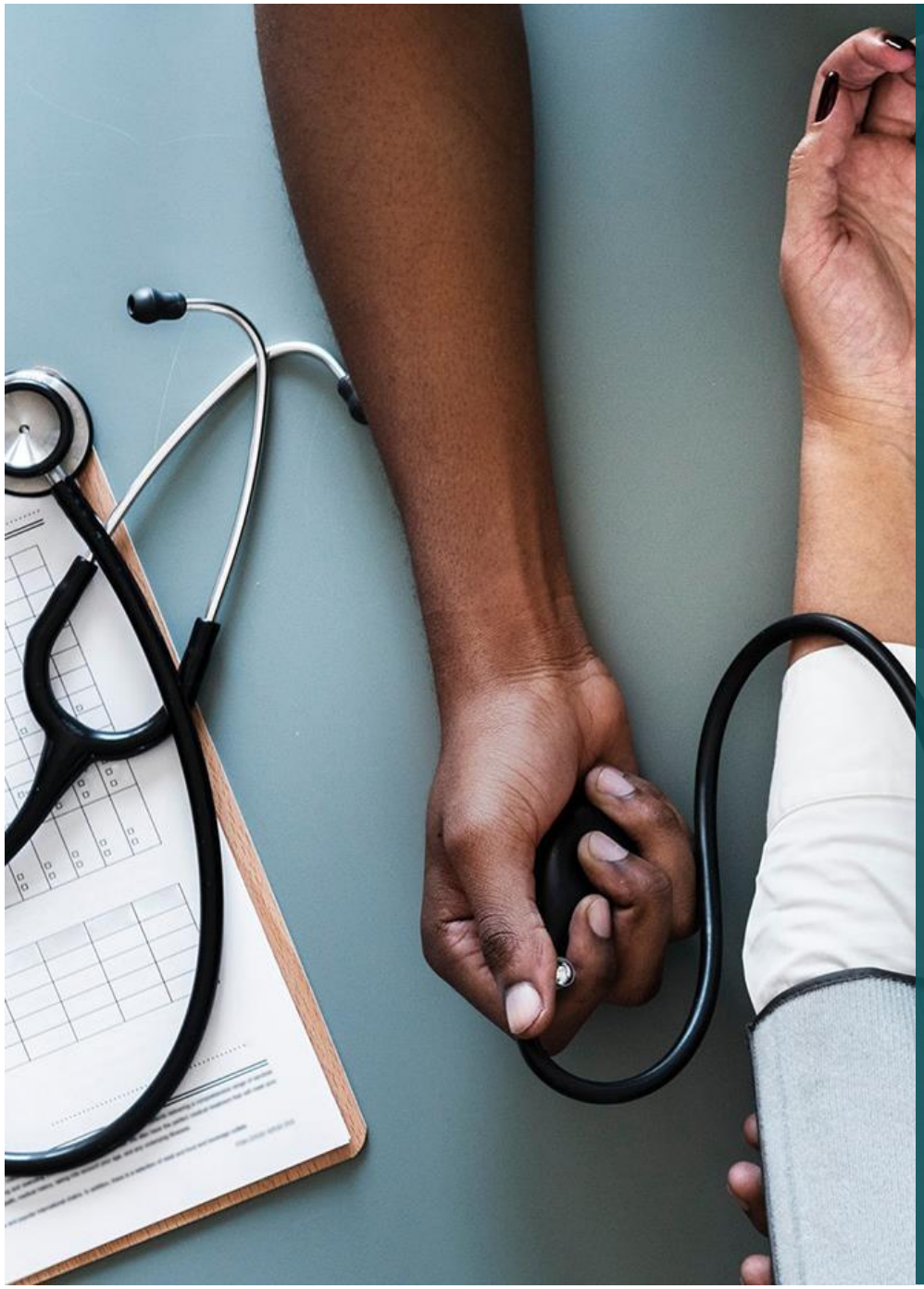


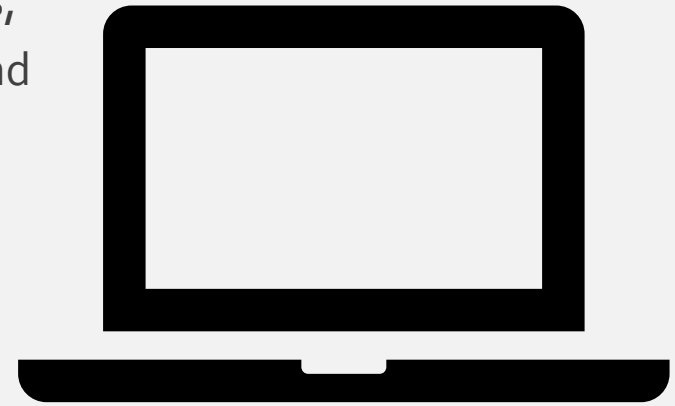
Preparing for the September 2020 UHC Work Group Meeting

Background Information on Implementation Feasibility

Preparing for the September UHC Work Group Meeting

September Meeting Goals:

