New CMS Proposed Rule: ACA Marketplace Integrity

April 1, 2025

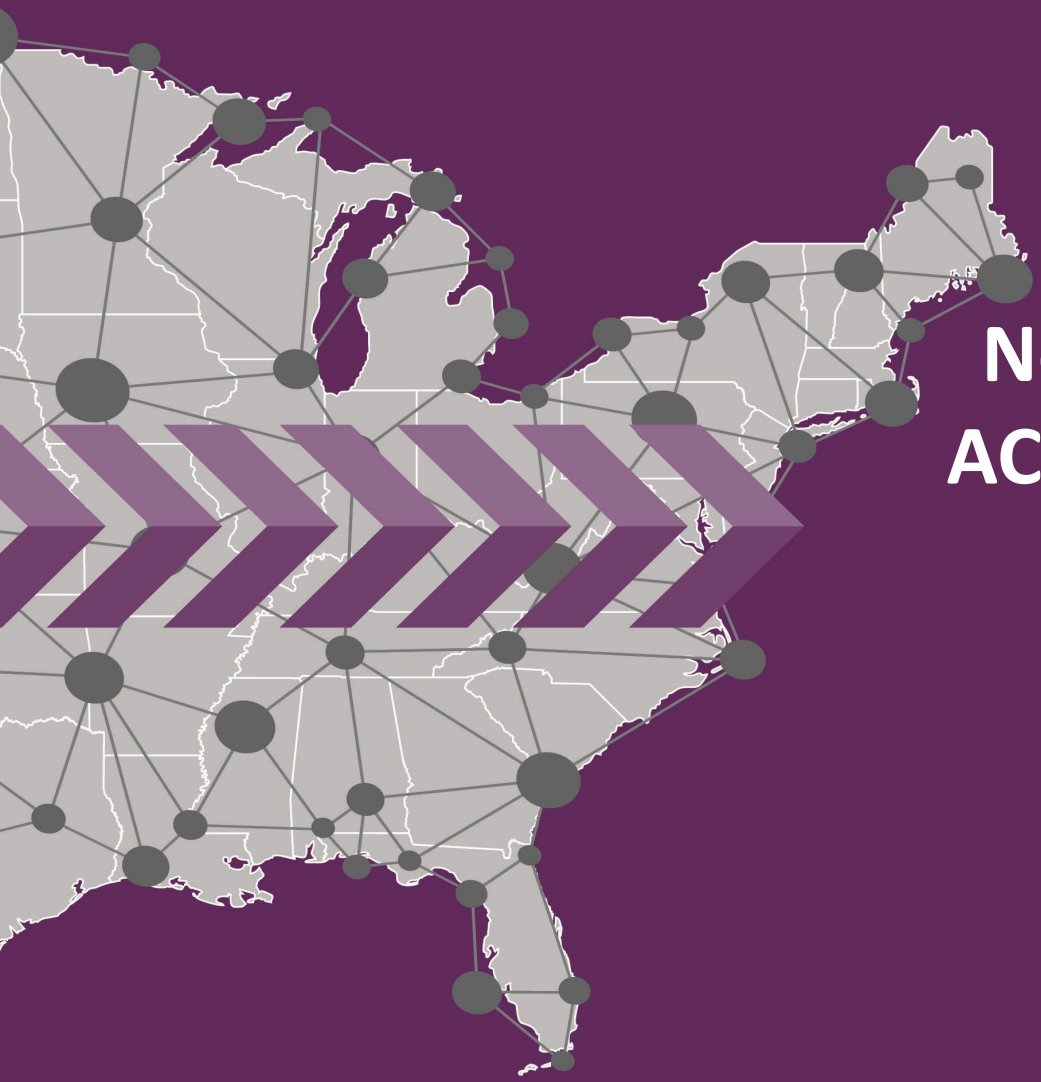
2:30 – 3:30 p.m. ET

Please stand by, this webinar will begin shortly

STATE Health & Value STRATEGIES

Driving Innovation Across States

A grantee of the Robert Wood Johnson Foundation



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About State Health and Value Strategies

State Health and Value Strategies (SHVS) assists states in their efforts to transform health and healthcare by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's School of Public and International Affairs. The program connects states with experts and peers to undertake healthcare transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.shvs.org.

Questions? Email Heather Howard at heatherh@Princeton.edu.

