



Federal Policy Updates

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Policy Updates

The Health Connector continues to analyze and adapt to a dynamic health policy landscape, and is closely monitoring a number of potential challenges to health coverage and health reform in Massachusetts.

- Final Health Reimbursement Arrangement (HRA) rule
- Final Public Charge rule from the Dept. of Homeland Security (and ‘adjacent’ policymaking)
- *Texas v. United States* (ACA) case pending at 5th Circuit Court of Appeals
- Other rulemaking and federal actions & looking ahead

Health Reimbursement Arrangements (HRA)

A final rule on Health Reimbursement Arrangements has implications for State-Based Marketplaces, their consumers, and potentially for the merged market.

New federal HRA regulations were finalized on June 13th

- The new final HRA rule (effective January 2020) allows employers of any size to provide an HRA that can be used toward the premiums and cost-sharing of health insurance coverage
- If employers offer an HRA for individual coverage that meets an affordability threshold, employees may be barred from receiving federal Advance Premium Tax Credits (APTCs)
- An additional related rule clarifies how employers can satisfy the federal employer mandate with an HRA in some discrete circumstances

CCA preparations related to approaching HRA rule effective date

- CCA supporting and in coordination with DOI as they consider any guidance or policy responses needed to clarify or manage the final HRA rule's interaction with existing rules in the Massachusetts marketplace
- Partnering with an outside technical assistance group (State Health and Value Strategies at Princeton University, funded by Robert Wood Johnson Foundation) and other state Exchanges on a consumer facing tool to determine APTC impact of HRA offer as stopgap until we can incorporate HRA functionality in HIX
- Exploring the development of high level information to employers, brokers, and individuals about the HRA rule, including its interaction with the Health Connector
- Included content in recent Navigator training about HRA offers and how they may affect individuals' APTC eligibility so Navigators can best support consumers

Public Charge

The Department of Homeland Security (DHS) issued its final public charge rule in August.

The final public charge rule is scheduled to go into effect on Tuesday, October 15th

- As the Board knows, the rule significantly widens what criteria can be used to determine someone a “public charge”, to now include use of specific federal social and health programs in addition to cash benefits and long-term institutionalization
- Exchange subsidies like Premium Tax Credits are not included as a trigger for a public charge determination, but for states with a shared Medicaid/Exchange application, the rule’s provisions relating to whether someone has “applied for Medicaid” are not clear

Multiple legal challenges have been mounted against the final public charge rule, and decisions from courts could come down any day

- Last week and this week, hearings were held in response to multi-plaintiff challenges to the rule:
 - *Thursday, October 3rd*: Judge Rosana Malouf Peterson of the U.S. District Court for the Eastern District of Washington heard arguments from Washington, Virginia, Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, and Hawaii
 - *Wednesday, October 2nd*: Judge Phyllis Hamilton of the U.S. District Court for the Northern District of California heard arguments by California, Maine, Pennsylvania, Oregon, D.C., National Immigration Law Center and a coalition of health care providers and nonprofit organizations, and Santa Clara County and San Francisco
 - *Monday, October 7th*: Judge George B. Daniels of the U.S. District Court for the Southern District of New York heard arguments from New York state, City of New York, Vermont, Connecticut, and legal and immigration advocates.

Public Charge (Cont'd)

The Health Connector is working with other agencies and external groups like Health Care for All to guide consumers with questions to appropriate legal support resources

Information, resources, and support:

- Navigator training, Massachusetts Health Care Training Forum (MTF) sessions, and other fora provide opportunities to make sure that those working with consumers can help guide them to experts that can assist them based on their individual circumstances

HEALTH CONNECTOR **MassHealth**

Public charge and health coverage

On October 15, 2023, the federal government will change how an individual applying for a green card or entry into the United States may become a public charge. The public charge rules are complicated and may impact an individual's immigration status. If you have questions about whether public charge applies to you or your family, **we recommend you speak to an immigration expert.**

What is changing?

The recent changes allow more types of public benefits to be considered when making public charge determinations. Benefits considered will now include:

- certain MassHealth benefits
- supplemental Nutrition Assistance Program (SNAP), and
- rental assistance under Section 8 Housing vouchers, and public housing.

What is not changing?

The new rule **does not change** whether or not you are eligible for MassHealth or insurance through the Massachusetts Health Connector.

There are health benefits that **are not taken into account** in a public charge determination, including emergency Medical (MassHealth Limited), Massachusetts coverage for pregnant women (including 60 days post-partum) or children under age 21, and Advance Premium Tax Credits (APTCs) through the Massachusetts Health Connector.

For more information about what benefits may or may not be taken into account in a public charge determination visit Health Care for All's website at <https://www.healthcareforall.org/immigrant-health>

Who is not affected?

The revised public charge rule says that the following immigrant statuses are not subject to the public charge rule:

- U.S. Citizens
- Green card holders who do not leave the country for more than 6 months (180 days)
- Refugees
- Asylees
- Survivors of trafficking, domestic violence or other serious crimes (T or U visa applicants/holders)
- Special immigrant juveniles
- Certain people admitted into the U.S.
- Violence Against Women Act (VAWA) self-petitioners
- Active duty service-members

HEALTH CARE FOR ALL

Health Care for All (HCA) advocates for health justice in Massachusetts by working to promote health equity and ensure coverage and access for all.