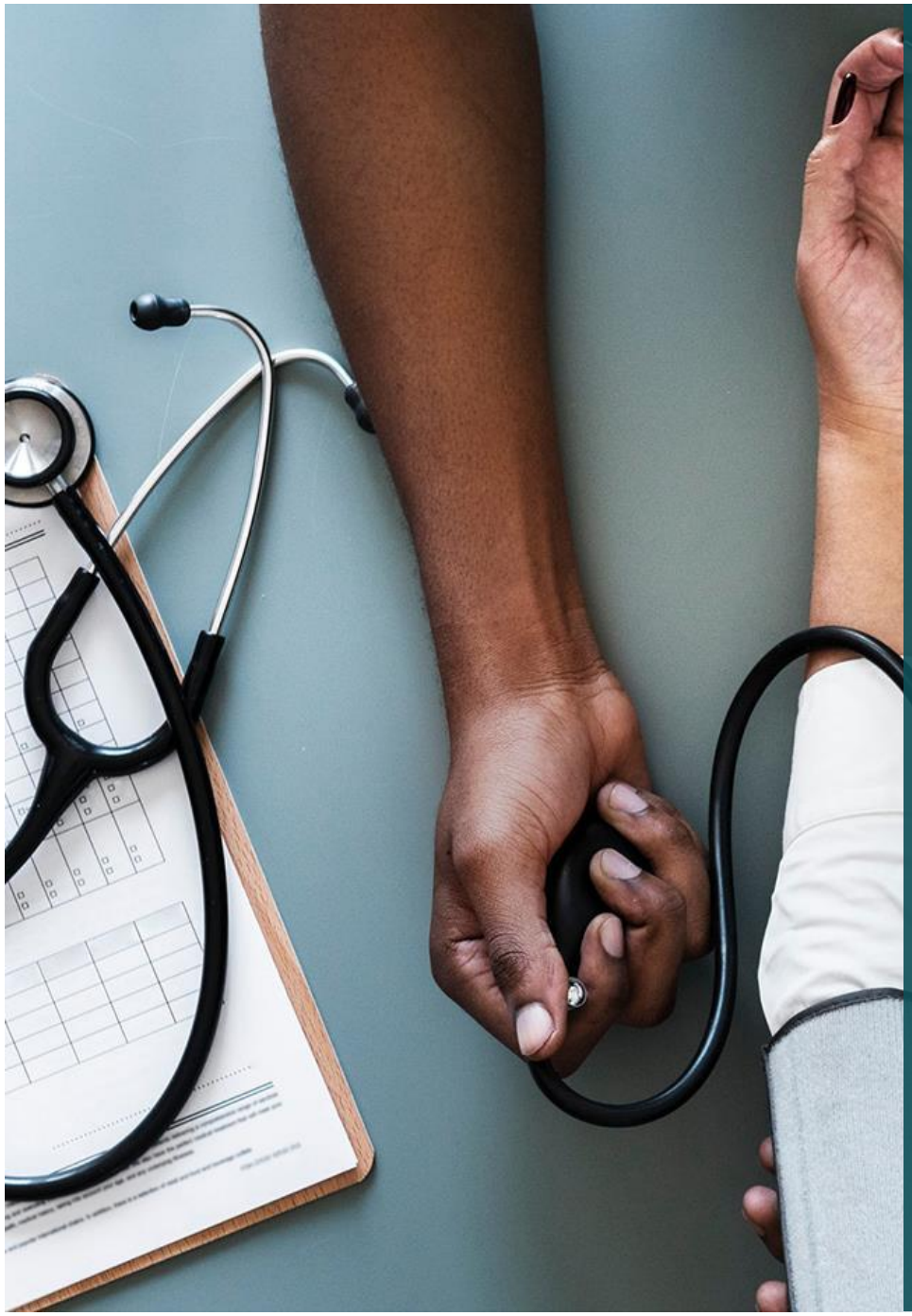
- Review and understand outcomes of actuarial analyses
- Discuss and understand the work that remains to design a system of universal health care, including policies, legal and administrative hurdles, financing, etc., to inform deliberations about recommended model(s) and articulate proposed next steps in the report



September Meeting Plan:

- Hear public comment
- Review modeling results
- Discuss implementation issues

Today's Presentation provides background to prepare for September discussion of implementation issues



For the September 2020 UHC Meeting

Background on Implementation Issues

Qualitative Criteria: Administration and Feasibility

- **Both administration and feasibility have implementation considerations**

- **Implementation will require statutory and regulatory changes**
  - Medicare
  - Medicaid
  - Affordable Care Act (ACA)
  - Employee Retirement Income Security Act (ERISA)
  - Washington State law and regulations

Impacted Federal Program: Medicare

- **Medicare is a federally administered and funded program**
  - Available to most Americans over age 65 and individuals under 65 with certain disabilities or end-stage renal disease
  - Includes Part A (hospital), Part B (provider), and Part D (prescription drug)
  - Reform would need to maintain benefits at or above level currently available to Medicare recipients

