State Innovation Waiver Policy Forum:

AUDREY MORSE GASTEIER
Director of Policy and Outreach

EMILY BRICE
Senior Advisor on State Innovation Waivers

MARISSA WOLTMANN
Associate Director of Policy and ACA Implementation Specialist

October 16, 2015
Goals

- Refresher on Section 1332 State Innovation Waivers
- Individual Shared Responsibility considerations
- Employer Shared Responsibility considerations
- Open public comment
Overview of ACA Section 1332

- Affordable Care Act Section 1332 creates a new option for states called an “innovation waiver”
- This waiver gives states flexibility to modify portions of the ACA, and instead pursue alternative paths to the overall goal of the law: expanding access to health coverage
- Waivers can:
  - Be broad or narrow, within the parameters set by Sec. 1332 and final regulations published in 2012
  - Take effect starting January 1, 2017 or after
  - Allow a state to receive the federal subsidies its residents would have received, if the state gets approval to use the funds differently

Sound Familiar?
- MassHealth has long operated under “1115” and “1915” waivers that grant state flexibility
- MassHealth has received an ACA grant called the State Innovation Model
# Opportunities for State Flexibility

<table>
<thead>
<tr>
<th>ACA Topic &amp; Citation</th>
<th>Examples of Provisions That May Be Waived <em>(see handout)</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits and Exchange Subsidies</strong></td>
<td></td>
</tr>
<tr>
<td>(Title 1, Subtitle D, Part 2)</td>
<td>- Essential Health Benefits</td>
</tr>
<tr>
<td>(Title 1, Subtitle E, Section 1401/36B of the IRC and Section 1402)</td>
<td>- Cost-sharing limitations</td>
</tr>
<tr>
<td></td>
<td>- Metallic tiers</td>
</tr>
<tr>
<td></td>
<td>- Individual and group market definitions</td>
</tr>
<tr>
<td></td>
<td>- Premium tax credits and cost-sharing reduction subsidies</td>
</tr>
<tr>
<td><strong>Exchanges and Qualified Health Plans</strong></td>
<td></td>
</tr>
<tr>
<td>(Title 1, Subtitle D, Part 1)</td>
<td>- Exchange structure and role</td>
</tr>
<tr>
<td></td>
<td>- Eligibility for Qualified Health Plans</td>
</tr>
<tr>
<td></td>
<td>- Criteria for Qualified Health Plans</td>
</tr>
<tr>
<td><strong>Individual and Employer Shared Responsibility (Mandate)</strong></td>
<td></td>
</tr>
<tr>
<td>(Title 1, Subtitle E, Section 1501/5000A of IRC)</td>
<td>- Minimum essential coverage requirement</td>
</tr>
<tr>
<td>(Title 1, Subtitle E, Section 1513/4980H of IRC)</td>
<td>- Tax penalty for individuals who fail to maintain coverage</td>
</tr>
<tr>
<td></td>
<td>- Tax penalty for employers who fail to maintain coverage for their full-time employees</td>
</tr>
</tbody>
</table>
Boundaries on State Flexibility

• Section 1332 does not extend to other portions of the ACA, such as:
  - Insurance market reforms, such as nondiscrimination
  - Rating factors applicable to merged market
  - Risk-spreading mechanisms, such as risk adjustment
  - Revenue provisions, such as the “Cadillac Tax”

• All Section 1332 waivers must meet four “guardrails”:
  - **Scope of Coverage**: Must provide coverage to at least as many people as the ACA
  - **Comprehensiveness**: Must provide coverage at least as “comprehensive” as Exchange
  - **Affordability**: Must provide “coverage and cost-sharing protections against excessive out-of-pocket” spending at least as affordable as Exchange
  - **Federal Deficit**: Must not increase the federal deficit
Individual Shared Responsibility
Preliminary Considerations
Overview

- **Massachusetts** – Chap. 58 of the Acts of 2006 established a mandate for adults to purchase health insurance if it is affordable
  - Mandate includes tax penalties, affordability standards, and coverage standards
  - Connector sets affordability/coverage standards and manages appeals
  - DOR enforces the mandate via tax filings

