

Massachusetts health reform mandate and penalties to continue into 2014

The Board of Directors of Massachusetts' Health Insurance Connector Authority (Connector) has voted to continue the state's individual health insurance mandate requirement and penalties into 2014, when the federal health reform individual mandate requirements become effective. It also has approved changes to the minimum creditable coverage requirements under the individual mandate. These new requirements may have a significant impact on many large employers providing health care coverage to employees and retirees in Massachusetts and could expose these individuals to tax penalties unless action is taken. Employers with employees in Massachusetts are required to make a "fair and reasonable" contribution toward the health care costs of full-time workers — or pay a \$295 assessment per employee. The current penalty provisions and employer reporting requirements are also still in effect for 2014.

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Background

In 2006, Massachusetts enacted a health reform law that requires Massachusetts residents age 18 and older to have health care coverage that qualifies as minimum creditable coverage (MCC) or be subject to tax penalties. (See our [December 11, 2008 For Your Information](#).) This reform law was the model for the federal Patient Protection and Affordable Care Act (ACA). Although employers are not directly affected by the MCC rules, employees, retirees, and family members enrolled in an employer plan that does not satisfy the MCC requirements may be subject to these tax penalties. The maximum annual individual penalty for 2013 is \$1,272.

With the ACA employer and employee shared responsibility requirements going into effect in 2014, Massachusetts had to decide whether to continue the individual mandate and MCC requirements. In December 2012, the Board of the Connector, the state agency that administers the Massachusetts reform law, voted to issue draft amendments to the MCC regulations that would revise the requirements starting in 2014. A hearing on the proposed amendments was held on January 22, 2013. [Buck Consultants testified](#) at the hearing to present its concerns about the significant impact that the proposed amendments would have on self-insured and large group health plans and

to propose modifications to the regulations. Following the hearing, the Board of the Connector decided to postpone its vote on the proposed amendments.

On March 14, 2013, the Board of the Connector voted to approve amendments to the [regulations](#) that continue both the individual mandate and the MCC requirements for 2014. As a result of these amendments, Massachusetts residents participating in large employer plans could be subject to significant penalties if their employer coverage does not satisfy the new MCC requirements. Especially at risk are individuals enrolled in ACA grandfathered plans, retiree-only plans, or plans with carve-out pharmacy benefits. According to a presentation made at the meeting at which the vote was taken, these changes are being made to preserve the current Massachusetts consumer protections and to mitigate inequities between large and small employers that might occur if the MCC requirements were not revised.

Revised MCC regulations

The amendments modify the current MCC coverage requirements to make them consistent with ACA requirements for health plans in the individual and small group markets. The most significant changes for self-insured and large group health plans concern:

- Essential health benefits (EHB)
- Maximum deductibles
- Out-of-pocket (OOP) limits on employee cost sharing
- Preventive health services

Essential health benefits

The current MCC regulations require that plans cover “a broad range of medical services,” which includes hospitalization, physician services, and prescription drugs.

The amended regulations provide that effective for plan years beginning on or after January 1, 2014, a plan must cover EHB as defined under ACA regulations.

Buck comment. Individual and small group plans will be required to cover EHB as defined by Massachusetts. However, since the federal guidance allows self-insured and large group health plans to use any permissible definition of EHB under federal regulations, it appears that these plans do not need to cover EHB as defined by Massachusetts. (See our [February 27, 2013 For Your Information.](#))

Maximum deductibles

Under current MCC regulations, plans cannot have deductibles for in-network services that exceed \$2,000 for an individual and \$4,000 for a family (\$2,000/\$4,000). However, they can also have separate deductibles of up to \$250/\$500 for prescription drug coverage.

The amended regulations provide that effective for plan years beginning on or after January 1, 2014, a plan with a separate prescription drug deductible will satisfy the MCC requirements only if the combination of the overall plan in-network deductible and prescription drug deductible satisfies the \$2,000/\$4,000 maximums. These dollar amounts will be subject to increase for plan years beginning in calendar years after 2014.

Buck comment. The ACA also limits deductibles for in-network services to \$2,000/\$4,000; however, these limits only apply to insured coverage in the individual and small group markets and not to self-insured and large group health plans. Thus employers that sponsor self-insured plans that have deductibles exceeding these amounts will need to review compliance with the Massachusetts MCC requirements.

Importantly, the proposed regulations continue the exception that high-deductible health plans (HDHP) that comply with federal HSA requirements, and make an HSA available to employees, will satisfy the MCC standards regardless of the other provisions, including the \$2,000/\$4,000 deductible requirement.

OOP maximums

Under current MCC regulations, a plan's out-of-pocket (OOP) maximums for in-network services cannot exceed \$5,000 for an individual and \$10,000 for a family. Although deductibles and coinsurance are taken into account towards satisfaction of the limits, copayments of \$100 or less and all cost sharing for prescription drugs (i.e., deductibles, coinsurance, and copayments) do not have to be counted.

