



## FINAL EMPLOYER FAIR SHARE CONTRIBUTION REGULATION EFFECTIVE OCTOBER 1, 2008

The Division of Health Care Finance and Policy (DHCFP) has adopted and published the final version of its revised FSC regulation, 114.5 CMR 16.00, effective October 1, 2008. Important changes to the previous October 1, 2006 version of the regulation include the following:

### THE GAME

In order to be in the MA health care reform game, an employer must have 11+ full-time equivalent (FTE) employees. Chapter 302 of the Acts of 2008 changed the annual FSC liability determination to a quarterly determination. Accordingly, under the revised final regulation, the 11+ FTE threshold determination period for FSC purposes will be quarterly, beginning October 1, 2008. 11+ FTEs for the quarter means at least 5500 payroll hours for the quarter with no more than 500 hours attributed to any one employee who worked more than 500 hours in that quarter.

### THE TESTS

- The two FSC tests have been retained, with slight modifications, but references to “primary” and “secondary” are no longer used in the regulation.
  - **Percentage of Full-Time Employees Enrolled (formerly the Primary Test)**
    - **Enrollment Percentage** = Full-time employees enrolled on the last day of the quarter divided by all full-time employees on the payroll on the last day of the quarter
    - Employee working both full and part time during the quarter = full-time if working full-time for a majority of the quarter
  - **Premium Contribution Standard (formerly the Secondary Test)**
    - **Standard** = Employer must make a contribution of at least 33% of the cost of an employer sponsored group health plan offered to all of its full-time employees no more than ninety days after date of hire
    - The group health plan must be in effect and available to the full-time employees for the entire quarter (or portion of the quarter that the employer was in operation
    - Employers with more than one full-time employee premium contribution rate must use the lowest contribution rate to comply with the standard

*PBM Comment: The former Secondary Test provided that the employer “must offer to pay at least 33% . . .” while the Premium Contribution Standard provides that the employer “must make a contribution of at least 33% . . .”. When combined with the new “in effect and available” provision in the second bullet above, this standard appears to require more than the former Secondary Test.*

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#### QUARTERLY TESTING BEGINNING 10/1/08 (As required by Chapter 302 of the Acts of 2008)

- For the period October 1, 2008 to December 31, 2008 – retention of the “or” test for employers of all sizes -- an employer makes a fair and reasonable premium contribution if:
  - Its enrollment percentage for full-time employees is at least 25%; OR
  - It meets the premium contribution standard
- Effective January 1, 2009 – “or” / “and” test applies based on size of employer as determined by number of full-time equivalent (FTE) employees for the quarter.
  - The “or” test continues to apply to small employers with 50 or fewer FTE employees
  - The “and” test applies to large employers with 51+ FTE employees. The enrollment percentage for full-time employees must be at least 25%; AND the premium contribution standard must be met
  - Special enrollment percentage test for large employers with 51+ FTE employees only. Employers with at least a 75% enrollment percentage for full-time employees satisfy FSC and do not need to meet the “and” test

*PBM Comment: FTE is used to measure employer size only. FTE was chosen as a measure because employers will have already calculated FTE employees for purposes of the 11+ FTE threshold for the quarter. However, FTEs have nothing to do with the actual FSC tests, which continue to apply to an employer's full-time employees.*

#### SPECIAL RULES FOR SPECIAL GROUPS

- Employers contributing on behalf of full-time employees to a multi-employer health plan (including a Taft-Hartley Plan) or making employee benefit contributions for such employees pursuant to federal contract requirements or the MA prevailing wage law:
  - May include such employees for purposes of the enrollment percentage calculation (formerly the Primary Test)
  - Shall exclude such employees and plans for purposes of determining compliance with the premium contribution standard (formerly the Secondary Test) for the employer's own group health plan.
- Employers shall exclude seasonal employees and temporary employees for FSC testing purposes. A temporary employee is an employee that works for an employer on either a full or part-time basis, whose employment is explicitly temporary in nature and does not exceed 12 consecutive weeks during the twelve month period ending on the last day of the reporting quarter.

*PBM Comment: Due to the quarterly nature of the FSC testing, 12 consecutive weeks is now measured within a rolling 12 month period instead of a fixed fiscal year.*

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For a copy of the final revised FSC regulation, click on the following link: [Final FSC Regulation](#).

Please contact me if you have any questions or comments.

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