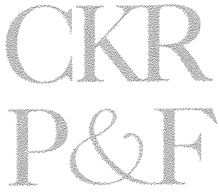

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Massachusetts Health Care Reform: Employer Mandates Effective July 1, 2007

In April of 2006, Massachusetts enacted An Act Providing Access to Affordable, Quality, Accountable Health Care (the "Act"). The Act aims to reduce the number of uninsured Massachusetts residents by combining an "individual mandate" with a "pay or play" employer mandate. Among other provisions, it established the Commonwealth Health Insurance Connector (the "Connector") to implement the Act. The Connector has developed a website which it updates regularly to add forms and respond to frequently asked questions. Since the Act is a "work in progress," we encourage you to check the Connector's website at www.mahealthconnector.org.

This advisory highlights some key employer requirements of the Act which are scheduled to become effective July 1, 2007 and apply to employers with more than ten employees in Massachusetts.

- Employers must make a "fair and reasonable premium contribution" towards a health insurance plan for their employees. Those that do not must pay a "Fair Share Contribution" of up to $295 per employee, per year.
- Employers must adopt and maintain a "cafeteria" or "Section 125" plan that allows employees to use pre-tax dollars to pay for health benefits. Any employer that does not offer such a plan may be subject to a "Free Rider Surcharge."
- Employers must complete an Employer Health Insurance Responsibility Disclosure (HIRD) Form and collect similar forms from certain employees.

Employers' "Fair and Reasonable" Premium Contribution

"Pay or Play." Each employer that employs eleven or more full-time equivalent employees in the Commonwealth must make a "fair and reasonable premium contribution" to a group health plan for its employees. If it does not, the employer must pay to the Commonwealth an annual "Fair Share Contribution" amount not to exceed $295 per employee. Although responsibility for collection is assigned to the Division of Unemployment Assistance, the Commonwealth has not yet finalized rules on how and when this charge will be collected.

In September, 2006, the Connector promulgated key regulations that define what constitutes a "fair and reasonable premium contribution." The employer satisfies this requirement – and therefore does not need to pay a "Fair Share Contribution" – if it can meet either of two tests, the "primary test" or the "secondary test." It does not need to meet both.

Primary test. Under the "primary test," an employer is deemed to have made a "fair and reasonable premium contribution" if 25% or more of its full-time employees employed at Massachusetts locations enroll in a group health insurance plan that it offers. The relevant time period for computing the employee participation rate under this test is October 1 to September 30 annually. The percentage is calculated by dividing the total payroll hours of enrolled full-time employees by the total payroll hours of all full-time employees. For purposes of both the primary and secondary tests, a full-time employee is an employee who works at least 35 hours per week. Independent contractors, seasonal employees (no more than 16 weeks), and temporary employees (employed no more than 12 consecutive weeks) are not counted. If an employee works both part-time and full-time during the year, only the payroll hours of the period in which the employee worked full-time shall be included. If employees are retained through an employee leasing company pursuant to a long-term leasing arrangement, the "fair and reasonable premium contribution" is tested at the level of the client company, but the employee leasing company is responsible for calculating and remitting the Fair Share Contribution on behalf of the client company. For purposes of the primary test, the amount of the employer's actual premium contribution to the plan is irrelevant if the employer makes some financial contribution. So long as 25% of full-time employees take up the plan, the employer is deemed to have made a fair and reasonable premium contribution.

Secondary test. If the employer does not satisfy the primary test, it still will be deemed to have made a "fair

and reasonable premium contribution" if it offers to pay at least 33% of the premium cost of any group health insurance plan offered to those of its full-time employees who were employed at least 90 days during the period October 1, 2006 through September 30, 2007.

Cafeteria or "Section 125" Plans

Effective July 1, 2007, all employers with eleven or more full-time equivalent employees in the Commonwealth must adopt and maintain a cafeteria or Section 125 plan that meets federal and Massachusetts regulations, and file a copy of that plan with the Connector. This is true whether or not the employer offers health insurance to its employees. By complying with Section 125 plan requirements, an employer is exempt from the Free Rider Surcharge. The amount of the Free Rider Surcharge will vary based on number of employees, utilization of state-funded care and the percentage of employees enrolled in the employer's health plan. This surcharge is triggered for non-conforming employers whose employees use a total of $50,000 or more of state-funded care during a 12-month period.

For purposes of this requirement, an employer's number of full-time equivalent employees is initially determined by calculating the total payroll hours for all employees from April 1, 2006 to March 31, 2007, and dividing by 2,000. For employees retained through an employee leasing company, the client company is responsible for providing and maintaining a cafeteria plan, but it may contractually allocate these responsibilities to the employee leasing company.

Under federal tax law, a Section 125 plan is a written plan that permits employees to choose between receiving their normal cash wages and certain qualified benefits that may be paid for on a pre-tax basis by employees. Employers are not required to offer their Section 125 plans to employees under 18 years of age, temporary employees, part-time employees who work fewer than 64 hours per month, certain wait-staff, student employees, and seasonal employees.

Employer contributions to the Section 125 plans are not required. Massachusetts regulations provide that employers must offer at least a "premium-only" plan. This type of plan allows eligible employees to contribute to the cost of health care coverage on a pre-tax basis, but provides no other benefits to employees. Plans that function only as flexible savings accounts do not qualify.

The Connector has published a Section 125 Plan Handbook for employers on its website.

Health Insurance Responsibility Disclosure (HIRD)

Effective July 1, 2007, all employers with eleven or more full-time equivalent employees must file an Employer Health Insurance Responsibility Disclosure (HIRD) form with the Commonwealth. The HIRD form is to provide information about the employer's number of employees, its health insurance and to certify the employer's compliance with the Section 125 mandate. In addition, employers must provide an Employee HIRD to those employees who elect not to take up their employer-sponsored coverage, and retain the Employee HIRD forms for three years. The Commonwealth has yet to finalize the Employer HIRD or the reporting deadline. The Division of Health Care Finance Policy (DHCFP) is to issue regulations about the HIRD forms. Once the forms are published, they will be available on the Commonwealth Connector's website.

Although certain employer requirements become effective July 1, 2007, the Act continues to evolve and new regulations issue. For more information, visit the Connector's website at www.mahealthconnector.org or call its Customer Service Center at 1-877-MA-ENROLL.

If you have questions about this advisory please contact your primary contact at the firm.

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