



# Employer Handbook



This handbook can also be found on the Connector's website at: [www.MAhealthconnector.org](http://www.MAhealthconnector.org)



# The Health Connector



The Commonwealth Health Insurance Connector Authority (the "Health Connector") is an independent authority created under the 2006 Health Care Reform Law. The Health Connector's mission is to serve individuals and employers in Massachusetts by increasing access to health insurance.

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## Introduction

The primary goal of the Massachusetts Health Care Reform Law is to increase access to health insurance for both individuals and employers. The guiding principle behind this reform is one of shared responsibility. Individuals, employers, health plans and state agencies all have new responsibilities under the law.

The purpose of this handbook is to highlight the key issues for employers and to make it easier for you to understand and meet your obligations. While some aspects of the Massachusetts Health Care Reform Law affect all Massachusetts employers, many employers are exempt from some or most of the new provisions. For example, employers who make a fair and reasonable contribution to employees' health care costs will not be liable for a "Fair Share Contribution" of up to \$295 per employee per year. Employers who offer a Section 125 Plan that complies with the Health Connector's regulations will not run the risk of incurring a "Free Rider Surcharge" when their employees use certain state-funded health services. In addition, many of the employer requirements do not apply to employers with fewer than 11 full-time equivalent employees. These issues – and more – are discussed in this handbook.

Employers who provide their employees with access to health insurance are better able to recruit and retain good workers, enhance employee loyalty and improve the productivity of their businesses. The Health Connector has been created to help connect employers and their employees to a choice of quality, affordable health plans and the tools to help them choose the plan that is right for them. We encourage you to read this handbook and to visit our web site at <http://www.MAhealthconnector.org> to learn more.

In addition to this handbook, please refer to the Health Connector's other employer-related publications, also available on our web site:

- [Commonwealth Choice Voluntary Plan Employer Guide](#); and
- [Section 125 Plan Handbook for Employers](#).

## Fair Share Contribution

|                              |  |
|------------------------------|--|
| <b>What is it?</b>           | <p>Under the Fair Share Contribution (FSC) requirement, certain employers must make a “fair and reasonable” contribution to the health insurance of its employees or contribute to the state fund that provides health services to the uninsured. Employers must file an FSC report annually with the state Division of Unemployment Assistance (DUA) between October 1 and November 15 so that any liability for an FSC assessment can be determined.</p> <p>FSC payments will be used to help fund the health plans that are subsidized by the state and are available to people who do not have access to employer-sponsored health insurance.</p>  |
| <b>Who does it apply to?</b> | <p>An employer will make a FSC payment if it meets <b>BOTH</b> these criteria:</p> <ol style="list-style-type: none"> <li>1. The employer has 11 or more full-time equivalent employees (FTEs)<sup>1</sup> who are employed at Massachusetts locations for at least one calendar month <b>AND ...</b></li> <li>2. The employer does not make a “fair and reasonable” premium contribution towards health insurance for his/her full-time employees.</li> </ol> <p>An employer makes a “fair and reasonable” premium contribution if <b>EITHER</b>:</p> <ul style="list-style-type: none"> <li>▪ There is at least 25% participation by full-time employees in the employer’s group health plan (known as the “Primary Test”),<sup>2</sup> <b>OR ...</b></li> <li>▪ The employer offers to contribute at least 33% of the premium cost of its health plan for individual coverage to all full-time employees employed more than 90 days during the period from October 1, 2006 to September 30, 2007 (known as the “Secondary Test”).<sup>3</sup></li> </ul> <p>Notes:</p> <ul style="list-style-type: none"> <li>▪ A full-time employee is an employee who works the lesser of (a) 35 hours or more per week, or (b) the number of weekly payroll hours to be eligible for the employer’s “full-time health plan benefits.”</li> <li>▪ “Full-time health plan benefits” means the equivalent level of employer contribution to the employer’s health plan that is offered to full-time employees.</li> <li>▪ Independent contractors, seasonal employees,<sup>4</sup> and temporary employees<sup>5</sup> are not considered full-time employees for FSC purposes.</li> <li>▪ A worker who comes from a “temp agency” is not considered to be an employee of the client company. However, individuals leased on a long-term basis from a leasing company are treated as employees of the client company for FSC purposes.</li> </ul> |
| <b>How much?</b>             | <p>If an employer does not make a “fair and reasonable” premium contribution as described above, his/her FSC payment will be no more than \$295 per employee per year.<sup>6</sup> An employer’s exact liability will be determined after the employer files a complete FSC report online.</p>   |
| <b>When?</b>                 | <p>The FSC requirement went into effect on October 1, 2006. The FSC filing period is October 1 through November 15 annually, although the on-line filing system is available all year. When employers file the first annual report between October 1 and November 15, 2007, they will be using employment and health insurance data for the applicable base period, from October 1, 2006 to September 30, 2007 for the Primary Test and from July 1, 2007 to September 30, 2007 for the Secondary Test.</p> <p>Employers with 11 or more FTEs must complete an FSC report online at <a href="https://fsc.detma.org">https://fsc.detma.org</a>. This online report also includes the employer’s Health Insurance Responsibility Disclosure (HIRD) annual report (described on page 6 of this handbook).</p>   |

