



# Policy Updates

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# Overview of Policy Updates

Today, staff will provide updates on the latest policy developments that affect or may affect the Health Connector or its members.

Item	Lead Agency	Timing
<b>Federal Developments</b>		
Proposed 2021 Notice of Benefit and Payment Parameters	Dept. of Health and Human Services (HHS) - Centers for Medicare & Medicaid Services (CMS)	Comments due March 2, 2020
Final Individual Coverage Health Reimbursement Arrangement Rule	Depts. of Labor, Treasury, and HHS	Rule in effect January 1, 2020
Final Public Charge Rule and adjacent rulemaking	Dept. of Homeland Security (DHS)	Rule in effect February 24, 2020
Final Exchange Program Integrity Final Rule	HHS-CMS	Key provisions in effect June 27, 2020
<i>Texas v. United States</i> (Affordable Care Act Case)	Litigation between Dept. of Justice (DOJ), states, and House of Representatives	Next step in litigation February 21, 2020
<b>State Developments</b>		
Merged Market Advisory Council	Division of Insurance (DOI)	Report due April 30, 2020



# **Federal Updates**

# 2021 Notice of Benefit and Payment Parameters

**CMS recently released its proposed 2021 Notice of Benefit and Payment Parameters. This is an annually promulgated rule that establishes policies for Marketplaces and individual and small group markets.**

- CMS indicated it is contemplating, but did not clearly propose, changes that would remove the ability of Marketplaces to automatically re-enroll individuals whose advance premium tax credit results in a \$0 premium
- Other key proposed changes include:
  - Proposed intensification of CMS involvement in state determinations of state-mandated benefits in excess of the Essential Health Benefit benchmark
  - Proposed adjustments to Special Enrollment Period, eligibility verification and periodic data-matching, and appeals policies
  - Encouragement of Value Based Insurance Design (VBID)
  - Changes to medical loss ratio calculations, such as including wellness activities as part of quality improvement
  - Annual updates, including: changes to risk adjustment methodology, updates to premium adjustment percentage, updates on annual limitations on cost-sharing
- The draft 2021 Actuarial Value calculator has also been released, and CCA staff are incorporating it into its approach to plan designs for 2021, which the Board will be briefed on in March
- Comments are due March 2nd

# Health Reimbursement Arrangements (HRA)

## A final rule on Health Reimbursement Arrangements has implications for Marketplaces and their members.

New federal Individual Coverage Health Reimbursement Arrangement (ICHRA) regulations were finalized last June, going into effect on January 1, 2020

- The new final ICHRA rule allows employers of any size to provide an HRA that employees can use toward the premiums and cost-sharing of individual health insurance
- If employers offer an ICHRA for individual coverage that meets an affordability threshold, employees may be barred from receiving federal Advance Premium Tax Credits (APTCs)

The Health Connector has made tools available to consumers whose APTC may be affected by an offer of ICHRAs, as well as Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs)

- CCA partnered with State Health and Value Strategies at Princeton University and other state exchanges on a consumer facing tool to determine APTC impact of HRA offer as stopgap until we can incorporate HRA and QSEHRA functionality in HIX
- The Health Connector has made a new web tool available individuals can use to calculate whether an ICHRA would make coverage "affordable" (<https://ma.hra.openhbx.org/>). The tool explains how eligibility for APTCs may be impacted and what steps to take next. The tool is also accompanied by consumer information about ICHRAs and QSEHRAs and their interaction with employees' APTCs (<https://www.mahealthconnector.org/help-center-answers/hra-and-your-aptc>).

# Public Charge

The Health Connector is working with other agencies and external groups like Health Care for All to ensure that consumers with questions have resources and support.

## Recent developments:

- National injunction that had been delaying implementation of the rule has been lifted by the Supreme Court, and DHS has announced the rule will go into effect on February 24, 2020
- Exchange subsidies are not a negative weight, but complexity of rule/confusion may result in members withdrawing from benefits for which they are eligible
- The Health Connector is working with other state agencies and external community-based groups to ensure that clear information is available for people with questions about public charge and their health coverage
- Health Connector to contemplate individual mandate and public charge interactions for tax year 2020

**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 Immigrants' Use of Benefits: Access to Health Care and the "Public Charge" Rule**

**What is "public charge"?**  
Federal immigration uses a "public charge" test to determine who may be denied a visa or adjustment of status to lawful permanent residence (a "green card"). You may have heard about policy changes that could penalize immigrants for using some public benefits (government programs that may help you pay for food, housing or health care) and would make it more difficult for a family with a low or moderate income to obtain a green card.

The U.S. Supreme Court allowed the implementation of the "public charge" rule while it is being challenged in court by several lawsuits. **The effective date of implementation of the public charge rule is February 24<sup>th</sup>, 2020. Benefits used and applications submitted before that date won't be subject to the new rule. Also, many people are not subject to "public charge" or do not qualify for the benefits listed on the rule.**

THIS FACTSHEET IS MEANT TO HELP YOU UNDERSTAND WHAT THE CURRENT RULE INCLUDES.

