



# Policy Updates

AUDREY MORSE GASTEIER  
Deputy Executive Director and Chief of Policy & Strategy

Board of Directors Meeting, September 8, 2022

# Policy Updates

**Key policy changes are in process that will have significant implications for Health Connector members and the Massachusetts public.**

Federal Policy Updates	
<i>Congressional</i>	<i>Administrative</i>
<ul style="list-style-type: none"><li>• Passage of the Inflation Reduction Act, which included extension of enhanced ACA premium subsidies</li></ul>	<ul style="list-style-type: none"><li>• Proposed non-discrimination rule (ACA Section 1557)</li><li>• PHE further extended</li><li>• “Family Glitch” fix</li></ul>

In addition to federal policy updates:

- CCA also recently implemented a state-level policy change via its Simple Sign-Up initiative
- A recent lawsuit against a provision of the ACA is being monitored for implications for CCA and Massachusetts, for the Board’s awareness



# **Federal Policy Updates & CCA**

# Passage of the Inflation Reduction Act (IRA) and Extension of Enhanced ACA Premium Subsidies

The Inflation Reduction Act (IRA) – signed into law by President Biden on August 16 – extended the enhanced ACA premium tax credits, which will prevent Health Connector enrollees from seeing premium increases (separate from trend) in 2023 renewal materials this fall.

- Extending these enhanced subsidies, which were slated to expire at the end of 2022, will make coverage more affordable for nearly 200,000 Massachusetts residents heading into 2023 Open Enrollment
- Impacts would have been felt by residents currently enrolled in Health Connector coverage as well those expected to migrate from Medicaid coverage to Marketplace coverage upon the end of the Federal Public Health Emergency (PHE)
  - This outcome would have been particularly challenging given heightened costs of household goods and services
- The IRA includes a three-year extension of the enhanced ACA premium tax credits that have been in effect for 2021 and 2022 (as a result of the American Rescue Plan). The enhanced premium tax credits are now in place through 2025. This extension will bring \$160M-\$175M additional APTC support into the state for the purpose of premium affordability in 2023 alone.

Premium Savings for Massachusetts Residents in 2023 Due to IRA	
ConnectorCare	Up to \$29/month
APTC eligible enrollees above 400 percent FPL	Average of \$219/month

# “Family Glitch” Fix Implementation Progress

**The Health Connector and other Marketplaces are proceeding towards implementation of a federal fix to the “family glitch.”**

## **Background**

- The ACA allows individuals to qualify for subsidized Marketplace coverage if the cost of employer-sponsored insurance (ESI) is considered unaffordable
- Existing rules include a “family glitch” that makes applicants for Marketplace subsidies use the cost of “self-only” ESI offers, as opposed to the cost of covering their family
- Treasury/IRS proposed a regulatory fix in May and the final rule is expected this fall

## **Massachusetts Impact and Next Steps**

- Estimates for the number of Massachusetts residents that will be newly eligible for ACA premium tax credits are roughly 44,000 residents, per an Urban Institute analysis
- The Health Connector worked with the HIX team and Optum on an implementation pathway and anticipate being ready to effectuate the change this fall once the rule is finalized
- The system change itself, included in a HIX release over the summer but currently “turned off”, will allow individuals in the HIX to report family premiums and have family members become newly eligible for APTC if their ESI offer did not meet the affordability threshold for the full family
- CCA will seek out outreach and education opportunities to ensure that residents not currently enrolled in CCA may be eligible for this new benefit

# ACA Section 1557 Non-discrimination Regulations

**CMS has issued a proposed rule updating ACA Section 1557 regulations, which govern consumer non-discrimination protections in many facets of health care coverage and delivery, including state-based marketplaces.**

- Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, and disability in certain health programs and activities. The proposed rule would reinstate civil rights protections for patients and consumers after a 2020 version of the rule significantly limited the scope of these protections, particularly for LGBTQ+ populations and communities with limited English proficiency, for example
- The rule's requirements and protections apply to Qualified Health Plan (QHP) issuers and Marketplaces, as well as any other health care entity or program that is administered by or receives Federal financial assistance, directly or indirectly, from HHS
- The newly proposed rule also expands on non-discrimination requirements, including clarifications and expansion of scope of regulatory applicability, new requirements around non-discrimination noticing, covered entities' written non-discrimination policies and procedures, and clarifies that ACA Section 1557 broadly applies to clinical algorithms, benefit design, and telehealth
- The Health Connector stands ready to implement enhanced protections enumerated in the rule, and remains committed to non-discriminatory policy, plan design, and services