The amended regulations increase the in-network OOP limit maximums for plan years beginning on and after January 1, 2014, to the maximum OOP amounts that an HSA-compatible health plan may have for self-only and family coverage in 2014. (In 2013 those amounts are \$6,250/\$12,500.) Like the deductible limits, these dollar amounts will be subject to increase for plan years beginning in calendar years after 2014.

The amended regulations also provide that in calculating whether an individual has satisfied the in-network OOP maximum for plan years beginning on and after January 1, 2014, a plan must take into account all cost sharing for EHB, which would include all copayments regardless of amount and any expenditures for prescription drugs.

The amended regulations allow separate OOP limits to apply to covered services as long as the sum of the OOP limits does not exceed the maximum allowed OOP amount.

Buck comment. The final ACA regulations include a similar transition rule for carve-out benefits in 2014. (See our [February 27, 2013 For Your Information](#).) However, the ACA transition rule does not require that the carve-out benefit have an OOP limit, while the MCC regulations subject carve-out benefits to the combined OOP limit. For this reason, employer plans that comply with the ACA requirements for carve-out prescription drug benefits will not be in compliance with the MCC requirements if there is no separate OOP limit on prescription drug benefits.

Preventive health services

Under current MCC regulations, preventive health services cannot be subject to deductibles; but they may be subject to copayments and coinsurance, as long as they do not exceed the employee cost sharing for primary care and routine office visits. Plans must cover preventive health services that are in accordance with the Massachusetts Health Quality Partners' Preventive Care recommendations and guidelines.

The amended regulations require plans to cover in-network preventive health services, as defined under ACA, without a deductible. There is no exemption for grandfathered plans or retiree-only plans, which are not required to comply with the ACA preventive health services mandate.

Buck comment. Employer plans that have retained grandfathered status under ACA and do not provide coverage for all ACA preventive health services will not satisfy the MCC requirements; as a result, their

participants could be subject to the Massachusetts penalties. The amended MCC regulations do not require that these preventive health services be covered at 100%. That may be an oversight in the regulations and could be revised in the future. This amendment also has no effective date and appears to be effective immediately.

MCC certification process

Employees and dependents enrolled in an employer plan that does not satisfy the MCC requirements may be subject to penalties. The Connector has previously provided two alternatives that plan sponsors can use to determine whether their plans satisfy the MCC requirements. (See our [December 11, 2008 For Your Information.](#)) These two certification approaches will continue to be available in 2014.

- Self-Assessment — A plan sponsor can self-assess its compliance with the MCC standards if its plan independently satisfies each individual requirement of the regulations. Employers with plans that are not in compliance with the new MCC requirements cannot use the self-assessment approach.
- MCC Certification by the Connector — If the plan sponsor cannot use the self-assessment method to confirm satisfaction of the MCC standards, it may apply to the Connector for certification by submitting a MCC Certification Application. The Connector has the “discretion to deem health plans that *deviate modestly* from the MCC standards as providing minimum creditable coverage.” (Emphasis added.)

Buck comment. In reviewing applications, it is not certain what deviations from the rules the Connector will permit in determining whether the MCC requirements are satisfied. Plan sponsors should submit their 2014 plan designs to the Connector for approval as early in 2013 as possible to allow time for the certification process and planning, particularly if plan design changes are required, to avoid employees being subject to penalties.

Coordination of state and federal individual penalties

In some situations, an individual could be subject to both the Massachusetts penalty for failing to have MCC and the federal penalty for failing to have minimum essential coverage. The Board of the Connector approved a “credit approach” for applying the individual penalty for failing to have MCC so that an individual is not subject to both state and federal penalties. An individual who is subject to both penalties will be able to offset the state penalty by the amount of the federal penalty, and only pay the excess amount. If the federal penalty exceeds the state penalty, no additional payment will be due the state.

Buck comment. For example, if a resident is subject to a Massachusetts penalty of \$1,272 and is also subject to a federal penalty of \$1,000, the resident would only be subject to a Massachusetts penalty of \$272 (\$1,272 less the \$1,000).

Employer reporting requirements and penalties

In January 2013, Massachusetts Governor Deval Patrick proposed legislation that would eliminate the employer “Fair Share Contribution” requirement effective June 30, 2013. The Fair Share Contribution requires employers with 11 or more full-time employees in Massachusetts to make a “fair and reasonable” contribution toward the health care costs of its full-time workers, or pay a \$295 assessment per employee. (See our [October 9, 2008 For Your](#)

Information.) The Governor stated that he proposed this legislation in part to save significant administrative costs for Massachusetts employers. However, as of the date of this FYI, no action has been taken on the Governor's proposal. Absent any legislative action, the current employer obligations under Massachusetts health reform will continue into 2014.

In closing

The changes in the Massachusetts MCC requirements could expose participants in many large employer plans to significant penalties. Employers with employees residing in Massachusetts should review their plans to determine whether they will satisfy MCC requirements in 2014. For plans that do not comply with the revised MCC requirements, employers should submit certification applications to the Connector as soon as possible.

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