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- Use the 'Q&A' function in Zoom to submit questions and comments to the meeting facilitators. **Note that you must select to submit a question anonymously.**
- All participant lines are muted.
- After the webinar, the slide deck and a recording will be available at **www.shvs.org.**

Agenda

- Background and What's At Stake
- Overview of the Proposed Rule
- Provisions of the Proposed Rule
- CMS Analysis and Questions About It
- Covered California Response
- Massachusetts Health Connector Response
- Discussion

Background

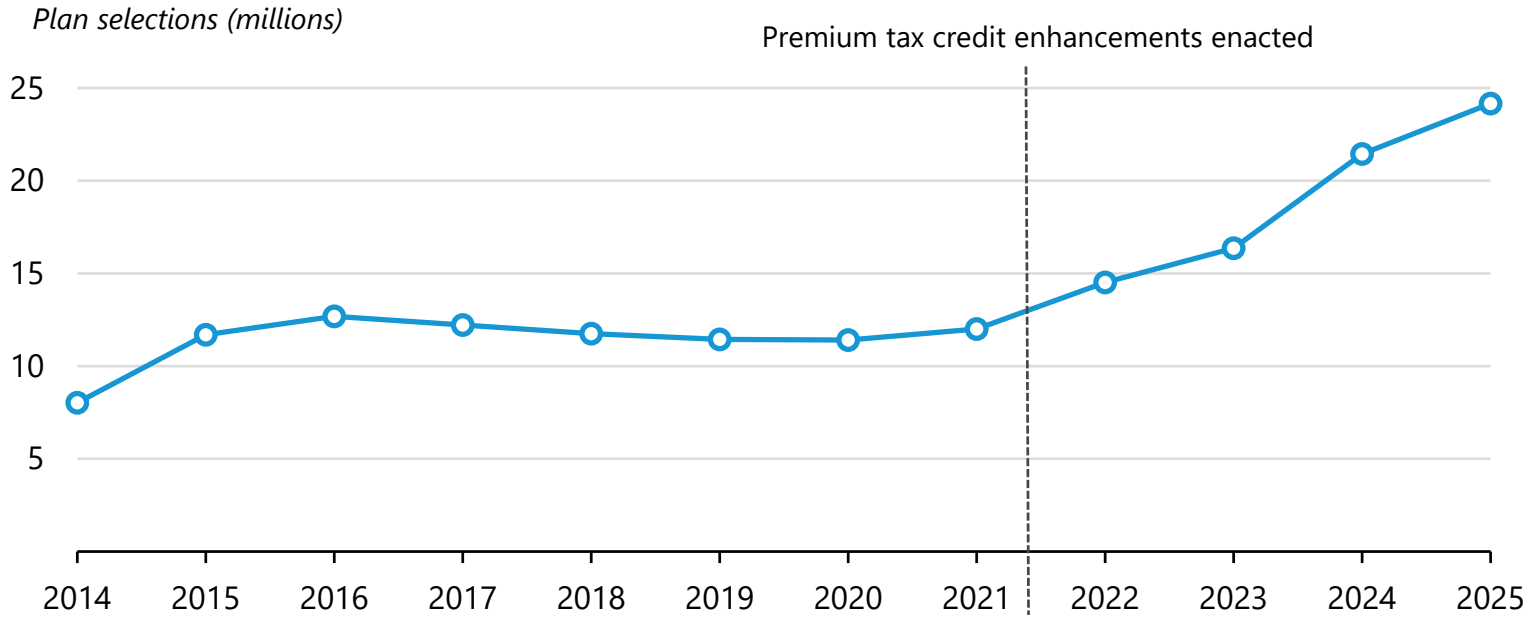
On March 10, 2025, the Centers for Medicare & Medicaid Services (CMS) released the "Marketplace Integrity and Affordability" proposed rule.

- The proposed rule focuses on Marketplace rules that are traditionally addressed in the annual Notice of Payment and Benefit Parameters, plus a few additional issues.
- Many changes would take effect before the next open enrollment period (OEP).
- Comments are due April 11, 2025.

Source: State Health and Value Strategies, *Recent Federal Marketplace Proposal Imposes New Requirements for States and Consumers*.