# Federal Public Health Emergency Extension

**In August, CMS and federal officials indicated that there would be another extension to the federal public health emergency (PHE).**

- An additional federal extension of the PHE places an end date beyond October 15, 2022 – we are assuming at least until January 2023
- Health Connector staff continue to work closely with colleagues at MassHealth to plan for the eventual conclusion of the PHE and are preparing for many of the individuals currently in ‘protected’ MassHealth coverage with underlying QHP eligibilities to shift to the Health Connector
- The Health Connector and MassHealth are also partnering with Health Care for All, as well as carriers, providers, community groups, and others to ensure readiness for the eventual transition to ensure smooth transitions and avoid coverage losses

# Monitoring Potentially Impactful Litigation: *Kelley v. Becerra*

Staff are monitoring a lawsuit filed in a federal court in Texas, for which a ruling was just issued. Depending on next steps directed by the court, it could pose challenges to the ACA's preventive services requirements.

- The ACA's preventive services mandate is being litigated in *Kelley v. Becerra*, and a decision was issued yesterday from U.S. District Judge Reed O'Connor. The potential consequences of the ruling are nationally significant, though additional court directives are being awaited.
  - An estimated 150 million people in the US have \$0 cost sharing for preventive services because of the ACA since the requirement applies to multiple market segments
  - The ACA's preventive service mandate requires insurers and plans to cover certain preventive care without cost-sharing, including over 75 services identified by the US Preventive Services Task Force (PSTF). Judge O'Connor ruled yesterday that these mandates may be unlawful because of the way the PSTF members are appointed. He also ruled that the requirement that employers provide coverage for PrEP drugs, which prevent HIV transmission, violates plaintiff employer's religious freedom.
- Massachusetts has select state laws that require zero cost sharing for a subset of the \$0 preventive benefits required by the ACA, but otherwise state law does not presently require the full range of preventive services be covered at zero dollars as the ACA does
- In the event that aspects of the ACA's preventive services requirements are struck down, Massachusetts policy makers can consider actions to preserve these consumer protections (e.g., state law, and/or CCA tools like Minimum Creditable Coverage (MCC) and the Seal of Approval process)

Sources: [Latest Legal Challenge to the ACA's Preventive Services Guarantee | Commonwealth Fund](#); [Physicians sound alarm on lawsuit threatening preventive care | American Medical Association \(ama-assn.org\)](#); [Supreme Court: A new lawsuit attacking Obamacare is a serious threat to the law - Vox](#); [Texas lawsuit targets coverage for preventive care : Shots - Health News : NPR](#)



# Implementation of First Year of 'Simple Sign-Up' Initiative Using Tax Filing Process

**The Health Connector recently launched its Simple Sign-Up program, designed to help facilitate outreach and enrollment of uninsured Massachusetts residents by leveraging the state tax filing process.**

- As background, Section 65 of the FY22 budget included a provision newly allowing the Health Connector to collaborate with the Dept. of Revenue on a check box on the state tax return that would allow tax filers to consent to have select information shared with the Health Connector for the purposes of eligibility estimates and outreach
- This initiative was animated by CCA's ongoing interest in finding more streamlined, accessible, and novel ways for the uninsured to enroll in coverage
- Notices including preliminary estimates for coverage costs and program eligibility were sent to 15,000 households -- representing roughly 20,000 household members -- on August 29
- The Health Connector looks forward to monitoring the impact of this effort and tracking enrollment of those who opted-into this engagement with the Health Connector and continuing to work closely with the Dept. of Revenue on this effort going forward

# Looking Ahead

**Health Connector staff will continue to keep the Board apprised of ongoing policy developments that shape the coverage and services that it offers to the Massachusetts public.**

- In the immediate term, the Health Connector looks forward to highlighting the extension of enhanced federal premium tax credits and affordability supports for renewing and new members as we head into Open Enrollment, allowing us to underscore a message promoting the strong affordability supports available
- Staff will continue to keep the Board posted on the progress of the Simple Sign-Up program and its impact on the Health Connector's ongoing mission to enroll uninsured residents
- Staff will continue to monitor federal rulemaking and litigation that will affect opportunities and challenges in the marketplace policy and program space, and will keep the Board apprised