio interviews that  
18 allows a Virginia insurance marketplace  
19 spokesperson to be interviewed by multiple  
20 stations and networks within a few hours. And we  
21 will -- actually, we were planning to do this here  
22 at our office in Richmond this year and have them,  
23 of course, disseminated through open enrollment.  
24 This will probably yield about 15 to 17 interviews  
25 that can be repeated over time. And we will do

1 this probably towards the middle of November. One  
2 of the things that we are mindful of is the  
3 presidential election and the saturation of the  
4 media market. So really trying to plan around  
5 that to get -- to maximize our reach and ensure  
6 that people will be able to hear the messages that  
7 we are pushing through. So that is at a high  
8 level our media campaign.

9 If we could go through to the next  
10 slide -- hold on for just a moment. I do see --  
11 Craig, is that your hand up?

12 MR. CONNORS: Yes, it is. Craig Connors.  
13 Thanks, Holly.

14 How much is going to be spent on the open  
15 enrollment campaign in total?

16 MS. MORTLOCK: I would have to take a look  
17 and get that to you, but I do know that we have  
18 had a substantial increase in the amount of media  
19 buy that we have had really amplifying in those  
20 areas.

21 MR. CONNORS: And I saw the goal is to  
22 educate people, which is a great goal, but I mean,  
23 is there an outcome metric, I mean, just to make  
24 sure you get the return on investment? Is it  
25 uninsured rate in Virginia? Is it driving

1 enrollment numbers? Is there an enrollment  
2 target? You know what I mean? With all that  
3 money, how are you going to make sure that its  
4 money well spent?

5 MS. MORTLOCK: Yeah. That's a wonderful  
6 question. So we definitely have -- so certainly,  
7 the uninsured rate is something that we are always  
8 looking towards in enrollment data. But beyond  
9 that in marketing, so we really look at, you know,  
10 how many people interacted with those ads, right,  
11 where they could use a QR code or they could click  
12 through to our website. Things like that and how  
13 much time did they spend when they were there.  
14 Those are some of the key metric indicators that  
15 we do use. I do know that we are refining those  
16 as we are going into open enrollment this year but  
17 definitely something that we are tracking.

18 MR. CONNORS: Thank you.

19 MS. MORTLOCK: Okay. So one of the other  
20 features that we are very excited to share with  
21 you is that we spent a lot of time -- our  
22 marketing team spent a great deal of time earlier  
23 this year to gather some marketplace consumer  
24 testimonials of real consumers that have used  
25 Virginia insurance marketplace and their

1 experience in using it. So we filmed these  
2 testimonials. We had a selection process and  
3 filmed five consumers in the areas of Roanoke,  
4 Richmond, and Hampton, and we have created a  
5 compilation of real stories to promote the use of  
6 the marketplace. We will use this on our website  
7 and we will also be able to play these on our  
8 connected channels.

9 So, Victoria, if you are able to press  
10 play on that, I am hoping that the committee will  
11 be able to see the compilation. So, Victoria, I'm  
12 not sure if the volume is available. Okay. Can  
13 anyone hear it? No. Okay.

14 MS. CANTU HINOJOSA: No, I can't hear it.

15 MS. DRESCHER: Let me try one more thing.  
16 I'm trying to figure out which setting I need.  
17 I'm sorry.

18 MS. CANTU HINOJOSA: Are these currently  
19 up on the Virginia marketplace website?

20 MS. MORTLOCK: They are not, but they will  
21 be shortly.

22 MS. CANTU HINOJOSA: Okay. Thank you.

23 MR. ROSSITER: Are they on YouTube?

24 MS. MORTLOCK: Yes. They will be.

25 MR. ROSSITER: Okay. They will be.



1 MS. DRESCHER: Is the audio still not  
2 working?

3 MS. MORTLOCK: Yeah, Victoria, I'm not  
4 able to hear it.

5 Well, we will send you out the links so  
6 that you all can view them. I'm so sorry that  
7 we're not able to have the volume available. We  
8 could play it so you can just get a visual of what  
9 it looks like. It is about a minute.

10 MS. BECKER: Victoria, this is Rachel. If  
11 you go under -- no. If you go under share and  
12 click include sound in the top right corner, you  
13 should be able to -- so if you just go under  
14 share, it should work.

15 MR. PATCHETT: Well, I think we should go  
16 ahead and move on. I do want to circle back just  
17 for a second to Craig's question about our  
18 marketing and outreach budget. So a couple of  
19 years ago, the Health Insurance Reform Commission,  
20 I believe it was, had made some recommendations  
21 around marketing spend, and we have used that as  
22 sort of our guidepost. We have not reached -- as  
23 I recall, they recommended something close to  
24 11 percent of overall budget towards marketing.  
25 We're not --

1 (Video playback begins.)

2 (Video playback ends.)

3 MS. MORTLOCK: Well, sorry for that  
4 interruption, everyone, but hopefully you got to  
5 hear most of that. But that is our compilation  
6 video. We will still plan on sharing that with  
7 you, and we will let you know when it is on our  
8 website and other channels as well and hopefully  
9 you will be able see it on your television  
10 throughout open enrollment, and you may hear of  
11 others who see it as well.

