



Final Minimum Creditable Coverage Regulations Amendments (VOTE)

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Overview

1. Review of proposed changes
2. Summary and discussion of public comments received
3. Next steps
4. Staff request for Board vote

Background

As part of Chapter 58 reforms, Massachusetts law requires adult residents to have health insurance that meets the state's Minimum Creditable Coverage (MCC) standards or potentially face an individual mandate penalty.

- State law defines MCC at a high level and authorizes the Health Connector Board to further determine the minimum standards of the plans that individual residents are required to have (via MCC regulations)
- MCC has a wide reach; over 4 million Massachusetts residents are subject to MCC standards
- MCC regulations are intended to offer a minimum coverage floor, to ensure basic consumer protection for Massachusetts residents while retaining affordability, which includes ensuring individuals aren't unnecessarily penalized when they have reasonable, market standard coverage
- Today, MCC standards are especially important in offering a framework for acceptable coverage in Massachusetts because the federal individual mandate penalty has been zeroed out
- In October, staff requested that the Board issue for public comment draft amendments to the regulations at 956 CMR 5.00 to better align with market dynamics and current Health Connector practice (see appendix for more detail):
 - Reinstate indexing of MCC deductible limits from 2013
 - Clarify standards used to define health arrangements established by religious organizations that can meet MCC
 - Technical and organizational updates

Review of Proposed Changes

Staff recommended the following targeted amendments to the MCC regulations:

Insurance Coverage Topic	Overview of Proposed Regulatory Change	Reasons for Update
Deductible limits	<ul style="list-style-type: none"> Reinstate indexing of MCC deductible limits from 2013 which were approved by the Board but never took effect due to a change in federal law that nullified the indexing cross-reference Authorize the Board to amend indexed deductible in any given year via a vote 	<ul style="list-style-type: none"> Restore the nullified indexing cross-reference resulting from a change in federal law in order to ensure that MCC deductible limits can account for inflation
Health Arrangements Established by Religious Organizations	<ul style="list-style-type: none"> Clarify current standards used to define these entities and ensure they are bona fide organizations in order to meet MCC 	<ul style="list-style-type: none"> Address the emergence of arrangements that do not comply with ACA requirements or otherwise offer non-comprehensive or fraudulent coverage to consumers under the guise of health arrangements established by religious organizations
Technical & organizational updates	<ul style="list-style-type: none"> Update definitions, remove dated references, clarify meaning of certain requirements, reorder provisions 	<ul style="list-style-type: none"> Improve clarity and readability of regulations



Summary and Discussion of Public Comments Received

Summary of Comments and Testimony

The Health Connector received written comments or testimony from 20 stakeholders and members of the public.

- Commenters included carriers, consumer advocates, the MA Attorney General’s Office, health care sharing ministries, and individuals participating in health care sharing arrangements (Please see appendix for a full list of commenters)
- Commenters generally were amenable to deductible indexing, though some had technical feedback and one suggested further studying the impact on consumers
- Commenters generally recognized the need for additional consumer safeguards for religious sharing arrangements, though some disagreed on the specifics
- Commenters generally did not comment on technical items so no changes were made
- In light of these comments, the Health Connector made some modifications to the text of the regulations:
 - Additional text around separate prescription deductibles to note rounding methodology and that the Board may also vote to override the separate drug deductible in any given year
 - Text confirming that disclosure of financial audits as required by law for certain health arrangements would not be considered inconsistent with the types of health arrangements that may be used to satisfy the individual mandate
 - Modification of language around use of paid agents to ensure health arrangements could continue to rely on referrals by members to grow membership without precluding members from meeting mandate requirements
 - Addition of specific terms that would be considered deceptive in their use outside an insurance product, such as “deductible,” as well as timing and placement of disclosures
 - Clarification that the “other” criteria the Health Connector may require is only applicable to items necessary to implement the other requirements outlined in the regulation (1)-(6) relating to health arrangements

