



# **Final Minimum Creditable Coverage Regulation Amendments (VOTE)**

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# Overview

**In May 2023, the Health Connector Board voted to pursue proposed amendments to Minimum Creditable Coverage (MCC) regulations to specify that no-cost high-value preventive services must be included in coverage that residents must enroll in to avoid paying a tax penalty. Today, staff seek a Board vote on final recommended amendments to MCC regulations. This amendment preserves coverage standards in the Massachusetts market today, despite a recent federal court ruling from the Northern District of Texas.**

This presentation will cover:

1. Brief update on legal challenge against the Affordable Care Act's (ACA's) preventive services mandate: *Braidwood Management Inc. v. Becerra*
2. Review of proposed amendments
3. Summary of public comments and final recommendations
4. Board vote



# **Case Update & Review of Proposed MCC Regulation Amendments**

# ***Braidwood Management Inc. v. Becerra:*** **Case Review and Update**

**A U.S. District Court ruling placed limitations on the ability of the federal government to enforce the Affordable Care Act's (ACA) requirement that health plans cover a broad range of preventive services and that they do so without cost-sharing.**

- The ACA requires all (non-grandfathered) plans to cover preventive services without cost sharing if the U.S. Preventive Services Task Force (USPSTF) recommended them
- The ruling determined that any recommendations made after 2010 were not enforceable, which would allow insurers and plan sponsors to remove coverage or charge cost-sharing for these services
- Examples of preventive services recommended by the USPSTF after 2010 (that insurers do not have to cover without cost-sharing under the ruling) include: lung and skin cancer screenings, PrEP for HIV prevention, statins to lower cholesterol, and medications to reduce breast cancer. (See Appendix for more detail)
- Preventive services recommended by entities outside of the USPSTF such as the Health Resources and Services Administration and the Advisory Committee on Immunization Practices are unaffected and will continue to be covered without cost-sharing

## **New updates post-May 2023 Board meeting**

- On May 15, 2023, the Fifth Circuit Court of Appeals issued an administrative stay of the district court's ruling allowing the federal government to continue enforcing the preventive services requirement while the Fifth Circuit considered the Department of Justice's motion for a stay pending the appeal
- A Fifth Circuit Panel heard oral arguments in June and on June 13, 2023, the court issued an order, jointly proposed by the litigants, allowing the USPSTF preventive health services recommendations and the corresponding coverage mandate to remain in effect while the appellate court decides the case
- The stay pauses the effect of the lower court's ruling that threatens access to USPSTF recommended preventive services without cost sharing as required under the ACA

# Review of Proposed Changes: Preserving Preventive Services Coverage via MCC

**During the May 2023 Board meeting, Health Connector staff proposed draft amendments to the MCC regulations to preserve residents' access to preventive services.**

- In order to avoid facing a tax penalty, Massachusetts residents already must enroll in a health plan that includes coverage of all federally defined preventive health services\*, including those impacted by the *Braidwood* decision, without imposing a deductible
- Under current regulations, a resident's coverage can be considered MCC even if forms of cost-sharing other than deductibles (co-pays and co-insurance) apply to preventive health services
- Health Connector staff recommended finalizing proposed amendments to MCC regulations to:
  - Prohibit *any* cost sharing (beyond just deductibles) for all preventive services, preserving the status quo from the past decade under the ACA
  - Make a clarifying edit to 956 CMR 5.03(1)(a)6. to replace the word “preventive” with the defined term “Preventive Health Services,” for the avoidance of doubt that all of the preventive services required to be covered by the ACA without cost-sharing before the *Braidwood* decision must be included

\*Preventive Health Services within MCC regulations reference the services defined in 42 U.S.C. § 300gg-13 (which is all of the preventive services required to be covered by the ACA without cost-sharing before the *Braidwood* decision)

A faint, light blue graphic of a scale of justice is visible in the background of the slide. It features a central vertical pillar supporting a horizontal beam, with a curved scale on the left side.

