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July 28, 2021

Center for Medicare and Medicaid Services
Department of Health and Human Services
ATTN: CMS-9906-P
P.O. Box 8016
Baltimore, MD 21244

Re: Notice of Proposed Rulemaking, "Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond" (Published in Federal Register Volume 86, Number 124, page 35156 on July 1, 2021)

To Whom It May Concern:

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) and the Department of the Treasury (Treasury) to comment on the proposed rule, **"Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond".**

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 a quarter-million Massachusetts residents, including approximately 275,000 individuals as well as over 9,000 small business employees. The Health Connector's efforts have contributed to the Commonwealth's status as the healthiest state in the nation,[1] with a nation-leading health insurance rate over 97%,[2] and the second lowest-cost average Marketplace premiums in the country in 2021.[3]

While CMS and Treasury offered guidance on a number of important areas for Marketplaces to consider, our comments focus on areas where the proposed rule would have a direct impact on the policy-related or operational aspects of the Health Connector's ongoing work. We respectfully offer the following comments in support of the proposed rule and appreciate the administration's commitment to protecting and strengthening the Affordable Care Act.

[1] *See* https://about.sharecare.com/press-releases/massachusetts-ranks-healthiest-state-in-us-on-sharecares-community-well-being-index-as-mississippi-sits-in-last-place/
[2] U.S. Census Bureau, at www2.census.gov/programs-surveys/demo/tables/p60/264/table6.pdf.
[3] Analysis of CMS Public Use Files, at www.cms.gov/CCIIO/Resources/Data-Resources/marketplace-puf.html.

The Health Connector supports repeal of the direct enrollment option because such entities undermine the purchasing power and trusted brand of Exchanges nationwide. (45 CFR 155.221)

The Health Connector has expressed significant concerns in the past with allowing states to waive their federal or state-based exchange in favor of allowing private entities to directly enroll individuals in qualified health plans (QHPs). The direct enrollment option runs counter to the intent and purpose of the ACA by reducing consumer protections, interfering with transparency and competition, and providing no clear value over existing Exchange pathways.

Consumer Protections

The Health Connector agrees with CMS that the direct enrollment option would cause consumer confusion, a lack of coordination with Medicaid/CHIP, increased enrollment in non-comprehensive plans, and coverage disruption.

Without a clear, consistent, and trustworthy pathway to enrollment, consumers are likely to struggle in finding the health coverage benefits they need and to which they are entitled. Direct enrollment (DE) does not support the ACA's "no wrong door" policy which enables consumers to use a single, streamlined application to determine eligibility and enroll in Medicaid, CHIP, or Exchange coverage. Consumers interacting with a DE entity may not be made aware of eligibility for certain programs and instead be directed to options that are less affordable and less generous than what they would have been determined eligible for through the streamlined application. In addition, consumers left unaware of their eligibility for subsidized coverage may choose to forgo coverage altogether.

Consumers are already confused by the actions of private companies with misleading and deceptive marketing practices. The expansion of direct enrollment entities exacerbates this problem and creates additional challenges for consumers trying to find their way to legitimate, comprehensive coverage. In recent years, the Health Connector has been made aware of a variety of entities deceptively marketing scam plans or products not covering core comprehensive medical benefits to Massachusetts residents seeking major medical coverage. For example, in 2019, it was discovered that Florida-based Simple Health Plans LLC, deceptively misled dozens of Massachusetts residents into purchasing scam coverage. The Federal Trade Commission (FTC) alleged that Simple Health collected more than $100 million nationally by selling "worthless" health plans, leaving tens of thousands of Americans uninsured.[4] In addition, the Massachusetts Division of Insurance (DOI) warned consumers in June 2019 about a company, Aliera, after a Georgia court found the for-profit company misrepresented itself to members and state regulators.[5] The Massachusetts DOI warning noted that the type of coverage Aliera was offering did not have the same consumer protections as traditional insurance plans and may not have guaranteed payments for medical services or expenses. In response to both instances, the Health Connector took steps to assist harmed residents by opening up Special Enrollment Periods for affected individuals. Similar deceptive marketing practices targeting more than 15,000 individuals seeking traditional health coverage, including Exchange coverage, are also detailed in a recent complaint filed by Massachusetts Attorney General Maura Healey in December 2020. While approved direct enrollment entities are not permitted to display non-compliant plans alongside marketplace plans, DE entities may still find ways to discourage consumers away from marketplace plans because of incentives to enroll consumers into non-compliant plans.

