

More Massachusetts Health Reform Measures

New Mass EMAC/"HIRD" Update for Employers

Sponsored by:

Roblin Insurance

Live Webcast Program

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2017 GOP Health Reform Scorecard

- ◆ **American Health Care Act (AHCA)**
 - ▶ Passed by House on 5/4/17 -- 217 to 213
- ◆ **Better Care Reconciliation Act of 2017 (BCRA)**
 - ▶ Defeated in Senate 7/25/17 – 43 to 57
- ◆ **Original Repeal and Delay**
 - ▶ Defeated in Senate 7/26/17 – 45 to 55
- ◆ **“Skinny Plan” (Health Care Freedom Act)**
 - ▶ Defeated in Senate 7/28/17 – 49 to 51
- ◆ **Graham-Cassidy Bill**
 - ▶ Forgeddabahdit; pulled by Senate 9/26/17

Current State of the ACA

The ACA is Still the Law of the Land

- ◆ **Exchanges/Marketplaces are Tenuous**
- ◆ **IRS struggles with mandate enforcement technology**
- ◆ **Medicaid expansion a growing problem for the Feds and the states**
- ◆ **Cadillac Tax still looming on the horizon**

Medicaid Expansion is a Growing Financial Problem

- ◆ **Medicaid created in 1965 – originally intended as a safety net for poor women, children and the disabled**
- ◆ **2010 – ACA expanded to childless, non-elderly adults with income \leq 133% of FPL**
- ◆ **Medicaid now insures more than 72 million people nation wide –**
 - ▶ **one in every 5 Americans**
 - ▶ **higher in six states, including MA**
- ◆ **Medicaid is now the 3rd largest program in the federal budget AND the fastest growing**

And in Massachusetts . . .

- ◆ **MassHealth provides health coverage to 1.9 million low-income residents – about 1 in 4 MA residents**
- ◆ **MassHealth is the state's largest expense -- approximately 40% of the entire state budget**
- ◆ **MA's Medicaid tab this year is \$14.7 billion**
- ◆ **According to MA officials, at least 300,000 people working full time in MA are enrolled in MassHealth at a cost to MA of more than \$1 billion**
- ◆ **Result: new MA employer assessment in 2018**

Turning to Massachusetts

The Employer Medical Assistance Contribution (EMAC)

Current EMAC Explained

- ◆ **EMAC is a MA payroll tax paid by employers. Its purpose is to help finance the cost of subsidized care for low-income MA residents**
- ◆ **The EMAC was enacted effective 1/1/14 in tandem with repeal of the MA Fair Share Contribution and the Medical Security Program (MSP)**
- ◆ **EMAC contributions are paid on the first \$15,000 of each employee's wages; applying an assigned rate**
- ◆ **EMAC applies to employers with an average of 6 or more employees in a quarter and is phased in over five years for employers newly subject to the EMAC rules**
- ◆ **The EMAC rate is zero percent in the first three years for newly subject employers**

What the Governor Proposed

- ◆ **Governor Baker's budget proposal introduced in January 2017 included an "Employer Contribution to Healthcare" (EHC); a new employer assessment to offset MassHealth funding shortfall**
- ◆ **Proposed by the Governor to address rapidly increasing health care costs in the MassHealth program**
- ◆ **Governor perceived rise in MassHealth costs as health cost shifting from private sector employers to MassHealth**
- ◆ **Applied to employers with 11 or more full-time equivalent (FTE) employees (5500+ hours/Qtr)**
- ◆ **Imposed on noncompliant employers an annual penalty amount of \$2000 per FTE, assessed quarterly**