What's At Stake

Marketplace Plan Selections at Open Enrollment, Nationally, Coverage Years 2014-2025



- The Congressional Budget Office and Urban Institute estimate premium tax credit (PTC) enhancements increase enrollment by seven to eight million people.
- But enrollment has increased by 12 million since 2021.
- **So, four to five million of the increase is due to other causes, including regulatory changes.**
- CMS projects the proposed rule, if finalized, would reduce enrollment by 0.75 to two million.

Overview of the Proposed Rule

- **Two stated goals:**
  - Addressing "fraud" and other "improper enrollments."
  - Reducing premiums, which could increase unsubsidized enrollment.
- **The proposals fall into three buckets**:
  - Reducing affordability and benefits.
  - Narrowing eligibility.
  - Imposing barriers to enrollment.
- Many changes would **roll-back previous policies**, **reduce state flexibility** and come with **substantial implementation costs** for Marketplaces.
- If finalized, legal challenges could focus on the analysis used to justify the proposals, the statutory basis for some proposals, procedural issues, failure to consider other reasonable options, and the short implementation timeline.

Provisions in the Proposed Rule

Proposals to Reduce Affordability and Benefits

Increases to Consumer Cost-Sharing and Net Premiums	Permitting Less Generous Plans, Including PTC Benchmarks	New $5 Charge for Certain Enrollees Who Do Not Actively Re-Enroll.
• "Premium adjustment percentage" used to set the maximum out-of-pocket (MOOP), premium contributions, and employer responsibility payment. • Proposal would increase MOOP by 15% over 2025. • When adopted by the Internal Revenue Service (IRS), would reduce PTC amounts, resulting in 4.5% higher net premiums.	• Allows issuers to reduce actuarial value (AV) for on- and off-Marketplace plans. • CMS estimates 1% decrease in gross premiums and reduction in PTCs by $1.22 billion in 2026. • States with standardized plan designs can retain tighter AV limits.	• Applies to enrollees with APTCs that fully cover their premium. • The Federally Facilitated Marketplace (FFM) will implement for 2026; State-Based Marketplaces (SBMs) have until 2027. • CMS seeks SBM data on numbers automatically re-enrolled.

Ends the Bronze-to-Silver "Crosswalk Policy"	Prohibits the Inclusion of Gender Affirming Care in Essential Health Benefits
• Would be required across all Marketplaces, including SBMs.	• States with mandates would face defrayal obligation.

Proposals to Limit Enrollment Opportunities and Impose Administrative Requirements

Shortened Open Enrollment Period	Eliminates the Low-Income Special Enrollment Period (SEP) for Individuals Under 150% of the Federal Poverty Level (FPL)	New Documentation for SEP Triggering Events
• Would require all Marketplaces, including SBMs, to run OEP from November 1 to December 15. • Seeks comment on whether CMS should prohibit SBMs from extending OE through special enrollment periods.	• Effective within 60 days of final rule. • Incorrectly asserts that no SBMs currently offer the low-income SEP.	• Would require pre-enrollment verification for at least 75% of all SEPs. • Would apply to FFM and SBMs.

Cancels APTCs for Failure to Reconcile After One Year	New Documentation for Data Matching Inconsistencies (DMIs)
• In effect for November 1, 2025.	• When data show income below the FPL. • When tax data is unavailable. • Shortens the window for submitting documentation. • Would result in additional 2.5 million DMIs per year.

Proposals to Narrow Eligibility

Reverses the Deferred Action for Childhood Arrivals (DACA) Eligibility Rule	Eliminates Issuer Options for Premium Payment Thresholds	Permits Coverage Denials for Past-Due Premiums
• Would require mid-year terminations of DACA recipient coverage. • Estimates 11,000 would lose coverage mid-year. • Estimates of costs to SBMs include IT costs, but not costs associated with outreach, call centers, or assister training.	• Reverses the Biden-era policy allowing continuation of coverage if the enrollee is short on premiums by a de minimis amount. • Reduces federal spending on APTCs by $820M in 2026.	• Amends ACA's "guaranteed issue" protection to allow issuers to deny policies to consumers with past-due premiums. • Delegates to states any notice requirements. • Requests comment on whether states should have flexibility to set restrictions on issuers' payment policies.

Request for Comments

Public comments on the proposed rule are due by April 11, 2025.