12 So I will turn it back to Keven.

13 MR. PATCHETT: Yes. So I was just adding  
14 a little bit to your question, Craig, around  
15 market and outreach spend. Our overall marketing  
16 and consumer outreach budget right now is around  
17 eight percent of our total budget, now that is for  
18 the entire year and it includes a lot more than  
19 our open enrollment marketing budget. We are  
20 still making some tweaks to what our open  
21 enrollment spend is going to look like as we, you  
22 know, work with our marketing vendor on the  
23 various channels that Holly laid out and how we  
24 navigate sort of the timing around the beginning  
25 of open enrollment. One of the reasons -- Holly

1 was talking about some deferred timing. We know  
2 that first week of November there's likely going  
3 to be media saturation in the market which means  
4 unusually high prices and also just less air time  
5 available. So the details of exactly how much  
6 we're going to spend during open enrollment, we're  
7 still refining that and should have that finalized  
8 here in the next week or two.

9 MR. CONNORS: Thank you, Keven, for  
10 additional information.

11 Just one question as far as tactics, and  
12 if it was on the slide, I apologize. I missed it.  
13 But have you all considered doing some targeting  
14 rather than mass marketing specifically maybe to  
15 small employers who don't offer health insurance  
16 and figuring how to get to the people who are most  
17 likely to need a plan from the marketplace?

18 MR. PATCHETT: We do. And we have a  
19 variety of targeted consumer direct, even our sort  
20 of mass media portions of our marketing campaign  
21 are tailored based on surveys that we have done of  
22 the marketplace. We have created what we call  
23 personas which, again, based on some market  
24 research that we hired some contractors to do  
25 divides our market into segments so we can

1 understand, you know, who our consumers are, where  
2 they live, and then target outreach and specific  
3 regions based on the results of those surveys. We  
4 do boots-on-the-ground outreach where we have  
5 folks from our outreach team who attend a variety  
6 of community events and partner with various  
7 organizations to do more of that targeted  
8 outreach. For example, just this last weekend, we  
9 had some of our outreach folks attend the tribal  
10 powwow that was held to start to build some  
11 relationships there and learn more about the  
12 tribal communities in Virginia and how we can do  
13 outreach that best meets their needs. So it's a  
14 pretty robust outreach program that we're  
15 developing. What Holly was sharing here was just  
16 one segment in our media push as we get closer to  
17 open enrollment.

18 MR. CONNORS: Thank you.

19 MS. MORTLOCK: And also as we get closer  
20 to open enrollment, it is still in the process of  
21 building those ads and modalities. So I think at  
22 our next meeting, we should have some additional  
23 live ads to show you. So I think you will be able  
24 to see the full range of the communities that we  
25 have targeted and just the scope of how much we

1 have planned here. And we can also share with you  
2 how those align to the specific -- the ads that we  
3 are developing specifically are aligned to those  
4 distinct communities and segments that Keven was  
5 mentioning. So we can share with you -- I think  
6 it might be more meaningful once you can see the  
7 ad itself but -- so we will be happy to share that  
8 with you at our December meeting.

9 MR. PATCHETT: All right. So Victoria has  
10 moved us into our metric slides here. Do we need  
11 to pause, Sabrina, and give your guest speaker an  
12 opportunity, or can we take a few more minutes  
13 here?

14 MS. CORLETTE: Welcome, Zach. I think we  
15 can take a few more minutes. Zach, are you  
16 comfortable staying on with us for just a few  
17 minutes and we will call on you momentarily?

18 MR. BARON: Yeah, that's fine. Thanks for  
19 having me.

20 MS. CORLETTE: Thanks for your patience.

21 MR. BARON: All good.

22 MR. PATCHETT: All right. Well, one of my  
23 favorite topics and one that I know the committee  
24 has been very interested in is in our metric  
25 reporting. So we have got data here that shows

1 that the changes from open enrollment through the  
2 first and second quarters. One of the interesting  
3 lessons that we're continuing to learn -- and it  
4 is always fascinating to me because we -- those of  
5 you who have been with us for a while on this  
6 journey know that we have spent a lot of time  
7 leading up to our transition working with other  
8 states and national experts gathering as much  
9 information as we could about lessons learned. We  
10 continue to follow that practice and nonetheless  
11 we continue to discover and learn as we do. And  
12 so metrics is one of those areas where despite how  
13 many resources we have worked with, we still sort  
14 of learn things that are surprising to us. So you  
15 can see that the continued activity by consumers  
16 post-enrollment -- one of the things that is  
17 always a challenge for us -- so a lot of the  
18 metrics that we track, we track for various  
19 purposes and regulators. CMS has a number of  
20 metrics that they require us to report on. The  
21 Bureau of Insurance also often has data and  
22 metrics that they ask us for to facilitate various  
23 of their activities in an actuarial area. And one  
24 of the things that happens when we start to put  
25 data together, we recognize that, you know, that

1 number made a lot of sense, the purpose for which  
2 we were using it, but when we start putting these  
3 things together, it shines some light on the  
4 different way that metrics can be calculated. So  
5 for instance, these first two metrics, if you --  
6 if you look, the number of new consumers is  
7 outpacing the overall enrollment growth. And this  
8 is an example of where in our first enrollment  
9 number we're using what we call effectuated  
10 enrollment. So this effects consumers who not  
11 only signed up for a health plan but also made at  
12 least one premium payment. Whereas when you look  
13 at the new consumers, that's an aggregated number  
14 that reflects consumers who have submitted  
15 applications but may not have effectuated their  
16 enrollment. So it is a continual process for us  
17 to align these metrics and figure out how we are  
18 sharing, defining, but I left these two different  
19 so that we could sort of share that -- some of  
20 those decisions that, you know, data is not just  
21 plug and chug, but it's -- there's a -- there are  
22 meaningful and concerted decisions that we make  
23 throughout the process.