What the Governor Signed

- ◆ A two-year, two-tiered assessment on employers expected to collect \$400 million over fiscal years 2018 and 2019, effective 1/1/18
- ◆ Involves the expansion of the current Employer Medical Assistance Contribution (EMAC):
 - ▶ Tier One -- An increase in the EMAC contribution rate currently paid by employers, resulting in a maximum per employee annual contribution of \$77 in 2018 and 2019 instead of the current \$51
 - ▶ Tier Two -- A new, targeted assessment requiring employers to pay 5% of wages on the first \$15,000 in wages paid (capped at \$750 per affected employee)
- ◆ No MassHealth reforms included, but proposed reforms are in new legislation introduced in MA Senate 10/23/17¹⁰

Increase in the EMAC Rate

- ◆ Year 1, 2 and 3: employers becoming newly subject to EMAC are exempt for first three years
- ◆ Year 4: 2017 rate of .0012 / **.0018 in 2018**
- ◆ Year 5: 2017 rate of .0024 / **.0036 in 2018**
- ◆ Year 6: 2017 rate of .0034 / **.0051 in 2018**
- ◆ Must file quarterly Employment and Wage Detail Report and pay by quarter due date
- ◆ 12% interest accrues from quarter due date until fully paid

The Targeted 5% EMAC Supplement

- ◆ **The relevant text from the statute reads:**
 - ▶ **“Each employer, . . . except those who employ not more than 5 employees,**
 - ▶ **shall pay a contribution for each employee who receives health insurance coverage through the division of medical assistance or subsidized insurance through the commonwealth health insurance connector authority.**
 - ▶ **The contribution shall be computed by multiplying the wages the employer paid any such employee by 5 per cent.”**

EMAC SUPPLEMENT FAQs

- ◆ **The EMAC Supplement is based on wages paid and not hours worked**
 - ▶ **Employers will pay the applicable EMAC Supplement for ALL FULL-TIME OR PART-TIME EMPLOYEES**
- ◆ **The 5% targeted EMAC assessment (up to \$750/employee receiving MA assistance) is referred to as the EMAC Supplement in the FAQs and regs**
- ◆ **Employees in the premium assistance program will not be considered an employee on MassHealth for EMAC Supplement purposes**
- ◆ **DUA held “listening sessions” in locations around the state and is now preparing final regulations**

DRAFT EMAC Supplement Regs

- ◆ **Draft Regs are for Tier II, 5% employer assessment – the “EMAC Supplement”**
- ◆ **Beginning Q1 2018 ANY employer with 6+ employees in the Q is in the game -- subject to the EMAC Supplement for the Q**
 - ▶ **Getting to 6+ -- Number of employees who worked/received wages for any part of the pay period that includes the 12th of month – Add the 3 “snapshots” for the 3 months in Q and divide by 3**
- ◆ **EMAC Supplement applies to employer in a Q if 1+ employees are enrolled in MassHealth or ConnectorCare for a continuous period of 14 days**
- ◆ **No EMAC liability for employees covered by MassHealth who are:**
 - ▶ **Permanently and totally disabled as defined by Title XVI of the SSA (supplemental security income, or SSI) or by applicable state law**
 - ▶ **Covered by employer-provided insurance where MassHealth is secondary payer**

DRAFT EMAC Supplement Regs

- ◆ **Non-profits and governmental employers are liable for EMAC Supplement regardless of the method used to finance UI benefits for their employees – contributory or reimbursement method**
- ◆ **Change in ownership rules**
 - ▶ **Seller (acquired employer) is liable for EMAC Supplement for the quarter for wages reported before the transaction**
 - ▶ **Buyer (acquiring employer) is not allowed any credit for EMAC Supplement amounts paid prior to the acquisition by the acquired employer**
- ◆ **Quarterly EMAC Supplement payments are due and payable by the last day of the month following the applicable Q**
- ◆ **Interest assessed on late EMAC payments. DUA can collect overdue amounts via dunning, property liens and bank levies**
- ◆ **Failure to comply penalties may apply**

