

114.5 CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY

114.5 CMR 17.00 EMPLOYER SURCHARGE FOR STATE-FUNDED HEALTH COSTS

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- (1) Scope and Purpose. 114.5 CMR 17.00 governs the surcharge assessed on employers that do not comply with the requirements of M.G.L. c. 151F to establish a Section 125 payroll deduction program for health insurance premiums in accordance with the rules and regulations of the Commonwealth Health Insurance Connector. The surcharge is assessed for state funded health costs incurred for its employees or employee dependents.
- (2) Authority: 114.5 CMR 17.00 is adopted pursuant to M.G.L. c. 118G, § 18B.
- (3) Effective Date. 114.5 CMR 17.00 is effective on January 1, 2007. The Employer Surcharge will be determined based on State Funded Health Costs for services provided on or after July 1, 2007.

17.02 Definitions

Meaning of Terms: As used in 114.5 CMR 17.00, unless the context otherwise requires, terms have the following meanings:

Client Company. A person, association, partnership, corporation or other entity that uses workers provided by an Employee Leasing Company pursuant to a contract.

Commonwealth Care Trust Fund. The trust fund established under M.G.L. c. 29, § 2000.

Connector. The Commonwealth Health Insurance Connector established under M.G.L. c. 176Q.

Dependent. An individual that meets the criteria defined in Title 26, Subtitle A, Chapter 1, Subchapter B, Part V, Section 152 of the Internal Revenue Code.

Division. The Division of Health Care Finance and Policy established under M.G.L. c. 118G or its designated agent.

Employee. An individual employed by an Employer subject to M.G.L. c. 151A.

Employee Leasing Company. A sole proprietorship, partnership, corporation or other form of business entity whose business consists largely of leasing employees to one or more Client Companies under contractual arrangements that retain for such employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire workers provided by the Employee Leasing Company; provided, however, that the leasing arrangement is long term and not an arrangement to provide the Client Company temporary help services during seasonal or unusual conditions.

Employer. An Employing Unit subject to M.G.L. c. 151A, and the commonwealth, its instrumentalities, political subdivisions, an instrumentality of a political subdivision, including municipal hospitals, municipal electric companies., municipal water companies, regional school districts and any other instrumentalities as are financially independent and are created by statute.

Employing Unit. Any individual or type of organization including any partnership, firm, association, trust, trustee, estate, joint stock company, insurance company, corporation, whether domestic or foreign, or his or its legal representative, or the assignee, receiver, trustee in bankruptcy, trustee or successor of any of the foregoing or the legal representative of a deceased person who or which has or had one or more individuals performing services for him or it within the Commonwealth of Massachusetts.

Fiscal Year. The hospital Fiscal Year from October 1 through September 30.

Free Care. Services eligible for payment from the Uncompensated Care Trust Fund under 114.6 CMR 11.00 or the Health Safety Net Trust Fund.

Health Insurance Responsibility Disclosure (HIRD). The form that employers and employees are required to submit about health insurance status under M.G.L. c. 118G, § 6C and 114.5 CMR 18.00.

Health Safety Net Trust Fund. The trust fund established pursuant to M.G.L. c. 118E, § 57.

Insurance Partnership Program. The premium assistance program established under M.G.L. c. 118E, § 9C.

Section 125 Plan. A cafeteria plan that meets the criteria defined in Title 26, Subtitle A, Chapter 1, Subchapter B, Part III, Section 125 of the Internal Revenue Code.

State-Funded Health Services. Services that are paid from the Uncompensated Care Trust Fund or the Health Safety Net Trust Fund as further defined in 114.5 CMR 17.03(4).

Uncompensated Care Trust Fund. The fund established pursuant to M.G.L. c. 118G, § 18.

17.03 Employers Subject to Surcharge.

- (1) General. An Employer is subject to surcharge if
 - (a) it is a Non-Providing Employer determined in accordance with 114.5 CMR 17.03(2); and
 - (b) any of its Employees are State-Funded Employees determined in accordance with 114.5 CMR 17.03(3); and
 - (c) its State-Funded Employees receive State-Funded Health Services that total at least \$50,000 in a fiscal year as determined in accordance with 114.5 CMR 17.03(4).
- (2) Non-Providing Employer. A Non-Providing Employer is an Employer of a State-Funded Employee as defined in 114.5 CMR 17.03 (3) that employs more than ten Employees and is not in compliance with the requirements of M.G.L. c. 151F to adopt and maintain a Section 125 cafeteria plan in accordance with the rules of the Connector.

