



Massachusetts Health Care Reform Act: Information for Brokers, Employers, and Employees

2009 Update:

Reporting: The 1099-HC form will show proof of coverage for each month of 2008.

Individual's Coverage: Minimum Creditable Coverage for 2009 and 2010 is redefined.

Employer "Fair Share" test: imposed quarterly and employers with 51+ full time employees must either have 75% participation or both 25% participation and 33% contribution.

Introduction

In 2006, the Commonwealth of Massachusetts passed the Health Care Reform Act with a goal to improve access to healthcare for all Massachusetts residents.

During 2008, all Massachusetts residents were required to have some level of health coverage, with determinations of coverage based on a resident's health insurance enrollment status for each month over the year.

Starting in 2009, a more stringent level of coverage (called "minimum creditable coverage") is required for Massachusetts residents. Massachusetts employers will face a new test to demonstrate that they are paying their "Fair Share" of health insurance costs.

As a trusted healthcare partner, BCBSRI wants to help employers through this process. We have also provided important information that employees should know. If you are an employer who has any questions that are not answered below, or if you need to extend coverage to your employees to comply with the Act, please contact your BCBSRI sales representative today.

What Employers Need to Know

Employers with Massachusetts locations, even if headquartered outside of Massachusetts, who pay taxes in the commonwealth of Massachusetts, are subject to the regulations of the Health Care Reform Act. Even employers who do not maintain locations in Massachusetts should be aware of these requirements, as their employees who reside in Massachusetts will be impacted.

- **1099-HC Filings** – Employers are to provide their employees residing in Massachusetts with proof of creditable coverage via the 1099-HC form. Employers are also to provide a separate report verifying the statement to the Department of Revenue. The 1099-HC must be issued annually no later than January 31 for the prior tax year.
 - In 2009, the form will document coverage for each month during 2008. BCBSRI will assist employers by preparing 1099-HC forms for distribution to their employees residing in Massachusetts and by submitting the proof of insurance information to the Department of Revenue. This service will be provided at no cost. Employees who do not receive the form should call BCBSRI Customer Service at 1-800-639-2227 (outside RI only) or (401) 459-5000.

- If the coverage offered by the employer does not meet the Commonwealth's standards of minimum creditable coverage (MCC) as of January 1, 2009, then an employee who is a Massachusetts resident will face a penalty. Minimum creditable coverage is described below.
- **Fair Share Contribution Requirement and \$295 Penalty** – Employers with 11 or more full-time equivalent employees at Massachusetts locations must offer healthcare coverage. Employers that do not make fair and reasonable premium contributions for their employees will be required to make a Fair Share Contribution payment of up to \$295 per employee per year.

For 2009, the test to determine if an employer is paying its "Fair Share" has changed; it will be based on the following triggers and will be measured quarterly.

- An employer with 11 to 50 full-time employees ("FTEs", 35 hours or more per week) makes a fair and reasonable contribution if it passes one of these two tests:

At least 25 percent of FTEs are enrolled in the employer's healthcare coverage plan, and the employer is making a financial contribution to it.

The employer offered to pay at least 33 percent of the premium cost of its healthcare coverage plan offered to all full-time employees no more than 90 days after the date of hire.

- An employer with more than 50 FTEs must either (a) pass both of the above tests or (b) have at least 75 percent of full-time employees enrolled.

The Fair Share Contribution requirement and penalty does not apply to employers with offices exclusively outside of Massachusetts (e.g., an employer with offices exclusively in Rhode Island that employs Massachusetts residents is not subject to the penalty).

- **Section 125 (Cafeteria Plans) and Free Rider Surcharge** – Employers with 11 or more employees (full-time equivalents) at Massachusetts locations must adopt and maintain a Section 125 plan that meets the regulations of the Commonwealth Health Insurance Connector. This requirement applies even if the employer offers health insurance. If an employer does not adopt a Section 125 plan, and if an employee or dependent receives publicly funded health services, then the employer may be subject to the Free Rider Surcharge. A copy of the Section 125 plan must be filed with the Connector upon request.

