



## CLIENT ADVISORY ON THE MASSACHUSETTS HEALTH CARE REFORM LAW

May 21, 2007

The purpose of this Advisory is to summarize for our Clients some of the key elements of the Massachusetts Health Care Reform Law. As you probably know from the many media reports on this sweeping legislation, some elements of this law are presently in effect, other requirements go into effect on July 1, 2007, and certain other provisions have been deferred to later dates. Despite the immediacy of many of these implementation dates, it must be noted that this Law remains something of a moving target. As will be noted below, certain regulations necessary to implement components of this Law have yet to be finalized. Nonetheless, there is sufficient certainty and urgency regarding enough of this Law to warrant this Advisory, with the *caveat* that this is all subject to change.

The well-publicized goal of the Massachusetts Health Reform Law and its implementing regulations is to increase access to medical care coverage. Underlying this goal is the principal of shared responsibility among individuals, employers, health plans/carriers, and State agencies. This Advisory is intended primarily for the benefit of employers, our Clients. Some of the responsibilities of other parties under this Law are also noted, though, so employers will have a sense of the interplay between certain provisions of the Law and be better prepared to respond to employee inquiries about the shared responsibilities under the Law.

All of the information contained in this Advisory is important and warrants a careful reading. However, **your attention is directed especially to the Section 125 Plan requirement discussed in II.A. below.** This requirement necessitates that each of our Clients takes prompt action to ensure compliance.

### I. THE INDIVIDUAL MANDATE

Some confusion has arisen as to the implementation date of the so-called Individual Mandate. The Massachusetts Health Care Reform Law mandates that individuals have health insurance **on or before July 1, 2007.** The implementation date for Minimum Creditable Coverage standards (the minimum insurance requirements necessary to comply with this mandate) has been deferred to January 2009, but this deferral did not change the fact that individuals must have some form of health insurance in place by this July 1<sup>st</sup>. Failure to do so will subject individuals to loss of their Massachusetts personal income tax exemption when filing

their 2007 income taxes. Failure to meet the individual mandate in 2008 will result in a monthly fine equal to 50% of the least costly insurance premium meeting the minimum creditable coverage standards.

## II. EMPLOYER RESPONSIBILITIES

### A. Section 125 Plan

Employers with 11 or more “full-time equivalent employees” must adopt **by July 1, 2007** and thereafter maintain a Plan that satisfies both the requirements of Section 125 of the Internal Revenue Code and the regulations established by the Commonwealth Connector. The latter part of this requirement is significant, for while many of our clients have Section 125 “premium-only plans” in place, the State Commonwealth Connector regulations have broader eligibility requirements than many of these in-force plans.

Before examining the Plan requirements under the Commonwealth Connector’s regulations, the method by which employers must compute the number of “full-time equivalent employees” under these regulations should be addressed. Throughout the Health Care Reform Law, certain employer obligations are triggered when the employer reaches a certain number of “full-time equivalent employees.” As noted above, that number is 11 for purposes of the Section 125 Plan requirement. Under the regulations adopted recently by the Commonwealth Connector, an employer has 11 or more such employees **if the sum of total payroll hours for all Employees during the applicable determination period divided by 2,000 is greater than or equal to 11.** For each employee with more than 2,000 hours, the employer should include only 2,000 hours. The initial determination period is April 1, 2006 through March 31, 2007. The regulations contain other important definitions and guidelines regarding this calculation.

While different State agencies have been given the responsibility for issuing regulations concerning other aspects of the Law, some of which have number of employee thresholds similar to this one relative to the Section 125 Plan requirement, we have been advised that the various State agencies have agreed informally to utilize this same method of calculating “full-time equivalent employees.” Consequently, it is extremely important that employers familiarize themselves with the Section 125 regulations. These regulations may be found in the *Section 125 Plan Handbook for Employers* (hereafter “the *Section 125 Handbook*”) published online by the Commonwealth Connector. This is a link to that Handbook:

[http://www.mass.gov/Qhic/docs/section125\\_handbook.pdf](http://www.mass.gov/Qhic/docs/section125_handbook.pdf)

As previously noted, the Section 125 Plan required by the Health Care Reform Law must meet both the usual IRC requirements and State regulation requirements. Once again, the Connector’s *Section 125 Handbook* provides more detail about these requirements than is included in this Advisory. Briefly, though, on the topic of eligibility, the only classes of employees that may be excluded from eligibility to participate in the employer’s Section 125 Plan under the Connector’s regulations are:

- Employees less than 18 years of age;
- Temporary employees;

- Part-time employees working less than 64 hours per month, on average, for an employer;
- Certain wait staff, service employees or service bartenders;
- Student employees employed as interns or as cooperative education student workers, and;
- Seasonal employees under a U.S. J-I student visa or a U.S. H2B visa, and who are enrolled in travel health insurance.

To comply with these broad eligibility requirements and other State requirements, many existing Section 125 plans will have to be replaced or supplemented with another Section 125 Plan operating beside the in-force plan to capture employees eligible under State requirements but excluded under the current plan. The Connector's *Section 125 Handbook* contains sample Section 125 Plan documents and forms that should enable employers to set up a Plan, subject, of course, to review by the employer's legal counsel and/or benefits advisor. A copy of the Plan will have to be filed with the Connector. Naturally, we stand ready to assist all our clients with implementation of this requirement. We can also provide referrals to attorneys concentrating in ERISA and other aspects of employee benefits law.

