



*The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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August 10, 2020

Internal Revenue Service
U.S. Department of Treasury
ATTN: REG-109755-19
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking, “Certain Medical Care Arrangements” (Published in Federal Register Volume 85, Number 112, page 35398 on June 6, 2020)

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 Internal Revenue Service (IRS) to comment on the proposed rule, “Certain Medical Care Arrangements.”

Founded in 2006 as part of bipartisan state health reform, the Massachusetts Health Connector is the longest-running 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 300,000 individuals as well as over 8,000 small business employees. The Health Connector’s efforts have contributed to the Commonwealth’s status as one of the healthiest states in the nation,¹ with a nation-leading health insurance rate over 97%,² and the lowest-cost average Marketplace premiums in the country.³ Further, the Health Connector is responsible for many of the policy aspects of the state’s requirement to carry health insurance, including the associated “minimum creditable coverage” standards detailing what types of health insurance may satisfy this requirement.

While the IRS offered guidance on a number of important areas, 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 relating to the proposed rule.

¹ See www.mass.gov/news/massachusetts-named-healthiest-state-in-the-nation.

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 requests that the Treasury Department and IRS ensure that Health Care Sharing Ministries and other types of arrangements are properly distinguished from ACA-compliant coverage to minimize consumer confusion and harm.

The IRS's proposed rule addressing the treatment of certain medical care arrangements under section 213 of the Internal Revenue Code would provide a new tax incentive for individuals to join health care sharing ministries and direct primary care arrangements. Consumers utilizing this tax benefit may mistakenly purchase health coverage products that are not subject to the consumer protections of the Affordable Care Act or state insurance laws only to find out after they need or receive care that the product they bought is not traditional health insurance.

The Health Connector is particularly concerned that consumers will be confused or misled about health care sharing ministries and unknowingly end up owing high out of pocket costs after they receive care. These products, marketed to closely resemble traditional health insurance, have created consumer confusion and financial strain for Massachusetts residents.⁴ In June 2019, the Massachusetts Division of Insurance alerted residents to be clear about what their health insurance does and does not cover because alternatives to traditional health insurance plans, such as health care sharing ministries, do not offer the same consumer protections as traditional insurance and may not guarantee payments for or discounts on medical services and expenses leaving consumers with significant bills for medical services.⁵

Minimizing consumer confusion when purchasing health coverage and ensuring access to affordable medical care through comprehensive health insurance is especially important today as the COVID-19 public health crisis and its economic impacts continue. The proposed rule does not address the major distinctions between health care sharing ministries and traditional medical insurance at a time when many Americans have lost both job-based health insurance and wages, making lower cost alternatives to health insurance particularly attractive. Health care sharing ministries do not have to comply with federal health insurance requirements, provide significantly fewer protections than ACA-compliant health insurance, and often have pre-existing conditions exclusions.⁶ The proposed rule considers health care sharing ministries "health insurance" for the purposes of allowing individuals to take an itemized deduction for shares under Section 213 of the Internal Revenue Code. This characterization of health care sharing ministries does not align with what the Massachusetts Division of Insurance considers these arrangements for regulatory purposes.

The Health Connector recommends that the IRS and Department of Treasury consider how the proposed rule would exacerbate market segmentation and increase health care costs for consumers.

Massachusetts has a long history of promoting universal coverage for residents. Policies like the state's individual mandate established under Chapter 58 in 2006 requiring residents to maintain minimum creditable coverage (MCC) help to increase insurance coverage levels and support a broad health insurance risk pool. Spreading risk across a large group of people helps to prevent premium increases that may result from healthy people dropping traditional insurance products.

Growth in non-ACA plan enrollment poses a threat to the ACA-compliant risk pool by segmenting the market and as a result, increasing health insurance costs.⁷ Care that is not paid for by a health care sharing or direct primary care arrangement may also drive higher insurance costs by putting financial pressure on hospitals and other providers. Providing a tax incentive for individuals to purchase health

⁴ Massachusetts Division of Insurance. "Division of Insurance Warns Against Unlicensed Health Insurance Plans" (June 12, 2019), <https://www.mass.gov/news/division-of-insurance-warns-against-unlicensed-health-insurance-plans>

⁵ Massachusetts Division of Insurance. "Division of Insurance Warns Against Unlicensed Health Insurance Plans" (June 12, 2019), <https://www.mass.gov/news/division-of-insurance-warns-against-unlicensed-health-insurance-plans>

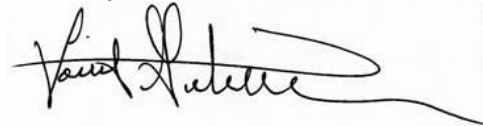
⁶ Vanessa Forsberg and Ryan Rosso. Congressional Research Service. "Applicability of Federal Requirements to Selected Health Coverage Arrangements" (November 2019), <https://crsreports.congress.gov/product/pdf/R/R46003>

⁷ Christina Lechner Goe. "Non-ACA-Compliant Plans and the Risk of Market Segmentation: Considerations for State Insurance Regulators" (March 2018), https://healthyfuturega.org/ghf_resource/non-aca-compliant-plans-risk-market-segmentation/

coverage products that are not subject to ACA consumer protections could encourage people to leave the Massachusetts merged market for alternative forms of reimbursable care which may segment the market and lead to a smaller, less healthy, and more expensive risk pool. For example, individuals with significant health care costs may be more likely to enroll in a traditional health insurance plan with guaranteed payment and fewer limits on coverage while people with lower health care costs may be attracted to options like a health care sharing ministry despite the lack of consumer protections.⁸ Such market segmentation is likely to both burden household budgets and increase federal spending on advance premium tax credits.

We thank you for consideration of our comments and look forward to working with the IRS to ensure consumers have access to comprehensive health coverage options without being misled or confused by products that do not have to meet certain standards and may not cover members' medical needs. Additionally, we appreciate the opportunity to work with the IRS to protect Massachusetts's merged market from risk segmentation caused by increased enrollment in medical care arrangements not subject to critical consumer protections under the ACA.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Gutierrez", written over a light gray rectangular background.

Louis Gutierrez
Executive Director

⁸ Christina Lechner Goe. "Non-ACA-Compliant Plans and the Risk of Market Segmentation: Considerations for State Insurance Regulators" (March 2018), https://healthyfuturega.org/ghf_resource/non-aca-compliant-plans-risk-market-segmentation/