- **Federal** – ACA established a similar, but not identical, mandate for adults & children to purchase health insurance if it is affordable
  - Mandate includes tax penalties, affordability standards, and coverage standards
  - HHS sets affordability/coverage standards and manages exemptions, with IRS
  - IRS enforces the mandate via tax filings
### Summary of MA Approach

<table>
<thead>
<tr>
<th>Component</th>
<th>Description of MA Approach</th>
</tr>
</thead>
</table>
| **Applicability** | ▪ Applicable for adult tax-filers  
▪ Not applicable for children or other tax dependents                                                                                   |
| **Coverage Standard** | **Minimum Creditable Coverage**  
▪ MCC sets a standard for individuals; it does not impose a benefit standard on employers  
▪ Certain types of coverage automatically meet MCC (e.g., Medicare, QHPs)  
▪ For other types of coverage, Health Connector regulations require coverage to meet certain benefit and cost standards in order to be considered MCC |
| **Affordability Standard** | ▪ Set by Health Connector Board  
▪ Historically: Progressive fixed-dollar standard  
▪ 2015: Progressive percentage of income, capped at 8.05% of household income                                                                 |
| **Penalty**      | ▪ Administered through DOR via state income tax filings (Schedule HC and Form 1099-HC)  
▪ Set at ½ of premium for lowest-cost plan the individual could have purchased through the Connector  
▪ For 2015, penalties range from $20-91/month of uninsurance                                                                 |
| **Reporting**    | ▪ Plan sponsors must send enrollees evidence of MCC (Form 1099-HC) for each month individual was covered for at least 15 days                                      |
| **Exemptions**   | ▪ Multiple coverage gaps of up to 3 months permitted  
▪ Individuals may request exemption based on financial hardship or sincerely held religious beliefs  
▪ Individuals claim hardships on Schedule HC when filing state taxes, then provide proof to Connector (DOR regulates religious exemptions) |
## Summary of Federal Approach

<table>
<thead>
<tr>
<th>Component</th>
<th>Description of Federal Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicability</strong></td>
<td>▪ Applicable for adult tax-filers and their tax dependents, including children under age 18</td>
</tr>
</tbody>
</table>
| **Coverage Standard** | **Minimum Essential Coverage:**  
▪ MEC sets the standard for individuals; it is not the same as the standard for employers  
▪ Certain types of coverage automatically meet MEC (e.g., Medicare, QHPs, employer plans)                                      |
| **Affordability Standard** | ▪ Set by ACA and indexed annually for inflation  
▪ Defined by percentage of income approach: For 2015, contribution of 8.05% of household income is considered affordability for individual or family. (Different than 9.56% affordability standard, used to determine eligibility for premium tax credits if offer of employer-sponsored insurance) |
| **Penalty**      | ▪ Administered through IRS via federal income tax filings (Form 8965)  
▪ For 2015, penalties are higher of: 2% of household income above tax-filing threshold (capped at national average premium for a bronze plan), $325/adult and $162.50/child (capped at $975/family) |
| **Reporting**    | ▪ Entity providing coverage must send enrollees evidence of MEC (Form 1095) for each month individual was covered for at least 1 day                                                                                      |
| **Exemptions**   | ▪ Single coverage gap for no more than 2 consecutive months permitted  
▪ Individuals may request exemption based on financial hardship, sincerely held religious beliefs, or membership in particular groups (e.g., tribal status)  
▪ Individuals claim some hardships through Healthcare.gov, or others when filing federal taxes                                              |
Comparison: Federal vs. MA

Though MA has taken steps to align with federal approach, differences remain:

- Applicability of penalty for children
- Applicability of penalty for those above federal filing threshold, but below 150% FPL
- Amount of penalties at some income levels/family structures
- Specific standards for exemptions
- Standards for assessing whether offer of coverage is affordable
- Length of permissible coverage gap, and specific standards for gap
- Separate forms and reporting requirements
Status Quo: Layered Mandates

- In 2014, an estimated 96.3% of state residents had coverage (CHIA, 2015)

- Because of this success, MA retained its state-specific individual mandate, with some modifications – for example, to avoid double penalties, individuals can subtract any federal penalty owed from their state penalty liability

- MA residents and employers must comply with two separate mandate processes, each with its own standards

Should the Commonwealth consider a different approach?
1332-Related options could include:

- Eliminate the federal mandate for MA residents
- Modify the federal mandate for MA residents, to align with MA standards
- Make no change to either the federal mandate or the state mandate
- Other?
## Options Must Meet 1332 Guardrails

<table>
<thead>
<tr>
<th>Category</th>
<th>Requirement</th>
<th>Question</th>
<th>Special Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scope of Coverage</strong></td>
<td>Must provide coverage to at least as many people as the ACA</td>
<td>Is there a population that finds the federal or state mandate more compelling?</td>
<td></td>
</tr>
<tr>
<td><strong>Comprehensiveness</strong></td>
<td>Must provide coverage at least as “comprehensive” as Exchange</td>
<td>How does MCC compare to MEC?</td>
<td></td>
</tr>
<tr>
<td><strong>Affordability</strong></td>
<td>Must provide “coverage and cost-sharing protections against excessive out-of-pocket” spending at least as affordable as Exchange</td>
<td>(not directly applicable)</td>
<td></td>
</tr>
<tr>
<td><strong>Federal Deficit</strong></td>
<td>Must not increase the federal deficit</td>
<td>How does amount of revenue generated through federal mandate differ from state mandate?</td>
<td></td>
</tr>
</tbody>
</table>
Questions for Discussion

Is there interest in modifying the status quo?

- What types of considerations are important for the Commonwealth in approaching this question?

- To what extent does or could MA’s existing individual mandate and minimum creditable coverage requirements serve as equivalent to the federal mandate provisions?

- Is there a population of people who do not find the state mandate compelling, but who might purchase coverage when faced with the federal mandate?

- How might MA offset revenue to the federal government that is currently generated from federal penalties?
Employer Shared Responsibility
Preliminary Considerations
Overview

- **Massachusetts**
  - Chap. 58 of the Acts of 2006 established four responsibilities for employers; all have since been repealed
    - Fair share contribution requirement
    - Health insurance disclosure obligation
    - Maintenance of Section 125 cafeteria plan
    - Free rider surcharge
  - FY 2014 budget established new employer assessment, Employer Medical Assistance Contribution

- **Federal** – ACA established a federal assessment on certain large employers whose full-time workers obtain premium tax credits through an Exchange
## Summary of MA Previous Approach

<table>
<thead>
<tr>
<th>Component</th>
<th>Description of MA’s Previous Approach (now repealed)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicability</strong></td>
<td>▪ Employers with 11 or more full-time equivalents</td>
</tr>
</tbody>
</table>
| **Coverage Standard** | ▪ Employers must provide group plan to at least 25% of full-time employees and/or offer to contribute at least 33% towards the cost of coverage (or, just have 75% of full-time employees participating in group plan)  
▪ Employers must offer all employees (including those not eligible for group benefits) the opportunity to make contributions toward coverage using pre-tax deductions through a Section 125 plan |
| **Affordability Standard** | ▪ Employers must offer to make a premium contribution of at least 33% of the cost of the group plan available to its FTEs                                                                                                                               |
| **Penalty**      | ▪ Employers that failed to pay Fair Share Contributions assessed $295/full-time employee  
▪ Free Rider Surcharges could apply to employers without Section 125 plans that had employees utilizing the Health Safety Net                                                                                                                                 |
| **Reporting**    | ▪ Employers reported through quarterly filings with DUA                                                                                                                                                                                               |
| **Definitions**  | ▪ Full-time employee is defined as the lower of: 35+ hours/week or number of weekly payroll hours to be eligible for full-time health plan benefits                                                                                                             |
# Summary of MA Current Approach

<table>
<thead>
<tr>
<th>Component</th>
<th>Description of MA’s Current Approach (EMAC)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicability</strong></td>
<td>▪ Employers who have been in business for 2 calendar years, and have employed an average of 6+ employees that quarter</td>
</tr>
<tr>
<td><strong>Coverage Standard</strong></td>
<td>▪ N/A</td>
</tr>
<tr>
<td><strong>Affordability Standard</strong></td>
<td>▪ N/A</td>
</tr>
<tr>
<td><strong>Penalty</strong></td>
<td>▪ Per-employee assessment, regardless of whether employer offers health coverage</td>
</tr>
<tr>
<td></td>
<td>▪ Contributions assessed on the first $15,000 of each employee’s wages, multiplied by an assigned rate</td>
</tr>
<tr>
<td></td>
<td>▪ Phase-in with reduced fee until 2016</td>
</tr>
<tr>
<td><strong>Reporting</strong></td>
<td>▪ Employers report through quarterly filings with DUA</td>
</tr>
</tbody>
</table>
# Summary of Federal Approach