- CMS seeks comments from states on:
  - Implementation timeline
  - Operational costs
- CMS requests evidence with "data sets and detailed findings" to support public comments.
- CMS may give less weight to public comments than in past rulemaking.
  - "[W]e must also consider that many parties who comment…may represent the will of special interests who do not necessarily represent all special interests or the general public interest in the faithful and efficient administration of the statute."
  - On March 26, 2025, CMS released a revised final AV calculator for 2026, incorporating changes in the proposed regulations.

CMS' Analysis

Claims About Fraud and Improper Enrollments

The proposed rule states its primary purpose is to address the large number of improper enrollments and APTC payments.

- Estimates several million inappropriate enrollments overall.
  - Compares actual enrollment to estimates of the eligible population.
- Apparent excess enrollment is highly concentrated in FFM states, especially non-expansion states.
- Cites CMS data about consumer complaints.
- Estimates that proposals in the rule will eliminate improper enrollment without reducing enrollment among those who are eligible.

Questions About the Rule's Analysis of Improper Enrollment

- **The analysis may overstate improper enrollments**:
  - There are disconnects between survey data used for the eligible population and administrative data used for enrollment.
    - Data sets have different income definitions, family concepts, timing, etc.
  - CMS treats individuals legitimately expecting to have incomes above 100% FPL but ending the year with lower income as "ineligible," but they are eligible under ACA rules.
  - CMS' earlier actions to address these issues are not reflected in estimates.

- **The disconnect between these estimates and the proposals in the rule**:
  - CMS' estimates only show excess enrollment in nine FFM states, mostly non-expansion states.
    - No SBM shows a take-up rate over 100%.
    - This is consistent with known issues about FFM rules, and with SBM experience.
  - Yet proposals would force SBMs to make substantial changes.
  - The proposed rule does not address known issues with FFM rules (e.g., enhanced direct enrollment).
  - CMS just reinstated FFM brokers who'd been banned due to fraud concerns.

CMS Estimates of State Take-Up Rates (Excerpt)

TABLE 15: Exchange Sign-Ups Compared to Potential Enrollees at 100-150 Percent FPL Income, by State and Year

	2019			2023			2024		
	Exchange Sign-Ups	Potential Enrollees	Take-Up Rate (%)	Exchange Sign-Ups	Potential Enrollees	Take-Up Rate (%)	Exchange Sign-Ups	Potential Enrollees	Take-Up Rate (%)
Alabama	70,951	162,156	43.8	119,737	161,318	74.2	228,883	162,580	140.8
Alaska	1,896	16,161	11.7	2,050	11,860	17.3	2,317	11,918	19.4
Arizona	20,565	177,646	11.6	49,204	153,762	32.0	114,197	156,012	73.2
Arkansas	11,893	106,418	11.2	23,680	90,011	26.3	56,640	90,565	62.5
California	242,016	758,412	31.9	274,117	630,793	43.5	278,204	634,536	43.8
Colorado	15,222	104,067	14.6	14,327	85,286	16.8	14,786	86,098	17.2
Connecticut	8,292	51,747	16.0	8,315	46,834	17.8	12,991	47,246	27.5
Delaware	2,886	16,730	17.3	3,584	13,723	26.1	8,374	13,928	60.1
Florida	981,323	742,425	132.2	1,961,049	608,549	322.2	2,718,501	620,966	437.8
Georgia	219,261	362,003	60.6	496,628	326,102	152.3	834,058	329,534	253.1
Hawaii	2,352	20,557	11.4	2,571	24,026	10.7	3,006	24,105	12.5
Idaho	NR	NR	NR	4,768	43,826	10.9	8,193	44,504	18.4
Illinois	52,000	255,798	20.3	78,590	198,726	39.5	111,131	199,793	55.6
Indiana	19,172	173,981	11.0	41,719	131,311	31.8	112,127	132,154	84.8
Iowa	6,334	53,568	11.8	12,580	49,928	25.2	23,908	50,286	47.5
Kansas	28,266	88,955	31.8	47,693	83,239	57.3	82,256	83,778	98.2
Kentucky	10,401	94,295	11.0	4,748	83,064	5.7	8,534	83,754	10.2

Source: HHS, *Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability*.