- **CMS has resisted changes to Medicare program**
  - States have never been allowed to modify eligibility or covered benefits – only payment rate changes have been allowed
  - Only Maryland has authority to set payments for Medicare-covered services – its agreement with CMS requires total Medicare per-beneficiary costs to stay under a growth cap
  - Medicare is part of Vermont's All-Payer ACO Model – designed to change health care payment models, curb cost growth, maintain quality and improve health

- **Timeline: can take 2 years or more**

Impacted Federal/State Program : Medicaid (Apple Health)

- **Federal law lays out rules for Medicaid**
  - Must cover comprehensive, medically appropriate services, including services and goods not usually in commercial benefit packages
  - Strict limits on participant cost sharing
  - Requirements are strongest for "mandatory" eligible groups
- **Medicaid Section 1115 Waiver** (demonstration waiver)
  - Can be used to expand Medicaid eligibility, redesign benefit packages, and test delivery system models that improve care, increase efficiency, and reduce costs
  - Must show benefits for Medicaid beneficiaries would be maintained or improved under proposed system
  - Must show Federal budget neutrality – waiver program can not cost more than previously
  - Waiver can change how coverage is organized – e.g., move from Medicaid MCOs to single state-administered program or to commercial carriers
- **Current waiver (Washington Medicaid Transformation Project)**
- Accountable Communities of Health coordinate regional projects to improve care (build health systems capacity, redesign care delivery, support prevention and health promotion, prepare for value-based payments)
- **Timeline: 12-24 months depending on proposal, administration, application timing**

Impacted Federal Law: Affordable Care Act (ACA)

- The ACA governs insurance coverage, premium subsidy/cost sharing supports, requirements and consumer protections in commercial coverage, etc., particularly the Exchange ("Washington Healthplanfinder")

- **Certain changes require a Section 1332 Waiver**:
  - Establish alternative to current individual and group markets
  - Change covered benefits if they don't include all ACA "essential health benefits"
  - Allow tax credits to be used for coverage outside the ACA's Qualified Health Plan structure
  - Allow tax credits to be used for benefits other than essential health benefits
  - Change minimum % of premium to be spent on medical care
  - Change "rate bands" – amount that premiums can vary by age

- **Waiver program must be "budget neutral" to federal government**

- **Timeline: 12-24 months (or more) depending on proposal, administration, application timing**

Impacted Federal Law: Employee Retirement Income Security Act (ERISA)

- **ERISA regulates administration of private-sector employer-sponsored health and other benefits** – it was enacted to:
  - Let multistate employers to offer a uniform package of benefits to all their workers
  - Protect employee benefits from loss or abuse
  - Encourage employers to offer benefits

- **ERISA preempts states' ability to establish laws that apply to self-insured employer coverage**
  - The state cannot tell self-insured employers to buy coverage or what they have to cover
  - This has limited state-based health reform efforts
  - BUT – state may regulate insurance (self-insured plans are not usually "insurance")

Impacted Federal Law: ERISA, continued

- **Hawaii is the only state with an ERISA exemption**
  - Employer insurance mandate was in place before ERISA was made law in 1974
  - Other state exemptions or waivers are unlikely

- **Court challenges have further defined ERISA**
  - Requiring employer to purchase insurance – not allowed (e.g., Maryland)
  - Requiring employer to make minimum health care expenditure for employees – allowed (San Francisco)
  - No ERISA cases to date about a state universal health care system with tax financing
    - Likely argument: a required state-funded comprehensive health benefit would compel employer to discontinue its current plans and offer a different benefit package to employees in the state
    - But: taxation and health care financing are usually seen as areas of state authority, which could deflect an ERISA challenge

- **Timeline: Unknown, depends if proposal is challenged in court**

Impacted State Law: Washington Insurance Markets

- **Washington's health insurance market is currently split into:**
  - Individual market (including Cascade Care and other coverage through the Exchange)
  - Small-group
  - Large-group
  - Coverage for associations and trusts
  - *Self-insured coverage is not regulated at state level or considered "insurance"*

- **Individuals and small group plans are subject to more oversight than are large groups, self-insured plans, and associations**

- **Legislative action would be required to:**
  - Add state subsidies to improve health plan affordability
  - Merge markets and require participation in universal program
  - Offer Cascade Care to undocumented

- **Timeline: likely two or more legislative sessions plus implementation time**

Implementing Universal Coverage: Waivers, Law/Regulatory Changes, Potential Legal Challenges

- **Medicare:** waiver approval will be challenging
- **Medicaid:** clear waiver approval pathway, will take time and depends on administration
- **ACA:** clear waiver approval pathway, will take time and depends on administration
- **ERISA:** potential legal challenge with unknown outcome
- **Washington State laws/regulations:** approval of significant structural change is dependent on legislature and administration, will take time to implement

- **Timeline: process will take <u>at least</u> 5+ years for passage of health reform law, waiver development and negotiations, potential court process**