### **B. Fair Share Contribution**

Employers with 11 or more full-time equivalent employees employed at Massachusetts locations who do not make a "fair and reasonable" premium contribution to their employees' health insurance will be required to pay a fee known as the Fair Share Contribution. This fee will be no more than \$295 per employee per year, prorated for part-time employees. An employer will be deemed to satisfy the "fair and reasonable" premium contribution requirement, and therefore **not** be subject to the Fair Share Contribution, if the employer **EITHER**:

- has 25% or greater participation by full-time employees in the employer's group health plan, **OR**;
- offers to contribute at least 33% of the premium cost of its health plan to all full-time employees employed more than 90 days during the period from October 1, 2006 to September 30, 2007.

Once again, things are not quite so straight forward as that. There are detailed methods and regulations for computing the participation rate in employer health plans and in determining who are full-time employees for purposes of the Fair Share Contribution. The Commonwealth Connector's *Employer Handbook* describes these methods and requirements and contains as well good summaries of all the key employer responsibilities under the Health Care Reform Law. The *Employer Handbook* may be found at:

[http://www.mass.gov/Qhic/docs/Handbook\\_v10\\_adobe.pdf](http://www.mass.gov/Qhic/docs/Handbook_v10_adobe.pdf)

### **C. Free Rider Surcharge**

As with certain other aspects of the Health Care Reform Law, the Free Rider Surcharge regulations are not final. It is expected, though, that this description of the Surcharge will prove reasonably accurate.

An employer may be subject to the Free Rider Surcharge if the employer:

- has more than 10 employees;
- employees or their dependents received “state-funded health services”;
- these “state-funded health services” are at least \$50,000 in one hospital fiscal year, **AND**;
- these employees were not offered a Section 125 plan meeting the Connector’s requirements.

The amount of the Free Rider Surcharge will vary based on the number of employees, the total state-funded costs and other factors. Since employers offering a compliant Section 125 Plan will not be subject to this Surcharge, this should not be an issue for most employers. However, further details on this Surcharge may be found in the *Employer Handbook*.

#### **D. Health Insurance Responsibility Disclosure (HIRD) Forms**

Final regulations (and the forms themselves) are expected to be issued by the State any day now. There will be two HIRD forms, the Employee HIRD Form and the Employer HIRD Form. The Employee HIRD Form will be required to be signed by employees of Massachusetts employers with more than 10 employees if the employee declines to enroll in the employer-sponsored health plan or the employer’s Section 125 Plan. The employer will then collect the form and retain it for 3 years. As many employers are in the middle of open enrollments, we have been asked whether employers will have to require those employees who declined coverage to sign these forms after the fact, once the HIRD Forms are issued. The good news is that you will not have to chase such employees. As simple as this may sound, the Employee HIRD Form will be required only prospectively, once it has been issued.

The Employer HIRD Form is still under development. As it is intended to help give the State the tools it needs to enforce the requirements of the Health Care Reform Law, it likely will require employers to provide identifying information regarding the employer, employee counts, whether subsidized health insurance is offered and to whom, and whether a compliant Section 125 Plan is offered.

### **III. NON-DISCRIMINATION**

The non-discrimination requirements of the Health Care Reform Law have been another source of some confusion. Like the new dependent coverage standards implemented earlier, the non-discrimination requirement operates through health insurance contracts. Beginning July 1, 2007, a health carrier is only permitted to enter into an insured group health benefit plan contract with an employer if:

- the employer offers the health benefit plan to all of its full-time employees living in Massachusetts, and:
- the employer does not make a smaller premium contribution percentage to such an employee than the employer makes to any other such employee who receives an equal or greater total hourly or annual salary for each specific or blanket insured group health benefit plan contract.

This provision does not apply to an employer with separate contribution percentages for employees covered by collective bargaining agreements. There are certain other exceptions or arrangements deemed satisfactory by the Division of Insurance, as described in this Bulletin:

[2007-04 Non-discriminatory Offer and Equal Contribution by Employers of Insured Group Health Benefit Plan Contracts Pursuant to Chapter 58 of the Acts of 2006, as amended](#)

Once again, this applies only to insured group health plan contracts with health carriers entered into on or after July 1, 2007. Health insurance contracts entered into prior to this date are not subject to these non-discrimination provisions.

#### IV. CONCLUSION

This overview and the more detailed information contained in the documents available through the links appearing above should provide you with the tools to ensure that your organization is compliant with the employer mandates of MA Health Care Reform and that you can answer the most common employee questions. We certainly recognize, though, that all of this is not for the faint of heart. In this regard, please remember that you are not alone. We are a phone call or an e-mail away anytime you have any questions about all this or any other aspects of your employee benefits program.

Beyond this mailing and our availability through telephone and e-mail, **we are finalizing plans for a series of workshops on this crucial topic.** These workshops will be in various convenient locations. **You will be receiving notice of the dates and locations of these workshops within the next few days.** Finally, please know that we are also available to meet with you at your location if you would prefer to review this matter on-site.