

The Health Care Reform Law, Chapter 58 of the Acts of 2006: How the Law Affects Employers

The goal of Chapter 58 is to increase access to health coverage and ultimately to ensure coverage for all residents of the Commonwealth. While the new law is not directly focused on businesses, a number of its provisions have potential effects on them. This fact sheet outlines the main issues for employers.

The Fair Share Contribution

The Fair Share Contribution is designed to equitably share the burden of funding free care among all employers. The provision applies *only* to employers with more than ten full-time equivalent (FTE) employees, and only to employers who are defined as “non-contributing” under regulations recently promulgated by the Division of Health Care Finance and Policy (DHCFP). Employers who make a “fair and reasonable contribution” are exempt from the Fair Share requirement. To meet this standard, an employer must:

- Offer health insurance to employees, and
- Have at least 25% of full-time employees enrolled in the employer-sponsored insurance plan. If an employer does not meet the 25% threshold, but has offered to pay 33% of the premium cost, it is considered a contributing employer. **NOTE:** part-time, temporary, and seasonal employees do *not* count in this calculation. Thus an employer who meets the above test for its full-time employees, but does not provide insurance for seasonal workers, would not have to pay the Fair Share contribution.

Non-contributing employers will pay an amount of up to \$295 per employee. The actual amount will be calculated annually and could be less, but not more, than \$295 per FTE. *The Fair Share Contribution went into effect October 1, 2006. While DHCFP determines what employers are subject to the requirement, the contribution will be collected by the Division of Unemployment Assistance, under regulations yet to be promulgated.*

Fair Share regulations can be found at www.mass.gov/dhcfp

Employer Responsibilities

Chapter 58 imposes three new requirements on employers in order to facilitate access to insurance and implementation of the individual mandate and other provisions of the law. Each of these requirements is overseen by a separate agency.

“Cafeteria Plan” requirement

The new law requires that employers with more than ten employees maintain a “cafeteria” plan in accordance with federal law (26 U.S.C. 125). Such a plan (also known as a “Section 125 plan”) gives employees the opportunity to pay for health coverage in pre-tax dollars. The employer is not required to contribute to the premium cost, but must file a copy of the plan with the Commonwealth Health Insurance Connector. *This requirement will go into effect July 1, 2007. The Connector will oversee implementation of this requirement.*

Coverage Statement

The individual mandate contained in the new law requires residents of Massachusetts to buy insurance, as long as affordable products are available, and uses the state tax system to enforce the requirement. To facilitate implementation, the law requires employers to distribute to each employee whom it

provided with creditable health coverage (as defined by the Connector) a written statement with information such as dates of coverage and names of those covered by the plan. This statement would be similar to other statements provided to taxpayers (such as a 1099 statement), and would be used by the employee to show compliance with the individual mandate when filling out tax forms. While employers bear primary responsibility for issuing this form, the law envisions that they will work cooperatively with insurance providers to collect the necessary information. *The individual mandate goes into effect in July, 2007, so businesses will need to issue this statement early in 2008 for taxpayers to use when filling out 2007 tax forms. The Department of Revenue, in consultation with the Division of Insurance, will determine the final format of these statements.*

HIRD Forms

Employers with more than ten employees will also be required to complete an employer Health Insurance Responsibility Disclosure (HIRD) form, to be filed with the Division of Health Care Finance and Policy. Employers will report on this form whether they are in compliance with the requirement, described above, to offer a Section 125 “cafeteria” plan. Employers will also be responsible for an employee HIRD form, on which any employee who declines to enroll in an employer-sponsored health plan will report whether he or she has another source of health coverage. Employers will be required to retain the employee HIRD forms for three years. The forms will be used in implementing the Free Rider Surcharge (described below). *This requirement is slated to go into effect on January 1, 2007. DHCFP will promulgate further regulations concerning the distribution of the HIRD form.*

Free Rider Surcharge

Under the “Free Rider Surcharge” (described as the “Employer Surcharge for State-Funded Health Costs” in DHCFP regulations) created in Chapter 58 “non-providing employers” with more than ten employees may be required to pay a portion of costs incurred by their employees who receive health services that are billed to the state’s Free Care Pool. It is important to recognize that the way “providing” or “non-providing” employers are defined differs from the way “contributing” and “non-contributing” employers are defined for the purpose of the Fair Share Contribution described above. Employers are exempt from the Free Rider surcharge if they:

- Meet the law’s requirement to offer a Section 125 “cafeteria” plan, or
- Have a collectively bargained contract that covers the employee who seeks free care, or
- Participate in the Insurance Partnership Program.