24 Any questions about any of these metrics  
25 before we move on?

1 MS. CORLETTE: Yeah. One thing we talked  
2 about, Keven, was having some sort of public  
3 facing dashboard for some of these numbers. And  
4 I'd be curious about the status of that as well as  
5 the frequency in which those numbers would be  
6 shared publically.

7 MR. PATCHETT: Yeah. So we're very close.  
8 Although, you know, two months ago I thought we  
9 were on the cusp. So we're still planning to post  
10 numbers three or four times a year. The -- you  
11 know, one of the questions that we're still  
12 mulling on the frequency is the, you know, the 4th  
13 quarter versus open enrollment. I think we will  
14 probably wind up essentially sharing five sets of  
15 metrics over the year. The four quarterly metrics  
16 plus then the overall open enrollment metrics at  
17 the end of open enrollment. We are working with  
18 our website vendor to figure out how to best build  
19 a display rather than posting PDF. We may for the  
20 third quarter this year just wind up posting the  
21 PDF in order to get the data posted. But it's a  
22 work in progress.

23 MS. CORLETTE: I think Craig is next.

24 MR. CONNORS: Yeah. Can you just confirm  
25 that number, 47,405 people are eligible for



1 Medicaid but are enrolled in a marketplace plan  
2 instead. Any insight you have on that? That  
3 seems like a lot of people.

4 MR. PATCHETT: Yeah. So that's --  
5 that's -- that's not -- those folks are not  
6 enrolled in marketplace plans. So folks that we  
7 determine eligible for Medicaid are famous. They  
8 are transferred directly to the Department of  
9 Medical Assistance Services for enrollment.

10 MR. CONNORS: Okay. That makes more  
11 sense. Thank you.

12 MS. CORLETTE: Ikeita?

13 MS. CANTU HINOJOSA: Yes. So I was just  
14 checking on the status of our conversations we  
15 have had in past meetings about the geographic  
16 breakdown of key metrics, just the ability to see  
17 certain metrics by region of the state because  
18 Virginia is diverse. If you could just update us  
19 on that, that would be great.

20 MR. PATCHETT: So we actually have two or  
21 three more slides of data, and that one is coming.

22 So if we could go to the next slide. So  
23 here you see the breakdown by income level  
24 relative to the federal poverty level. At that  
25 bottom row there, not reported, those are

1 consumers who have chosen not to report their  
2 income.

3 All right. Next slide.

4 MS. CORLETTE: I see Doug -- Doug, do you  
5 have a question?

6 MR. GRAY: I do. I notice that between  
7 the end of open enrollment and the second quarter,  
8 you have about a 16,000 person increase. I was  
9 wondering if that was a reflection of  
10 predeterminations or something else.

11 MR. PATCHETT: So it's a reflection of I  
12 think two different things. So, one, the  
13 continuous coverage unwinding is ongoing. So we  
14 have, you know, folks that are transferring over  
15 from Medicaid and enrolling in coverage, and then  
16 we have the variety of special enrollment periods  
17 that folks are taking advantage of. So those are  
18 just increased enrollments over the course of the  
19 first six months of the year.

20 MR. GRAY: Okay. Pretty interesting.

21 MR. PATCHETT: All right. Next slide.

22 MS. CORLETTE: Keven, on this one, do you  
23 know if the folks taking up the bronze plan, how  
24 many would be eligible for CSRs if they signed up  
25 for a silver?

1 MR. PATCHETT: Yeah. So that's some data  
2 analysis that we're working on as well as, you  
3 know, how can we help folks maximize those  
4 benefits when they make those decisions. That's  
5 an ongoing project for us.

6 MS. CORLETTE: Thanks.

7 MR. ROSSITER: Keven, I sent Holly a  
8 Health Affairs paper on that topic and how  
9 California is doing it.

10 MR. PATCHETT: Yes. Thank you for that.

11 All right. Next slide. All right. So,  
12 Ikeita, I think this is what you were asking  
13 about.

14 So this is geography based on rating area.  
15 We are also working on a way to sort of  
16 effectively display it based on ZIP code. So  
17 that's kind of the next -- one of the next phases  
18 for us. But right now, we have the rating areas.

19 MR. ROSSITER: Keven, this is Rossiter.

20 We need to standardize it somehow so that  
21 relative to population or percent of or number of  
22 people in poverty or something like that to get a  
23 better -- we need to divide by something.

24 MR. PATCHETT: Right.

25 MS. CORLETTE: Yeah. And I think, too, it

1 would be helpful to see these regions in terms of  
2 their uninsured rates too or a percentage of  
3 eligible uninsured.

4 MR. ROSSITER: Yeah. Unfortunately, when  
5 we -- when the subcommittee looked at this, the  
6 only source of that by region was Debbie Oswalt  
7 and the Virginia Foundation, Health Care  
8 Foundation. And so -- but, you know, it's  
9 probably -- across regions, it probably doesn't  
10 change that much. So her data probably would be a  
11 good way to standardize and use the uninsured rate  
12 in each region and figure out how many were  
13 signing up.

