

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA**

STATE OF NEW YORK,
COMMONWEALTH OF
MASSACHUSETTS, DISTRICT OF
COLUMBIA, STATE OF
CALIFORNIA, STATE OF
DELAWARE, COMMONWEALTH
OF KENTUCKY, STATE OF
MARYLAND, STATE OF NEW
JERSEY, STATE OF OREGON,
COMMONWEALTH OF
PENNSYLVANIA,
COMMONWEALTH OF VIRGINIA,
and STATE OF WASHINGTON,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR; R.
ALEXANDER ACOSTA, in his
official capacity as Secretary of the
U.S. Department of Labor, and
UNITED STATES OF AMERICA,

Defendants.

Civ. Action No. 18-1747

DECLARATION OF AUDREY MORSE GASTEIER

I, Audrey Morse Gasteier, declare:

1. I am the Chief of Policy and Strategy for the Massachusetts Health Insurance Connector Authority (the "Health Connector") and submit this declaration in support of the Plaintiff States' Application for Summary Judgment.

The Massachusetts Health Connector

2. The Health Connector is a state-based health insurance marketplace for individuals and small businesses. More than 250,000 Massachusetts residents are covered by

health insurance through the Health Connector. These residents receive high-quality coverage through Qualified Health Plans (“QHPs”) certified by the Health Connector.

3. Massachusetts has a “Merged Market” for individuals and small employers with 50 or fewer employees. Massachusetts merged its nongroup and small group markets in 2007, as part of the implementation of our 2006 state health reform (“Chapter 58”). There are approximately 770,000 covered lives in the Merged Market. The Health Connector’s enrollment comprises roughly one-third of the overall Merged Market, and its nongroup enrollment is roughly 80% of the Commonwealth’s entire nongroup market.

4. Massachusetts has its own individual mandate, enacted as a part of Chapter 58. This mandate requires adults to carry coverage that meets Minimum Creditable Coverage (MCC) standards or else pay a tax penalty. The setting of MCC standards is the responsibility of the Health Connector’s Board of Directors. MCC requires that adult residents carry health insurance that covers a range of benefit categories, such as hospitalization, prescription drugs, and mental health care, and also sets limits on out of pocket expenses for consumers.

5. Chapter 58 and the Affordable Care Act (ACA) have provided members of small groups and individuals in Massachusetts with robust protections (*e.g.* maternity services, mental health and substance use disorder services, and prescription drugs) and have prevented insurance policies from excluding individuals based on age, occupation, health status, claims experience, or duration of coverage.

6. Since Chapter 58, the uninsured rate in Massachusetts has declined from 11% to 3%, the lowest in the nation. Owing in part to its success in reaching near-universal coverage, Massachusetts has been ranked the healthiest state in the nation.¹

¹ <https://assets.americashealthrankings.org/app/uploads/2017annualreport.pdf>

Impact of the Association Health Plan (“AHP”) Final Rule on Massachusetts

7. The Department of Labor’s Final Rule re-interpreting ERISA’s definition of employer (“Final Rule”) is likely to have a negative impact on the merged individual and small group insurance markets in Massachusetts (the “Merged Market”), including the Health Connector and the populations it serves.

8. Although Massachusetts’s market rules will continue to be applicable to AHPs comprised of small employer groups, the Final Rule presents the probability that out-of-state actors unfamiliar or unconcerned with existing state law that authorizes the Division of Insurance to regulate AHPs and the Health Connector to implement Minimum Creditable Coverage requirements may attempt to market and sell plans that do not meet these standards. Even with vigorous enforcement of non-compliance and consumer education, an increase in the sale of AHPs that do not meet Massachusetts standards could result in declines in merged market coverage (on and off-Exchange) and increased consumer risk (*e.g.*, exposure to insufficient coverage or unexpected medical bills). Further, consumers who inadvertently purchase AHP coverage that does not meet state Minimum Creditable Coverage standards may face a state tax penalty associated with inadequate coverage. To prevent this harm, the Commonwealth will need to incur new costs and resources, such as additional staff time dedicated to enforcement of Minimum Creditable Coverage standards and M.G.L. c. 176J requirements, as well as distribution of educational materials to consumers.

9. I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge.

Executed on August 9, 2018, in Boston, Massachusetts.

A handwritten signature in blue ink, reading "AGasteier", written over a horizontal line.

Audrey Morse Gasteier
Chief of Policy and Strategy
Massachusetts Health Insurance Connector Authority