



issue alert

American Staffing Association

277 South Washington Street, Suite 200 • Alexandria, VA 22314-3646 • 703.253.2020 • 703.253.2053 fax • www.staffingtoday.net

July 6, 2006

Contact: Ed Lenz
Senior Vice President, Public
Affairs, and General Counsel
703-253-2035
elenz@americanstaffing.net

Massachusetts Issues Proposed Health Insurance Regulations

ASA and MSA Will Submit Comments

The Massachusetts Division of Health Care Finance and Policy issued proposed regulations June 30 for implementing the state's new universal health insurance law, passed in April. The proposed regulations provide guidance regarding the fees employers must pay if they don't provide health insurance coverage and the forms they and their employees will have to file with the state that will be used to enforce the employer's obligations as well as the individual insurance mandate.

Public hearings will be held on the employer fee provisions on Aug. 8 and on the reporting requirements on Aug. 15. Final rules will become effective on Oct. 1, 2006. ASA and the Massachusetts Staffing Association will file comments on the proposed regulations and will attend the public hearings. Staffing firms that have questions or comments on the regulations are encouraged to submit them to ASA so that the industry's comments can be coordinated.

Below is ASA's summary of the proposed regulations. The official text of the proposed regulations can be downloaded from the Division of Health Care Finance and Policy Web site at www.state.ma.us/dhcfp. Click on "Health Care Reform Implementation: Employer Requirements."

Fair Share Contribution

The new law requires every Massachusetts employer of 11 or more full-time equivalent employees that does not make a "fair and reasonable" contribution toward the health insurance costs of its employees to pay a "fair share" contribution to help defray the cost of providing public health care services. The amount of the contribution will be calculated by the state annually and, by law, cannot exceed \$295 per full-time equivalent employee. Collection procedures will be established by the state's Department of Labor.

The proposed regulations provide two tests under which an employer can determine whether it meets the "fair and reasonable" standard and is thus exempt from making the fair share contribution.

The primary test is whether at least 25% of the employer's full-time employees (those who work at least 35 hours per week) are enrolled in a group health plan (as defined in the Employee Retirement Income Security Act) sponsored by the employer. The percentage of enrolled employees is calculated by dividing the total annual payroll hours of full-time employees enrolled in the plan by the total annual payroll hours of all full-time employees. An employer can satisfy this test even if it pays no portion of the premium.

Alternatively, if the percentage of enrolled employees is less than 25%, the employer is exempt if it offers to pay at least 33% of the premium cost toward an individual (as opposed to family) health plan for full-time employees.

An employee whose employment is “explicitly temporary in nature” and does not exceed 90 days during the period Oct. 1 through Sep. 30 will not be considered full-time. Employees performing services for a “seasonal employer” (as defined in the state unemployment insurance law) will not be considered full-time unless they work more than 16 weeks during the year.

“Free-Rider” Surcharge

In addition to a fair-share contribution, the law imposes a surcharge on employers with more than 10 employees who have state-funded employees (as defined in the proposed regulations) for whom the employer does not either offer to contribute toward or arrange for the purchase of health insurance, or maintain a “cafeteria plan” under section 125 of the Internal Revenue Code. Employers subject to a collective bargaining agreement or who participate in the Massachusetts insurance partnership program are exempt from the surcharge. To be exempt from the surcharge, employers need only arrange for the purchase of health insurance or maintain a cafeteria plan. No employer contribution is required.

Reporting Requirements

The law not only imposes fees on employers that don’t provide health coverage, but also requires every resident of the state to obtain health insurance coverage. To assist the state in enforcing those obligations, the proposed regulations require employers and employees to complete special reporting forms that+ must be filed with the state.

Employer Reports

The proposed regulations require every Massachusetts employer to file an initial “health insurance responsibility disclosure” (HIRD) form containing general information about the employer, including the number of employees, whether the employer offers access to employer-sponsored insurance, whether the employer offers to arrange for the purchase of health insurance (including maintenance of a cafeteria plan), and whether the employer’s health insurance plan is a self-insured plan.

The initial HIRD form also will require employers to submit each employee’s name, social security number, whether the employee was offered employer-sponsored health insurance, and whether the employee accepted or declined. If the employee accepted, the form must indicate whether the employee was enrolled in an individual or family plan. If enrollment was declined, the form must state whether the employee claimed access to alternative coverage and whether the employer offered to arrange for the purchase of health insurance, including a cafeteria plan. If the latter, the employee must state whether such arrangement was accepted or declined.

Employers will be required to submit the initial form based on employees employed as of April 15, 2007, and the forms will be due on May 15, 2007. Thereafter, employers will be required to submit updates concerning changes to general employer information and information about new and terminated employees. Employers with 50 or more employees will be required to submit quarterly updates. All employers will be required to submit annual updates to the HIRD by May 15 of each year.

Employee Reports

All employees (full-time or not) who are not offered or who decline employer-sponsored insurance or the employer's offer to arrange for the purchase of health insurance must sign a separate employee HIRD form containing the employee's name, social security number, name of employer, whether the employer offered health insurance or offered to arrange for the purchase of health insurance, whether the employee declined, and—if the employee declined—whether the employee has alternative insurance coverage. The employee form will contain an acknowledgement that the employee is aware of the individual mandate and the penalties for failure to comply. If the employer did not offer health insurance or offer to arrange for the purchase of health insurance, the employee must sign an authorization for the Massachusetts Division of Health Care Finance and Policy to notify the employer if the employee or an employee's dependent receives services funded by the uncompensated care pool. **Employers will be required to distribute and collect the employee forms and file them with the Division of Health Care Finance and Policy.**