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Labor & Employment Alert
August 2012

Governor Patrick Signs New Health Care Law

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On August 6, 2012, Governor Patrick signed into law “An Act improving the quality of health care and reducing costs through increased transparency, efficiency and innovation” as Chapter 224 of the Acts of 2012. The stated aim of this legislation is to help moderate increases in consumer and business insurance premiums, as health care costs have increased by 6-7% annually in Massachusetts, while the state economy has only grown by 3.7%.

Under the new law, businesses will receive "wellness tax credits," if they adopt programs to combat preventable chronic diseases such as obesity, diabetes, and asthma. The law also makes changes to the Fair Share Contribution mandate established by the Massachusetts Health Care Reform Act passed in 2006 that may protect more employers from the Fair Share Contribution penalty. Unless otherwise noted, the provisions of the law become effective 90 days after its passage.

Cost Containment

To assist employers to comparison shop for group health care plans, the Center for Health Information and Analysis will publish an annual report and maintain a website that will outline price variations by payer and provider, and compare the quality of health care services.
The Health Policy Commission will establish annually a health care cost growth benchmark, indexed to the long-run average growth rate of the Commonwealth’s economy. Starting in 2016, any “health-care entity” that exceeds this benchmark must develop a performance improvement plan to reduce costs or face a fine of $500,000. The term health care entity is defined as including not only health care providers but payers.

Wellness Programs

Wellness programs are fitness and behavioral change programs. The new law encourages the development of such programs and their implementation by employers by two methods: 1.) an insurance premium adjustment, and 2.) a tax credit.

Labor & Employment Alert
August 2012

The new law provides for a premium rate adjustment to be offered by insurance companies based on employee participation in a qualified wellness program. Future regulations from the Commissioner of Insurance will establish the criteria for the rate discount, but the criteria may require: (1) a minimum participation in the wellness program by percentage; (2) promoting healthy workplace habits; (3) promoting health screenings; (4) promoting health education; and (5) any other criteria that the Commissioner determines.

Starting January 1, 2013, the new law also provides for a wellness program tax credit for businesses on their Massachusetts state taxes. Each business is eligible for the tax credit in the year in which it implements the qualifying wellness program. The tax credits will be for 25% of the costs associated with implementing the program, but shall not exceed $10,000 in one year for any given taxpayer. The tax credit cannot reduce the taxes below zero, but businesses may carry over and apply the credit against any tax liability in the succeeding five taxable years.

In order to obtain the tax credit, an eligible business will submit documentation proving the existence of its wellness program to the Department of Public Health, and will then receive a certification for its tax filing. The Department of Public Health is to establish more detailed regulations on how to apply for the tax credit and the criteria for an acceptable wellness program.

Fair Share Contribution Changes

While previously each employer who employed 11 or more full-time equivalent employees and who was not a "contributing employer" had to pay a per employee contribution, called the fair share contribution, under the new law, this requirement applies only to such non-contributing employers who employ 21 or more full-time equivalent employees.

The new law provides that employees who have qualifying health insurance coverage from a spouse, parent, veteran's plan, Medicare or plans due to disability or retirement will not be included in determining whether the employer is a contributing employer, at least with regard to the percentage enrolled test, formerly known as the primary test. This should help more employers meet the percentage enrolled test.

The statute is unclear as to whether employers must continue to offer insurance to full time employees who have coverage elsewhere for the premium contribution test, formerly the secondary test. Further, it does not appear from the language of the statute that employers would be allowed to exclude employees covered elsewhere from the calculation of the Fair Share penalty if the employer is determined to be a non-contributing employer.

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Labor & Employment Alert
August 2012

Importantly, the statute requires employers to maintain proof of their employees' coverage under other plans. What proof will be required will be determined by the Massachusetts Health Care Connector Authority.

These fair share provisions become effective as of July 1, 2013.

Expanded Role of the Health Connector

The new law transfers several duties previously required of the Division of Health Care Finance and Policy to the Health Care Connector Authority. The Connector is now responsible for determining who is a contributing employer for Fair Share Contribution purposes. The Connector will also now be responsible for issuing the Health Insurance Responsibility Disclosure ("HIRD") form and for enforcing the Free Rider Surcharge.

The new statute maintains the prior record-keeping requirements with employers and employees having to complete annual disclosure forms. The Connector may rely on the HIRD form as proof of employee coverage elsewhere, or it may choose to require additional proof which employers will be required to maintain. Further guidance is anticipated.

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If you have any questions or concerns with regard to the implementation of the Act, please contact Katherine A. Hesse, Brian P. Fox or the attorney assigned to your account.

In addition to the changes noted above, the new law also enacts a number of provisions that will have major effects on health care entities. Those changes are the subject of a separate client alert. If you have questions on those issues, please contact Geoffrey Wermuth or the attorney assigned to your account.

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