

New Guidance for Employer Obligations Under Massachusetts Health Care Reform Act

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Massachusetts recently released additional guidance related to the July 1, 2007 employer obligations under the Massachusetts Health Care Reform Act (the Act). For more background (including further information on the Act's obligations), see:

http://www.morganlewis.com/pubs/EB_LF_MassHealthcareReformAct_06jun07.pdf

Employee HIRD Requirement

Last week, Massachusetts released the employee Health Insurance Responsibility Disclosure (HIRD) form and related regulations. This form must be collected within 30 days from each Massachusetts employee who declines employer-provided medical coverage or who declines to pay for Connector coverage on a pretax premium basis. The HIRD form should be collected beginning July 1, 2007 for new hires, subsequently at each annual open enrollment, and from employees who drop coverage. The form should be retained for three years, and employees should be supplied with a copy of the signed form. The form will be subject to a public hearing and regulatory comment process.

The new form contains a fair amount of detail, including the cost of the least expensive employee-only medical coverage available to the employee, an affidavit, and several yes/no questions. While the form is designed to be used in a paper-based face-to-face enrollment meeting, the form and associated regulations permit employers to design alternative forms. However, the form contains restrictive language stating that an alternative form must contain the same data elements and "all information must be included, with the same wording and order, and the sequence and numbering of the Questions must be exactly as it appears on the version provided by the Commonwealth of Massachusetts." This "exact" requirement for alternative forms may pose problems for employers with web- or voice-based enrollment systems. The form can be found at:

http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/employee_hird_form.pdf

Cafeteria Plan Filing Requirements

A new Commonwealth Connector website also contains additional directions and instructions for employers that plan to satisfy the cafeteria plan requirement (in whole or in part) by allowing employees to purchase Connector coverage on a pretax basis. In addition to adopting a

cafeteria plan document, employers must now fill out an Employer Census Form and also execute a Terms and Conditions agreement by July 1, 2007. The Census Form can also be completed online. This material can be found at: <http://www.mahealthconnector.org/portal/site/connector/menuitem.26c01aac2120f4ce505da95c0ce08041/> (Click on the "Begin enrollment in the Voluntary Plan" link in the "Get Started Now" box on the right-hand side of the page > Scroll down and click on the "Additional Enrollment Options" link in the bottom, right-hand corner of the page.)

Employers who will instead satisfy the cafeteria plan requirement by allowing employees who work 64 or more hours per month to purchase employer-provided medical coverage on a pretax basis have not yet been informed of the address to send their cafeteria plan document. However, it is expected that the July Connector board meeting will postpone the cafeteria plan filing requirement until October 1. Further, a proposed technical correction to the Act would drop the automatic filing requirement and provide discretionary authority for the state to request a copy of an employer's cafeteria plan. As such, it appears that employers that will not offer Connector coverage on a pretax basis will not have to automatically file their cafeteria plan with the state.

For a discussion of penalties for noncompliance, please see: http://www.morganlewis.com/pubs/EB_LF_MassHealthcareReformAct_06jun07.pdf.

Morgan Lewis attorneys have helped many Massachusetts employers determine how the Act applies to their Massachusetts workforce. We would be happy to help you examine the details of the Act and how you can prepare to comply with the Act.

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