Important Update Regarding Immigrant's Use of Benefits: Access to Health Care and Changes to the "Public Charge" Rule

You may have heard about policy changes that could penalize immigrants for using public benefits (government programs that may help you pay for food, housing or health care). The new "public charge" rule announced in August 2023 is complex and confusing, and there's a lot of misinformation out there. This fact-sheet is meant to help you understand the rule, determine whether it applies to you, and make informed decisions about health care options for you and your family.

What is "public charge"?

Federal immigration rules use a "public charge" test to determine which low-income people may be denied a visa or adjustment of status to lawful permanent residence (a "green card"). The meaning of "public charge" may vary.

BEFORE MAKING ANY DECISION REGARDING YOUR USE OF BENEFITS, PLEASE TAKE THE FOLLOWING INFORMATION INTO ACCOUNT:

- **Many immigrants don't have to worry about the "public charge" changes.** For example:
 - Refugees and asylees, including people applying for asylum
 - Lawful Permanent Residents (green card holders) applying for US citizenship
 - Lawful Permanent Residents (green card holders) applying to renew their expired cards
 - People applying for or re-registering for Temporary Protected Status (TPS)
 - UNHCR self-petitioners
 - U and T visa holders
 - People with Special Immigrant Juvenile Status, including people applying for this status
- **Changes to the "public charge" rule are not effective until October 15, 2023.**
 - For applications to adjust to legal permanent resident status filed before October 15th, DHS will benefit considered under "public charge" law.
 - Cash benefits such as:
 - Emergency All in the Family, Disabled, and Children (EAFDC) from the Department of Transitional Assistance (DTA)
 - Transitional All in the Family with Dependent Children (TAFDC) from the Department of Transitional Assistance (DTA)
 - Supplemental Security Income (SSI)
 - Government payment for long-term institutional care

HCA, HSA, MSA or RLA do not offer immigration counseling and are not responsible for the immigration advice provided by any of the groups listed below

For continued monitoring and awareness – an array of public charge ‘adjacent’ policy-making aimed at legal immigrants and health care utilization:

- White House memo on how sponsorship income is counted
- DOJ public charge deportation rule pending at Office of Management and Budget
- 10/4 White House Executive Order on health care coverage and visa applicants

Texas v. United States Lawsuit

A decision could be issued any day from the 5th Circuit Court of Appeals on a lawsuit challenging the constitutionality of the Affordable Care Act.

- *Texas v. U.S.* challenges the entirety of the ACA, centering on an argument related to the removal of the federal individual mandate penalty
- The case is being brought by 17 state Attorneys General, led by Texas. 21 Attorneys General, led by California and including Massachusetts Attorney General Healey, are intervening defendants in the lawsuit to defend the ACA. Defendants are now joined by the US House of Representatives
- In December 2018, federal Judge Reed O'Connor of the Northern District of Texas ruled in favor of the plaintiff states, finding that the ACA is unconstitutional. The defendant states immediately appealed the decision
- On March 25th, the U.S. Department of Justice indicated in a briefing memo to the court that it would cease to defend the constitutionality of the ACA, leaving the intervening-defendant states' Attorneys General and the US House of Representatives as the law's sole defenders in the case
- The U.S. Court of Appeals for the 5th Circuit heard oral arguments about the constitutionality of the law on July 9
- A decision is expected imminently

Texas v. United States Lawsuit (Cont'd)

Implications for the Health Connector

- Implications of the ACA being struck down are foundational and significant for Massachusetts given how interwoven the law is with the health care and health insurance system
- At stake are billions of dollars of federal funding, including Exchange subsidies

Agency Preparedness

- It is unclear whether, in the event of an unfavorable outcome, a stay would be issued while the case advances potentially to SCOTUS
- CCA has previously analyzed legal, policy, and financial interdependencies between itself and the ACA in the face of multiple threats to the ACA, which would be leveraged in the event of the law being struck down
 - Many, but not all, of the ACA's coverage protections are present in Massachusetts law, and many other interdependencies exist
- Over the summer, CCA staff have worked with BCBS of Massachusetts Foundation as they conduct work with the Urban Institute and its Health Insurance Policy Simulation Model (HIPSM) to model impacts of Texas outcomes using various assumptions

Anticipated Forthcoming Rulemaking

Final rulemaking:

- Final Program Integrity rule expected in coming months
- Final ACA Section 1557 nondiscrimination regulation rule

Proposed rulemaking:

- 2021 Notice of Benefit and Payment Parameters – proposed rule arrived at the Office of Management and Budget on September 27

Looking Ahead

- The Health Connector will continue to seek out strategies to preserve the approaches to health coverage that have proven successful in Massachusetts
- Staff will keep the Board of Directors apprised of new developments related to these regulatory and legal actions, and their impact to the Health Connector, the population it serves, and the health coverage landscape in the Commonwealth more broadly