Claims About the Rule's Risk Pool Impact

- CMS claims the proposed rule will reduce premiums overall by between 0.9% and 5.4%, helping unsubsidized enrollees.
- The main reason for the reduction is eliminating the under-150% FPL SEP, which CMS estimates will reduce premiums by 3.4%.
- Assumes no coverage or risk pool affects from imposing administrative burdens on eligible individuals.

Questions About Risk Pool Claims

Heavy reliance on large estimate for under-150% FPL SEP, which is inconsistent with SBM experience.

- SBM data suggest the risk profile of SEP users is similar to that of other enrollees.

Failure to provide key data that's readily available.

- E.g., CMS could specify the risk profiles of enrollees using various SEPs, losing coverage due to DMIs, auto-reenrolled with a zero premium, etc.

Disregards impact of administrative burdens.

- For example, CMS estimates income verification changes would lead to 2.5 million more people needing to submit documentation.

Cuts to Navigator funding and cuts to CMS and IRS staff could exacerbate effects of new administrative burdens.

Reactions From State-Based Marketplaces

State Perspective: Covered California

Katie Ravel, Director of Policy, Eligibility & Research, Covered California
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PRELIMINARY ANALYSIS: OPEN AND SPECIAL ENROLLMENT PERIODS

April 1, 2025

COVERED CALIFORNIA

SUMMARY OF PRELIMINARY ANALYSIS

Open enrollment and special enrollment are both important pathways for consumers who experience coverage churn to gain health insurance at Covered California.

This analysis provides background information on the use of Special Enrollment by Covered California enrollees, along with data on Open Enrollment and Special Enrollment consumer risk profiles.

Enrollment data are from Covered California administrative data.

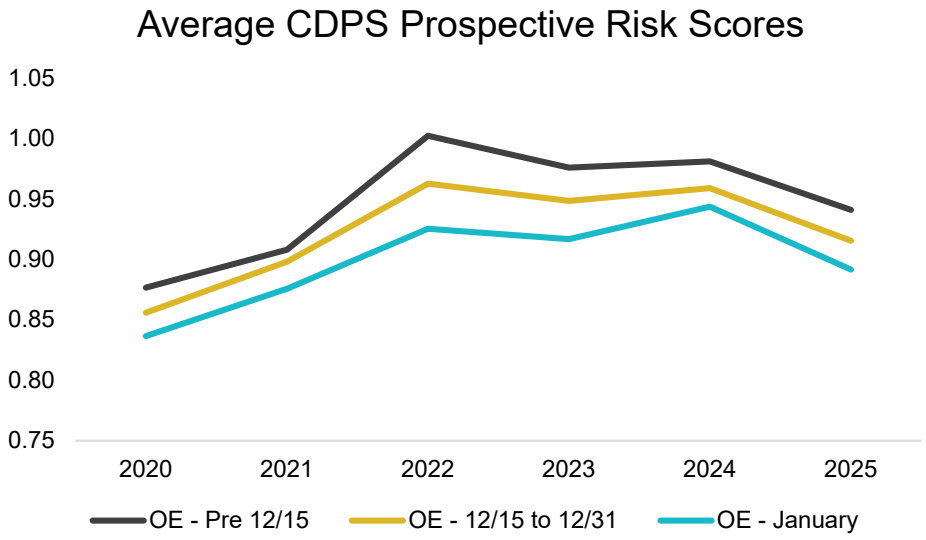
Prospective risk scores – which Covered California uses to gain insight into expected health experience among newly enrolled individuals based on prior utilization – are calculated using the Chronic Illness & Disability Payment (CDPS) system algorithm. Note that the risk profile may not reflect actual spending once enrolled.

For more information on CDPS risk scores: Gilmer, Todd PhD; Kronick, Richard PhD. Updating the Chronic Illness and Disability Payment System. Medical Care 62(3):p 175-181, March 2024. | DOI: 10.1097/MLR.0000000000001968. Information on Covered California's use of CDPS risk scores available here.

PRELIMINARY ANALYSIS: TIMING OF OPEN ENROLLMENT SIGN-UPS

Among Open Enrollment new sign-ups, those who enroll after December 15th have consistently lower prospective risk scores.

Those who enroll in January, have the lowest risk scores among new sign-ups.