Value

The direct enrollment option relies heavily on direct enrollment entities without clear evidence that these pathways provide more value than ACA exchanges or have increased overall enrollment. For example, while consumers have had the option to pursue direct enrollment and enhanced direct enrollment pathways for

[4] The Boston Globe, at https://www.bostonglobe.com/business/2019/07/11/dozens-mass-residents-bought-fake-health-insurance-state-officials-say/IZkrZSyVE7Hu7KHQHBrS2N/story.html; https://www.ftc.gov/news-events/press-releases/2019/07/consumers-still-paying-sham-insurance-products-sold-simple-health

[5] Massachusetts Division of Insurance, at https://www.mass.gov/news/division-of-insurance-warns-against-unlicensed-health-insurance-plans

several years, these entities only account for one third of FFE enrollment.[6] Since direct enrollment entities can already exist alongside Exchanges, a push towards a decentralized and private alternative appears unsupported by evidence of increased efficacy in pursuit of the consumer-focused or market-oriented goals of the ACA. Massachusetts's 2006 landmark health care reform law demonstrated the value and effectiveness of establishing a centralized health insurance exchange. In the first two years of the Health Connector's existence, nearly 440,000 Massachusetts residents became newly insured, half of which were enrolled in unsubsidized private plans.[7] Establishing a centralized health insurance exchange helped to propel the Commonwealth from seventh place in the percentage of insured residents to first place, a ranking Massachusetts has maintained over time.[8]

For these reasons, the Health Connector strongly supports CMS's proposal to repeal the direct enrollment option and agrees that this option would undermine efforts to strengthen the Exchanges, including continued implementation of the American Rescue Plan (ARP).

The Health Connector supports the proposed amendment of Section 1332 State Innovation Waiver guidance and new proposed processes allowing for 1332 Waiver amendments. (31 CFR 33)

The Health Connector strongly supports CMS and Treasury's proposal to replace 2018 Section 1332 guidance with the 2015 approach because it will ensure that Section 1332 waivers provide coverage that is at least as comprehensive and affordable as would have been provided absent the waiver and to the same number of residents, require "coverage" be interpreted as minimum essential coverage (MEC) throughout Section 1332(b), and prevent waivers from being approved if they reduce the comprehensiveness of coverage for vulnerable populations. In addition, the Health Connector strongly agrees with CMS that states should assess whether their waiver would increase health equity.

The Health Connector did not support codifying the 2018 guidance published by the Secretary of Health and Human Services and the Secretary of the Treasury at 83 FR 53575 because it is inconsistent with the statutory ACA Section 1332 waiver guardrails and undermines the purpose of the provision: to allow states to innovate while ensuring a floor of consumer protections related to coverage and affordability. The 2018 guidance promotes state proposals that may expand less comprehensive coverage, expose consumers to more cost-sharing and out-of-pocket costs, and burden vulnerable populations.

The 2018 guidance fails to ensure that comprehensive and affordable coverage would be available to a comparable number of residents under a proposed waiver. Under the 2018 guidance, states do not have to guarantee that coverage within their waivers is considered "minimum essential coverage"; instead, coverage may include "health insurance coverage" as defined under 45 CFR 144.103. Health insurance coverage under this broad definition includes limited coverage options, such as short-term limited duration insurance, that lack vital consumer protections central to the ACA. The intent of the ACA Section 1332 waiver option was to allow state innovation while still upholding robust ACA standards, not to undermine the benefits the ACA brings to consumers.

The COVID-19 pandemic has disproportionately impacted vulnerable populations and magnified existing health disparities, making it more important than ever to ensure equitable access to comprehensive health coverage. The 2015 Section 1332 waiver guidance appropriately ensured consideration of impacts across different populations with particular attention to impacts on vulnerable residents. The 2018 guidance, by only focusing on the aggregate impacts of a state's 1332 waiver, allows states to pursue proposals that may disproportionately harm vulnerable populations' access to comprehensive and affordable coverage. For these reasons, the Health Connector strongly supports the proposal to rescind the 2018 Section 1332 guidance in favor of the 2015 guidance and the enhanced focus on the overall impact waivers have on health equity. These changes will ensure more robust consumer protections and address racial and ethnic inequities.

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[6] Health Affairs, at https://www.healthaffairs.org/do/10.1377/hblog20201127.118789/full/
[7] Report to the Massachusetts Legislature Implementation of the Health Care Reform Law, Chapter 58 2006-2008
[8] KFF, at https://www.kff.org/wp-content/uploads/2013/01/8311.pdf

The Health Connector also strongly supports CMS's proposal to allow amendments in addition to extensions to approved Section 1332 waivers because it will help ensure continued state innovation. The option to amend approved 1332 waivers will allow states the ability to adapt to new policy landscapes, address newly discovered coverage gaps, and advance access to affordable coverage.

The Health Connector supports CMS's proposal to extend Open Enrollment and urges continued flexibility for state-based Exchanges' extended Open Enrollment timeframes. (45 CFR 155.410)

The Health Connector strongly supports CMS's proposal to extend the annual open enrollment (OE) period to 75 days, from November 1 to January 15 and agrees that an extended OE period helps consumers to review plan choices, seek in-person assistance if needed, and enroll in a plan that best meets their needs. Similar to many other state-based Exchanges, the Health Connector maintained a longer OE period when CMS previously shortened the Federal Exchange OE period to 45 days in 2018; however, Massachusetts and other state-based Exchanges still stand to benefit from an extended OE across all Exchanges because it will amplify public awareness about OE and affordable coverage options through the Exchanges.