# **Review of Public Comment & Final Recommended Regulation Amendments**

# Public Comment on Proposed MCC Regulation Amendments and Final Recommendations

**The Health Connector received two public comments in strong support of the recommended regulation changes.**

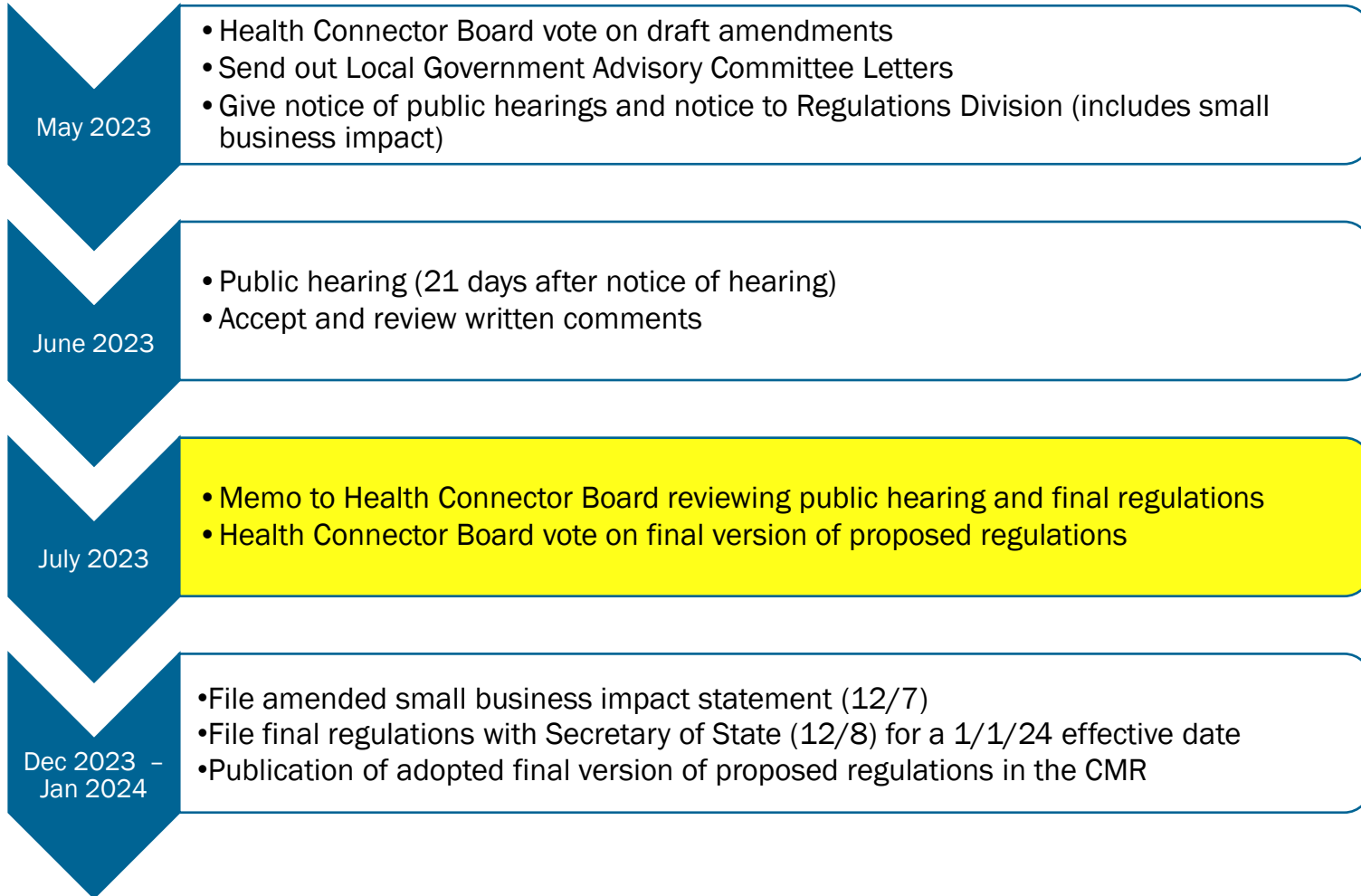
- The Health Connector accepted comments on the draft MCC regulations from interested parties from May 25, 2023 to June 23, 2023 including in writing and in a public hearing hosted by the Health Connector on June 22\*
- The Health Connector received written comments or testimony from two stakeholders in total
- The two commenters, Health Care for All (HCFA) and Blue Cross Blue Shield of Massachusetts (BCBSMA), voiced strong support for the proposed amendments to MCC regulations