General feedback; Deductibles

Comment	Health Connector Response	Rationale
<p>General: One commenter appreciated thoughtfulness in eliminating outdated language around benefit limitations and addition of provisions that address the current health insurance landscape.</p>	<p>Maintain language as proposed</p>	<p>The Health Connector’s goal was to address this issue and appreciates confirmation its revisions were clear.</p>
<p>Deductible indexing: Three commenters were supportive of the reinstatement of deductible indexing, and a fourth did not outright oppose indexing but had concerns about growing out-of-pocket costs and requested the Health Connector study impacts of this change on plan designs.</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff appreciate recognition from various stakeholders that the current \$2,000/\$4,000 deductible limits are out of step with today’s market and expects to continue monitoring out-of-pocket costs for consumers.</p>
<p>Deductible indexing methodology: Three commenters supported the premium adjustment percentage as an indexing factor, and one of those commenters also supported granting the Board flexibility to adjust the deductible for a given year as needed.</p>	<p>Maintain indexing methodology as proposed</p>	<p>Health Connector staff appreciate support for its proposal to rely on the premium adjustment percentage, as well as the flexibility granted to the Board to adjust the deductible for a given year as needed.</p>

Deductibles, cont'd

Comment	Health Connector Response	Rationale
<p>Deductible limits: One supporter of the premium adjustment percentage methodology suggested maximizing the deductible limits and offered two alternate methodologies: 1) raising the initial deductible to be indexed to the average deductible approved via the Health Connector’s certification process (\$3,500/\$7,000) and applying indexing from there; or 2) indexing by comparing the “premium adjustment percentage” change since 2007, rather than the federal baseline of 2013.</p> <p>A second supporter of the premium adjustment percentage methodology asked for clarification about the deductible limit that would be indexed each year.</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff intend to apply the premium adjustment percentage to the \$2,000/\$4,000 limits in effect in 2013, in the same way indexing is applied to annual out-of-pocket maximums that were in effect in 2013.</p> <p>The premium adjustment percentage itself is calculated to quantify cost changes from a 2013 baseline.</p> <p>Indexing based on change since 2007 would require deviating from federal methodology, and using a deductible other than the 2013 baseline would produce skewed results.</p>

Deductibles, cont'd

Comment	Health Connector Response	Rationale
<p>Rx deductibles: One commenter questioned whether maintaining the proportion between pharmacy and overall deductibles as it is today is flexible enough to account for the widening gap between total health expenditure growth and pharmacy growth.</p> <p>A second commenter requested that the Health Connector issue guidance each year translating the 12.5% limit to dollar terms to ensure consistency in interpretation and suggested rounding to the nearest multiple of \$50 or \$10. The commenter also requested clarification that the 12.5% limit was only for purposes of the maximum and did not dictate the proportion of any given plan's deductible (e.g., a \$1,000 deductible plan would not be capped at \$125).</p>	<p>Added suggested changes, in part</p>	<p>Health Connector staff agree with the comment that the separate Rx deductible should be rounded and has added in the regulation that separate Rx deductibles should be rounded down to the nearest \$10 to ensure consistency in interpretation.</p> <p>Health Connector staff also agree that the Board's ability to adjust deductible limits through a vote, if necessary, should apply to both the medical deductible and separate prescription drug deductible and has added language to that end.</p> <p>Health Connector staff agree that the prescription drug deductible is based on the limit in the regulations as indexed and not the specific deductible in a given plan.</p>
<p>Timing of deductible setting: One commenter requested that the Health Connector issue guidance to the market every year no later than March 1 with instructions for the upcoming year.</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff agree that annual guidance is necessary and expects to release annual guidance in the March timeframe</p>

