Policy Updates

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# Overview of Policy Updates

Today, staff will provide updates on the latest policy developments that affect or may affect the Health Connector or its members.

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Federal Updates
2021 Notice of Benefit and Payment Parameters

CMS recently released its proposed 2021 Notice of Benefit and Payment Parameters. This is an annually promulgated rule that establishes policies for Marketplaces and individual and small group markets.

- CMS indicated it is contemplating, but did not clearly propose, changes that would remove the ability of Marketplaces to automatically re-enroll individuals whose advance premium tax credit results in a $0 premium
- Other key proposed changes include:
  - Proposed intensification of CMS involvement in state determinations of state-mandated benefits in excess of the Essential Health Benefit benchmark
  - Proposed adjustments to Special Enrollment Period, eligibility verification and periodic data-matching, and appeals policies
  - Encouragement of Value Based Insurance Design (VBID)
  - Changes to medical loss ratio calculations, such as including wellness activities as part of quality improvement
  - Annual updates, including: changes to risk adjustment methodology, updates to premium adjustment percentage, updates on annual limitations on cost-sharing
- The draft 2021 Actuarial Value calculator has also been released, and CCA staff are incorporating it into its approach to plan designs for 2021, which the Board will be briefed on in March
- Comments are due March 2nd
New federal Individual Coverage Health Reimbursement Arrangement (ICHRA) regulations were finalized last June, going into effect on January 1, 2020

- The new final ICHRA rule allows employers of any size to provide an HRA that employees can use toward the premiums and cost-sharing of individual health insurance
- If employers offer an ICHRA for individual coverage that meets an affordability threshold, employees may be barred from receiving federal Advance Premium Tax Credits (APTCs)

The Health Connector has made tools available to consumers whose APTC may be affected by an offer of ICHRAs, as well as Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs)

- CCA partnered with State Health and Value Strategies at Princeton University and other state exchanges on a consumer facing tool to determine APTC impact of HRA offer as stopgap until we can incorporate HRA and QSEHRA functionality in HIX
- The Health Connector has made a new web tool available individuals can use to calculate whether an ICHRA would make coverage "affordable“ (https://ma.hra.openhbx.org/). The tool explains how eligibility for APTCs may be impacted and what steps to take next. The tool is also accompanied by consumer information about ICHRAs and QSEHRAs and their interaction with employees’ APTCs (https://www.mahealthconnector.org/help-center-answers/hra-and-your-aptc).
Public Charge

The Health Connector is working with other agencies and external groups like Health Care for All to ensure that consumers with questions have resources and support.

Recent developments:

- National injunction that had been delaying implementation of the rule has been lifted by the Supreme Court, and DHS has announced the rule will go into effect on February 24, 2020

- Exchange subsidies are not a negative weight, but complexity of rule/confusion may result in members withdrawing from benefits for which they are eligible

- The Health Connector is working with other state agencies and external community-based groups to ensure that clear information is available for people with questions about public charge and their health coverage

- Health Connector to contemplate individual mandate and public charge interactions for tax year 2020

For continued monitoring and awareness – an array of Public Charge ‘adjacent’ policy-making aimed at lawfully-present immigrants, lawful entrants, and health care utilization:

- DOJ public charge deportation rule pending at Office of Management and Budget

- 10/4/19 White House Executive Order on health care coverage and visa applicants – presently under injunction
Program Integrity

CMS recently finalized an Exchange Program Integrity rule which includes some new implications and requirements for State-Based Marketplaces and Qualified Health Plan Issuers.

- The final rule includes requirements for Exchanges on a range of topics such as periodic data matching, which the Health Connector already conducts.

- In addition, the rule finalizes new requirements for issuers regarding treatment of funds to pay for non-Hyde abortion services related to ACA Section 1303.
  
  * New requirements are in effect as of June 27, 2019 – though additional time is contemplated for issuers in states with State-based Marketplaces that conduct premium aggregation.
  * The Health Connector has worked with carriers on compliance with rule, and has come to an agreement with carriers on a state-specific approach.
Texas v. United States Lawsuit

Recent court decisions mean the lawsuit challenging the Affordable Care Act (ACA) will remain unresolved for some time.

- *Texas v. U.S.* challenges the entirety of the ACA, centering on an argument related to the removal of the federal individual mandate penalty
  - Plaintiffs include a group of state Attorneys General led by Texas, while Defendants include a group of state Attorneys General including Massachusetts AG Healy and the U.S. House of Representatives
  - A federal district court in Texas ruled in favor of the plaintiffs and declared the entire ACA invalid (although the law remained in place)
  - The Fifth Circuit Court of Appeals affirmed that the mandate was unconstitutional, but remanded back to the district court to determine severability
- Defendants asked the Supreme Court to review the case on an expedited basis
  - The Supreme Court declined to expedite, but will consider whether to accept the case on Feb. 21, 2020
  - If the Supreme Court takes the case, it may not be argued and decided until next year
- Massachusetts is not immune from significant impacts in the event of an unfavorable outcome in this case, as demonstrated by a recent BCBS of MA Foundation analysis modeling coverage losses and financial and economic impacts to the Commonwealth

For more information on the case, please see:
State-Level Update
Merged Market Advisory Council

In October 2019, Governor Baker signed Executive Order 589 establishing a Merged Market Advisory Council to study and provide recommendations to ensure the long-term stability and affordability of coverage for individuals and small employers in the merged market.

- Council is led by Commissioner Anderson of the Division of Insurance, and includes Executive Director Gutierrez of the Health Connector and Secretary Sudders of the Executive Office of Health and Human Services. Other Council members include small business owners, employer associations, brokers, an actuary, carrier representatives, and an individual market consumer representative.

- The Council is overseeing an actuarial analysis being conducted by Gorman Actuarial, which will conduct a refreshed study of the merged market for the first time in several years, including risk pool dynamics, changing market composition, and other market features.

- The Council will review the role of certain kinds of products, such as self-insurance/stop loss, health care sharing ministries, association health plans, professional employer organizations, short-term limited duration plans and their impact on the merged market.

- The Council will issue a report to the Governor by April 30th with recommendations for ensuring the long-term stability and affordability of coverage in the merged market.

Massachusetts HEALTH CONNECTOR
Looking Ahead

- The Health Connector staff will continue to keep the Board of Directors apprised of new developments related to policy developments that may affect the work of the Health Connector.

- We welcome any questions or suggestions as to how staff can best keep Board apprised of relevant policy dynamics that intersect with the Health Connector’s work.