<table>
<thead>
<tr>
<th>Component</th>
<th>Description of Federal Approach</th>
</tr>
</thead>
</table>
| **Applicability** | Applicable Large Employers  
  - 2015: Employers with 100+ full-time employees or equivalents, on average (transitional relief)  
  - 2016: Employers with 50+ full-time employees or equivalents, on average                                                                                 |
| **Coverage Standard** | Coverage must provide minimum value (at least 60% actuarial value)                                                                                           |
| **Affordability Standard** | Employee’s share of premium for self-only coverage must cost no more than 9.56% of employee’s annual household income                                             |
| **Penalty**       | Employer must pay assessment if full-time employee enrolls in QHP and receives premium tax credit  
  Penalty amount differs, based on whether employer made offer:  
  - Employer does not offer coverage (or offers coverage to fewer than 70/95% of full-time employees and dependents) and 1+ full-time employee receives premium tax credit – penalty is ;  
  OR  
  - Employer does offer coverage (or offers to at least 70/95% of full-time employees and dependents), but 1+ full-time employee receives premium tax credit because coverage was unaffordable or did not provide minimum value |
| **Reporting**     | Employers must file 1095-C for each full-time employee and 1094-C transmittal form annually                                                                        |
| **Definitions**   | Full-time employee is defined 30+ hours per week, on average (two approaches: look-back or monthly measurement)  
  Exceptions for seasonal workers, etc.                                                                                                                |
Status Quo: Federal Approach

- MA has removed its previous state-specific requirements geared toward encouraging employer-sponsored insurance, in favor of federal law
- EMAC applies regardless of whether employer offers coverage
- Data not yet available on impact of federal employer shared responsibility provisions, as compared to Chap. 58 requirements

Should the Commonwealth consider a different approach?
Preliminary Policy Considerations

Options could include:

- Eliminate the federal mandate for MA employers
- Modify the federal mandate for MA employers, to align with select components of MA’s previous standards
- Modify the federal mandate for MA employers, with new approach
- Make no change to the federal mandate and/or wait for additional data on impact of federal employer mandate in MA
- Other?
Options Must Meet 1332 Guardrails

Scope of Coverage
- Must provide coverage to at least as many people as the ACA
  - How does MA’s previous rate of ESI under Ch. 58 compare to current rate under federal mandate?

Comprehensiveness
- Must provide coverage at least as “comprehensive” as Exchange
  - Would changes to federal mandate reduce employer incentive to offer minimum value plans?

Affordability
- Must provide “coverage and cost-sharing protections against excessive out-of-pocket” spending at least as affordable as Exchange
  - Would changes to federal mandate reduce employer incentive to offer affordable coverage?

Federal Deficit
- Must not increase the federal deficit
  - How much revenue is generated under the federal mandate? How would a change impact take-up of premium tax credits or MassHealth?
Questions for Discussion

Is there interest in modifying the status quo?

- What types of considerations are important for the Commonwealth in approaching this question?
- On a broad or targeted basis (such as adjusting key standards or reporting requirements)? If targeted, which ESR provisions present challenges for employers or employees?
- On what timeframe, given employers’ activities currently underway to comply with federal law?
- Are there lessons learned from MA’s own approach to employer responsibility under Chap. 58 (e.g., Fair Share Contribution)?
- What type of alternative state policies could be implemented that would promote an equivalent level of employer-based coverage and revenue to the federal government?
- How might a state-specific change to the ESR provisions impact different types of employers, such as small employers, large employers, or multistate employers?
- Other employer-related ACA policy topics we should take note of for innovation consideration?
Questions? Ideas? Reactions?