If employees of a non-providing employer receive free care (i.e., health care reimbursed by the state’s Free Care Pool), the employer will be charged a percentage of the state’s cost of that care. The surcharge will *only* be triggered if any one employee of a non-providing employer uses free care more than three times in one year or if there are five or more uses of free care by all employees of an employer. In addition, the first \$50,000 of state costs is exempt from the surcharge. The percentage of costs paid by a business will range from 10% to 100%, depending upon total free care usage by its employees. *This requirement is slated to go into effect on January 1, 2007. The Division of Health Care Finance and Policy has issued proposed draft regulations, but these are likely to change somewhat to reflect recent technical corrections to the law. Implementation of the provision may also be delayed in order to coordinate this requirement with other provisions in the law.*

Current proposed Employer Surcharge for State-Funded Health Costs regulations can be found at www.mass.gov/dhcfp

Health Insurance Opportunities for Employees

In addition to the requirements outlined above, three provisions in Chapter 58 also provide new assistance to help employers provide health coverage to employees, particularly lower-income employees.

Commonwealth Health Insurance Connector Authority

Chapter 58 creates the Connector, an entity through which businesses with 50 or fewer employees will be able to purchase insurance coverage for their employees. The Connector will identify health plans that are good value and will take care of administrative details, making it easier for businesses to offer affordable health coverage to employees. Employees of businesses purchasing health coverage through the Connector will be able to pay for it in pre-tax dollars, further lowering the cost of coverage.

An open enrollment period for these plans will be held May 1-June 30, 2007, with plans effective on July 1, 2007. To monitor developments, go to www.mass.gov/connector

Insurance Partnership Program

The new law expanded the existing Insurance Partnership Program that provides subsidies to small businesses and low-income employees to help pay for their health coverage, and also made some changes to the current program. As in the past, businesses with 50 or fewer employees are eligible for the program, as long as the employer pays 50% of the cost of the employer-sponsored health plan. The program provides subsidies for the employer's share of the cost that range from \$400 to \$1,000, depending on the type of plan (individual, 2-person, family), and also provides a subsidy to offset the employee's share of the cost. The new provisions:

- Expand eligibility for the program by raising the income criterion for employees from 200% to 300% of the Federal Poverty Level (\$49,800 for a three-person household). Subsidies cannot be greater than subsidies provided to enrollees in the Commonwealth Care Health Insurance Program (see below).
- Add new "crowd-out" language specifying that only employees whose employer has not provided insurance in the past six months, or who were not eligible for employer-sponsored insurance, are eligible to participate in the program.
- Add new language prohibiting "double subsidies" for self-employed participants. Self-employed individuals or couples would be eligible for the employee subsidy *only*, and would not be able to combine it with the employer subsidy as is currently the case.

The new IP provisions went into effect on October 1, 2006. To learn more, contact Employer Benefit Resources at 1-800-399-8285.

Commonwealth Care Health Insurance Program

Chapter 58 creates a new Commonwealth Health Insurance Program (C-CHIP) that will provide subsidized insurance to Massachusetts residents with incomes below 300% of the Federal Poverty Level. The program, which is administered by the Connector, is targeted to people whose employers do not offer health insurance, or offer but do not subsidize it at specified levels. Employees with access to health insurance coverage that is subsidized at levels at or higher than 25% (for a family plan) and 33% for an individual plan are not eligible for C-CHIP. However, this provision may be waived if an employer is willing to send his premium contribution to the Connector, to offset the state's cost of subsidizing the C-CHIP program. Employers may want to consider this waiver option in order to enable their employees to buy insurance at a lower cost.