14 MS. CORLETTE: Doug?

15 MR. GRAY: Have you all been able to kind  
16 of get a data point on how many folks were  
17 eligible for subsidies but didn't take them? Have  
18 you been tracking that? Have there been  
19 discussions about insurance costs and things?

20 MR. PATCHETT: Yes. I looked at that  
21 number very recently. It is -- I will say it's  
22 much smaller than was anticipated when that topic  
23 came up last year. I can't put my hands on that  
24 number right now. I believe we have sent that to  
25 the bureau. But I will pull that, Doug. But I am

1 certain that it was a much lower number than folks  
2 had expected.

3 MR. GRAY: Yeah. When you mentioned that  
4 there were people who didn't want to share their  
5 income, that kind of triggers that question about  
6 whether they should have to as part of the  
7 application process.

8 MR. PATCHETT: Yeah. And that's one of  
9 the things that all of the state marketplaces have  
10 been talking about and working with the federal  
11 government. So a lot of those folks who don't  
12 share income, right, they choose to file their tax  
13 return and get whatever credits they are eligible  
14 as tax credits at the time of filing as opposed to  
15 advanced premium tax credits. So we're working to  
16 see if there's a way that we can get at least  
17 some, you know, anonymous data from the IRS about  
18 the total number of premium tax credits that are  
19 being claimed that will -- that's one way to help  
20 get that information without requiring people to  
21 report income on their taxes. So far we haven't  
22 made a whole lot of progress with the IRS in that  
23 regard, but it's a concerted effort across states  
24 to do that.

25 MR. GRAY: Yeah. We have been requiring

1 to report it as part of the application. That's  
2 another way to handle it. Anyway, this will  
3 become a relevant topic in about a week because  
4 we're going to get the report on the reinsurance  
5 costs of the first year around the first of the  
6 month.

7 MR. PATCHETT: Yeah. And it's -- it is  
8 one of the numbers -- there are a lot of numbers  
9 that make me scratch my head, but I think we're  
10 just over 26,000 consumers who are not reporting  
11 income. I would have not expected it to be at  
12 that five percent -- five percent level.

13 MR. GRAY: But that might be a chunk of  
14 change for the state portion of reinsurance.

15 MR. PATCHETT: All right. Well, I think  
16 that is the last of our slides.

17 Any other questions before I pass it back  
18 to Sabrina?

19 All right. It's all yours, Sabrina.

20 MS. CORLETTE: Thank you, Keven. And  
21 thank you to you and your entire team for the  
22 tremendous amount of work that you all have been  
23 putting in and the progress that you have made.  
24 It's obviously great to see Virginia launch its  
25 own marketplace, and I think everybody has a lot

1 to be proud of in terms of how well things are  
2 going and the coverage people are getting. I  
3 found myself getting a little verklempt during the  
4 video; so I'm really glad that we got the audio.  
5 So thank you, Victoria.

6 Okay. So when we met in June -- I'm going  
7 to pivot here a bit -- we got to hear a briefing  
8 on a new Biden Administration policy that enables  
9 DACA recipients to enroll in the health insurance  
10 marketplaces and potentially qualify for financial  
11 assistance. Nationally -- I don't know what the  
12 numbers are in Virginia -- but nationally,  
13 27 percent of DACA recipients are uninsured.  
14 That's over three times the average rate of  
15 uninsured which nationally is about now eight and  
16 change. This new policy, which is scheduled to be  
17 implemented in time for this coming open  
18 enrollment period, I think could help Virginia's  
19 marketplace fulfill its stated mission which is,  
20 of course, to increase access to affordable and  
21 reliable health insurance coverage for Virginians,  
22 and I think that does include our residents who  
23 are DACA recipients.

24 We heard from the marketplace staff during  
25 our June meeting that they are working very

1 diligently, and Holly just mentioned that they are  
2 working hard to implement this policy and make  
3 sure that DACA recipients cannot only enroll but  
4 get the information they need about the benefits  
5 that they are entitled to.

6 With that said, I was therefore incredibly  
7 disappointed last month that Virginia's Attorney  
8 General has joined a handful of other states in an  
9 attempt to block this DACA policy. I think this  
10 is in direct contradiction to the marketplace's  
11 purpose and mission as envisioned under its  
12 authorizing statute.

13 So we have invited here today an expert  
14 from Georgetown University Law School, Zach Baron.  
15 He will brief us on this litigation, its status,  
16 and its potential impact on the Virginia  
17 marketplace. For those of you who are not  
18 familiar, Zach and his team at the law school  
19 maintain a litigation tracker for a wide range of  
20 health-related litigation. It has been an  
21 increasingly important resource for many of us who  
22 are in the health policy domain as a lot of these  
23 issues are increasingly being determined in the  
24 courts.

25 So, Zach, thank you so much for taking



1 time out of your busy schedule to share with the  
2 Advisory Committee some information about this  
3 litigation and what it means. So, Zach, take it  
4 away.

5 MR. BARON: Thank you, and thank you for  
6 the introduction. And I want to thank certainly  
7 all the Advisory Committee members for having me  
8 and the marketplace staff for all the hard work  
9 that they are doing.

10 I did have an opportunity a couple weeks  
11 ago -- I was at NASHP, at a part of their national  
12 conference at a session with, you know, various  
13 state policy officials. And it was nice to  
14 connect with some of the Virginia folks and others  
15 talking about ongoing litigation under, you know,  
16 the Affordable Care Act.

