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The Massachusetts Health Care Reform Act: New Rules Governing the Health Insurance Responsibility Disclosure Form Requirement

The Massachusetts health care reform act—H. 4850, An Act Providing Access to Affordable, Quality, Accountable Health Care (the “Act”)—imposed a host of new requirements on individuals, insurers, and employers relating to health insurance coverage. In order to facilitate enforcement of certain of the Act’s new rules, the Act requires employers to file annually a “Health Insurance Responsibility Disclosure” (or HIRD) form. On January 1, 2007, the Division of Health Care Finance and Policy (DHCFP) of the Commonwealth’s Executive Office of Health and Human Services issued an emergency regulation implementing the HIRD form requirement. This advisory explains the HIRD form rules.

Background

Act § 42 directs the DHCFP to promulgate a HIRD form that provides information necessary to administer and enforce the Act’s individual insurance mandate, fair share contribution requirement, and free rider surcharge. Each Massachusetts employer must file information annually about health insurance it offers to employees. In addition, an employee who declines coverage (or who declines his or her employer’s offer to arrange for coverage through the Connector) must sign an employee HIRD form.

The Emergency HIRD Regulation

The Employer HIRD Form

Massachusetts Employers with more than ten employees are required to report the following information:

- Employer Legal Name

1620 26th Street
Santa Monica, California 90404
310 586 3200
310 586 3202 fax

1400 Page Mill Road
Palo Alto, California 94304
650 251 7700
650 251 7739 fax

9255 Towne Centre Drive
San Diego, California 92121
858 320 3000
858 320 3001 fax

The Rectory
9 Ironmonger Lane
London EC2V 8EY England
+44 (0) 20 7726 4000
+44 (0) 20 7726 0055 fax

- Employer DBA Name
- Employer FEIN
- Division of Unemployment Assistance Account Number
- Number of full-time Employees
- Number of part-time Employees
- Whether the Employer offers subsidized insurance to full-time employees
- Whether Employer offers subsidized insurance to part-time employees
- Whether the Employer offers a section 125 cafeteria plan
- Whether the Employer has complied with the requirements of M.G.L. c. 151F

The HIRD requirements took effect January 1, 2007, and employers must report information as of September 30th of each year. Full- and part-time employees are included in the employee tally, as are seasonal and temporary employees, but not independent contractors. The Employer HIRD form is due on November 15th of each year, based on information as of the immediately preceding September 30th. New Employers are required to register with the DHCFCP when they register with the Division of Unemployment Assistance.

DHCFCP plans to establish a data matching program in concert with the Division of Unemployment Assistance and the Department of Revenue. An Employer that knowingly falsifies or fails to file any information required by the DHCFCP is subject to a fine of not less than \$1,000 or more than \$5,000.

The Employee HIRD Form

Employees who are employed by a Massachusetts Employer with ten or more employees and who either decline employer-sponsored insurance or the employer's offer to arrange for insurance (through the Connector with pre-tax dollars) must sign an Employee HIRD form. Employers are required to provide the employee HIRD form for the employee's signature. The Employer must retain the signed HIRD form for a period of three years. If the employee does not comply with the employer's request to return the signed form, the employer is required to document its efforts to obtain the form and maintain the documentation for a period of three years.

The Employee HIRD Form must contain the following information:

- The employee's name
- The name of the Employer
- Whether the Employee has alternative insurance coverage
- An acknowledgement that the employee is aware of the individual mandate and the penalties for failure to comply with the individual mandate.

Employers must require affected employees to sign an Employee HIRD Form by the earlier of 15 days after the close of the open enrollment period for the employer's health insurance, or July 1st of each year. New hires who decline coverage must sign their HIRD form within 15 days of hire.

Special Leasing Company Rules

The regulation singles out "Employee Leasing Companies" for special treatment. An "Employee Leasing Company" is defined to mean an entity that:

"consists largely of leasing employees to one or more Client Companies under contractual arrangements that retain for such employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire workers provided by the Employee Leasing Company."

The regulation goes on to provide that the leasing arrangement must be "long term" and not an arrangement "to provide the Client Company temporary help services during seasonal or unusual conditions." Thus traditional staffing firms and Professional Employer Organizations are Employee Leasing Companies, but temporary help agencies are not. Under the special rule, if an Employee Leasing Company files the HIRD Form on behalf of a client company, it must file a separate form for each of its clients.

The model employee HIRD form can be downloaded by [clicking here](#).

¹ As amended by Chapter 324 of the Acts of 2006, An Act Relative to Health Care Access (the "Technical Corrections Act").

² Technical Corrections Act § 66.

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