The amount of the surcharge will vary based on the number of employees, the utilization of the free care pool or health safety net, total publicly funded costs, and the percentage of employees enrolled in the employer's health plan.

As with the Fair Share Contribution requirement, the Free Rider Surcharge does not apply to employers with offices exclusively outside of Massachusetts (e.g., an employer



with offices exclusively in Rhode Island that employs Massachusetts residents is not subject to the penalty).

- **Health Insurance Responsibility Disclosure (HIRD)** – An employer with 11 or more employees (full-time equivalents) is required to report such information as whether the employer offers its employees a Section 125 plan that meets the regulations of the Commonwealth Health Insurance Connector, the percentage of the employer’s contribution to premiums, and the cost of premiums. The Employer HIRD information is filed with the Division of Unemployment Assistance.

An employee must also complete an Employee HIRD form if the employee declines to enroll in either the employer-sponsored health plan or in the employer’s Section 125 cafeteria plan.

What Employees Need to Know

The following requirements apply to all Massachusetts residents, regardless of where their employers are located.

- **Individual Mandate** –Massachusetts residents aged 18 and over are required to have some level of healthcare coverage. Starting in 2008, whether a resident had coverage will be determined based on enrollment each month throughout the year. Starting in 2009, the level of healthcare coverage that meets minimum creditable coverage standards increases. (see “MMC” definition below).
- **Massachusetts Residents Working in Rhode Island** – As a resident of Massachusetts, these employees are subject to Massachusetts law—they must carry health insurance. If the coverage offered through their Rhode Island employer meets the coverage standards, then they do not need to obtain additional coverage. If the coverage does not meet minimum Massachusetts standards, then they may face a penalty.
- **Penalties** – Beginning with the 2008 tax year and for subsequent tax years, individuals who fail to meet the healthcare coverage requirement will be fined for each month the individual does not have coverage. The fine will equal 50 percent of the least costly available insurance premium that meets the standard for creditable coverage (penalty could be as high as \$912/yr). *Please note: Some residents are exempt from this penalty due to affordability, financial hardship, or religious beliefs.*
- **Minimum Creditable Coverage Requirement (MCC)** – MCC is the Commonwealth’s determination of what health insurance should cover. MCC is designed to provide an individual with access to some preventive healthcare as well as protection against severe financial losses as a result of serious illness. For the period of July 1, 2007, through December 31, 2008, any healthcare coverage met the definition. Beginning



January 1, 2009, more substantive requirements, which were redefined in October of 2008, must be met.

The commonwealth's definition of MCC includes these standards:

- Comprehensive health benefits, for 2009, include preventive care, primary care, emergency services, hospitalization, ambulatory patient services, prescription drugs, and mental health and substance abuse services.
 - In 2010, this broad range of benefits is scheduled to expand to also require diagnostic imaging and screening, diagnostic lab service, maternity and newborn care, and radiation therapy and chemotherapy.
- Medical deductibles for in-network services may not exceed \$2,000 for individual coverage and \$4,000 for family coverage annually.
- If there is a separate deductible for drug coverage, the annual deductible may not exceed \$250 for individual coverage and \$500 for family coverage.
- For health insurance plans that include a deductible and/or coinsurance, the maximum annual out-of-pocket spending for in-network services may not exceed \$5,000 for an individual and \$10,000 for a family. The calculation of these maximums is to include payments arising from copays of more than \$100, coinsurance and deductibles, but need not include from amounts paid for drugs.
- Annual maximum benefit limits are not permitted for all covered services collectively or for core services individually or collectively (core services are physician services, inpatient acute care, day surgery, and diagnostic procedures and tests). The plan may impose maximum benefit limitations on non-core services (e.g. limits on physical therapy). However, starting in 2010, maximums might cause a plan to be found to be noncompliant if the limits are inconsistent with standard employer-sponsored coverage and are not an innovative way to improve quality or manage costs.
- Preventive care (includes routine adult physical exams, well baby care, prenatal care, immunizations, and routine gynecological exams) must be covered before the plan imposes a deductible. These preventive care visits may be subject to copayments or coinsurance. The plan must allow three preventive care visits per individual and six per family, or follow other Massachusetts quality guidelines.
- A plan with deductibles and/or out-of-pocket maximums that exceed the MCC limits may be combined with a health reimbursement arrangement (HRA), so that the combination of the plan's benefits plus the HRA funding meets the standards.
- High-deductible health plans (HDHP), compatible with Health Savings Accounts (HSA) are deemed creditable coverage and thus exempt from the above requirements for 2009.

