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Massachusetts Finalizes Guidance on Minimum Creditable Coverage Certification Process

In October, the Massachusetts Connector Board approved final regulations on the minimum creditable coverage requirements under the Massachusetts health reform law, which included two alternatives for satisfying the requirements. Now the Connector has issued additional guidance finalizing the process for plan sponsors to obtain certification that they have met the minimum creditable coverage standards.

Background

Starting January 1, 2009, Massachusetts residents age 18 and older who are not covered by health insurance that satisfies certain minimum creditable coverage (MCC) requirements may be subject to significant tax penalties. The MCC requirements do not apply directly to employers, but if an employer plan does not qualify as minimum creditable coverage, individuals enrolled in that plan who are Massachusetts residents may be subject to these tax penalties.

Employers and carriers providing coverage that satisfies the MCC standards are required by law to provide a Form 1099-HC annually to Massachusetts residents enrolled in that coverage, which will enable these individuals to avoid the tax penalties. However, an employer cannot fulfill this obligation unless it determines whether its plans qualify as minimum creditable coverage.

In October, the Connector issued final regulations on the MCC standards. (See our October 24, 2008 *For Your Information*.) Shortly thereafter, it released draft guidance on the process plan sponsors would follow to certify that a plan meets the MCC standards. On November 25, 2008, the Connector released an *Administrative Bulletin* with final guidance on the certification process and an *MCC Certification Application*.

Guidance in Administrative Bulletin

The Connector has provided two alternatives that plan sponsors can use to determine whether their plans satisfy the MCC standards – self assessment or MCC certification by the Connector.

Self Assessment

An employer can self assess its compliance with the MCC standards if its plan meets every element of the regulations. An employer that determines compliance with the MCC standards using self assessment is not required to seek any form of approval or certification by the Connector.

> ***BUCK COMMENT.*** *While the Connector states in the Administrative Bulletin that the majority of health plans will be able to confirm satisfaction of the MCC standards using self assessment, Buck has found that many plans offered by large employers do not meet all of the MCC requirements and thus will be precluded from using this method. Sponsors of these plans will have to apply for MCC certification by the Connector as described below. Given continued uncertainty about some of the MCC requirements, even a plan sponsor that can use the self assessment alternative may want to apply for MCC certification.*

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 MCC certification by submitting a completed 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.) This alternative allows plans to satisfy the MCC standards "in instances in which a plan does not meet every element of the Regulation."

To be eligible to apply for MCC certification by the Connector for 2009, the plan must meet all of the following –

- provide coverage for all core services (i.e., physician services, inpatient acute care services, day surgery, and diagnostic procedures and tests)
- provide some level of coverage for each of the broad range of medical benefits listed in the regulations
- have an actuarial value equal to or greater than any Bronze-level plan offered through the Connector.

For periods beginning January 1, 2010, an MCC certification will not be provided if the plan includes benefit limitations (such as annual visit, day or dollar limits) that are clearly inconsistent with standard employer-sponsored coverage or which do not represent innovative ways to improve quality or management of the services provided.

MCC Certification Application

The MCC Certification Application must include the plan's schedule of benefits, identify the plan's deviations from the MCC standards and provide any additional information supporting the application. An actuarial attestation of actuarial equivalence with a Bronze-level plan is not required with the initial submission.

The Connector will review the application and issue an MCC certification if it determines that the overall value of benefits provided by the plan provides sufficiently comprehensive coverage. If it cannot make that determination based on the information contained in the application, it will likely request an actuarial attestation certified by an actuary confirming that the plan has an overall value equal to or greater than any Bronze-level plan.

BUCK COMMENT. *Although not required with the initial application, submission of an actuarial attestation may help expedite the Connector review process if the plan's overall value is not clearly greater than a Bronze-level plan.*

Effective Date of MCC Certification

A plan sponsor can request MCC certification for both 2009 and 2010 in the initial MCC Certification Application, and the certification remains valid until there is a material change in the plan benefits, or the MCC standards are revised. A material change in plan benefits is defined as any modification in the plan that directly relates to the MCC standards. Therefore, plan design changes related to benefits not subject to these standards, such as out-of-network benefits or chiropractic care, would not affect the MCC certification.

Other Clarifications

The Connector's administrative bulletin also clarifies a number of other areas.

Mental Health and Substance Abuse Services. The bulletin confirms that mental health and substance abuse services are not considered core services. Therefore, while these services must be covered under a plan to satisfy the MCC standards, a plan can include limitations such as hospital day and physician visit limits for these services, as permitted by regulations and applicable state and federal laws.

High-Deductible Health Plans with an HSA. The bulletin confirms prior guidance that a high-deductible health plan (HDHP) that complies with federal HSA requirements will meet the MCC standards for 2009. It also confirms that starting in 2010, an HDHP/HSA combination will satisfy the MCC standards only if it satisfies all of the following requirements –

- The plan complies with federal HSA requirements.
- The carrier or plan sponsor facilitates access to an HSA administrator.
- The plan provides a "broad range of medical benefits," satisfies the maximum benefit limitations to the extent not inconsistent with federal requirements and satisfies the MCC rules for preventive care.

BUCK COMMENT. *The bulletin clarifies that to "facilitate access to an HSA" means providing information explaining an HSA and how an individual may establish and fund an HSA. The individual is not required to establish an HSA and neither the individual nor the employer is required to fund the HSA.*

Collectively Bargained Plans. The final MCC regulations included a delayed MCC effective date for collectively bargained plans. However, the bulletin notes that this delayed effective date does not constitute an automatic safe harbor, and that collectively bargained plans that cannot self assess compliance with the MCC standards may apply to the Connector for MCC certification. The Connector, after reviewing the circumstances of a particular request, may grant MCC certification for up to one year following the expiration of a collective bargaining agreement (CBA) that is in effect on January 1, 2009 or up to one year following the date of the last renewing CBA that is part of a multi-employer plan. The bulletin states that this grace period is intended to allow the parties subject to a CBA to modify their group health plans to meet MCC standards and to then re-apply for MCC certification based on the MCC standards in effect at that time.

Conclusion

Employers that provide health coverage to individuals who live in Massachusetts should review their health plans to determine whether they satisfy the MCC standards. Buck's consultants would be happy to assist you in this review and in completing and submitting the MCC Certification Application if needed.