17 We can go to the next slide, but I think  
18 Sabrina's introduction was so good that she went  
19 through what I was going to say about how my team  
20 operates at Georgetown Law. We are at the O'Neill  
21 Institute. There's all different types of centers  
22 and institutes at Georgetown which is wonderful.  
23 And, you know, what my team does is we follow kind  
24 of a range of ongoing health care litigation, a  
25 lot particularly in the private insurance base but

1 we also follow certain lawsuits challenging the  
2 Medicare negotiation program, other types of  
3 issues. You know, we try to promote public  
4 education about those cases so that people, of  
5 course, policy makers and advocacy makers, others  
6 understand how these lawsuits effect health care  
7 policies. And we also provide legal technical  
8 assistance to policy makers that are trying to  
9 understand how the legal environment and  
10 developments can affect their policy.

11 So we can go to the next slide. So  
12 briefly it sounds like you already had some  
13 background in the regulation that the Biden Harris  
14 Administration issued back in May to increase  
15 access to health coverage for DACA recipients  
16 either through -- through the marketplace or --  
17 and the handful of states that have the basic  
18 health program. But, you know, just briefly, you  
19 know, there has been a number of twists and turns  
20 when it comes to sort of the -- how essentially  
21 the Medicare Medicaid services has approached the  
22 issue of eligibility for marketplace coverage for  
23 DACA recipients and others lawfully present in the  
24 United States. Actually, before the Obama  
25 Administration issued their memorandum, you know,

1 sort of creating the DACA program, you know, the  
2 position the agency had taken was that, you know,  
3 consumers granted deferred action were considered  
4 lawfully present for purposes of eligibility to  
5 enroll in a marketplace plan. And then subsequent  
6 to that, you know, the agency issued new  
7 regulations explaining that actually that that  
8 definition of lawfully present did not apply to  
9 make DACA recipients eligible for marketplace  
10 coverage. And, you know, earlier this year, what  
11 the Administration said in its regulation is that  
12 it is reconsidering its position, you know,  
13 particularly in thinking about how this program  
14 under the law was established with the explicit  
15 objective of expanding access to help insurance  
16 affordability programs, and the previous approach  
17 really failed to effectuate Congressional intent  
18 in the ACA. The CMS estimates that this role  
19 could lead to a 100,000 previously uninsured DACA  
20 recipients enrolling in health coverage through  
21 the marketplace or the basic health plan.

22 So next slide. Flash forward a couple  
23 months and, you know, we had this lawsuit that was  
24 filed that Sabrina alluded to. So in early  
25 August -- it's hard to believe now we're just at

1 the end of September -- but just last month, you  
2 know, we had a lawsuit filed by several state  
3 attorneys general. That complaint was then  
4 amended a couple weeks later to add a couple more  
5 states. So I think the total is now up to 19  
6 states, you know, bringing a lawsuit saying that,  
7 you know, what the -- this regulation expanding  
8 access to coverage for DACA recipients is, you  
9 know, it violates the Administrative Procedure  
10 Act. And what that means essentially is saying  
11 that it is inconsistent with the text of the  
12 statute and is the agency going too far to expand  
13 access to coverage for this population. You know,  
14 I think as Sabrina alluded to, there are both  
15 states like Virginia who have joined this lawsuit  
16 that are running their own state-based marketplace  
17 and there are also states that are relying on the  
18 federal marketplace.

19 So next slide, please. What the state  
20 attorneys general argued is that they are harmed  
21 by this regulation in two ways. One, for those  
22 states that are running their own state-based  
23 marketplace, they argue that it is leading to  
24 additional administrative and economic burdens on  
25 those states. And then even in states that are

1 not running their own marketplace and are relying  
2 on healthcare.gov and relying on CMS under the  
3 federal marketplace, you know, it will require  
4 those states to expand more resources on  
5 education, health care, law enforcement, and other  
6 things, and also, you know, sort of discussion of  
7 like encouraging other types of immigration. And,  
8 you know, the response by CMS, at least in its  
9 regulation -- we will talk next about where sort  
10 of things are in the case itself -- you know, in  
11 the regulation itself, as I mentioned before, what  
12 CMS said is, look, really what the agency is  
13 trying to do is both in line with the aim of the  
14 Affordable Care Act, in line with aim of sort of  
15 ensuring broader eligibility for marketplace  
16 coverage, and actually in line with both how HHS  
17 itself and as well as the Department of Homeland  
18 Security have traditionally sort of considered  
19 folks that are, you know, lawfully present and  
20 what types of benefits that they are eligible for.  
21 In some sense, I think what the agency wrote was  
22 that actually the way that previously DACA  
23 recipients were treated was sort of an outlier in  
24 terms of excluding them from eligibility of  
25 these -- of these services. But that also, you

1 know, I think contrary to some of the arguments  
2 that some of the state attorneys general made,  
3 that actually if you look at the population of  
4 DACA recipients that are generally I think are  
5 like a younger, healthier population, it will also  
6 have some sort of positive impact, you know, on  
7 the risk pool. And certainly, you know, we know  
8 that when people you know have private -- when  
9 they have private coverage, they are more likely  
10 to get preventative services and others and that  
11 will help them sort of be more productive members  
12 of the workforce.