Note: The footnotes for the above table are shown on the next page.

## Fair Share Contribution

The following footnotes apply to the preceding page:

<sup>1</sup>To determine the number of FTEs, an employer should sum all payroll hours worked by all employees (who have been on payroll for more than one full calendar month) during the period from October 1 through September 30 and divide by 2,000. A maximum of 2,000 hours can be counted for any one employee.

### <sup>2</sup>The Primary Test:

An Employer passes the Primary Test if the average annual employee participation rate in the Employer's group health plan is at least 25%.

The employer will calculate the average annual employee participation rate as follows:

- A. Identify and record the number of full-time employees enrolled in employer's health plan on the last day of each quarter ending on December 31, March 31, June 30 and September 30.
- B. Identify and record the number of full-time employees on the employer's payroll on the last day of each quarter ending on December 31, March 31, June 30 and September 30 (record zero if no employees on payroll).
- C. Calculate the average number of full-time employees enrolled in employer's health plan by summing the values recorded in (A.) and dividing by the number of non-zero quarters in (B.)
- D. Calculate the average number of full-time employees on the employer's payroll by summing the values recorded in (B.) and dividing by the number of non-zero quarters in (B.)
- E. Calculate the average annual employee participation rate by dividing the result of (C.) (average enrolled full-time employees) by the result of (D.) (average total full-time employees).

Note: (A.) above does not include employees who receive health insurance coverage from other parties (e.g. a spouse's health plan, or a government program such as MassHealth or Commonwealth Care).

### <sup>3</sup>The Secondary Test:

An employer passes the Secondary Test if he/she offers to contribute at least 33% of the premium cost of any Group Health Plan for individual coverage offered by the Employer to his/her full-time employees who were employed at least 90 days during the period from July 1, 2007 to September 30, 2007; and each October 1 to September 30 thereafter.

**If:** The Employer passes **EITHER** the Primary Test, **OR** the Secondary Test,  
**Then:** The Employer does not have to pay the FSC assessment.

<sup>4</sup>A "seasonal employee" is an employee whose employment does not exceed 16 weeks, but only if DUA has certified the employee's position as "seasonal" under M.G.L. Chapter 151A (the Massachusetts Unemployment Insurance law).

<sup>5</sup>A "temporary employee" is an employee who works either full-time or part-time, whose employment is explicitly temporary in nature, and who does not work for more than 12 consecutive weeks during the period from October 1 through September 30.

<sup>6</sup>The exact amount of an employer's FSC assessment, if any, will be determined after the employer has completed his/her annual FSC report at: <https://fsc.detma.org>.

For more details, see: [www.mass.gov/fairshare](http://www.mass.gov/fairshare)

## Section 125 Plans

### What is it?

A Section 125 plan allows employees to pay for health insurance coverage on a pre-tax basis. A Section 125 Plan provides tax benefits to both the employee and the employer.

An employee who pays his/her health care coverage premiums on a pre-tax basis will pay less state income taxes, federal income taxes and federal FICA taxes. This tax savings could amount to as much as 40% of the cost of health care coverage. In addition, an employer pays less FICA withholding taxes for each participating employee.

**If:** An employer does not offer a Section 125 Plan that meets the regulations of the Health Connector ...

**Then:** The employer may be subject to the Free Rider Surcharge for those employees not offered a Section 125 Plan option who receive certain state-funded health services.

### Which employers does it apply to?

An employer with 11 or more full-time equivalent employees working at Massachusetts locations for at least one calendar month must adopt and maintain a Section 125 Plan that meets the regulations of the Health Connector. This is true regardless of whether the employer offers health insurance to his/her employees.<sup>1</sup>

### Which employees does it apply to?

Most employees must have the option to participate in the employer's Section 125 Plan.

