



Federal Policy Updates

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Federal Policy Continues to Evolve

Recent federal actions continue to introduce new variables in the Massachusetts health care landscape.



Public Charge Rule

Department of Homeland Security has proposed a regulation that would substantially expand the definition of "public charge," with significant potential impacts to health coverage for some lawfully present immigrants.

- The proposed rule would establish new criteria for when a lawfully present immigrant is considered inadmissible to the US because he or she is likely to become a public charge based on receipt of public benefits.
- The rule proposes to include in a public charge determination the ability to look at an immigrant's use of programs such as non-emergency Medicaid, SNAP, Medicare Part D Low-Income Subsidy Program, and Section 8 housing, among others.
- Unlike some prior leaked drafts, Exchange subsidies (e.g., Advance Premium Tax Credits) are not proposed as a new "trigger," but our members' households may be impacted.
- The Baker-Polito Administration is formally opposing the proposed changes to the public charge rule. The Commonwealth has established a webpage with resources, directing individuals with questions to Health Care for All (HCFA) and the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA) and emphasizing that the rules are not yet final, so nothing has changed with respect to immigrant eligibility for these programs.

New 1332 Waiver Guidance

CMS and Treasury introduced guidance that broadens “guardrails” for states seeking Section 1332 waivers, now being called “State Relief and Empowerment Waivers.”

- The new guidance relates to State Innovation Waivers authorized under Section 1332 (“1332 waivers”) of the Affordable Care Act.
- The guidance renames these waivers “State Relief and Empowerment Waivers,” suggests new principles that should be considered in state waiver applications, and significantly relaxes some of the four statutory “guardrail” standards a state must demonstrate to obtain a 1332 waiver:

1. Comparable Number Covered

2. Equivalently Comprehensive Coverage

3. Equivalently Affordable Coverage

4. Federal Deficit Neutrality

- The guidance goes into effect immediately, rescinding previous guidance issued in 2015, but the Departments will accept comments.

New 1332 Waiver Guidance *(continued)*

While the new guidance may make it easier for states to apply for a waiver, it is unclear how the principles and guardrails articulated will support a strong and stable individual market.

| Policy Focus | Guardrail Changes | Procedural Changes |
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| <ul style="list-style-type: none">▪ The Departments will view waiver applications favorably if they advance new federal policy priorities, including expanded access to association health plans and short-term plans. | <ul style="list-style-type: none">▪ The Departments have relaxed the comparability, comprehensiveness, and affordability guardrails—allowing states to propose waivers that offer lesser coverage than the ACA.▪ The Departments continue to maintain strict view of deficit neutrality and pass-through funding. | <ul style="list-style-type: none">▪ The Departments will newly allow states to customize aspects of the Federally-Facilitated Marketplace to support waivers, but will not allow states to customize IRS rules.▪ The Departments clarified the timing, legislative authorization, and public comment period needed for waiver approval. |

Additional guidance, including sample “waiver concepts,” is likely to follow.

HRA Rule

CMS, Treasury and the Department of Labor have proposed new regulations loosening federal restrictions on the use of Health Reimbursement Arrangements and other similar arrangements.

- Guidance stems from October 2017 Executive Order from President Trump, directing several federal agencies to expand access to Short-Term Limited Duration Plans, Association Health Plans, and Health Reimbursement Arrangements (HRAs).
- The new rule would reverse prior Departmental guidance by allowing HRAs to be used to fund both premiums and out-of-pocket costs associated with individual health insurance coverage.
 - Although the rule appears to widen usability of HRAs for employers to contribute to workers' individual coverage, there are complex interactions between these vehicles and lower and middle income workers' access to Advance Premium Tax Credits (APTC), which could result in some HRA-recipients from being barred from APTC.
 - Given this and other complexities, the rule's proposed January 2020 effective date could also prove challenging.
- The rule would also create a new "excepted benefit HRA" option that employees could use to pay premiums for short-term limited duration policies, if also offered group coverage.

Individual Mandate: Federal and State Interplay

The Health Connector continues to assertively promote #StayCovered messaging to prevent erosion in awareness of the continued Massachusetts individual mandate.

- Feedback from key stakeholders, as well as preliminary member survey data, suggests that there is lower-than-ideal level of awareness about the state’s individual mandate – potentially a result of national attention to the federal individual mandate penalties being zeroed out.
- CCA continues to work with Navigators, carriers, public officials, and others through Open Enrollment and beyond to promote awareness that Massachusetts continues to have its own individual mandate. Returning awareness to pre-ACA levels will require a long-term effort.
- CCA and sister agencies working to refresh public awareness of Massachusetts’s standards for comprehensive coverage, in light of national uptick in “gray market” plans.
- We continue to welcome Board members to help us spread the word.

Toolkits available on the Health Connector’s #StayCovered webpage:
www.MAhealthconnector.org/stay-covered



Looking Forward

The Health Connector continues to monitor, analyze, and react to an evolving federal landscape, and will keep the Board apprised.

- Will keep the Board apprised of proposed rule released late yesterday, on “Exchange Program Integrity,” as well as forthcoming proposed “Notice of Benefit & Payment Parameters for 2020”
- Will continue to identify opportunities to preserve the policy framework and guiding principles that have worked well for Massachusetts’s coverage and approach to reform – on topics ranging from individual mandate policy to risk pool stability to coverage standards.
- Will continue to ensure that Massachusetts consumers have clear and trustworthy information about health coverage requirements and ready access to coverage they need.