(a) Number of Employees. An Employer has more than ten employees if the sum of total payroll hours for all employees for the period from October 1 through September 30 divided by 1,820 is greater than 10. Payroll hours include regular, vacation, sick, Federal Medical Leave of Absence, short term disability, long term disability, overtime and holiday payroll hours.

(b) Exemptions. An Employer is not a Non-Providing Employer if it is a signatory to or obligated under a negotiated, bona fide collective bargaining agreement that governs the employment conditions of the State-Funded Employee; or participates in the Insurance Partnership Program.

(c) Employee Leasing Companies. If there is a co-employment arrangement between a Client Company and an Employee Leasing Company, the Client Company is the Employer for determining the Employer Surcharge for State Funded Costs.

(3) State-Funded Employee. A State-Funded Employee is

(a) an Employee or Dependent of such Employee with more than three State-Funded admissions or visits during a Fiscal Year, or

(b) an Employee or Dependent of an Employee of an Employer whose Employees or Dependents make five or more State-Funded admissions or visits during a Fiscal Year.

(4) Determination of State-Funded Health Costs. The Division will determine the State-Funded Health Costs for a State-Funded Employee as follows:

(a) The Division will review all claims for State-Funded Health Services submitted for payment by hospitals and community health centers during a Fiscal Year.

(b) The Division will match claims to Employers, using all available data sources, including, but not limited to, the employee's application form, the provider claim or Emergency Room Bad Debt Form, the HIRD form, Office of Medicaid data, and data from the Department of Revenue and Division of Unemployment Assistance

(c) For each Fiscal Year, the Division will determine State-Funded Health Costs by multiplying each provider's claims for State-Funded Health Services by its percentage of total Uncompensated Care Pool or Safety Net Care payments divided by its total charges for all State-Funded Health Services.

(d) The Division will determine the employers of State-Funded Employee(s) as set forth in 114.5 CMR 17.03(3) and with \$50,000 or more in aggregate State-Funded Health Services.

(e) The Division will determine if an employer identified in paragraph 4 above is a Non-Providing Employer. The Division will make this determination using data from the HIRD form, the Connector, and data matches with the Department of Revenue and the Division of Unemployment Assistance.

(f) FY2007. For FY2007, the Division will determine State-Funded Health Costs only for the period from July 1, 2007 through September 30, 2007.

(5) Monitoring: The Division will monitor uncompensated care usage during the fiscal year and will notify an Employer when it determines that its State-Funded Employees have incurred State-Funded Health Care Costs exceeding \$25,000 in a fiscal year.

17.04 Determination of Surcharge Amount

- (a) General. The Division will determine the Surcharge amount by taking into account
1. the number of employees of the Employer;
 2. the number of admissions and visits for each State-Funded Employee;
 3. the total State-Funded Health Services attributed to the employer's State Funded Employees as determined under 114.5 CMR 17.03(4); and
 4. the percentage of employees for whom the employer provides health insurance.

- (b) Employer category.
1. The Division will assign each employer subject to surcharge to one of five categories as follows:

Category 1	11-20 Employees
Category 2	21-35 Employees
Category 3	36-50 Employees
Category 4	>50 Employees

2. The Division will determine the number of employees using data from the HIRD form and data from the Department of Revenue and the Division of Unemployment Assistance.

(c) Assessment Percentage. The Division will determine the percentage of State-Funded Health Costs to be assessed in accordance with the Tables in 114.6 CMR 17.05(d). The percentages in the Tables are based on the number of admissions and visits by State-Funded Employees during the fiscal year, the percentage of employees for whom the employer provides insurance, the Employer's compliance with the HIRD requirement, and the number of years the Employer is not in compliance with the requirement under M.G.L. c. 151F, § 2 to adopt and maintain a cafeteria plan that satisfies 26 U.S.C. § 125 and the rules and regulations of the Connector.

(d) Surcharge Determination.