13 So next slide, please. So as I mentioned,  
14 we had -- the lawsuit was filed in early August.  
15 You know, of course, since I have made these  
16 slides, there's been some updates that just  
17 happened late last week. But, you know -- so what  
18 the states did was they both filed this lawsuit  
19 and they also moved for emergency relief saying  
20 that they needed to have this regulation blocked  
21 or delayed before it goes into effect, as Sabrina  
22 mentioned, on November 1 when the start of open  
23 enrollment is. So the Court set an expedited  
24 briefing schedule. And, actually, the Department  
25 of Justice, the federal government, is slated to

1 respond in court tomorrow. Briefing is going to  
2 be all wrapped up with a hearing in the middle of  
3 October. And then presumably, I think we will  
4 have a decision coming shortly thereafter,  
5 potentially days before, you know, open  
6 enrollment. Of course, that again has  
7 implications on potentially requiring changes for,  
8 you know, certain marketplaces for their  
9 eligibility and enrollment processes if the Court  
10 were to rule against the Federal government.

11 So one thing I should have noted at the  
12 beginning, which I realized I forgot, is that this  
13 lawsuit, which is again a collection of data from  
14 different attorneys general, was filed in North  
15 Dakota. In late last week, actually a -- some  
16 nonprofit organization CASA, which I think might  
17 be headquartered in Maryland, actually filed a  
18 motion to intervene in the case and also filed a  
19 motion to transfer the case to Washington, D.C.,  
20 saying that, you know, why is this case being  
21 heard in North Dakota; it's a federal regulation,  
22 there are few DACA recipients in North Dakota, and  
23 sort of wouldn't the case make more sense,  
24 actually -- I believe they might have even  
25 referenced Virginia, saying that it would make

1 more sense to have it in D.C. I think Virginia  
2 has the biggest population of DACA recipients. So  
3 there was a slew of filings that came in towards  
4 the end of last week. And the states have now  
5 pushed back and said that, wait a second, we have  
6 got this hearing that I mentioned on October 15,  
7 let's just resolve that first and then we will  
8 deal with this whole motion to intervene and  
9 transfer. So we will see what the judge does  
10 there. So I think it's, you know -- there's still  
11 a lot of moving pieces. But at the end of the  
12 day, I do expect -- unless there was any delay to  
13 the briefing and given the request from the  
14 states, we are going to get a ruling some time  
15 next month. And there the question becomes what  
16 type of relief will the judge provide. So the  
17 judge could in they're block the implementation of  
18 this regulation only in the states in which the  
19 named parties are plaintiffs. Or the judge, if,  
20 you know, siding with the challengers, could  
21 vacate the regulation on a nationwide basis and  
22 block any DACA recipient from being able to enroll  
23 in the marketplace. So, you know, I think either  
24 way depending on what ruling is issued, I think  
25 you could expect quick appeals. And even if the



1 states were successful, you can imagine the  
2 Department of Justice potentially seeking some  
3 type of expedited appeal. And I do expect there  
4 will be a fair amount of discussion and oral  
5 argument next month just about the practical  
6 implications of what it would mean to issue a  
7 ruling this close to open enrollment that would  
8 require certain changes to the eligibility open  
9 enrollment process.

10 So I'm happy to take questions from anyone  
11 about this. I see Sabrina has got her hand up.

12 MS. CORLETTE: Yeah. Zach, thank you.  
13 That's really helpful. And I just want to say, my  
14 understanding in talking to Keven and Holly is  
15 that because there's an active -- there is this  
16 active litigation, our marketplace friends,  
17 colleagues, are not authorized to answer any  
18 questions from the Advisory Committee or speak to  
19 the litigation. So, Holly or Keven, jump in if  
20 that's an incorrect characterization, but if we  
21 have questions of Zack or about the litigation, we  
22 should go ahead and ask. But the marketplace  
23 staff, because it's active litigation, are not  
24 authorized to speak on this issue.

25 But I do -- Zach, I am just concerned both

1 from like an operational perspective because this  
2 seems to sew a lot of confusion and obviously the  
3 marketplaces are actively trying to implement this  
4 rule and do all the IT changes and everything else  
5 that's required, and they may have to roll that  
6 back at the very last minute.

7 The other concern, of course, is if there  
8 are appeals or stays, that people will be actively  
9 enrolling in coverage and maybe, even depending on  
10 timing, effectuate enrollment, and then all that  
11 has to be unwound.

12 So I just -- can you opine at all on the  
13 possibility of that scenario? It just seems so  
14 messy.

15 MR. BARON: I think it's a great question.  
16 I think you're right to note the messiness and  
17 sort of potential paths here. Let's say in  
18 they're that the Government won at the district  
19 court level and then lost on appeal and the timing  
20 on which that would take. You know, it's  
21 certainly -- it is always hard to predict exact  
22 timelines of rulings. But I wouldn't say that is  
23 a certain -- that is certainly a possibility in  
24 which you could have something like that happen.  
25 I would say then, you know -- and this would be

1 something that would be very important for, I  
2 think, federal officials to weigh in, but  
3 certainly to the extent that somebody was enrolled  
4 in coverage and getting a tax credit in which  
5 those court decisions, through no fault of their  
6 own, that they were then later deemed ineligible  
7 for, I would certainly hope that the Department of  
8 Treasury, you know, would be able to sort of issue  
9 guidance and clarify that and make sure that  
10 people are paid back anything for those past  
11 months. So I would argue that they have such  
12 flexibility, but I do think it would probably  
13 require them to issue some type of guidance to  
14 deal with that. Unfortunately, I don't think  
15 there's really any precedent for something like  
16 this happening in which you have something in the  
17 midst and particularly very early in the  
18 enrollment process to have a change like that that  
19 sort of effects core eligibility for financial  
20 assistance. But, you know, I would think that  
21 there are some options that the agencies can  
22 pursue.

