

One Minute Memo[®]



January 31 Deadline Looms for Companies with Massachusetts Employees

Under Massachusetts' 2006 Health Care Reform Act (the "Act"), plan sponsors providing health care coverage for more than 11 employees in Massachusetts locations must comply with certain disclosure and reporting requirements by January 31, 2008. These "creditable coverage" requirements relate to the "individual mandate" under the Act.

To satisfy that mandate, Massachusetts residents 18 years of age and over must obtain health care coverage under an individual or group health care plan that meets the definition of "minimum creditable coverage" established by the Commonwealth Health Insurance Connector (the "Connector").

For the period of July 1, 2007 to December 31, 2008, the Connector will treat self-funded plans that provide medical, surgical or hospital benefits and fully insured plans issued by Massachusetts-licensed insurance companies as "minimum creditable coverage."

The Responsible Entity

For fully insured plans, the insurer is responsible for these disclosure and reporting requirements. For

self-insured plans, the plan sponsor is responsible for compliance. (Although state-law requirements do not usually apply to self-funded plans subject to ERISA because of federal preemption, to date, the law has not been challenged as preempted.)

Note: Some third party administrators who are insurers in Massachusetts have indicated that they will prepare and distribute the participant notification to all Massachusetts participants, for both insured and self-insured plans. Therefore, employers who sponsor self-insured plans should verify if their third party administrators will be responsible for the Massachusetts reporting compliance.

The Disclosure and Reporting Requirements

1. Form MA 1099-HC (available on the Massachusetts Department of Revenue website, www.dor.state.ma.us) must be distributed to all employees who reside in Massachusetts (including COBRA beneficiaries and retirees), and who were covered under health care plans as of December 31, 2007; and
2. The employer's aggregate report to the Commissioner of the Massachusetts Department of Revenue must verify that Form MA 1099-HCs were sent to all such participants.

Penalties for Noncompliance

Plan sponsors and insurance carriers that fail to distribute Form MA 1099-HCs timely or file a Commissioner's Report are subject to a penalty of \$50 per individual, to a maximum of \$50,000. Additionally, if a Massachusetts resident does not receive a Form MA 1099-HC, the participant may be subject to state income tax penalties for failure to comply with the individual mandate.

If you have any questions regarding this One Minute Memo, please contact the Seyfarth Shaw attorney with whom you work, or any Employee Benefits attorney our website, www.seyfarth.com.

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