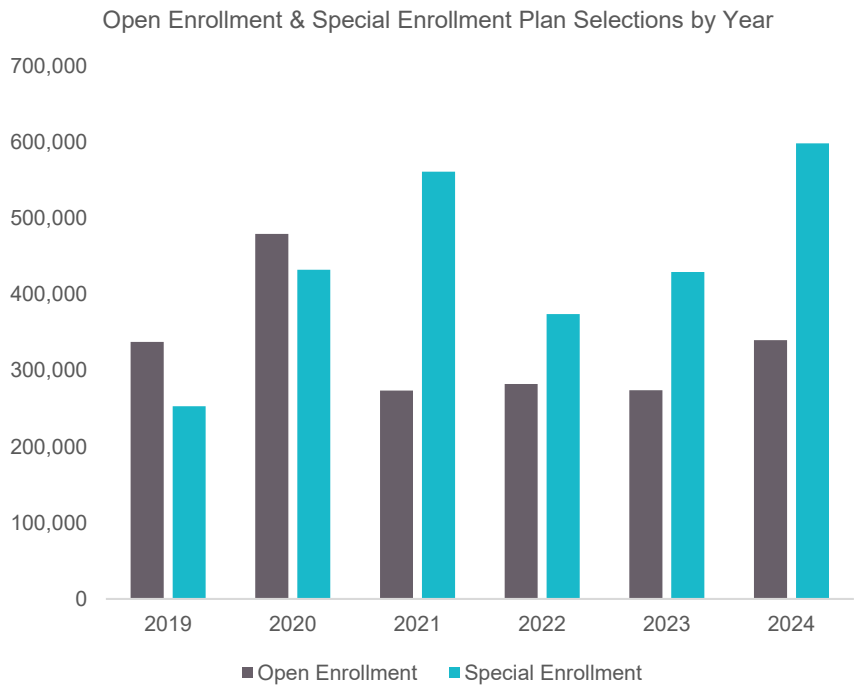


*Prospective risk scores calculated using the Chronic Illness Disability Payment System (CDPS) algorithm using patient discharge (PDD), emergency department (ED), or ambulatory surgery (AS) data sets from the Department of Health Care Access and Information (HCAI). For more information on CDPS risk scores see: Gilmer, Todd PhD; Kronick, Richard PhD. Updating the Chronic Illness and Disability Payment System. Medical Care 62(3):p 175-181, March 2024. | DOI: 10.1097/MLR.0000000000001968

COVERED CALIFORNIA GROWTH INCREASINGLY DRIVEN BY SPECIAL ENROLLMENT

Special Enrollment period are a core pathway for consumers who experience eligibility churn to ensure continuity of coverage and care.

Since 2021, more consumers have enrolled in coverage during Special Enrollment than during Open Enrollment.



Counts are distinct individuals with a plan selection (regardless of effectuation status).

PRELIMINARY ANALYSIS: RISK SCORES FOR OPEN ENROLLMENT & SPECIAL ENROLLMENT CONSUMERS

In most recent years, the prospective risk scores of Special Enrollment consumers has been equal to or lower than those of the Open Enrollment consumers.

	Open Enrollment	Special Enrollment
2020	0.86	0.85
2021	0.89	0.87
2022	0.96	0.93
2023	0.95	0.94
2024	0.96	0.96
2025*	0.92	0.94

Prospective risk scores calculated using the Chronic Illness Disability Payment System (CDPS) algorithm using patient discharge (PDD), emergency department (ED), or ambulatory surgery (AS) data sets from the Department of Health Care Access and Information (HCAI). For more information on CDPS risk scores see: Gilmer, Todd PhD; Kronick, Richard PhD. Updating the Chronic Illness and Disability Payment System. Medical Care 62(3):p 175-181, March 2024. | DOI: 10.1097/MLR.0000000000001968. For the Marketplace enrollment years of 2020 to 2024, risk scores are calculated using observed diagnoses from HCAI data from the prior year.

Risk scores are standardized to a mean of 1 for all enrollees across all enrollment years.