- For 2010, the HDHP must meet certain MCC standards and the carrier or plan sponsor must facilitate access to an HSA administrator (financial institution).
- An “Actuarial Equivalence” exemption allows plan to be deemed creditable coverage if it meets certain minimum requirements and has an actuarial value at least equal to the Connector’s Bronze level plans.
- Collectively bargained plans may obtain a deferred effective date. At the Connector’s discretion, the plans may be deemed to meet MCC for up to one year following expiration of the agreement in effect on January 1, 2009, and multi-employer plans for one year after the expiration of the last renewing agreement.
- Medicare and Medicare Advantage are deemed to meet MCC requirements.
- **Dependent Coverage** – The Act requires that insurance policies issued by insurers licensed in Massachusetts extend coverage of dependents until they reach age 26 or for two years following the loss of dependent status under the Internal Revenue Code, whichever occurs first. This requirement is an insurance mandate and applies only to insurance policies issued, delivered, and renewed in Massachusetts by insurers licensed under the laws of the Commonwealth of Massachusetts. BCBSRI is not licensed in Massachusetts, and all of our policies are issued, delivered, and renewed in Rhode Island. As a result, BCBSRI’s insurance policies are not required to provide coverage in accordance with this section of the Act. As you know, the Rhode Island Legislature passed a law in 2006 that provides for coverage of any student (part- or full-time) up to the age of 25. We have implemented this new law for all fully insured groups.

Frequently Asked Questions (FAQs)

What are employers required to do to comply with the Health Care Reform Act?

Employers that have 11 or more full-time employees at locations in Massachusetts must:

- **Make a Fair Share Contribution** – Employers who do not make a fair and reasonable contribution to health insurance coverage are subject to a fine of up to \$295 per employee per year. The Commonwealth’s Division of Unemployment Assistance has more information on this calculation.
- **Set Up a “Cafeteria Plan” for Employees** – A cafeteria plan allows employees to pay for insurance premiums on a pre-tax basis. If an employer does not set up this plan, and if an employee or a dependent receives publicly funded health services, then the employer may be subject to a “Free Rider Surcharge.” The Commonwealth Health Insurance Connector has more information on this requirement.
- **File the Fair Share Contribution and Health Insurance Responsibility Disclosure Reports** – Employers are to make a combined online filing with the Division of Unemployment Assistance. This combined filing satisfies the requirement for the two reports. The submission is due quarterly.



- **Retain Employee Health Insurance Responsibility Disclosure (HIRD) Forms** – Employees who do not accept their employers’ coverage are required to complete an Employee HIRD, which the employer keeps for three years. This enables compliant employers to avoid liability for the Free Rider Surcharge and the Fair Share Contribution penalty.
- **Provide Employees and the Commonwealth of Massachusetts with Proof of Coverage** – Employers must provide their enrolled employees who reside in Massachusetts with proof of coverage via a 1099-HC form. Employers must also send this information to the Department of Revenue.
 - In 2009 (for the 2008 tax year), BCBSRI will send these forms to employees residing in Massachusetts and will provide the Department of Revenue with the required information.

Where can employers get the 1099-HC form?