Deductibles, cont'd

Comment	Health Connector Response	Rationale
<p>MCC Certification: One commenter suggested amending the regulation to state that Health Connector standard plan designs are automatically MCC, without plans needing to apply for certification if the deductible deviated from regulation.</p> <p>A second requested that MCC certification be automatic or self-assessed by any plan with an actuarial value equal to or greater than the lowest level Bronze product offered by the Health Connector.</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff believe its current process regarding standard plan designs adequately ensures a streamlined process for carriers submitting plans for Seal of Approval.</p> <p>Health Connector staff do not agree that any plan should be able to meet MCC solely because its actuarial value is equal to or greater than the lowest Bronze product offered by the Health Connector because this would materially diminish the important consumer protections codified in MCC.</p>

Health Arrangements

Comment	Health Connector Response	Rationale
<p>Health Arrangements – General: Ten commenters expressed support for the Health Connector’s goal of protecting consumers from entities engaging in fraudulent or deceptive practices while still maintaining a pathway for individuals belonging to legitimate health arrangements to meet MCC requirements</p>	<p>Acknowledged</p>	<p>Health Connector staff appreciate recognition from various stakeholders that changes in the market have made additional consumer safeguards necessary.</p>
<p>Health Arrangements – Supportive: Several commenters noted that misleading marketing has led to consumer confusion and participation in health arrangements under mistaken beliefs about the nature of these products. This leads to negative health and financial consequences when services consumers thought would be covered are not.</p>	<p>Acknowledged</p>	<p>Health Connector staff agree that misleading marketing has led to consumer confusion and negative consequences for consumers.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Health Arrangements – Not supportive: Twelve commenters expressed concern that the Health Connector was seeking to take away a pathway to individual mandate compliance that some individuals preferred for various reasons.</p> <p>Commenters noted that health arrangements provided for individuals’ medical needs while being more affordable than insurance products and honoring religious and community-based principles.</p> <p>Others noted fewer administrative burdens than insurance alternatives, including with regard to provider choices and pre-authorizations.</p>	<p>Acknowledged</p>	<p>Health Connector staff appreciate the concerns commenters expressed and the reasons why some consumers may prefer their health arrangements over insurance alternatives.</p> <p>Health Connector staff affirm that health arrangements may continue to be a pathway for individuals to satisfy the individual mandate provided the arrangement meets certain standards.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Health Arrangements – Exemption from MCC: Several commenters expressed a desire for the Health Connector to maintain a categorical individual mandate exemption for members of health arrangements, and some opposed the imposition of requirements on arrangements</p>	<p>No changes made to the regulations in response to these comments</p>	<p>Health Connector staff affirm that membership in a health arrangement can continue to meet MCC standards provided the arrangement meets certain standards.</p> <p>For clarity, such arrangements satisfy the individual mandate if they meet the proposed standards, rather than form the basis for an exemption from the mandate.</p> <p>Further, the MCC regulations outline the kinds of coverage an individual must have to satisfy the mandate.</p> <p>They do not require market actors to provide compliant coverage.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Health Arrangements – Right of Conscience and Religious Exercise: One commenter expressed concerns that the proposed regulations abridge individual right of conscience and religious exercise</p>	<p>No changes made to the regulations in response to these comments</p>	<p>The Health Connector’s proposed regulations do not in any way affect an individual’s ability to freely exercise their rights to religion and conscience.</p> <p>They ensure that individuals can satisfy the individual mandate through legitimate health arrangements, while safeguarding individuals from fraudulent or misleading entities.</p> <p>Further, individuals can continue to claim the religious exemption available in the individual mandate, if appropriate, since that exemption is not addressed or affected by these regulations.</p> <p>Alternatively, individuals can become members of health arrangements, consistent with these regulations, without being subject to a mandate penalty.