

April 12, 2006

### **The Massachusetts Universal Health Coverage Law**

This morning Governor Romney signed into law a highly publicized Massachusetts bill aimed at providing nearly universal health insurance coverage for the state's residents by July 1, 2007 (the "MA UHC Law"). The new law mandates that all residents obtain health insurance coverage individually, through various free or subsidized state programs, or from an employer-sponsored plan. It also permits portability of insurance under certain circumstances as individuals move from job to job. Today's new law covers all employers except those with 10 or fewer employees.

The nation's most comprehensive universal health coverage state statute to date, the MA UHC Law redeploys public funds (over \$600 million in the Uncompensated Care Pool) to cover the state's currently uninsured low-income population, currently estimated at 550,000. The law eliminates the Uncompensated Care Pool and creates a new and reformed Health Safety Net Fund overseen by the Office of Medicaid.

#### ***Employer Obligations***

Under the new law, Massachusetts employers with more than 10 employees *must*:

- adopt and maintain a Section 125 cafeteria plan to permit employees with to pay health insurance premiums on a pre-tax basis;
- file the Section 125 cafeteria plan with the state; and
- offer health insurance options to their employees.

#### ***Employer Penalties***

Under the law as submitted to the Governor, employers who did not comply with these mandates were to pay an assessed penalty, the so-called "*Fair Share Contribution*," of up to \$295 per full-time employee and a pro-rata penalty for part-time or seasonal workers.

As an additional penalty for non-compliance, the law as submitted to the Governor imposed a *Free Rider surcharge* on "non-providing" employers when an employee receives free care more than 3 times in a year, or when a company has 5 or more instances of employees receiving free care in a year. The surcharge ranges from 10% to 100% of the state's costs of services provided to the employees, with the

first \$50,000 per employer exempted. However, the definition of “non-providing employer” expressly excludes an employer that is a signatory to or obligated under a collective bargaining agreement that governs the employment conditions of an employee receiving free care. The definition also excludes an employer that offers to contribute toward or to arrange for the purchase of health insurance, and an employer who participates in the Insurance Partnership Program described below.

In signing the bill into law, Governor Romney exercised 8 line-item vetoes, including a veto of the controversial \$295 penalty. According to news reports, leaders of the heavily Democratic House and Senate of the Massachusetts legislature have vowed to override the vetoes, while administration officials claim that the penalty might have discouraged participation in the new health program, because some employers would find it cheaper to pay the penalty rather than to insure employees.

### ***Options for Small Business***

Small businesses that have weathered double-digit inflation in health care premiums, and certain industries that rely upon part-time workers, such as the restaurant and retail industries, have voiced concern that the new law will discourage businesses from doing business in Massachusetts. One feature of the new law may help to abate that concern: individuals and small businesses with 50 or fewer employees can “connect” with certified health insurance products of high value and good quality through a newly created “Commonwealth Health Insurance Connector.”

According to the Conference Committee Report, the MA UHC Law expands eligibility for the current Insurance Partnership Program in order to provide another option for small businesses who want to offer health care to their employees. Under the new law, employees with incomes up to 300% of the Federal Poverty Level (“FPL”) can participate in the Insurance Partnership Program, and their employers will receive a subsidy towards the employee’s share of the premium cost. Self-employed individuals enrolled in the Insurance Partnership Program are eligible for the employee subsidy only.

### ***Mandated Benefits***

The law places a moratorium on *new* mandated insurance benefits until 2008, so that the state can complete a review about the costs and necessity of all current mandates. All *current* mandated benefits are protected.

### ***Subsidized Program for Individuals***

The MA UHC Law also creates a subsidized insurance program (the Commonwealth Care Health Insurance Program) for individuals who earn less than 300% of the FPL and who are ineligible for Mass Health. Premiums for the program, operated through the Connector, will be set on a sliding scale based on household income, and no plans offered through the program will have deductibles. The program will retain any employer contribution to an employee’s health insurance premium. Individuals who earn less than 100% of the FPL will enjoy special protections, including a waiver of premiums.

### ***Possible Penalties for Uninsured Residents***

Like employers who “pay or play,” Massachusetts residents also face financial penalties if they fail to secure health insurance coverage. Massachusetts residents must confirm health insurance coverage on their 2008 state income tax forms for tax year 2007. For an individual who has not certified his or her coverage for tax year 2007, the penalty amounts to a loss of the personal exemption. For tax year 2008 and later, the penalty will increase to 50% of an available premium cost for each month the individual was not adequately covered beginning in January of 2008.

Given the complexity of today’s new law and the flux created by Governor Romney’s vetoes, Seyfarth Shaw is preparing a more in-depth analysis of the bill as enacted and expects to distribute that analysis in the very near future.

*For more information on this new law, please contact any of the following attorneys in the firm’s Boston office:*

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