



*The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
100 City Hall Plaza
Boston, MA 02108*

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Kathleen E. Walsh
Board Chair

Audrey Morse Gasteier
Executive Director

April 3, 2023

Center for Medicare and Medicaid Services
Department of Health and Human Services
ATTN: CMS-9899-P
P.O. Box 8016
Baltimore, MD 21244

Re: Notice of Proposed Rulemaking, “Coverage of Certain Preventive Services under the Affordable Care Act” (Published in Federal Register Volume 88, Number 22, page 7236 on February 2, 2023)

Dear Secretary Becerra:

The Massachusetts Health Connector (“Health Connector”), a state-based Marketplace (SBM) authorized under the Patient Protection and Affordable Care Act of 2010 (“ACA”), appreciates the opportunity provided by the Department of Health and Human Services (HHS) to comment on the proposed rule, **“Coverage of Certain Preventive Services under the Affordable Care Act”**.

Founded in 2006 as part of bipartisan state health reform, the Massachusetts Health Connector is the longest-running State-Based Marketplace (SBM) in the country. The Health Connector is designed to connect Massachusetts residents and small businesses with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. Today, the Health Connector serves over 214,500 individuals and about 12,000 small business employees from over 2,000 businesses.¹ The Health Connector’s efforts have contributed to the Commonwealth’s status as the healthiest state in the nation,² with a nation-leading health insurance rate over 97%,³ and among the lowest-cost average Marketplace premiums in the country in 2022.⁴

¹ See Massachusetts Health Connector March 2023 Board Meeting Records (March 2023 Summary Report), at <https://www.mahealthconnector.org/about/board-meetings>

² See [Sharecare-Community-Well-Being-Index-2021-state-rankings-report.pdf](#)

³ Kaiser Family Foundation analysis of U.S. Census Bureau data, at <https://www.kff.org/other/state-indicator/health-insurance-coverage-of-the-total-population-cps/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁴ : [Kaiser Family Foundation analysis](#) of data from Healthcare.gov, state rate review websites, and state plan finder tools. [Analysis of CMS Public Use Files](#).

The Health Connector strongly supports actions to protect and strengthen access to preventive services, including contraceptives.

The proposed rule, “Coverage of Certain Preventive Services under the Affordable Care Act” published by the U.S. Department of Health & Human Services (HHS), the Department of Labor, and the Department of Treasury (Departments) importantly addresses exemptions and optional accommodations for entities and individuals with religious or moral objections to coverage of contraceptive services. The Health Connector appreciates and supports all efforts to strengthen access to birth control coverage under the Affordable Care Act (ACA). Massachusetts has taken steps to ensure that most individuals have coverage with access to contraceptives at no cost, and all Health Connector plans are required to cover contraceptives. In order for an individual to be considered to have Minimum Creditable Coverage (MCC) under Massachusetts’s individual mandate, they must have a plan that covers preventive services as defined in federal law ([42 U.S.C. § 300gg-13](#)).⁵ In addition, the Massachusetts ACCESS Law (Chapter 120 of the Acts of 2017) sets forth specific requirements for contraceptive coverage by all fully insured health benefit plans issued to individuals and employers in Massachusetts.⁶ Massachusetts has also prioritized expansion of contraceptive care in a range of other ways, including through the state’s ongoing “Project to Increase Access to Contraceptive Counseling and Long-Acting Reversible Contraception in the Commonwealth”, a 5-year project implemented by the Massachusetts Department of Public Health (DPH) and the state’s Medicaid program.⁷

To ensure access for the broadest number of state residents, however, the Health Connector asks the Departments to provide additional clarification on how the proposed individual contraceptive arrangements may be operationalized in states with State-Based Marketplaces (SBM) and for any guidance for individuals and providers interested in pursuing this pathway.

Access to contraception is an essential part of health care and key to promoting reproductive autonomy and equity.