23 MS. CORLETTE: Thank you. Ikeita, I see  
24 you have your hand up.

25 MS. CANTU HINOJOSA: Yes. First of all,

1 thank you for being with us. This is very, very  
2 helpful.

3 So the case is discussed as being about  
4 DACA recipients, but it is actually about DACA  
5 recipients and other eligible groups. And, you  
6 know, the AGs are challenging, in their words,  
7 DACA recipients and other unlawfully present  
8 persons. And the other eligible groups, that  
9 category is much smaller than DACA. And so I'm  
10 just wondering if you could opine on the  
11 possibility of the Court saying no to DACA but yes  
12 to the smaller group of youth granted special  
13 immigrant juvenile classification and children  
14 under 14 seeking asylum withholding removal  
15 relief, you know, under the Convention Against  
16 Torture, you know, the smaller groups. Or would a  
17 decision be wholesale guidance for all individuals  
18 both for DACA and the smaller other eligible  
19 groups?

20 MR. BARON: Yeah. Thank you for that  
21 question. You know, I guess I would say, you  
22 know, when you're in the business for predicting  
23 different types of rulings, I would say anything  
24 is, like, possible. I guess what I would say,  
25 though, in a world in which this -- if this judge

1 were to sort of rule against the federal agency  
2 taking a broader interpretation of lawfully  
3 present, it strikes me as unlikely that they would  
4 do that. As much parsing and probably, you know,  
5 would end up in a situation in which if a judge is  
6 going to take a pretty strict view of this scope  
7 of this statutory provision, you know, it is  
8 probably going to be done under the lens of if  
9 Congress really wanted these folks to be covered,  
10 they should have been more clear. So I guess I  
11 would be -- while anything is possible, I would  
12 say it's probably less than likely to sort of  
13 split that way when the core issue is sort of the  
14 agency clarifying who the lawfully present  
15 definition applies to.

16 MS. CORLETTE: Lou?

17 MR. ROSSITER: So, Zach, that bleeds right  
18 into the question of the Chevron Doctrine and  
19 whether that -- its role here now or lack of role.

20 MR. BARON: Yeah. That's a good question.  
21 And I would imagine we might see some of that play  
22 out, you know, in some of the back and forth in  
23 some of this briefing. I guess I would say a  
24 couple things. Certainly, I think particularly in  
25 the health care arena and various challenges in

1 the Affordable Healthcare Act regulations, even  
2 when Chevron was on the books, I think there are  
3 judges that took a more strict and narrow view of  
4 statutory interpretation that already weren't  
5 going to defer to the agency in situations like  
6 this. And so my inclination is that really, you  
7 know, this by Chevron which dealt with -- if a  
8 certain provision and a statute is sort of  
9 ambiguous, you know, then you sort of defer to an  
10 agency's reasonable interpretation. I guess what  
11 I would say here is I think the fight will be more  
12 on -- before you get to that, you know, I think  
13 what the state AGs are arguing and what the  
14 government is saying -- absolutely is saying on  
15 the other side is the statute is really clear.  
16 The state agencies are saying the statute is  
17 really clear, it does not apply to DACA recipients  
18 and some of the other groups. And what the  
19 Government is going to say, I expect tomorrow, is  
20 going to be well, no, the statute is really clear,  
21 they gave authority to, you know, to the federal  
22 agencies to sort of clarify and expand the scope  
23 here, and we don't need -- even the ruling, the  
24 Loper Bright Supreme Court decision has said that.  
25 You know, where Congress is clear in delegating a

1 certain authority that federal agencies, you know,  
2 the Court should still -- you know, even that's  
3 not binding, you know, that's an area, you know,  
4 in which they should look for carefully in how the  
5 agency is approaching that. So I think it is a  
6 great question to ask, and I think we will see  
7 exactly how it plays out. But my -- my  
8 inclination is that we would have been probably in  
9 the same place regardless of that, of what the  
10 Supreme Court did on Chevron.

11 MS. CORLETTE: Any other questions for,  
12 Zach?

13 Well, Zach, thank you very much for  
14 briefing us on the litigation. We may want to  
15 check back with you after October 15 or after the  
16 Court's ruling to see where things stand, but  
17 really appreciate your insights. Thank you.

18 MR. BARON: Thank you all. Thank you for  
19 having me.

20 MS. CORLETTE: So I think we are at the  
21 stage of the agenda where we have subcommittee  
22 reports. I do not believe we have any  
23 subcommittee reports today; is that correct?  
24 Okay. I'm seeing nods.

25 So the next item is what we call other

1 business. And I think, Holly, you had a couple  
2 things you wanted to mention.

3 Are you still with us, Holly?

4 MS. MORTLOCK: Yes. Can you hear me? I  
5 look frozen on my screen.

6 MS. CORLETTE: We can hear you but not see  
7 you.

8 MS. MORTLOCK: I will keep going because  
9 it may change.

10 So, Sabrina, thank you. So this is, of  
11 course, a bittersweet moment where, as you know,  
12 with Sabrina with her term ending at the end of  
13 October, the committee is going to need to elect a  
14 new chair.

