



Administrative Information Bulletin 04-23

Guidance Regarding Minimum Creditable Coverage (MCC) Regulations

For Calendar Year 2024: Preventive Health Services and Grandfathered Plans

September 27, 2023

The purpose of this Administrative Bulletin is to provide guidance regarding amendments to Minimum Creditable Coverage (MCC) regulation, 956 CMR 5.00 requiring Massachusetts residents to be enrolled in coverage that provides Preventive Health Services without cost-sharing to meet their individual mandate obligations that were adopted by the Commonwealth Health Insurance Connector Authority's (Health Connector) Board on July 13, 2023, to be published as final on December 22, 2023.

I. Background

The Affordable Care Act (ACA) requires all plans to cover preventive services without cost sharing if the U.S. Preventive Services Task Force (USPSTF) recommends them. See, 42 U.S.C. § 300gg-13 and its implementing regulations at 45 C.F.R. § 147.130, 29 CFR § 2590.715-2713, & 26 C.F.R. § 54.9815-2713. These Preventive Health Services (PHS) coverage obligations apply to non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage. By contrast, grandfathered group health plans have been permitted to avoid full compliance with the PHS coverage mandate, and other, ACA requirements. See, 75 Fed. Reg. 34538 (06/17/2010) (codified at 26 CFR 54, 26 CFR 602, 29 CFR 2590, 45 CFR 147); and 75 Fed. Reg. 70114 (11/17/2010) (codified at 26 CFR 54, 29 CFR 2590, 45 CFR 147).

The PHS coverage requirement is subject to active litigation that threatens to render its application unenforceable to plans offering coverage to residents of Massachusetts. See, Board Memorandum, Minimum Creditable Coverage Regulations—Proposed Draft Amendments (May 5, 2023), https://www.mahealthconnector.org/wp-content/uploads/board_meetings/2023/05-11-23/Board-Memo-Proposed-MCC-Regulation-Amendments-050523.pdf, and Presentation, Health Connector Board of Directors Meeting (May 11, 2023) at 30-41, https://www.mahealthconnector.org/wp-content/uploads/board_meetings/2023/05-11-23/Board-Meeting-Presentation-Desk-051123.pdf. In response, the Health Connector amended 956 CMR 5.00 to require that individuals seeking to satisfy their obligation to have MCC would, notwithstanding the outcome of that active litigation, still be required to obtain coverage that satisfies the PHS coverage requirements to avoid paying a tax penalty.

II. Exercise of Health Connector Discretion to Facilitate Grandfathered Plan Compliance with 956 CMR 5.00

Many residents of the Commonwealth receive coverage through group health plans, and rely on that coverage to satisfy their obligations under the individual mandate. The Health Connector understands

that many grandfathered group health plans seek to offer coverage to Massachusetts residents that satisfies those residents' individual mandate obligations, and further that some such plans may wish to modify their benefits design by adding the PHS-required coverage of preventive health services. The Health Connector further recognizes that, because of the timing considerations related to the implementation of the 956 CMR 5.00 amendments, it may not be possible for such grandfathered health plans to ensure all plan year months falling within calendar year 2024 will satisfy the PHS coverage requirements. Moreover, because the Health Connector amendments will not be published as final and effective until December 22, 2023, some grandfathered group health plans may have relied on the version of the regulations currently in effect when designing plans. Therefore, using its authority under 956 CMR 5.03(3)(g), the Health Connector will deem as providing MCC any grandfathered plan that does not satisfy the PHS coverage requirements and that "reasonably relied" on the previous, unamended, 956 CMR 5.00 when designing its coverage, provided that such plan otherwise meets the standards of 956 CMR 5.00. The Health Connector will consider any such grandfathered plan to have "reasonably relied" where the plan's renewal date for a plan year containing all or part of calendar year 2024 occurred on or prior to January 31, 2024.

This Bulletin takes effect immediately.