However, an employer may exclude the following classes of employees from participating in its Section 125 Plan:

- employees who are less than 18 years of age;
- temporary employees;
- part-time employees working, on average, less than 64 hours per month;
- wait staff, service employees or service bartenders who earn, on average, less than \$400 in monthly payroll wages (tips are not included);
- student interns and student cooperative employees;
- seasonal employees who are international workers and have travel health insurance;
- student employees working for the educational institution they attend who are required by state law to participate in a qualifying student health insurance program; and
- employees covered under a multiemployer plan to which the employer contributes.

### When?

The requirement to adopt and maintain a Section 125 Plan went into effect on July 1, 2007.

### How does an employer adopt a Section 125 plan?

An employer can obtain a free [Section 125 Plan Handbook for Employers](#) which describes in detail how to adopt a Section 125 Plan. The handbook can be found at: <http://www.MAhealthconnector.org> in the section for Employers.

Employers may also consult their broker, benefits lawyer, payroll vendor and/or accountant for help with adopting a Section 125 Plan.

Note: Employers are not required to submit copies of their plan documents to the Health Connector unless requested by the Health Connector.

<sup>1</sup>An exception to this statement is the following: If an employer pays the full monthly cost of medical coverage for all his/her employees (and dependents, if available) not otherwise excluded by Health Connector regulation, then the employer is not required to adopt a Section 125 Plan.



## Free Rider Surcharge

(Formally known as the "Employer Surcharge for State-Funded Health Costs")

### What is it?

The Free Rider Surcharge is a surcharge on employers who do not comply with the requirement to establish a Section 125 Plan that meets the regulations of the Health Connector.

The surcharge is assessed for "state-funded health services"<sup>1</sup> that are incurred by employees and/or their dependents not offered participation in the employer's Section 125 Plan.

### Who does it apply to?

An employer may be subject to the Free Rider Surcharge if it meets all these criteria:

- The employer has 11 or more full-time equivalent employees, **AND ....**
- Employees or their dependents received "state-funded health services," **AND ...**
- These employees<sup>2</sup> were not offered a Section 125 Plan that meets the regulations of the Connector, **AND ...**
- These "state-funded health services" are at least \$50,000 in one hospital fiscal year.<sup>4</sup>

If an employer adopts and maintains a Section 125 Plan that is offered to all its employees (not otherwise excludable under the Health Connector regulations), and complies with the regulations of the Health Connector, then the employer is not subject to the Free Rider Surcharge for employees or dependents receiving state-funded health services.

An employer is not subject to the Free Rider Surcharge for those employees who are covered by certain collective bargaining agreements, nor for those employees who participate in the state's Insurance Partnership program.

### When?

The Free Rider Surcharge went into effect on July 1, 2007. For fiscal year 2007 (October 1, 2006 to September 30, 2007) the state Division of Health Care Finance and Policy (DHCFP) will determine state-funded health costs incurred only for the period from July 1, 2007 to September 30, 2007.

For employers who will be required to pay a Free Rider Surcharge for the fiscal year: DHCFP will notify them after the close of the fiscal year. This notice will include the date payment is due.

### How much is the surcharge?

The amount of the Free Rider Surcharge will vary by employer based upon the number of employees, the utilization of the Health Care Safety Net, total state-funded costs and the percentage of employees enrolled in the employer's health plan.<sup>3</sup>

<sup>1</sup>"State-funded health services" are health services that are paid for by the Health Safety Net Trust Fund.

<sup>2</sup>"These employees" refers to employees who themselves or their dependents received health care services paid by the state through the Uncompensated Care Trust Fund (also known as the "free care pool") or the Health Safety Net Trust Fund.

<sup>3</sup>The exact amount will be calculated by the Division of Health Care Finance & Policy (DHCFP). DHCFP will notify employers who are subject to the Free Rider Surcharge at the end of each hospital fiscal year.

<sup>4</sup>The hospital fiscal year runs from October 1 through September 30.

## Health Insurance Responsibility Disclosure (HIRD)

### What is it?

There are two separate employer HIRD responsibilities: filing an annual Employer HIRD Report, and proper collection of Employee HIRD Forms from appropriate employees.

#### **Employer HIRD Report (filed online annually):**

Employers must report annually certain information about their group health plan (if applicable) and their Section 125 Plan(s). Employers complete this annual report online as part of the annual Fair Share Contribution (FSC) reporting process at <https://fsc.detma.org> (described on pages 2-3 of this handbook).

#### **Employee HIRD Form:**

Each employee working at a Massachusetts location must sign and submit to his/her employer an Employee HIRD Form **if:**

- That employee declined to enroll in an employer-sponsored health plan that is offered, **AND / OR ...**
- That employee declined to use the employer's Section 125 Plan to purchase health coverage.

