

Client Alert

A report
for clients
and friends
of the Firm **January 2008**

Massachusetts Health Care Reform Act – January 31 Reporting Requirement Deadline

In April of 2006, Massachusetts enacted comprehensive health care reform legislation known as the **Massachusetts Health Care Reform Act** (the “Act”). The purpose of the Act is to ensure that every Massachusetts resident has adequate health coverage by requiring state residents to obtain health coverage that satisfies minimum guidelines, and by imposing various health care funding and reporting requirements on Massachusetts employers. Employers or sponsors of employment-sponsored health plans (“Plan Sponsors”) must fulfill the following two reporting requirements under the Act by **January 31, 2008** if they provide health care coverage to adult residents of Massachusetts:

1. Each employee residing in Massachusetts must be provided with a Form MA 1099-HC (the “Individual Mandate”);
2. An electronic report must be provided to the Commissioner of the Massachusetts Department of Revenue (“DOR”) verifying that the Form MA 1099-HC were sent to all participants who reside in Massachusetts.

The deadline for fulfilling these two reporting requirements each year is January 31, with the first reports being due on **January 31, 2008**.

Plan Sponsors who maintain insured health plans issued in Massachusetts may rely on their insurance carriers to satisfy these reporting requirements. We do, however, recommend that such Plan Sponsors confirm with their brokers or directly with their insurance carriers that the insurance carriers will comply with the reporting requirements.

Plan Sponsors who maintain self-insured health plans or insured health plans issued by an insurance carrier outside Massachusetts bear the responsibility of complying with the reporting requirements. However, insurance carriers doing business in Massachusetts or third-party administrators may comply with the reporting requirements on behalf of the Plan Sponsor. Accordingly, Plan Sponsors should contact their insurance carriers and/or third-party administrators to determine who will be responsible for sending the required forms and report.

The Individual Mandate

In order to fulfill the Individual Mandate requirement, Plan Sponsors or insurance carriers must forward a completed Form MA 1099-HC to all plan participants (including COBRA beneficiaries and retired participants) with coverage in effect as of December 31, 2007 who have a mailing address in Massachusetts.

The statements should include:

- Name of the Insurance Company
- Federal Tax ID for the Insurance Company
- Name of the Participant
- Participant’s Date of Birth
- Participant’s Member ID
- Mailing address for the Participant (on file with the insurance company)
- Name(s) of Participant’s Dependent(s) (if applicable)
- Date(s) of Birth of Participant’s Dependent(s) (if applicable)
- Member ID(s) of Dependent(s)
- Effective Date of Insurance Coverage of Participant and Dependent(s) (if applicable)

- Through Date of Insurance Coverage of Participant and Dependent(s) (if applicable)

A model Form MA 1099-HC is available at www.mass.gov.

Report to the DOR Commissioner

As noted above, the report to the DOR Commissioner must be provided electronically in accordance with the technical instructions provided at www.mass.gov.

Implications for Plan Sponsors

Plan Sponsors or insurance carriers that fail to provide a Form MA 1099-HC to Massachusetts residents or to file a report with the DOR Commissioner are subject to penalties of \$50 per individual, not to exceed a total of \$50,000 per year per violator. While penalties can be abated for reasonable cause, inadvertent oversight does not meet the reasonable cause standard.

In addition, failure to provide a Massachusetts resident with a Form MA 1099-HC may result in the resident incurring state income tax penalties.

ERISA Preemption

Whether the Act or any specific requirements of the Act are preempted by the Employee Retirement Income Security Act of 1974 ("ERISA") have yet to be addressed. It is possible that we may see a challenge to certain requirements under the Act based on ERISA preemption grounds.

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Client Alert

Proskauer's Employee Benefits and Executive Compensation Law Practice Group includes over 50 attorneys with significant and diverse tax, executive compensation and employee benefits law experience.

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