DRAFT EMAC Supplement Regs

- ◆ **Failure to comply penalties -- An employer who does any of the following will be subject to penalties, including fines and imprisonment:**
 - ▶ **Willfully attempts to evade or defeat any contribution, interest, or penalty payment;**
 - ▶ **Knowingly makes any false statement or misrepresentation to avoid or reduce any financial liabilities under EMAC;**
 - ▶ **Knowingly fails or refuses to pay any such EMAC related contribution, interest charge, or penalty;**
 - ▶ **Attempts to coerce any worker to misrepresent his or her circumstances so that the employer may evade payment of contributions**
- ◆ **Appeals of initial EMAC determination by DUA:**
 - ▶ **Must be filed within 10 days of employer's receipt of determination notice**
 - ▶ **DUA will issue written decision affirming, modifying, or revoking the initial determination**
 - ▶ **DUA decision may be appealed by filing suit in Superior Court**

DRAFT EMAC Supplement Regs

- ◆ **No Commingling with the Unemployment Insurance Program**
 - ▶ DUA will administer the calculation and collection of the EMAC Supplement independently from the Massachusetts unemployment insurance program
 - ▶ Any employer EMAC Supplement payments, etc, collected by DUA will not be credited or charged to that employer's unemployment insurance account
 - ▶ Employer unemployment insurance contributions will be credited to the employer's unemployment insurance account
- ◆ **Refunds -- If an employer pays excess EMAC contributions**
 - ▶ The employer is eligible for a refund or a credit of the excess amount against any liability for the EMAC Supplement
 - ▶ Any excess payment will not carry interest
 - ▶ Applications for refunds must be filed within three years of date of payment of the contributions

DRAFT EMAC Supplement Regs

- ◆ **Confidentiality Rules – between state agencies and between DUA and employers**
 - ▶ DUA may provide member info to employer to review/appeal DUA EMAC determination
 - ▶ Info must be kept confidential, employer must limit use and disclosure to minimum necessary
 - ▶ Employer must sign written acknowledgement of confidentiality obligation under DUA procedures to be established
 - ▶ Employer prohibited from retaliation vs employee or disparagement through disclosure of info
- ◆ **Use of Electronic Communications (E-Mail) -- Any communication required to be in writing may include use electronic communication, including email, as determined by DUA**

Boston EMAC Listening Session

- ◆ **DUA confirmed that by April 2018 it will match DUA Quarterly wage reports with MassHealth and Health Connector records to determine which employers owe the assessment and how much**
 - ▶ **Employer to be notified on April 1 and the employer will have 30 days to pay**
- ◆ **Open issues/suggestions at Boston session:**
 - ▶ **Will Unions pay the assessment or will the employer using the union laborers pay?**
 - ▶ **Companies with significant turn-over will be paying the 5% over and over again for each new employee hired into the same position**
 - ▶ **Cap the quarterly assessment at \$187.50 per quarter per job - if the employee leaves and is replaced, then the maximum the employer will pay for all persons in that job during the year is \$750 annually**
 - ▶ **Part-time employees -- DUA could be paid double or triple as many PT employees work for more than one company**
 - ▶ **Establish a 90 day wait -- many employees in certain industries do not stay for 90 days**

Have You “HIRD”?

- ◆ **MA legislation (Chapter 110 of the Acts of 2017)**
- ◆ **Upon DMA request, employers must provide health insurance info for employees who have applied for a state subsidized health insurance program**
- ◆ **Requires Div. of Med Assistance to create a HIRD Form**
 - ▶ **For employer to report (annually, under oath) if it has offered to pay for or arrange for the purchase of health insurance and info about the insurance such as:**
 - the premium cost
 - benefits offered
 - cost sharing details
 - eligibility criteria and
 - any other info required by DMA

In ACA News . . .