When completing an Employee HIRD Form, the employee must indicate whether he/she has an alternative source of coverage.

The Employer collects the signed Employee HIRD Forms from declining employees, and retains them for a period of three years.

### Who?

All Massachusetts employers with 11 or more full-time equivalent employees working at Massachusetts locations must meet this responsibility.

### When?

This requirement went into effect on July 1, 2007.

#### **Employer HIRD Report:**

Employers must complete the Employer HIRD Report online between October 1 and November 15 of each year.

#### **Employee HIRD Form:**

The Employer must obtain a signed Employee HIRD Form from each Employee required to sign within 30 days of the following:

- close of enrollment period, or September 30 if earlier, for annual open enrollments;
- close of applicable enrollment period for new hire enrollments;
- date participation terminates for enrolled employees who terminate coverage mid-year.

### Where to get HIRD Forms?

The Employer HIRD Report must be completed online at: <https://fsc.detma.org>. There are no paper Employer HIRD Report forms.

A blank Employee HIRD Form can be downloaded from the Health Connector's website at: <http://www.MAhealthconnector.org>.

## Insurance Partnership

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| <b>What is it?</b>                             | <p>The Insurance Partnership (IP) is a program that helps small employers pay for health insurance in the employer's group health plan. For each employee who participates in the program, the IP gives two subsidies: one to the employer, and one to the employee.</p>  |
| <b>Who does it apply to?</b>                   | <p><b>Employer Criteria:</b><br/>An employer is eligible for the IP program if he/she meets all these criteria:</p> <ul style="list-style-type: none"> <li>▪ The employer has 50 or fewer full-time employees, or is self-employed, <b>AND....</b></li> <li>▪ The employer offers (or plans to offer) comprehensive health insurance to his/her employees, <b>AND...</b></li> <li>▪ The employer contributes (or is willing to contribute) at least 50% of the cost of employer-sponsored health insurance that is purchased by the employee.</li> </ul> <p><b>Employee Criteria:</b><br/>An employee may be determined eligible for the IP program if he/she meets all these criteria:</p> <ul style="list-style-type: none"> <li>▪ The employee is between the ages of 19 and 64.</li> <li>▪ The employee is a resident of Massachusetts and meets certain citizenship requirements.</li> <li>▪ The employee has not been offered health insurance by his/her current employer in the past six months, and has not been eligible for health insurance through his/her spouse's employer in the past six months.</li> <li>▪ The employee has a family income that is at or below 300% of the Federal Poverty Level. (For 2007: 300% of the Federal Poverty Level is \$30,636 for 1 person).</li> </ul> |
| <b>When?</b>                                   | <p>Although the IP has been in operation since 1999, some changes have been made:</p> <ul style="list-style-type: none"> <li>▪ <b>Starting October 1, 2006:</b> The income limit was expanded to include employees with a family income at or below 300% of the Federal Poverty Level.</li> <li>▪ <b>Starting October 1, 2006:</b> The following eligibility criteria was added: An employee can only participate in the IP if he/she has not been offered health insurance by his/her current employer in the past 6 months, and has not been eligible for health insurance through a spouse's employer in the past 6 months.</li> <li>▪ <b>Starting July 1, 2007:</b> Self-employed individuals and self-employed couples can continue to participate in the IP and receive <b>one</b> subsidy as an employee. However, they are no longer eligible to receive <b>two</b> subsidies as both an employee and an employer.</li> </ul>   |
| <b>How much does the IP give to employers?</b> | <p>In order to decrease the employer's share of the premium cost for an employee's health plan, the IP provides a subsidy to the employer. The exact amount of the subsidy depends on what type of plan the employee is enrolled in.</p> <p>For example, the IP provides the following subsidy <b>to the employer:</b></p> <ul style="list-style-type: none"> <li>▪ For an individual plan up to \$400 per employee per year</li> <li>▪ For a two-person plan up to \$800 per employee per year</li> <li>▪ For a family plan up to \$1,000 per employee per year</li> </ul>   |
| <b>How much does the IP give to employees?</b> | <p>The IP also provides the following monthly subsidies <b>to the employee:</b></p> <ul style="list-style-type: none"> <li>▪ For an individual plan: up to \$150;</li> <li>▪ For a two-person plan: up to an additional \$150 for a covered spouse;</li> <li>▪ For a family plan: up to an additional \$210 per child covered by the policy</li> </ul>  |
| <b>For more information</b>                    | <p>Contact the IP at 1-800-399-8285 or visit their website: <a href="http://www.insurancepartnership.org">www.insurancepartnership.org</a></p>  |

## Frequently Asked Questions (FAQs)

*Note: The information below is subject to revision as health care reform implementation continues and new regulations are promulgated.*

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### **What are the new requirements for employers?**

#### Fair Share Contribution

Employers with 11 or more full-time equivalent employees (FTEs) who do not make a "fair and reasonable" premium contribution for their employees' health insurance will be subject to pay a Fair Share Contribution (FSC) payment. The FSC payment will be no more than \$295 per employee, per year. Liability for the payment is based on employer payroll and benefits data from October 1, 2006 to September 30, 2007.

