



Leadership is our business

Associated Industries of Massachusetts

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STATEMENT OF ASSOCIATED INDUSTRIES OF MASSACHUSETTS BEFORE THE COMMONWEALTH HEALTH INSURANCE CONNECTOR AUTHORITY REGARDING PROPOSED REGULATIONS 956 CMR 5.00 MINIMUM CREDITABLE COVERAGE.

Good morning, I am Eileen McAnney, Senior Vice President and Associate General Counsel of Associated Industries of Massachusetts (AIM), the state's largest nonprofit, nonpartisan association of Massachusetts' employers. AIM's mission is to promote the well-being of its 7,000 members and their 680,000 employees and the prosperity of the Commonwealth of Massachusetts by improving the economic climate, proactively advocating fair and equitable public policy, and providing relevant, reliable information and excellent services.

AIM appreciates the opportunity to provide some feedback on these important regulations. The intended purpose of the proposed changes was to provide some additional clarity on minimum creditable coverage, due to numerous questions with respect to them since they were first promulgated in June, 2007. AIM believes that some of the suggested changes are substantive in nature and detrimental to our members.

Before delving into the details of our concerns, I would like to publicly acknowledge and thank the Connector staff for all of its hard work on health care reform implementation. You had a very ambitious time table, the issues were complicated and the stakes high. You are to be commended for your herculean efforts in advancing the goal of universal coverage.

With any reform of the magnitude Massachusetts undertook, there is bound to be some bumps in the road. For the Connector, there is one issue we think needs to be revisited and reconsidered and that is the issue of minimum creditable coverage. AIM offers three general comments with respect to it.

1. **MCC was not intended to be the same as the Connector's seal of approval.** When the Connector was first envisioned and discussed, one of its primary functions was to connect consumers, many of whom would be purchasing health insurance for the first time, with value-added health insurance. The Connector would essentially do the leg work for consumers and provide a subset of the products available in the marketplace with its seal of approval, indicating that the product provided good coverage for the money. Separate and distinct from the seal of approval was the concept of minimum creditable coverage and how much insurance would be enough in the context of an individual mandate. Somehow those concepts got blurred, and the result is that "MCC" is defined in an overly broad way. As you consider changes to MCC, AIM urges you to keep the concepts separate.

2. **Emphasis should be on “minimum.”** MCC arises in the context of the individual mandate. We need to provide people with choices about how much health insurance is enough rather than dictating the type of insurance they must have. While AIM appreciates the need to protect our most vulnerable citizens, we should not design the general rule for the majority of citizens in a way that makes them purchase more health insurance than they may need or can afford. Massachusetts prides itself on our highly-skilled, highly-compensated work force that is increasingly white-collar and well educated. These consumers are quite capable of choosing the right health insurance policy for themselves and their families. A high deductible plan or large co-payments may make perfect sense given their age, income or health status and we should not foreclose their ability to do so. Therefore, minimum creditable coverage should be just that - the minimal level of insurance needed to comply with the individual mandate contained in Chapter 58. In contrast, far more comprehensive coverage could be required to obtain the Connector’s seal of approval.
3. **MCC should not be defined in an overly-detailed and restrictive way.** To do so will place employers that provide very generous coverage in a position of noncompliance, adversely impacting employees relying on their employer-sponsored coverage to meet the stringent standards. Such an outcome would be very detrimental to health care reform’s long-term success and its widespread support. By way of example, a large retailer in Massachusetts will not comply with the proposed minimum creditable coverage standards even though they pay 100% of the coverage for their unionized, part-time workers because they have an annual cap. This coverage cost them \$25-30 million a year and was negotiated during collective bargaining.

To address this situation, we suggest that the Connector exempts from the individual minimum creditable coverage mandate any part-time employee covered in a Taft-Hartley plan that offers comprehensive core benefits until the plan year after the collective bargaining agreement covering such employees expires. This would give the bargaining parties a fair opportunity to address the issues raised by the minimum creditable coverage in the bargaining context with the other elements of compensation (including wages, pension, paid time off, etc.).

Another employer in Massachusetts has fully replaced their insurance coverage with high deductible health plans (HDHPs). Many more employers offer them alongside more traditional plan designs. These employers are placed in a terrible quandary due to the proposed changes to MCC. Compliance with the proposed changes to the MCC standards automatically disqualifies the HDHPs from meeting federal requirements, thereby eliminating the tax advantage of offering them in conjunction with a health savings account (HSA). The original approach of providing a safe harbor to HDHPs by deeming them compliant with MCC so long as they met federal requirements was the correct approach and we urge the Connector to return to that standard. The Massachusetts Association of Health Plans has offered some corrective languages that AIM fully supports and urges you to adopt.

In addition, a prominent AIM member brought to our attention the fact that they would have not been in compliance with MCC even though they met nationally recognized standards for coverage of preventive care visits. When it was brought to the Connector’s attention, the

regulations were amended to accommodate that employer. Our concern is that there could be numerous other similarly-situated employers that are offering comprehensive coverage yet they do not comply with the very specific proposed standards.

A better determinant of coverage would be an actuarial equivalency standard. This safe harbor would allow companies to innovate while ensuring that “minimum creditable coverage” does guarantee a meaningful and adequate level of benefits. We urge the Connector to seriously consider this option. It makes the possibility of an ERISA challenge less likely since national self-insured employers will not have to tailor their benefits to try to comply with MCC standards to maintain positive employee relations. The Connector will not have to revisit the issue year after year to address constant changes in the health insurance marketplace. Most importantly, perhaps, it will ensure that the business community’s support of health care reform remains strong.

In closing, AIM suggests that the Connector comply with both requirements of section 5 of M.G.L.Chapter 30A and complete a general fiscal impact and a small business impact statement prior to finalization of these regulations.

Thank you for the opportunity to provide comments.