



CHANGES/PROPOSED CHANGES TO THE MASS HEALTH CARE REFORM FAIR SHARE CONTRIBUTION (FSC) REQUIREMENT

On Friday, August 8, 2008, some important changes/proposed changes to the Fair Share Contribution (FSC) requirement took place with little fanfare.

First, the Governor signed Chapter 302 of the Acts of 2008 containing the provisions of the FY 2008 supplemental budget. These provisions change the FSC requirement in the health care reform statute (by amending M.G.L. c. 149, § 188) in two ways:

- Section 58 of the Act provides that all FSC liability for the period October 1, 2007 to September 2008 (the current FSC fiscal year) must be paid to the Commonwealth no later than June 30, 2009.

PBM Comment: The practical effect is that the maximum time to pay the FSC assessment for the current FSC fiscal year ending September 30, 2008 has been shortened by 46 days.

- More importantly, however, Sections 18 and 19 of the Act change the FSC testing from an annual test to a quarterly test beginning with the new FSC fiscal year on October 1, 2008.

PBM Comment: Those employers failing the quarterly test will pay 25% of the \$295 per employee assessment (or \$73.75) per employee for the quarter. The timing for quarterly testing and payment will need to be ironed out by DUA, perhaps by regulation or administrative bulletin. There is no hidden agenda here. This change is intended to get FSC assessment amounts to the Commonwealth as quickly as possible.

Second, the Division of Health Care Finance and Policy (DHCFP) issued proposed amendments to its FSC regulation, 114.5 CMR 16.00, to be effective October 1, 2008 and notice of a public hearing on the proposed amended regulation (held Friday, September 5, 2008 at 10:00 AM in Boston). The proposed amendments:

- Change the FSC test to determine if an employer makes a fair and reasonable premium contribution. Under the proposal, employers would be required to meet both the primary AND secondary tests to be exempt from the FSC requirement: (1) at least 25% of full time employees are enrolled in an employer-sponsored group health plan, AND (2) the employer offers to contribute at least 33% to the premium cost for its group health plan for its full time employees that work at least 90 days. The current regulation exempts an employer if it meets just one of the two tests.

PBM Comment: The proposal also clarifies the secondary test by providing that the group health plan for which the employer offers to pay at least 33% of the premium cost must be in effect and available to full-time employees for the entire quarter (or if the employer was not in operation for the entire quarter, for the portion of the quarter that the employer was in operation).



- Reflect the provisions of Chapter 302 of the Acts of 2008 (discussed above) that change the FSC requirement from an annual FSC liability determination to a quarterly FSC determination.

PBM Comment: Under the proposal, the 11+ FTE threshold determination period for FSC purposes will also be a quarterly determination, beginning October 1, 2008. (11+ FTEs for the quarter would mean at least 5500 payroll hours for the quarter with no more than 500 hours attributed to an employee who worked more than 500 hours in that quarter.)

- Include language to make the regulation consistent with current FSC collection regulations promulgated by the Division of Unemployment Assistance, and incorporate policy clarifications that had been promulgated by administrative bulletin.

For copies of the current and proposed DHC FP FSC regulations, click on the following link: [Current and Proposed Regulations](#)

Please contact me if you have any questions or comments.

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