Audrey Morse Gasteier
Director of Policy & Outreach
audrey.gasteier@state.ma.us
617-933-3094

Emily Brice
Senior Advisor on State Innovation Waivers
emily.brice@state.ma.us
617-933-3156

Marissa Woltmann
Assc. Director of Policy & ACA Imp. Specialist
marissa.woltmann@state.ma.us
617-933-3151
Supplemental Slides
Steps in Waiver Process

State Planning
- Determine if waiver is needed to achieve policy goals
- Obtain legislative authority to apply for and implement a waiver
- Draft waiver application, including:
  - Rationale
  - Actuarial and economic analysis
  - Implementation timeline
  - 10-year budget
  - Provide a meaningful public notice and comment period, including:
    - Pre-application hearings
    - Consultation with tribes

HHS Approval
- Coordinate with Treasury
- Conduct a preliminary review for application completeness within 45 days
- Conduct federal notice and comment period
- Review and approve or reject the application within 180 days of deeming complete (runs concurrent with federal notice and comment period)

Implementation
- Waiver may be implemented starting in 2017 and can last 5 years, with option of renewal
- Waiver may be amended
- State must hold a public forum within 6 months of implementation
- State must submit quarterly and annual reports to HHS
- HHS must conduct periodic evaluations
- Either state or HHS can suspend or terminate waiver, with limited close-out costs awarded to state
How To Be Involved

- Committed to open stakeholder process and welcome feedback on proposed process
- Upcoming topical policy working group meetings: Health Connector Board Room (5th Floor of CCA Offices at 100 City Hall Plaza, Boston, MA)

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open discussion # 1</td>
<td>▪ Individual mandate</td>
</tr>
<tr>
<td>Friday, Oct. 16, 9-11 AM</td>
<td>▪ Employer mandate</td>
</tr>
<tr>
<td>Open discussion # 2</td>
<td>▪ Exchange and qualified health plan structure</td>
</tr>
<tr>
<td>Friday, Oct. 23, 9-11 AM</td>
<td>▪ Individual and group market structure</td>
</tr>
<tr>
<td></td>
<td>▪ Essential health benefits</td>
</tr>
<tr>
<td>Open discussion # 3</td>
<td>▪ Exchange subsidies</td>
</tr>
<tr>
<td>Friday, Oct. 30, 9-11 AM</td>
<td>▪ Exchange eligibility</td>
</tr>
<tr>
<td>Roll-up and next steps</td>
<td>▪ Roll-up of discussion to date</td>
</tr>
<tr>
<td>Friday, Nov. 6, 9-11 AM</td>
<td>▪ Revisit timeline for application, including topics for in-depth sessions</td>
</tr>
<tr>
<td>In-depth discussion # 1</td>
<td>▪ Topic TBD based on earlier sessions</td>
</tr>
<tr>
<td>Friday, Nov. 13, 9-11 AM</td>
<td></td>
</tr>
<tr>
<td>In-depth discussion # 2</td>
<td>▪ Topic TBD based on earlier sessions</td>
</tr>
<tr>
<td>Friday, Nov. 20, 9-11 AM</td>
<td></td>
</tr>
<tr>
<td>In-depth discussion # 3</td>
<td>▪ Topic TBD based on earlier sessions</td>
</tr>
<tr>
<td>Wed., Nov. 25, 9-11 AM</td>
<td></td>
</tr>
</tbody>
</table>

State decision on whether to aim for 1/1/17 start date or later start date
How to Be Involved (cont’d)

In the meantime…

• Add your name to the stakeholder distribution list, including language or disability accommodation requests
• Request an individual meeting or discussion with your group
• Submit written comments with your priorities, suggestions, and data/support (note: written comments will be posted) to StatelInnovation@massmail.state.ma.us

To Stay Informed:

• Meeting information, materials and other information will be posted regularly to our dedicated State Innovation Process Website: www.MAhealthconnector.org/innovation-waiver
Key Resources

Federal Guidance


Massachusetts Resources

- Health Connector 1332 Hub: [www.MAhealthconnector.org/innovation-waiver](http://www.MAhealthconnector.org/innovation-waiver)
- BCBS Foundation/Manatt White Paper: [www.manatt.com/uploadedfiles/content/5_insights/white_papers/coverageoption.pdf](http://www.manatt.com/uploadedfiles/content/5_insights/white_papers/coverageoption.pdf)