## Final Recommendations

- Since the Health Connector only received comments in full support of the proposed amendments to MCC regulations, Health Connector staff are recommending that the Board approve the draft amendments to MCC regulations, as proposed
- Staff also recommend making MCC regulation amendments effective for January 1, 2024 in order to align with the tax year and to generally be consistent with the Health Connector's approach to individual mandate policy making

\*Health Connector staff [posted](#) a Notice of Public Hearing on 956 CMR 5.00 Minimum Creditable Coverage on May 25, 2023.

# Timeline and Next Steps







# **Board Vote**

# Vote

**Health Connector staff recommend that the Health Connector Board of Directors issue the final regulation amendments at 956 CMR 5.00, as described.**



# Appendix

# Background on Minimum Creditable Coverage (MCC)

**As part of Chapter 58 of the Acts of 2006 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)
- The Health Connector’s MCC regulations govern what constitutes minimum creditable coverage for nearly 5 million state residents
- MCC outlines the type of coverage a person needs to avoid facing a tax penalty under the state’s individual mandate, establishing a “floor” of benefits required to “check the box” as having been covered
- Today, staff are proposing draft amendments to the regulations at 956 CMR 5.00 to ensure a recent federal court ruling does not weaken access to existing robust coverage of preventive services in Massachusetts or change residents’ ability to afford and access these services
- While MCC does not apply to health plans directly, plans often choose to meet MCC standards so that their members don’t face tax penalties

# Major Additions and Revisions to USPSTF Recommendations on or After March 23, 2010

Health Area	Preventive Service	Affected Population
Cancer	<a href="#">Breast Cancer: Medication Use to Reduce Risk</a>	Women at increased risk for breast cancer aged 35 years or older
Cancer	<a href="#">Lung Cancer: Screening</a>	Adults aged 50 to 80 years who have a 20 pack-year smoking history and currently smoke or have quit within the past 15 years
Cancer	<a href="#">Colorectal Cancer: Screening</a>	Adults aged 45-49 years*
Chronic Conditions	<a href="#">Statin Use for the Primary Prevention of Cardiovascular Disease in Adults: Preventive Medication</a>	Adults aged 40 to 75 years who have 1 or more cardiovascular risk factors and an estimated 10-year cardiovascular disease (CVD) risk of 10% or greater
Chronic Conditions	<a href="#">Hepatitis C Virus Infection in Adolescents and Adults: Screening</a>	Adults 22 and older
Health Promotion	<a href="#">Unhealthy Drug Use: Screening</a>	Adults 22 and older
Pregnancy	<a href="#">Aspirin Use to Prevent Preeclampsia and Related Morbidity and Mortality: Preventive Medications</a>	Pregnant persons at high risk for preeclampsia
Pregnancy	<a href="#">Perinatal Depression: Preventive Interventions</a>	Pregnant persons**
Sexual and Reproductive Health	<a href="#">Prevention of Human Immunodeficiency Virus (HIV) Infection: Preexposure Prophylaxis</a>	Persons at high risk of HIV acquisition
Sexual and Reproductive Health	<a href="#">Human Immunodeficiency Virus (HIV) Infection: Screening</a>	Men 22 and older***