◆ IRS releases 2017 Forms 1094/1095 and Instructions

Form 1095-C
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage
Do not attach to your tax return. Keep for your records.
Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID
CORRECTED

OMB No. 1545-2251
2017

Part I Employee

1 Name of employee
2 Social security number (SSN)
3 Street address (including apartment no.)
4 City or town
5 State or province
6 Country and ZIP or foreign postal code

Applicable Large Employer Member (Employer)

7 Name of employer
8 Employer identification number (EIN)
9 Street address (including room or suite no.)
10 Contact telephone number
11 City or town
12 State or province
13 Country and ZIP or foreign postal code

Part II Employee Offer of Coverage

14 Offer of Coverage (enter required code)
15 Employee Required Contribution (see instructions)
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)

Plan Start Month (Enter 2-digit number):

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14													
15	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16													

Part III Covered Individuals

If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee. ☐

(a) Name of covered individual(s)	(b) SSN or other TIN	(c) DOB (or SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

◆ IRS clarified in a set of information letters earlier this year that the individual and employer mandates remain in force unless changed by Congress

◆ The Republican House/Senate compromise tax reform bill, if enacted, will repeal the ACA's individual mandate tax

The ACA Tax Man Cometh



Department of Treasury
Internal Revenue Service
Group 2219
7300 Turfway Road, Suite 410
Florence, KY 41042

Tax year:

2015

Letter date:

11/16/2017

Employer ID number:

Dear Employer,

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP	\$543,573.30
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Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 70% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or

Letter 226J (10-2017)
Catalog Number 67905G

More ACA Health Reform for 2018?

- ◆ **December 12, 2017 -- Republican members of the House Ways and Means Committee introduced five bills to modify ACA provisions:**
 - ▶ **H.R. 4616 -- would provide a retroactive and prospective moratorium on the employer shared responsibility penalty (the employer mandate) from 1/1/15 through calendar year 2018**
 - ▶ **H.R. 4617 -- would provide a temporary moratorium on the medical device excise tax until 1/1/23**
 - ▶ **H.R. 4618 -- would, for a two-year period (from Jan. 1, 2018 to Dec. 31, 2019):**
 - provide a moratorium on the tax on over-the-counter medications, and
 - allow for reimbursement for their costs under consumer-directed accounts
 - ▶ **H.R. 4619 – relates to health care plans in Puerto Rico**
 - ▶ **H.R. 4620 -- delays for another two years (through 2019) the annual health insurance tax which insurers have passed on to consumers by raising premiums**
 - **The HIT was delayed in 2017 but set to take effect once again in 2018, leading insurers to include it in 2018 rates**

Back to Massachusetts . . .

Paid Family and Medical Leave On the Horizon in MA?

Proposed Paid Family and Medical Leave (PFML)

- ◆ **Both S. 1048 and H. 2172 have been parked in a committee since late January 2017; Certified as a 2018 ballot initiative by the AG on 9/6/17**
- ◆ **Summary**
 - ▶ **Provides up to 16 weeks of family leave or 26 weeks of medical leave. Family leave =**
 - **care for new child through birth, adoption, placement for adoption or foster care;**
 - **to address a serious health condition or care for a seriously ill family member; or**
 - **to address needs arising from a family member's active duty military service.**
 - ▶ **PFML benefit = 90% of average weekly earnings, up to \$1,000 per week**
 - ▶ **Employer contribution is .0063 of each employee's annual wage**
 - ▶ **Contributions placed in a disability trust fund managed by MA**
 - ▶ **Those returning from leave will have job/pay/benefit protection**
 - ▶ **AIM estimates annual per employee cost to employers at \$520**

MA Minimum Wage Proposal

- ◆ **MW proposal certified as a 2018 ballot initiative by the AG on 9/6/17**
- ◆ **Proposal boosts MA base wage from the current \$11 per hour to:**
 - ▶ **\$12 in 2019;**
 - ▶ **\$13 in 2020;**
 - ▶ **\$14 in 2021; and**
 - ▶ **\$15 in 2022**

Stay Tuned For Future Changes to the Compliance Landscape



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