At no cost to employers, BCBSRI will mail the 1099-HC form directly to covered employees who reside in Massachusetts, in 2009 for the 2008 tax year. This form is required for preparation of the employees’ income taxes for tax year 2008.

What must Massachusetts residents do, and what are the penalties?

Massachusetts residents (whether they work in Massachusetts or not) are required to secure minimum creditable coverage. There are various levels of requirements and penalties for not meeting those requirements:

- For all of 2008, Massachusetts residents were required to have health insurance. Any individuals who cannot show proof of coverage will be assessed a penalty calculated by the Massachusetts Department of Revenue (could be as high as \$912/yr). *Please note: Some residents are exempt from this penalty due to affordability, financial hardship, or religious beliefs.*
- Beginning in 2009, the Commonwealth of Massachusetts will impose more specific standards that health insurance must meet to satisfy the coverage requirement. (The financial penalty will remain the same.) These coverage standards define what is referred to as “minimum creditable coverage” (MCC). Following is a partial list (see page 4 for the full list), this standard will include additional benefits in 2010:
 - Comprehensive health benefits, including preventive care, primary care, emergency services, hospitalization, ambulatory patient services, prescription drugs, and mental health services.
 - Annual deductibles can be no higher than \$2,000 (individual) or \$4,000 (family), and an out-of-pocket maximum can be no higher than \$5,000/\$10,000. Also, annual or per illness benefits maximums for core services are not allowed.

How can employers be sure that their BCBSRI coverage meets these requirements?

All BCBSRI plan descriptions indicate if that specific plan meets the MCC requirements. Please contact your BCBSRI sales representative to find out if your coverage meets all of these



requirements, ask any questions on your coverage or any of our other plan designs, or receive more information.

How will a Massachusetts resident receive the 1099-HC form?

BCBSRI expects to mail the 1099-HC form to covered employees who had active coverage in 2008, and who our records show to be Massachusetts residents.

By mid-February, if an employee does not receive the form, he or she may call BCBSRI Customer Service at 1-800-639-2227 (outside RI only) or (401) 459-5000. Customer Service may either provide the employee with the BCBSRI Federal Identification Number and other relevant information verbally or generate another copy of the 1099-HC form, as the form itself is not required to be filed (Massachusetts residents use the information to complete a Schedule HC when filing their taxes, but do not include the 1099-HC form). Information on Schedule HC and an instruction booklet are available on the www.mass.gov/dor Web site, as are applicable appeal rights and instructions for Massachusetts residents.

Where can employers/employees find more information on the Massachusetts reform law?

Commonwealth Health Insurance Connector Authority
100 City Hall Plaza, 6th Floor
Boston, MA 02108
1-877-623-6765
www.mass.gov/connector or
www.mahealthconnector.org

Division of Healthcare Finance and Policy
2 Boylston Street, 5th Floor
Boston, MA 02116-4734
(617) 988-3100
www.mass.gov/dhcfp

Department of Revenue
P.O. Box 7010
Boston, MA 02204
(617) 887-MDOR
www.mass.gov/dor

**Division of Unemployment Assistance,
Fair Share Contribution and HIRD Unit**
Administrative Offices
Charles F. Hurley Building

19 Staniford Street
Boston, MA 02114
(617) 626-6080
www.mass.gov/fairshare
MassHealth (Medicaid)
One Ashburton Place, 11th Floor
Boston, MA 02108
1-800-841-2900
www.mass.gov/masshealth

Healthcare Quality and Cost Council
2 Boylston Street, 5th Floor
Boston, MA 02116
(617) 988-3196
www.mass.gov/healthcarereqc

Rhode Island Health Insurance Commissioner
233 Richmond Street
Providence, RI 02903
(401) 222-5424
www.dbr.state.ri.us/divisions/healthinsurance



The summary and FAQs above are provided for informational purposes only and do not constitute legal or tax advice. Consult an attorney or tax advisor to

ensure compliance with all applicable requirements of the Massachusetts Health Care Reform Act.