



Federal Flexibility Request Update

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Background and Overview of CCA-Driven Flexibility Requests



The Health Connector is drafting a set of policy requests to federal partner agencies to help strengthen and stabilize the employer-sponsored insurance market in Massachusetts.

- Massachusetts has a longstanding commitment to universal health care coverage, with an insurance rate of over 96% – the highest rate in the country
- Despite this progress, federal flexibility is needed for further reforms in the commercial insurance market and Medicaid that can help support long-term fiscal sustainability
- The Health Connector is seeking to propose some federal flexibilities using Affordable Care Act (ACA) Sections 1332, 1321(e), and other flexibility vehicles
- These requests will support a broader set of Baker-Polito Administration requests for discrete policy flexibilities that enable Massachusetts to take a state-specific approach to employers' shared responsibility to maintaining near universal coverage, stabilizing our commercial health insurance market, and ensuring financial sustainability
- Some of the changes being proposed that relate to the commercial insurance market and the Health Connector build on policy approaches that the Commonwealth implemented under Chapter 58 of the Acts of 2006

Request 1: Flexibility on ACA Employer Mandate



Massachusetts seeks to waive the federal employer mandate in favor of a Commonwealth-specific employer contribution policy.

Rationale & Background:

- Massachusetts seeks to implement a state-specific approach to employers' shared responsibility in lieu of the federal requirements and penalties. The Governor's recent proposal, as enacted by the General Court, included a 2-year approach to a state-based employer contribution policy that leverages the state's existing Employer Medical Assistance Contribution (EMAC) policy
- The ACA's employer mandate has experienced multiple delays and, as such, is not currently contributing to a shared responsibility model for employer participation in supporting universal coverage
- Massachusetts previously administered a set of state-based policies to promote shared employer responsibility for coverage, and seeks to restore the state-based approach

Flexibilities needed:

- Transition relief under Treasury discretion; ACA § 1321(e) [42 USC § 18041(e)], an ACA provision that presumes compliance for state exchanges that operated prior to the ACA; and/or 1332 waiver of federal employer penalty provisions [26 USC § 4980H], [26 USC § 6056]

Request 2: Section 125 Plan Flexibility



Massachusetts seeks to expand options for employers to connect non-benefits eligible employees to health insurance through Section 125 cafeteria plans.

Rationale & Background:

- Create options for employers to connect non-benefits eligible employees with private coverage
- Massachusetts had a Section 125 cafeteria plan program administered by CCA that had to be discontinued under the ACA. These vehicles can provide meaningful savings for non-benefits eligible employees who are not eligible for ESI or subsidized coverage
- Reinstating such plans would expand the number of options available for employers to offer support for health insurance and for employees to purchase insurance, and could be particularly useful in light of recent labor market trends (e.g., rise of part-time work force, contract-based work)

Flexibility Needed:

- Discussion with IRS/Treasury/CMS on Section 125 cafeteria plans, or potentially flexible avenue via SHOP/GME platform (*under exploration*)

Request 3: Rating Factor Flexibility



Massachusetts seeks the option to allow continued use of state-based rating factors at their current level.

Rationale & Background:

- The state-specific rating factors we have maintained include adjustments for industry code, group size, and cooperative usage. Massachusetts has existing approval to continue to use these factors at one-third of their original magnitude through the end of Plan Year 2018
- Massachusetts' current flexibility with respect to small group rating factors has contributed to the stability of our insurance market and the Commonwealth wishes to maintain this flexibility at its current level, at the state's option

Flexibilities needed:

- Continued flexibility under ACA § 1321(e) [42 USC § 18041(e)], an ACA provision that presumes compliance for state exchanges that operated prior to the ACA

Request 4: State Administration of Small Business Tax Credits



Massachusetts seeks option to administer ACA Small Business Tax Credits at a state level to make them more accessible to eligible small employers in the Commonwealth.

Rationale & Background:

- Federal small business tax credits are not currently being used for maximum impact - preliminary data indicates that uptake has been low
- These tax credits are designed to help the types of small employers data indicates are struggling most in the current employer-sponsored-insurance market: the smallest (<25 employees) and those with lower wage employees (average wages <\$50K)
- With federal approval, Massachusetts would receive the federal funds currently available to eligible employers in Massachusetts and distribute them in a streamlined and administratively simplified manner in concert with the Health Connector's Wellness Track program

Flexibilities needed:

- 1332 waiver of federal small business tax credit program [26 USC § 45R] and pass through of available funds to Massachusetts [permissible under 42 USC §18052(a)(3)]

Request 5: CSR Risk Mitigation Proposal Using APTC Pass-Through



Massachusetts seeks opportunity to obtain “pass-through” APTC funding to use in a premium stabilization fund that could be accessed in the event that Cost Sharing Reduction (CSR) payments are withdrawn.

Rationale & Background:

- ConnectorCare plans for individuals <250% FPL feature federal CSRs
- If there is a continued threat of CSR withdrawal, carriers will need to file higher premium rates to account for the loss/possible loss of these funds
- The resulting spike in premiums would increase federal APTC liability, and would also significantly destabilize coverage for individuals as well as small employers, given Massachusetts’ merged market
- To prevent this outcome, Massachusetts would seek to receive an immediate pass-through of the APTC it otherwise would have received for its residents, to be deposited into a state market stabilization fund

Flexibilities needed:

- 1332 waiver of requirements to reduce cost-sharing [42 USC § 18071] and pass through of available funds to Massachusetts [permissible under 42 USC §18052(a)(3)]

Request 6: Request Opportunity to Reexamine Risk Adjustment



Massachusetts seeks the opportunity to convene a state working group to explore possible changes to Risk Adjustment in the Commonwealth for Plan Year 2019 and beyond.

Rationale & Background:

- Massachusetts seeks to convene a set of stakeholders to explore whether Risk Adjustment (RA) should continue to be administered 'as is' in the Massachusetts market for plan years 2019 and beyond
- Evolving market conditions and several years of RA experience make this an appropriate time for the Commonwealth to consider how it wishes to proceed with the program, mindful that any changes would need to be made well in advance for effectiveness so that the market can adapt appropriately
- The Commonwealth wishes to ensure that its policy goals for its health care market are well served by the RA program

Flexibility needed:

- Written comment through the Notice of Benefit and Payment Parameters (NBPP) rule making process

Process for Flexibility Requests Being Driven by the Health Connector



The Health Connector is working in coordination with other agency partners to submit contemporaneous flexibility requests this summer.

Flexibility Request Process Step	Anticipated Timing
Issue draft flexibility request materials for public comment	End of July
Hold public comment period	End of July – End of August
Host two public meetings for public comment and testimony	(Scheduling in process) ~ Likely late July for a Boston hearing ~ Likely early August for a Springfield hearing
Prepare final materials for submission to CMS and other federal partners	End of August