

November 17, 2021

Massachusetts Minimum Creditable Coverage – Employer Update (2021)

What You Don't Know Can Hurt Your Employees

Even though the Affordable Care Act's Individual Mandate penalty is \$0, Massachusetts requires its citizens to maintain what it considers a minimum level of health coverage or face a state individual mandate penalty. Massachusetts taxpayers must indicate if they maintained Minimum Creditable Coverage (MCC) as required by the [Massachusetts Health Care Reform Law](#) when completing their Massachusetts personal income tax returns using [Schedule HC](#). Massachusetts taxpayers who do not maintain MCC for themselves and their dependents throughout the year and who do not qualify for an exception are subject to state income tax penalties.

Note for 2021-2022: After the Commonwealth Health Insurance Connector Authority (the "Health Connector") issued its initial Bulletin with MCC deductible limits and Maximum Out-of-Pocket amounts for 2022, the U.S. Department of Health and Human Services ("HHS") revised the methodology that the MCC regulations rely upon to determine those amounts. As a result, the Health Connector issued a new [Bulletin](#) on July 30, 2021, with revised amounts (provided in the tables below) that should be used to assess whether a Health Benefit Plan meets MCC standards for 2022.

Basic MCC Requirements

Minimum creditable coverage is the minimum level of benefits that a Massachusetts individual must have to be considered "insured" under the State and avoid tax penalties. The basic MCC requirements are:

- Coverage for a comprehensive set of services (e.g. doctor visits, hospital admissions, day surgery, emergency services, mental health and substance abuse, and prescription drug coverage);
- Doctor visits for preventive care, without a deductible;
- Caps on annual in-network deductibles and maximum out-of-pocket spending limits for individual and family coverage, indexed annually;¹

¹ Please see [Administrative Information Bulletin 05-20](#) for 2021 and [Administrative Information Bulletin 06-21](#) (amending [Administrative Information Bulletin 03-21](#)) for 2022.

Annual MCC Limits		
Item	2021	2022
Maximum In-Network Deductible	Individual: \$2,700	Individual: \$2,750
	Family: \$5,400	Family: \$5,500
Maximum Out-of-Pocket Limit	Self-only: \$8,550	Self-only: \$8,700
	Family: \$17,100	Family: \$17,400

- No caps on total benefits for a particular illness or for a single year;
- No policy that covers only a fixed dollar amount per day or stay in the hospital (i.e. indemnity-only coverage), with the patient responsible for all other charges; and
- For policies with a separate prescription drug deductible, the separate deductibles cannot exceed the following amounts:

Annual MCC Limits		
Item	2021	2022
Maximum In-Network Prescription Drug Deductible	Individual: \$330	Individual: \$340
	Family: \$660	Family: \$680

Some Alternative Solutions

Many common group health plan designs do not satisfy the basic MCC requirements because the in-network deductibles are too high. The MCC rules provide some alternative solutions for a plan to qualify as MCC. Unfortunately, out-of-state employers can be caught unaware of potential MCC issues, may not receive support from their insurance carrier or third party administrator (TPA) to address them, and are only notified of the problem after-the-fact when Massachusetts residents are assessed a penalty.

1. High Deductible Health Plans (HDHPs) – A federally qualified HDHP is MCC if the employer offers the HDHP in conjunction with an employer-facilitated health savings account or a health reimbursement arrangement (HRA).
2. HRA Buy-Down – If the employer offers a medical plan in conjunction with an HRA, the employer’s HRA contribution can “buy down” the medical plan’s in-network deductibles to a level deemed to meet the Basic MCC Requirement deductible caps.

Example: A medical plan’s in-network deductibles are \$2,750 for employee-only and \$5,500 for all other tiers of coverage. The employer makes an HRA contribution of \$500 for employees who enroll in employee-only coverage and \$1,000 for employees who enroll in any other tier of coverage. For MCC purposes, the medical plan has in-network deductibles of \$2,250/individual (\$2,750 - \$500) and \$4,500/family (\$5,500 - \$1,000).

