

New Massachusetts Employer Assessment Intended to Deter MassHealth Enrollment

Written by Thomas Barker, Christopher Feudo

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Since the beginning of this year's legislative session, Governor Baker has expressed concern over the growth in enrollment in MassHealth, the state's Medicaid program. A look at the numbers explains why. Prior to the enactment of the Affordable Care Act's Medicaid expansion in 2014, there were 1.3 million people enrolled in MassHealth. By April of this year, that number had increased by 28.4%, to nearly 1.7 million state residents.¹ The Governor had expressed concern that some employers were encouraging employees to switch from employer-sponsored coverage to MassHealth.² Although the ACA imposes a penalty, at the federal level, on employers whose employees enrolled in coverage through an Exchange, no similar penalty applied if instead employees switched from employer-sponsored coverage to coverage through Medicaid. Accordingly, Governor Baker has proposed an employer assessment at the state level.

On Friday, July 7, the Massachusetts Legislature completed action on the state's budget for fiscal year 2018. The final conference agreement contains a version of the Governor's proposal. The legislation imposes an assessment on employers that would be paid in addition to the employer medical assistance contribution enacted as part of the Commonwealth's landmark health insurance law and codified in section 189 of Chapter 149 of the General Laws (the "section 189 assessment"). Unlike the section 189 assessment, the new assessment only applies with respect to employees of an employer who receive health insurance coverage through the MassHealth program. The assessment is generally equal to 5% of the employee's wages (as that term applies in the context of the unemployment insurance program), and applies to employers that employ more than five employees in Massachusetts. The state's department of labor, the division of medical assistance, and the health insurance connector authority are authorized to promulgate regulations to implement the provision especially with respect to issues such as the length of time a worker would need to be enrolled in MassHealth in order for the assessment to apply.

Employers have a right to appeal an assessment imposed under the new budget provision. Appeals are taken to an independent hearing officer, who would be designated by the division of unemployment assistance. Following the appeal, an aggrieved party may appeal to Superior Court.

Assessments under the new budget provision can be collected as a tax by the Department of Revenue. However, the remedies available to an aggrieved employer to contest the assessment are limited to the appeals procedures described above; remedies available under the Commonwealth's tax laws to otherwise collect a debt are not available.

In addition to the assessment, Governor Baker also had proposed enrollment reforms to the state's MassHealth programs. However, those reforms were not adopted by the Legislature. As a result, the state's employers are expected to strongly oppose the final version of the budget.

Assuming that the new assessment takes effect, Massachusetts will be the first state to penalize employers whose employees receive health coverage through the Medicaid program. The new assessment goes beyond federal law which, as noted above, only applies to large employers whose employees receive coverage in the individual insurance market through a health insurance exchange that is subsidized by the federal government. It remains to be seen whether the new provision will stabilize MassHealth enrollment. It also remains to be seen whether Governor Baker's other proposals to reform MassHealth enrollment will be further addressed by the Legislature.

1. Kaiser Family Foundation, "Total Monthly Medicaid and CHIP Enrollment - Massachusetts," available here (last accessed July 8, 2017).

2. Priyanka McCluskey, “Baker plan would penalize employers that don’t offer insurance,” The Boston Globe (Jan. 17, 2017).

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