15 But first, I just want to take a moment  
16 and echo Keven's comments about your wonderful  
17 contributions to the Exchange and how much you  
18 have helped to guide the Exchange, you know, as we  
19 are going through our transition. So just  
20 absolutely thank you on behalf of the Exchange for  
21 all of the work that you have done to support us.

22 The other -- the next phase of this is  
23 that in -- as you are transitioning off, as of  
24 October 31st, the Exchange, we will need to have a  
25 committee chair. So it would work as though -- so



1 the vice chair of the committee would step up and  
2 serve in an interim capacity as part of the normal  
3 process and then the committee would vote to elect  
4 a new chair at the December meeting. So what we  
5 wanted to share with you is that we will -- our  
6 plan is to send out a communication to the  
7 committee members in advance of the meeting and  
8 ask you to provide any nominations that you would  
9 like and then we can hold a vote at the next  
10 committee meeting.

11 I do see that Ikeita's hand is raised; so  
12 feel free to ask any questions.

13 MS. CANTU HINOJOSA: Yes. So I'm going to  
14 go ahead and put my hand down now.

15 I can't let Sabrina get out of here  
16 without saying a few words. So I know that Holly  
17 and Keven had made some very warm remarks about  
18 our chair, but I also felt compelled to say a few  
19 words about Sabrina as well.

20 So, Sabrina, just thank you so very much  
21 for your invaluable service to our Virginia Health  
22 Benefit Exchange Authority over these past several  
23 years. You have been here from the beginning.  
24 And I have had the pleasure of knowing you for  
25 over seven and a half years when I was at the D.C.

1 Health Benefit Exchange Authority, and we worked  
2 together on health policy issues over there. But  
3 you have always just throughout your career,  
4 throughout your life, been passionate about  
5 helping to increase access to health insurance  
6 coverage. And -- but here, just in your role as  
7 chair, your dedication and your expertise and your  
8 collaboration that you really brought to your role  
9 as chair for this Advisory Committee, it is just  
10 truly, truly, helped successfully establish our  
11 Virginia's insurance marketplace. So it has been  
12 a joy to partner alongside you in my role as vice  
13 chair. And I would love to have a champagne toast  
14 right now to cheers you, but since we're all  
15 virtual, I just hope that you will settle for our  
16 sincere gratitude and appreciation. So cheers to  
17 you, Sabrina.

18 MS. CORLETTE: So, Ikeita, I'm blushing at  
19 those kind words.

20 I will just say I'm taking this particular  
21 hat off, but I'm not going away. So I'm always  
22 here to help if anybody needs me, and I will  
23 certainly be staying engaged as much as I can. So  
24 thank you.

25 MR. CONNORS: Thank you, Sabrina, on

1       behalf of the Plans and me. It has been a lot of  
2       fun, and I'm excited that we launched  
3       successfully.

4               MS. MORTLOCK: Well, thank you, everyone,  
5       for joining in the comments and appreciation for  
6       Sabrina. I know we will want to take advantage of  
7       her offer to provide some expertise and guidance,  
8       you know, as we move forward as an Exchange. And  
9       just, again, I cannot thank her enough for the  
10      resources and support that she has provided the  
11      Exchange. So thank you again so much very, and we  
12      will definitely be talking with you soon, we hope.

13              So with that, again our next meeting will  
14      be Thursday, December 12. It is virtual from 2:00  
15      to 4:00 p.m. We will send out the links to the  
16      meeting in advance, and we will also be contacting  
17      the Advisory Committee members as I mentioned with  
18      their request for nominations to fill these very,  
19      very big shoes. And then, of course, we will have  
20      the vote at the meeting. So if anyone has  
21      questions, I will be happy to address them, or we  
22      can conclude and see you next time.

23              MS. CORLETTE: Anybody have questions for  
24      Holly? Thank you, Holly.

25              So I don't think we have any public

1 comments; is that correct?

2 MS. MORTLOCK: That is right. But we do  
3 accept them on an ongoing basis at  
4 exchagedivision@scc.virginia.gov. So we did not  
5 have anyone sign up this time, but, again, we do  
6 take these throughout the year.

7 MS. CORLETTE: Great. Thank you, Holly.

8 So the final agenda item is adjournment.  
9 And unless -- before we get there, I want to check  
10 with folks and see if there are questions,  
11 comments, words of wisdom for the order. Okay.  
12 Hearing none, I would take a motion to adjourn.

13 MR. CONNORS: I motion.

14 MS. CANTU HINOJOSA: Second.

15 MS. CORLETTE: All right. We're  
16 adjourned. Thank you all for this great  
17 experience. It has been a pleasure, and I wish  
18 you well.

19 MS. CANTU HINOJOSA: Bye.

20 MS. MORTLOCK: Thank you everyone.

21 (Meeting adjourned.)  
22  
23  
24  
25

1 CERTIFICATE OF DIGITAL REPORTER-NOTARY PUBLIC

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11 financial or otherwise, in its outcome.

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13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 and affixed my notarial seal this 24th day of  
15 September, 2024.

16 My commission expires:

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I, Natalie Steele, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



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Natalie Steele, CSR

Date September 30, 2024

Transcript of 3rd Quarter Advisory Committee Meeting  
 Conducted on September 24, 2024

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