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Health Arrangements – definition: Two commenters suggested that the Health Connector define a health arrangement consistent with the federal definition of a “health care sharing ministry (HCSM)” in 26 U.S.C. 5000A(d)(2)(B)</p>	<p>No changes made to the regulations in response to these comments</p>	<p>Health Connector staff believe that the federal definition of an HCSM does not contain sufficient consumer protections.</p> <p>Further the federal government is no longer actively monitoring HCSMs or determining which HCSMs satisfy federal standards.</p> <p>MA has maintained its own individual mandate since 2006, including after 2014 despite the addition of the federal mandate at that time, specifically to keep in place the MCC standards that meet the needs of Massachusetts and its residents.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Not for-profit status: Two commenters supported requiring that the organization be not for-profit. One of these commenters suggested affirmatively requiring that organizations be registered as 501(c)(3) non-profit organization.</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff appreciate commenters' support for requiring individuals to only belong to health arrangements that are not for-profit in order to meet MCC.</p> <p>Health Connector staff do not believe that arrangements that are not for-profit are always registered as 501(c)(3)s and does not want to limit the corporate forms of health arrangements individuals may have in order to satisfy the mandate.</p>
<p>Representations of financial soundness: One commenter supported the restriction on making representations about financial soundness.</p> <p>Three commenters suggested removal of this provision because of the requirement imposed on them by law to disclose financial statements as tax-exempt entities, which they asserted would conflict with this restriction.</p>	<p>Clarified the regulation specifically to address concern that the proposed regulations could be interpreted as prohibiting health arrangements from disclosing financial statements.</p>	<p>Health Connector staff appreciate support for the requirement in this provision.</p> <p>Health Connector staff do not agree that disclosure of financial statements, including those required by law, by a health arrangement would preclude a member from satisfying the individual mandate.</p> <p>However, in order to avoid confusion, we have amended the regulations to specify that the requirement does not apply to required financial disclosures.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Compensated agents and sales tactics (Not Supportive): Four commenters generally opposed restrictions on health arrangements considered MCC using compensated agents.</p> <p>Of the commenters in opposition, one commenter requested specifying “licensed” agents as those prohibited from being used by health arrangements and two of these commenters requested that the regulations rely on MA consumer protection law (M.G.L. Ch. 93A).</p> <p>One of these commenters also notes concern that the language could be interpreted as prohibiting incentives for member referrals.</p>	<p>The Health Connector maintains the proposed requirement and is clarifying that compensated agents referred to in the regulations are specifically “sales” agents.</p>	<p>Health Connector staff disagree that the restriction on using compensated agents should be narrowed to only "licensed" agents because the use of sales agents generally indicates that a given operation is functioning more as a business, rather than as a sharing arrangement among a community of individuals with sincerely held religious beliefs, which blurs the distinction between such sharing arrangements and regulated health insurance and creates space for fraudulent enterprises to operate.</p> <p>Health Connector staff also disagree that this provision should rely solely on Ch. 93A to achieve its intended goal of consumer protection because MCC is separate from 93A.</p> <p>The MA Attorney General would determine whether specific conduct violates 93A, which might include the kinds of deceptive marketing prohibited by these rules. Our guidelines are tailored to the individual mandate context.</p> <p>To address concerns that the language is too broad and may have unintended consequences, Health Connector staff specified that the prohibited compensated agents were specifically “sales agents,” which would not include member referrals so long as such referrals do not constitute sales conduct.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Compensated agents and sales tactics (Supportive): One commenter stated that restrictions on paid agents help ensure that health arrangements are legitimately operating among individuals with sincerely held beliefs and reduce deceptive practices and deceptive marketing.