3. Actuarial Equivalence – An employer may file an [MCC Certification Application](#) attesting that the plan is actuarially equivalent to a Bronze level plan available through the Massachusetts Health Connector (Massachusetts' health insurance marketplace). If approved by the Health Connector, the medical plan is deemed MCC for that plan year and for subsequent plan years so long as there are no material plan design changes and the MCC requirements do not change. An employer must file the MCC Certification Application by or before November 1st to claim actuarial equivalence for that calendar year.

MA Form 1099-HC and an Ugly Surprise

Medical plans covering Massachusetts residents are generally required to provide those individuals with [MA Form 1099-HC](#) by January 31st of the following year indicating whether the coverage was (or was not) MCC.² This is the insurance carrier's responsibility for fully insured coverage and may be delegated to TPAs for self-insured coverage.

A letter informing an employee that their employer-sponsored medical coverage failed to satisfy the MCC requirements is usually a surprise, as the liability for non-creditable coverage falls on the individual. The employee's first call will likely be to their human resources department asking, "Why did I get this letter? Why do I have a penalty? What are you going to do about it?"

Assuming the employer did not communicate at enrollment that one or more medical plan options were non-creditable and carried potential tax risk to employees who enrolled in them, it might feel some responsibility to make the affected employees whole. If the coverage cannot qualify as MCC through one of the alternative solutions, this might involve making the affected employee(s) "whole" by providing additional taxable compensation to compensate for the penalty amount. The employer may want to consider requesting some sort of offset from the insurance carrier or TPA, depending on the facts and circumstances.

MCC Requirements and Certain Life Events

Certain life events affect how and/or when the MCC requirements apply:

- **Moving in** – New residents have until the first day of the third full month following the month in which they become a Massachusetts resident to get MCC.
- **Moving out** – The mandate applies until the last day of the last full month in which an individual claims residency in Massachusetts.
- **Growing up** – Once an individual turns 18 years old, they have a three-month grace period before the mandate applies.
- **Self-employed** – Health care premiums are tax-deductible and reduce an individual's taxable income.
- **Living abroad during the golden years** – Retired Massachusetts residents living abroad with foreign health insurance coverage should complete the Schedule HC by applying for a Certificate of Exemption or requesting an appeal on the Schedule HC.

² As of the date of publication of this Alert, the 2021 MA Form 1099-HC has not yet been released on [Massachusetts's website](#).

- **Death and taxes** - The mandate applies until the last day of the last full month in which the individual was living.

State Tax Penalties for Failing to Maintain MCC

Employers may face a \$50 per individual penalty for reporting failures and unspecified fines for state tax-filing noncompliance. However, employers don't have to provide MCC, and no direct penalty applies to an employer for not offering MCC. An employee residing in Massachusetts, not the employer, who fails to maintain MCC is directly impacted by an income-based penalty. The penalty is scaled using the federal poverty level (FPL) based on family size and [indexed](#) annually. The 2021 [penalties](#) are as follows:

Individual Mandate Penalties for Tax Year 2021				
Individual Income Category ³	150.1-200% FPL	200.1-250% FPL	250.1-300% FPL	>300% FPL
Penalty	\$23/month \$276/year	\$44/month \$528/year	\$66/month \$792/year	\$142/month \$1,704/year
Use the chart below to determine the applicable federal poverty level (FPL) based on family size				
Family Size	150% FPL	200% FPL	250% FPL	300% FPL
1	\$19,140	\$25,520	\$31,900	\$38,280
2	\$25,860	\$34,480	\$43,100	\$51,720
3	\$32,580	\$43,440	\$54,300	\$65,160
4	\$39,300	\$52,400	\$65,500	\$78,600
5	\$46,020	\$61,360	\$76,700	\$92,040
6	\$52,740	\$70,320	\$87,900	\$105,480
7	\$59,460	\$79,280	\$99,100	\$118,920
8	\$66,180	\$88,240	\$110,300	\$132,360
For each add'l person add:	\$6,720	\$8,960	\$11,200	\$13,440

³ Individuals with incomes less than or equal to 150% of the Federal Poverty Level are not subject to any penalty for non-compliance.

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