The Health Connector also agrees with CMS that extending the period in which consumers can seek in-person assistance may be particularly beneficial to consumers across the U.S. facing language barriers or other obstacles in accessing health coverage.

The Health Connector also strongly supports continuing to allow flexibility for states to use special enrollment period authority to offer additional enrollment time beyond the proposed OE end date. It is important for Exchanges to maintain flexibility to meet market needs in their states and to align with their payment deadlines and other unique operational features. For example, the Health Connector's plan selection and payment deadline for February coverage is January 23. Flexibility to extend open enrollment to align with this due date has helped reduce consumer confusion and provide consistency with year-round operations.

The Health Connector supports CMS's proposal to allow lower-income individuals monthly opportunities to enroll in coverage. (45 CFR 155.420)

Special enrollment periods allow individuals critical access to coverage when they need it. Massachusetts residents have significantly benefited from special enrollment periods for certain lower-income individuals and recently from the extended COVID-19 special enrollment period, so we are deeply familiar with the member and market benefits this approach facilitates. The Health Connector applauds CMS's proposal to allow individuals who have income up to 150% of the federal poverty level (FPL) to qualify for a monthly special enrollment period.

In Massachusetts, people with household incomes that are at 300% FPL or lower may qualify for the Health Connector's ConnectorCare program[9], a unique state program that enhances premium and cost-sharing affordability for eligible individuals. About three-quarters of the Health Connector's nearly 275,000 members are enrolled in the ConnectorCare program. If a Massachusetts resident is determined newly eligible for ConnectorCare during the year, they are eligible for a 60-day special enrollment period. The Health Connector implemented this qualifying life event in 2014 to mirror enrollment opportunities afforded under its pre-ACA subsidy program, Commonwealth Care, which offered the type of year-round enrollment opportunity as contemplated in CMS's proposal, but for enrollees up to 300% FPL.

Massachusetts's ConnectorCare program demonstrates how a special enrollment period for lower-income individuals does not present adverse selection risks. Massachusetts has not experienced adverse selection within the program and enrollment has remained stable over time. The average risk score for ConnectorCare insurers is lower (1.36) than the risk score for insurers in the individual market outside of ConnectorCare

[9] ConnectorCare plans have low or no monthly premiums, low copays, and, no deductibles.

(1.81).[10] Moreover, the average 2018 risk score for the ConnectorCare market looks similar to small group market (1.31). Reducing administrative barriers to health insurance enrollment has helped Massachusetts maintain the highest rate of insurance coverage in the nation as well as encouraged year-round enrollment growth, boosting the health and stability of the Exchange market.[11]

In addition to the ConnectorCare experience, the Health Connector's broad extended Open Enrollment period in response to COVID-19 and its economic effects has demonstrated thus far that existing members re-shop for different plans at relatively low volumes, even when provided the opportunity to do so. Despite concerns about members switching plans often based on specific health care needs, only 0.23% of Health Connector members changed plans from June to July 2021, and shopping rates have not varied substantially by income level. The rate of plan switching has remained low even as the Health Connector has continuously worked to amplify messaging about extended Open Enrollment. These examples suggest that the benefits of expanding a special enrollment period that would allow individuals the opportunity to access coverage they need outweighs any hypothetical adverse selection risk.

The Health Connector supports CMS's proposal to allow states flexibility in choosing how to comply with requirements that certain abortion funding be segregated from other premium funding. (45 CFR 156.280)

In 2019, the Health Connector urged CMS not to finalize proposed changes to 45 CFR § 156.280 that required non-group QHP issuers to send a separate bill for the portion of a member's premium attributable to coverage for non-Hyde abortion services.

Rather than contributing to program integrity, the separate billing regulations established onerous and unnecessary new requirements about how abortion-related premium payments should be handled. The Health Connector commends CMS for proposing to allow states to choose the best compliance option that will minimize carrier and consumer burden in the context of the local, state-specific landscape.

We thank you for consideration of our comments and look forward to working with CMS on continuing to strengthen the ACA, advance health equity, and promote greater access to affordable coverage.

Sincerely,

Audrey Morse Gasteier
Chief of Policy and Strategy

[10] "Merged Market Recap" slides presented to the Massachusetts Merged Market Advisory Council (MMAC) on September 10, 2020 by Gorman Actuarial : https://www.mass.gov/event/massachusetts-merged-market-advisory-council-meeting-2020-09-10t140000-0400-2020-09-10t153000/agenda; https://www.mass.gov/doc/merged-market-recap-presentation/download

[11] Lueck, S. (2019). "Proposed Change to ACA Enrollment Policies Would Boost Insured Rate, Improve Continuity of Coverage. Center for Budget and Policy Priorities. https://www.cbpp.org/research/health/proposed-change-to-aca-enrollment-policies-would-boost-insured-rate-improve