</p> <p>This commenter also suggested additional language to prohibit the use of common insurance terms that would help to further make clear the type of deceptive behavior the proposed regulations seek to prohibit.</p>	<p>The Health Connector added the suggested language.</p>	<p>Health Connector staff agree that the proposed regulations about paid agents effectively helps to reduce deceptive practices to protect consumers and agrees that prohibiting the use of specific insurance terms will also help to effectively prevent deceptive marketing practices.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Use of funds for administrative costs (suggested alternative language): Three commenters suggested annually disclosing administrative fees and costs to participants, instead of not using funds paid by members for medical costs for covering administrative costs, should be sufficient for a health arrangement to be useful in satisfying MCC</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff disagree that disclosure of administrative fees is equivalent to ensuring that members' contributions specifically for medical costs within the arrangement do not go toward administrative costs instead.</p> <p>Limiting health arrangements that may be used to satisfy the individual mandate to those that comply with this standard is more consistent with the goals of the mandate and MCC.</p> <p>For clarity, health arrangements may charge a separate administrative fee and still be used by MA residents to satisfy MCC.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Use of funds for administrative costs (Supportive): One commenter expressed support for prohibiting health arrangements to be used by MA residents to satisfy MCC from directing member funds for covering health care costs to their own administrative expenses.</p> <p>This commenter noted that in one case, a health arrangement used 70% of every dollar collected from its members toward the organization and its own profits instead of member medical costs.</p>	<p>Acknowledged</p>	<p>Health Connector staff appreciate recognition from the commenter that this proposed regulation is necessary to prohibit member shares for medical costs going to administrative costs.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Required Disclosures: Four commenters supported the proposed regulation for health arrangements to be used by MA residents to satisfy MCC to provide a written disclosure that the organization is not an insurance company and does not guarantee that medical bills will be paid by the organization or any other individuals.</p> <p>One of these four supporters proposed additional clarifying language about when the disclosure occurred and in what materials.</p> <p>Two supporters requested that the Health Connector provide specific language for the disclosure.</p>	<p>Added suggested changes, in part</p>	<p>Health Connector staff agree that more specificity about when the disclosure occurs (initial contact and at the time of any material modification to terms) as well as where (advertising, brochures, and marketing material) is important to clarify and incorporated these suggestions.</p> <p>Health Connector staff declined to adopt a scripted disclosure for all health arrangements at this time. Similar to other portions of MCC, the Health Connector believes it is more appropriate to promulgate a standard at this time.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Reporting Requirement: Five commenters overall expressed support for reporting of information by health arrangements; however, they differed on what the reporting requirements should entail.</p> <p>One commenter generally supported the requirement as drafted.</p> <p>Two commenters indicated that they would support a registration process similar to a Memorandum of Understanding (MOU) entered into between the Oklahoma Division of Insurance and certain health arrangements.</p> <p>One commenter stated that that the reporting requirements as drafted are too vague and should be more specifically defined in the regulation.</p>	<p>Maintain language as proposed</p>	<p>Health Connector staff appreciate support for the requirement for health arrangements to report certain information annually.</p> <p>Health Connector staff declined to adopt the specific elements enumerated in the Oklahoma MOU in its regulations, but will consider the MOU elements when implementing the reporting requirement.</p> <p>Health Connector staff disagree that the reporting requirements should be based off of the Oklahoma MOU registration process.</p> <p>The Health Connector serves a different function than a Division of Insurance and will not be registering entities.</p> <p>The reporting requirement does not carry any further legal significance beyond meeting MCC.</p>