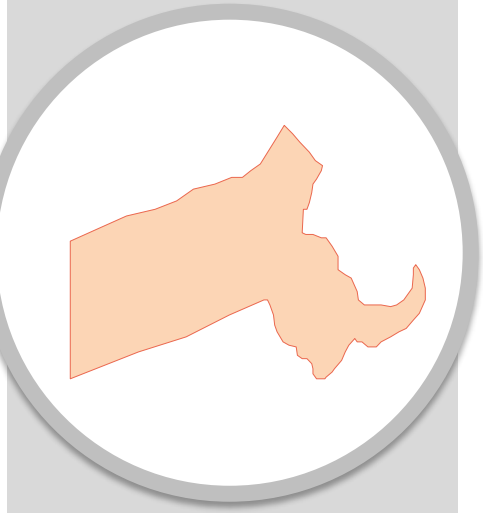
* For Marketplace enrollment for plan year 2025, risk scores were calculated using the 2023 data, because it was the latest available at the time of the analysis.

ADDITIONAL COMMENTS AND NEXT STEPS

- Covered California has safeguards in place to ensure that agents have the consumer's consent to work on their case before they are allowed to make any changes. Reports of unauthorized changes are low.

- Covered California's data analysis is ongoing. Final analysis will be made available at https://hbex.coveredca.com/data-research/.

State Perspective: Massachusetts Health Connector



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Data for Response to Proposed CCIIO Rule

Perspectives from Massachusetts

Audrey Morse Gasteier
Executive Director

Tuesday, April 1, 2025

MASSACHUSETTS HEALTH CONNECTOR

Paperwork Requirements for Verifying Income

- IRS returns non-income response often and across income ranges (*i.e.*, not explained by likely non-filers)
- Younger individuals slightly more likely to get non-income response (41.5% non-income responses for adults under 45 vs. 38.5% for 45+)
- After rule allowing for self-attestation if non-income response from IRS:
  - 40 percent reduction in applicants subject to paperwork requirement
  - 33 percent decrease in subsidy loss at renewal

Failure to Reconcile (FTR)

- One percent of Health Connector enrollees failed to file a tax return based on combined one-year and two-year FTR data
- IRS has mechanisms to identify and outreach filers who do not reconcile
- No clear correlation between income and FTR codes, suggesting that individuals enrolling in free coverage are not more likely than other groups to fail to reconcile

Special Enrollment Periods (SEPs)

- Eligibility-driven qualifying life events can be verified by integrated eligibility system – over 85 percent of total Special Enrollment Periods (SEPs) in 2024
- Average age of individuals who enrolled through a SEP was about 38, slightly younger than the average age of enrollees overall (41) in 2024
- Ensure robust opportunities for subsidized individuals to enroll, as they have lower costs than unsubsidized enrollees, based on Massachusetts data
- Actuarial data shows our population with the most SEP eligibility generally has lower risk than other enrollees

Experience with Unauthorized Enrollments

- Not seeing it! Dog that didn't bark
- The Health Connector has identified zero consumer reports among the 1.2 million calls to its customer service center in 2024 where a caller indicated they were unaware of their QHP enrollment or that it was fraudulent

Discussion

The slides and a recording of the webinar will be available at www.shvs.org after the webinar

Thank You

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Appendix

Resources From the Literature

- **On Premiums**
  - Drake C, et al Financial transaction costs reduce benefit take-up evidence from zero-premium health insurance plans in Colorado
  - McIntyre A, et al Small Marketplace Premiums Pose Financial And Administrative Burdens: Evidence From Massachusetts, 2016–17
- **On Administrative burdens**
  - Shepherd M, Do Ordeals Work for Selection Markets? Evidence from Health Insurance Auto-Enrollment
  - McIntyre A, et al Can Automatic Retention Improve Health Insurance Market Outcomes?
  - Erickson KM, et al Reducing Administrative Barriers Increases Take-up of Subsidized Health Insurance Coverage: Evidence from a Field Experiment
- **On Risk Pools**
  - Hsu J, Growth in ACA-Compliant Marketplace Enrollment and Spending Risk Changes During the COVID-19 Pandemic
  - Swartz K, Graves J, Shifting The Open Enrollment Period For ACA Marketplaces Could Increase Enrollment And Improve Plan Choices

Previous State Analyses

- New York comment on 2017 "Market Stabilization" rule (finding that the longer open enrollment period improves the risk pool)
- Massachusetts comment on 2022 Notice of Benefit & Payment Parameters (finding that risk scores for year-round SEP enrollees are healthier than for issuers off-Marketplace)
- California comment on 2022 Notice of Benefit & Payment Parameters (longer OEP associated with healthier risk mix)
- District of Columbia 2016 letter to GAO (SEP enrollees are younger, on average, than those enrolling through OEP)