**MLRI** Massachusetts Legal Resources Institute  
**MIRA** Massachusetts Immigrant & Refugee Advocacy Coalition  
**Health Care For All** health law advocates  
**HA** Health Advocates

**Immigration Resources in Northeastern Massachusetts/North Shore**

<b>Legal Services</b>		
International Institute of New England- Lowell Office	155 Merrimack Street, 5 <sup>th</sup> Floor Lowell, MA 01852	Ph: (978) 459-9031
Lawrence Family Development and Education Fund, Inc.	404 Haverhill Street Lawrence, MA 01841	Ph: (978) 794-5399
Legal Justice Access, Inc.	60 Island Street, Suite 105 Lawrence, MA 01840	Ph: (857) 264-2381
Northeast Legal Aid-Lawrence	50 Island Street, Suite 203A Lawrence, MA 01840	Ph: (978) 458-1465
Northeast Legal Aid-Lowell	35 John Street, Suite 302 Lowell, MA 01852	Ph: (978) 458-1465
Northeast Legal Aid-Lynn	181 Union Street, Suite 201A Lynn, MA 01901	Ph: (978) 458-1465
Open Door Immigration Services	57 Wharf Street, Suite 3A, Salem, MA 01970	Ph: (978) 21902355
Refugee and Immigrant Assistance Center-Lynn	20 Wheeler Street, Suite 401 Lynn, MA, 01902	Ph: (617) 238-2430
Russian Community Association of Massachusetts	330 Lynnway, Suite 302 Lynn, MA 01901	Ph: (781) 593-0100

**For continued monitoring and awareness – an array of Public Charge ‘adjacent’ policy-making aimed at lawfully-present immigrants, lawful entrants, and health care utilization:**

- DOJ public charge deportation rule pending at Office of Management and Budget
- 10/4/19 White House Executive Order on health care coverage and visa applicants – presently under injunction

# Program Integrity

## **CMS recently finalized an Exchange Program Integrity rule which includes some new implications and requirements for State-Based Marketplaces and Qualified Health Plan Issuers.**

- The final rule includes requirements for Exchanges on a range of topics such as periodic data matching, which the Health Connector already conducts
- In addition, the rule finalizes new requirements for issuers regarding treatment of funds to pay for non-Hyde abortion services related to ACA Section 1303
  - New requirements are in effect as of June 27, 2019– though additional time is contemplated for issuers in states with State-based Marketplaces that conduct premium aggregation
  - The Health Connector has worked with carriers on compliance with rule, and has come to an agreement with carriers on a state-specific approach

# ***Texas v. United States Lawsuit***

## **Recent court decisions mean the lawsuit challenging the Affordable Care Act (ACA) will remain unresolved for some time.**

- *Texas v. U.S.* challenges the entirety of the ACA, centering on an argument related to the removal of the federal individual mandate penalty
  - Plaintiffs include a group of state Attorneys General led by Texas, while Defendants include a group of state Attorneys General including Massachusetts AG Healy and the U.S. House of Representatives
  - A federal district court in Texas ruled in favor of the plaintiffs and declared the entire ACA invalid (although the law remained in place)
  - The Fifth Circuit Court of Appeals affirmed that the mandate was unconstitutional, but remanded back to the district court to determine severability
- Defendants asked the Supreme Court to review the case on an expedited basis
  - The Supreme Court declined to expedite, but will consider whether to accept the case on Feb. 21, 2020
  - If the Supreme Court takes the case, it may not be argued and decided until next year
- Massachusetts is not immune from significant impacts in the event of an unfavorable outcome in this case, as demonstrated by a recent BCBS of MA Foundation analysis modeling coverage losses and financial and economic impacts to the Commonwealth

For more information on the case, please see:

[www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-case-challenging-the-aca/](http://www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-case-challenging-the-aca/) and information on impacts in Massachusetts should the ACA be overturned, please see: Potential Coverage and Federal Funding Losses for Massachusetts if Texas v. United States Ultimately Overturns the Affordable Care Act. [www.bluecrossmafoundation.org/publication/potential-coverage-and-federal-funding-losses-massachusetts-if-texas-v-united-states](http://www.bluecrossmafoundation.org/publication/potential-coverage-and-federal-funding-losses-massachusetts-if-texas-v-united-states)



# **State-Level Update**

# Merged Market Advisory Council

**In October 2019, Governor Baker signed Executive Order 589 establishing a Merged Market Advisory Council to study and provide recommendations to ensure the long-term stability and affordability of coverage for individuals and small employers in the merged market.**

- Council is led by Commissioner Anderson of the Division of Insurance, and includes Executive Director Gutierrez of the Health Connector and Secretary Sudders of the Executive Office of Health and Human Services. Other Council members include small business owners, employer associations, brokers, an actuary, carrier representatives, and an individual market consumer representative
- The Council is overseeing an actuarial analysis being conducted by Gorman Actuarial, which will conduct a refreshed study of the merged market for the first time in several years, including risk pool dynamics, changing market composition, and other market features
- The Council will review the role of certain kinds of products, such as self-insurance/stop loss, health care sharing ministries, association health plans, professional employer organizations, short-term limited duration plans and their impact on the merged market
- The Council will issue a report to the Governor by April 30th with recommendations for ensuring the long-term stability and affordability of coverage in the merged market

# Looking Ahead

- The Health Connector staff will continue to keep the Board of Directors apprised of new developments related to policy developments that may affect the work of the Health Connector
- We welcome any questions or suggestions as to how staff can best keep Board apprised of relevant policy dynamics that intersect with the Health Connector's work