Health Arrangements, cont'd

Comment	Health Connector Response	Rationale
<p>Other Criteria (Not Supportive): Three comments opposed the requirement that entities meet other criteria deemed appropriate to ensure members participating in a health arrangement have access to health care services in a manner consistent with the purpose of Ch.111M.</p> <p>One of these commenters noted that this was beyond the Health Connector's authority and violated Massachusetts Administrative Procedure Act.</p>	<p>Changes made in order to clarify the intent of this proposed language.</p>	<p>Health Connector staff agree that it is subject to the Massachusetts Administrative Procedure Act and would not take any action out of compliance with its rules and limitations.</p> <p>However, in order to clarify the intent of this proposed language, Health Connector staff clarified that this provision is only applicable to items necessary to implement the other requirements outlined in the regulation (1)-(6).</p>
<p>Other Criteria (Supportive): One commenter expressed support for the Health Connector to include additional criteria to evaluate whether a health arrangement can be deemed minimum creditable coverage.</p>	<p>Acknowledged</p>	<p>Health Connector staff appreciate recognition that additional criteria may be necessary.</p>



Next Steps

Proposed Regulation Amendment Timeline

October
2019

- **10/10:** Presented proposed MCC regulation amendments for Board Vote
- **10/11:** Sent out Local Government Advisory Committee Letters
- **10/30:** Public comment period opened

November
2019

- **11/25:** Held public hearing; public comment period closed

December
2019

- **12/6:** Memo to Board of Public hearing and final regulations
- **12/11:** Filed amended small business impact statement
- **12/12:** Hold Board vote on final version of proposed regulations
- **12/13:** File final regulations with Secretary of State
- **12/27:** Publication of adopted final version of proposed regulations in the CMR

January
2020

- **1/1:** Effective date of proposed MCC regulations*

*No expected impact to CCA's 2020 product shelf or other plans that have received certification

Vote

Health Connector staff recommend that the Board issue the final Minimum Creditable Coverage regulation amendments at 956 CMR 5.00, as described.



Appendix

Commenters

- 9 individual members of health arrangements
- Alliance of Health Care Sharing Ministries
- Blue Cross Blue Shield of MA (BCBSMA)
- BMC HealthNet Plan (BMCHP)
- Christian Care Ministry
- Health Care for All (HCFA)
- Health Law Advocates (HCFA)
- Liberty HealthShare
- Massachusetts Association of Health Plans (MAHP)
- Massachusetts Attorney General's Office
- Samaritan Ministries International

Proposed Update: Reinstate 2013 Deductible Limit Indexing

The proposed amendments reprise the Board's previous decision to index deductibles with the HHS premium adjustment percentage, but add a new provision allowing the Board to make an annual adjustment as needed.

1. The proposed regulations index MCC deductible limits by the HHS premium adjustment percentage

- The premium adjustment percentage is the same standard the Board approved when the MCC regulations were revised in 2013 to index deductibles
- HHS determines this percentage annually and it has typically been published in the Notice of Benefit and Payment Parameters (NBPP), offering a clear resource to market participants seeking to understand the standard
- The percentage is used in updating other Affordable Care Act standards, such as the maximum annual limit on cost-sharing, the target enrollee contribution in the APTC calculation methodology, and the required contribution percentage for exemption eligibility

2. The proposed regulations include a provision allowing the Board to make its own annual adjustment to indexing if necessary

- Providing the flexibility for the Board to choose an alternative standard ensures that the Health Connector can respond appropriately to future conditions if necessary

Proposed Update: Clarify Health Arrangement Criteria

Maintain language in the MCC regulations that permits certain health arrangements to meet MCC, while specifying the criteria that are used to identify a bona fide health arrangement provided by established religious organizations. This preserves the intent of the language while accounting for current market conditions.

1. The proposed regulations clarify that these organizations are only offering “health arrangements” that meet MCC if they:

- Are not-for-profit;
- Do not make any direct or indirect representation that the organization is operating in a financially sound manner or that it has had a successful history of meeting members' financial or medical needs;
- Do not use paid agents, sales tactics, or deceptive marketing practices;
- Do not use funds paid by members for medical needs to cover administrative costs; and
- Provide written disclosure that it is not insurance and does not guarantee payment of medical bills

2. The proposed regulations also include reporting requirements as a condition of MCC status:

- This would allow the Health Connector to require these organizations to report basic information about membership and administrative practices; and
- This would help Massachusetts understand the extent to which these types of “health arrangements” are active in the Commonwealth

Overview of Technical/Organizational Changes

Update definitions

- Co-insurance
- Co-payment
- Deductible

Improve readability

- Remove language that refers to requirements prior to January 1, 2014 or mention of “after January 1, 2014”

Clarify language/ Organizational restructuring

- Clarify language used to explain calculation for maximum out-of-pocket adjustments each year (based on clarifying administrative bulletin issued in 2017)
- Arrange provisions in a manner that reads clearly, and logically
- Clarify that permissible maximum benefit limitations specifically regards medical management techniques (not dollar limits), and remove examples of services that may be limited, which are not necessary