



ACA COMPLIANCE BULLETIN

MASSACHUSETTS IMPLEMENTS EMPLOYER PENALTIES FOR EMPLOYEES RECEIVING MEDICAID

OVERVIEW

On Aug. 1, 2017, Massachusetts enacted a [new law](#) intended to help fund MassHealth, the state's Medicaid program. Effective immediately, the new law temporarily:

- ✓ **Increases the existing Employer Medical Assistance Contribution (EMAC) amount;** and
- ✓ **Imposes an employer penalty** for each employee who has subsidized health coverage through MassHealth or the state Exchange instead of the employer's plan.

This law applies to Massachusetts employers with six or more employees, and **applies only through the 2019 calendar year**. In addition, a [supplemental budget bill](#) enacted on Nov. 6, 2017, requires these employers to **annually submit a related health insurance disclosure**.

ACTION STEPS

Employers should prepare to pay the new assessment in addition to existing EMAC amounts. Employers should also review their current health plan and related employee communications to ensure that eligible employees are informed and able to enroll in employer-sponsored coverage.

HIGHLIGHTS

- Massachusetts law will impose a penalty on employers whose employees enroll in subsidized health coverage instead of the employer's plan.
- The new provisions took effect immediately upon enactment.
- Regulations implementing the new law are expected to be issued soon.

IMPORTANT DATES

August 1, 2017

Massachusetts implemented new employer fines for employees with government-subsidized coverage.

December 31, 2019

The employer fines are scheduled to sunset beginning in 2020.

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Background

Beginning in 2014, Massachusetts enacted an Employer Medical Assistance Contribution (EMAC) to help fund subsidized health coverage for low-income residents. Employers with six or more employees are subject to the EMAC requirements.

Affected employers must pay contributions on the first \$15,000 of each employee's wages paid during the calendar year. Contribution amounts are determined by multiplying these wages by an assigned contribution rate.

In light of increasing MassHealth enrollment over the past few years, Massachusetts Governor Charlie Baker expressed concern that some employers were encouraging employees to waive employer-sponsored coverage in favor of enrolling in MassHealth coverage. The new law, entitled "An Act Further Regulating Employer Contributions to Health Care" (the Act) is intended to discourage this practice, as well as to help fund the MassHealth program.

Overview of the Act

To accomplish these goals, the Act **temporarily increases the EMAC contribution rate through the 2019 calendar year**, as follows:

- ✓ In general, from 0.34 percent of an employee's wages to **0.51 percent of an employee's wages**; and
- ✓ For employers that are newly subject to the EMAC requirements, from 0.12 percent of an employee's wages to **0.18 percent of an employee's wages**.

The increased contribution rate applies through Dec. 31, 2019. Beginning with the 2020 calendar year, the EMAC contribution rates will return to their previous percentages (0.34 percent and 0.12 percent, respectively).

In addition, effective Jan. 1, 2018, the Act imposes a **temporary employer penalty of up to 5 percent of the employee's wages** for each nondisabled employee who receives subsidized health coverage through MassHealth or the Massachusetts Exchange (called Massachusetts Health Connector), instead of enrolling in employer-sponsored coverage.

This employer penalty is also effective only through the 2019 calendar year, and is scheduled to automatically sunset beginning in 2020. By implementing this employer penalty, Massachusetts became the first state to penalize employers whose employees choose to enroll in government-subsidized health coverage. The Act directs state agencies to issue regulations implementing these new provisions, which are expected to be issued shortly.

The new law is intended to prevent employers from encouraging their employees to enroll in MassHealth coverage instead of employer-sponsored plans, as well as to help fund the MassHealth program.

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Reporting Requirements

Beginning in 2018, Massachusetts employers with six or more employees must **also file a related health care coverage reporting form**. The Massachusetts Division of Medical Assistance (DMA) is expected to create an employer health care coverage form for this purpose. This reporting requirement differs from Massachusetts' previous Health Insurance Responsibility Disclosure (HIRD) form requirement, which was repealed in 2013.

This Massachusetts employer reporting requirement is imposed **in addition to** the Affordable Care Act's (ACA's) federal employer reporting requirements under Internal Revenue Code (Code) Section 6055 and Section 6056. **Employers in Massachusetts that are subject to both the federal and state reporting must comply with all applicable requirements in order to avoid penalties.**

Under this new reporting requirement, covered employers must annually complete and submit a health care coverage form under oath, reporting:

- ✓ Whether the employer offered to pay or arrange for the purchase of health insurance; and
- ✓ Certain information about the health insurance offered (such as the premium cost, benefits offered, cost sharing details, eligibility criteria and other information deemed necessary by the DMA).

The information collected through the health care coverage form cannot be used to deny or terminate MassHealth eligibility for non-disabled individuals who would otherwise qualify for a program of medical benefits who have access to employer sponsored health insurance. In addition, any information that identifies individual employees by name or health insurance status or is protected health information must be treated as confidential.

A covered employer who knowingly falsifies or fails to file this information may be subject to a penalty of between \$1,000 and \$5,000 for each violation.