#### Section 125 Plan/Free Rider Surcharge

Employers with 11 or more FTEs must adopt and maintain a Section 125 Plan that meets the regulations of the Health Connector. A Section 125 Plan allows employees to pay for health insurance coverage on a pre-tax basis, and is not subject to state and federal income taxes or federal FICA withholding taxes. A Section 125 Plan can benefit both the employer and the employee since they both will have lower payroll-related taxes. The requirement went into effect on July 1, 2007.

Employers with 11 or more FTEs who do not offer a Section 125 Plan that meets the regulation of the Health Connector to all employees (with some exceptions as detailed in the regulation) and who have employees and/or their dependents who receive "state-funded health services" may be subject to the Free Rider Surcharge.

#### Health Insurance Responsibility Disclosure (HIRD)

Employers with 11 or more FTEs are required to annually file an Employer HIRD Report online at <http://fsc.detma.org> as of each November 15. Such employers are also required to collect signed Employee HIRD Forms from employees who decline employer sponsored health insurance coverage, and/or decline to use their employer's Section 125 Plan to purchase health coverage. Blank Employee HIRD forms are available at <http://www.MAhealthconnector.org>.

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## Frequently Asked Questions (FAQs)

### **What is a “fair and reasonable” premium contribution for the purposes of determining the Fair Share contribution?**

An employer will make a “fair and reasonable” premium contribution if he/she passes either of the following tests:

Primary test: At least 25% of full-time employees participate (enroll) in the employer’s health insurance plan and the employer is making a financial contribution to it during the period from October 1 through September 30.

Secondary test: The employer offered to pay at least 33% of the premium cost of its health insurance plan for individual coverage offered to all full-time employees who are employed at least 90 days during the period of October 1, 2006 to September 30, 2007.

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### **If an employer offers more than a 33% premium contribution to one group of full-time employees, but less than 33% to another group of full-time employees, does it pass the secondary test?**

No. The employer must offer at least 33% to all full-time employees who were employed at least 90 days during the period from October 1 to September 30 in order to pass the secondary test.

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### **What are the rules for multi-state employers with Massachusetts locations?**

The employer must perform the primary and secondary Fair Share Contribution tests for all employees at Massachusetts locations, whether or not they are Massachusetts residents.

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### **If an employer does not make a “fair and reasonable” contribution to his/her employees’ health insurance premiums, what happens?**

The employer must pay an assessment of up to \$295 per employee, per year. An employer’s exact FSC assessment will be determined as part of the employer’s online fair share contribution report at <https://fsc.detma.org>.

## Frequently Asked Questions (FAQs)

### **If employees don't have health insurance, what consequences will they face as individuals?**

The Health Care Reform Law requires all Massachusetts residents age 18 and over (with some exceptions) to obtain and maintain health insurance beginning July 1, 2007. This is known as the individual mandate.

With some exceptions, individuals who cannot show proof of health insurance coverage on Dec. 31, 2007, will lose their personal income tax exemption when filing their 2007 Massachusetts income tax returns.

Failure to meet the individual mandate as of January 1, 2008 and beyond will result in stiffer penalties – capped at 50% of the least costly insurance premium available to the individual that meets the Health Connector's standard "Minimum Creditable Coverage" (MCC). For more information about the benefits required under MCC, see the Frequently Asked Questions (FAQ) at [www.MAhealthconnector.org](http://www.MAhealthconnector.org).

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### **Who will oversee enforcement of the individual mandate?**

The Massachusetts Department of Revenue (DOR) will enforce the individual mandate through the state personal income tax collection process.

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### **Will employers be subject to penalties if their employees refuse health insurance?**

No. If employees refuse employer-sponsored health insurance, the employer will not be held responsible.

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### **What will an employer be required to do if an employee declines employer-sponsored health insurance?**

Employers with 11 or more FTEs must collect and retain for three years an Employee HIRD Form for each employee who declines the employer-sponsored health plan and/or declines to use the employer's Section 125 Plan(s) to purchase health coverage. These forms are available at <http://www.MAhealthconnector.org>.

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