

MEMORANDUM

To: Health Connector Board of Directors
CC: Louis Gutierrez, Executive Director
From: Edward DeAngelo, General Counsel
Merritt Dattel McGowan, Assistant General Counsel
Date: March 30, 2015
Re: Repeal of Commonwealth Care Related Regulations

This memorandum outlines the proposal to repeal regulations governing the now-closed Commonwealth Care program: 956 CMR 2.00 Medicaid Managed Care Organization (MMCO) Participation in the Commonwealth Care Health Insurance Program (Commonwealth Care) and 956 CMR 3.00 Eligibility and Hearing Process for Commonwealth Care. The Massachusetts General Court repealed the enabling statute for the Commonwealth Care program and accompanying cross-references in light of federal reforms enacted pursuant to the Affordable Care Act (ACA). As such, repeal of the regulations is an act of technical “clean-up” to align with statutory changes made by the Massachusetts General Court in 2013.

BACKGROUND

The Health Connector operated the Commonwealth Care program from 2006 to 2015, pursuant to Massachusetts statutory authority to provide subsidies to individuals with incomes less than 300 percent of the Federal Poverty Level (FPL) who did not have access to insurance from another source, such as an employer. This program has since been replaced with a new ACA-compliant program called “ConnectorCare”. ConnectorCare was modeled after the Commonwealth Care program from a consumer-facing perspective, but operates in the commercial merged marketplace in accordance with federal law. Regulations enacted by this Board in October 2013 were similarly modeled after the regulations that Health Connector staff are proposing to repeal, modified predominately to align with ACA policies.

As a reminder, the ConnectorCare program, and the Commonwealth Care program before it, employs a mixture of state and federal funds to reduce the cost of premiums and point-of-service cost-sharing for eligible consumers. The General Court effectively authorized the Health Connector to establish the ConnectorCare program in two separate legislative packages enacted in 2013. St. 2013, c. 35, §§ 79-90; St. 2012, c. 118, §§ 38-43. As part of this legislation, the General Court simultaneously repealed the Commonwealth Care statute, as this coverage was slated to close on January 1, 2014 upon implementation of the ACA. St. 2013, c. 35, § 35.

It is of note that the Commonwealth Care program did not end as originally contemplated on January 1, 2014. Rather, the program closed to new members for effective dates on or after January 1, 2014, and completely closed to all remaining members on January 31, 2015. While the Commonwealth Care authorizing statutes were repealed in 2013, the replacement authority supporting administration of the ConnectorCare program similarly enabled continued operation and orderly close out of the

Commonwealth Care program, as did continued authority provided by the Centers for Medicare and Medicaid Services to continue the program concurrent with establishing the new ConnectorCare program and standing up a platform that would facilitate eligibility determination for and enrollment in that new program. As the ConnectorCare program was made accessible for coverage effective January 1, 2015 and beyond, the legacy Commonwealth Care program was officially able to close at the end of that month.

While the regulations at issue have not been enforceable since 2013, Health Connector staff waited to propose repeal of the regulations until the Commonwealth Care program finally closed. As that is now the case, Health Connector staff propose to repeal 956 CMR 2.00 Medicaid Managed Care Organization (MMCO) Participation in the Commonwealth Care Health Insurance Program (Commonwealth Care) and 956 CMR 3.00 Eligibility and Hearing Process for Commonwealth Care in accordance with the General Court's repeal of the General Laws Chapter (118H) supporting these regulations.

CONCLUSION

In order to repeal these regulations, the Health Connector Board must vote to issue the repeal in draft form for public notice and comment. If the Board votes to issue the draft repeal at its April 9, 2015 Board meeting, a public hearing will be scheduled for Tuesday, May 19, 2015. Following the hearing, public comments will be reported back to the Board and a final vote on the repeal will be sought most likely at the regular June meeting.

A copy of the regulations proposed for draft repeal is enclosed for your review.