CHART A

From 4 to-6 admissions or visits by one State-Funded Employee
or
From 5 to 10 visits for all State-Funded Employees

Year	Category 1	Category 2	Category 3	Category 4
2007	10%	15%	20%	25%

CHART B

From 7 to 14 admissions or visits by one State-Funded Employee
or
From 11 to 20 visits for all State-Funded Employees

Year	Category 1	Category 2	Category 3	Category 4
2007	20%	25%	30%	35%

CHART C

More than 15 admissions or visits by one State-Funded Employee

or
More than 21 visits by all State-Funded Employees

Year	Category 1	Category 2	Category 3	Category 4
2007	30%	35%	40%	45%

CHART D
Non-Compliance with HIRD Requirement

or
Employer Subject to Surcharge for second successive year

	Category 1	Category 2	Category 3	Category 4
	40%	45%	50%	55%

(e) Adjustment based on Percentage of Enrolled Employees. The Division will multiply the amount of state funded costs by the appropriate surcharge percentage chart. The product of this calculation will be reduced by the Employer's percentage of Enrolled Employees as determined under 114.5 CMR 16.03 (a). However, in no case shall the reduction be greater than 75%.

17.05. Collection of Surcharge

(a) Notification of Surcharge Liability. The Division will notify Employers subject to Surcharge at the end of each Fiscal Year. The Notice will contain the following information.

1. Employer name, FEIN, address
2. Name of State-Funded Employee. If employee dependent, name of Employee
3. Name of provider that submitted claim
4. Dates of service
5. Provider charges
6. Amount of State-Funded Health Costs per State-Funded Employee
7. Total Amount of State-Funded Health Costs
8. Surcharge Amount determined in accordance with 114.5 CMR 17.04
9. Date payment is due
10. Remittance advice with directions to submit payment

(b) If a State-Funded Employee is employed by more than one Non-Providing Employer at the time State-Funded Health Services are delivered, the Division shall assess a Surcharge on each Employer based on the proportion of total hours the Employee worked for each Employer during the Fiscal Year.

(c) Review. An Employer may challenge the Division's determination only if it can document either that an individual identified as a State-Funded Employee was not its Employee or Dependent of one of its Employees; or that the Employer is not a Non-Providing Employer.

1. The Employer must notify the Division in writing within 14 days of the notice that it contests the Division's determination. The Employer must submit documentation to support its claim with its notification.
2. The Division will review the documentation and make a determination based on its review of the documentation submitted and any other available data. The

Division will issue a written decision explaining its determination and any adjustment to the Employer Surcharge amount.

3. If the Division determines upon review that the Employer is not a Non-Providing Employer or it not otherwise responsible for the State-Funded Health Costs , no surcharge will be assessed.

4. If the Division does not adjust the Surcharge amount upon review, payment is due within seven days of the notification of the Division's decision. If the Division adjusts the Surcharge amount upon review, payment is due within fourteen days of the Division's decision.

(d) Penalties for nonpayment or late payment by the non-providing employer, including assessment of interest on the unpaid liability at a rate not to exceed an annual percentage rate of 18 per cent and late fees or penalties at a rate not to exceed 5 per cent per month.

(e) In the case of a transfer of ownership, a Non-Providing Employer's surcharge liability, shall in the case of a transfer of ownership, be assumed by the successor in interest to the non-providing employer's.

(f) All surcharge payments made under this Section shall be deposited into the Commonwealth Care Trust Fund, established by section 2000 of chapter 29.

17.06. Other Provisions

(1) No Employer shall discriminate against any employee on the basis of the employee's receipt of free care, the employee's reporting or disclosure of his employer's identity and other information about the employer, the employee's completion of a Health Insurance Responsibility Disclosure form, or any facts or circumstances relating to "free rider" surcharges assessed against the employer in relation to the employee. Violation of this subsection shall constitute a per se violation of chapter 93A.

(2) Reporting Requirements. Each Employer shall file or make available information which is required or which the Division deems reasonably necessary for calculating and collecting the Employer Surcharge.

(3) Penalties. If an Employer fails to file any data, statistics or schedules or other information required under this chapter or by any regulation promulgated by the division, the division shall provide written notice of the required information. If the employer fails to provide information within 2 weeks of receipt of said notice, or if it falsifies the same, it shall be subject to a civil penalty of not more than \$5,000 for each week on which such violation occurs or continues, which penalty may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction.

(4) Administrative Information Bulletins. The Division may issue administrative information bulletins to clarify policies, update administrative requirements and specify information and documentation necessary to implement 114.5 CMR 12.00.

(5) Severability. The provisions of 114.5 CMR 17.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, and such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 114.5 CMR 17.00 or the application of such provisions.

REGULATORY AUTHORITY

114.5 CMR 17.00 M.G.L. c. 118G.