Health Connector staff appreciate the Departments’ initiatives to strengthen and broaden access to contraceptive services for all across the market. Access to contraceptives and utilization of these services decreases unintended pregnancy, abortion, and overall maternal mortality.⁸ In addition, supporting access to contraceptives may increase educational and economic opportunities for women—for example, access to contraceptives via the federal Title X Family Planning program increased the rate at which women graduated with a bachelor’s degree by 6-12% according to a study published in the journal of *Health Affairs* in 2022.⁹

⁵ 956 CMR 5.00: Minimum Creditable Coverage: <https://www.mahealthconnector.org/wp-content/uploads/rules-and-regulations/956CMR5.00.pdf>.

⁶ Chapter 120 of the Acts of 2017: <https://malegislature.gov/Laws/SessionLaws/Acts/2017/Chapter120>; The ACCESS law also applies to coverage under the state’s Medicaid program (MassHealth) & the Group Insurance Commission (GIC); Self-funded plans are exempt from state mandated benefit requirements, including the ACCESS law.

⁷ White, K., Lerner N., LeRoy, L., Decker, E., and Clark, J. (2022). Massachusetts Initiative to Improve Contraception Services: A Tale of Two Programs, *American Journal of Public Health* 112, S478_S483, at <https://doi.org/10.2105/AJPH.2022.306905>

⁸ Sutton MY, Anachebe NF, Lee R, Skanes H. (2020). Racial and Ethnic Disparities in Reproductive Health Services and Outcomes. *Obstet Gynecol.* 2021 Feb 1;137(2):225-233, at [Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020 - PMC \(nih.gov\)](#)

⁹ Yeatman, S., Flynn, J., Stevenson, A., Genadek, K., Mollborn, S., and Menken, J. (2022). Expanded Contraceptive Access Linked to Increase In College Completion Among Women In Colorado, at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2022.00066>

Disparities in who experiences unintended pregnancy have continued to widen over the last two decades, with unintended pregnancy becoming more concentrated among those who are members of racial and ethnic minority groups and individuals living in poverty.¹⁰ Delayed contraceptive initiation is more common among people of color and low-income individuals in the United States, and is strongly associated with a short-term risk of unintended pregnancy.¹¹

The Health Connector encourages the Departments to continue to promote access to preventive services and to bolster awareness of access to health care services without cost sharing under the ACA.

According to the Kaiser Family Foundation's (KFF) 2022 Women's Health Survey (WHS), more than 40% of women ages 18-64 were unaware that most health insurance plans are required to cover the full cost of birth control without cost sharing, highlighting the importance of both increased access and efforts to raise awareness of available health services at no cost.¹²

The Health Connector thanks the Departments for addressing gaps in access to basic health care. We look forward to continued partnership in implementation of the Affordable Care Act and in strengthening access to essential health care services.

Sincerely,



Audrey Morse Gasteier
Executive Director

¹⁰ Darney, B., Biel, F., Hoopes, M., Rodriguez, M., Hatch, B., et al. (2022). Title X Improved Access to Most Effective And Moderately Effective Contraception In US Safety-Net Clinics, 2016–18., at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01483>

¹¹ Murray Horwitz, M., Ross-Degnan, D., Pace, L. (2019). Contraceptive Initiation Among Women in the United States: Timing, Methods Used, and Pregnancy Outcomes. *Pediatrics* ; 143 (2), at [Contraceptive Initiation Among Women in the United States: Timing, Methods Used, and Pregnancy Outcomes | Pediatrics | American Academy of Pediatrics \(aap.org\)](https://www.aap.org/pediatrics/article/143/2/20190201)

¹² 2022 Kaiser Family Foundation (KFF) Women's Health Survey (WHS), at <https://www.kff.org/womens-health-policy/issue-brief/many-women-use-preventive-services-but-gaps-awareness-insurance-coverage-requirements-persist-findings-from-2022-kff-womens-health-survey/>