



RETAILERS ASSOCIATION  
OF MASSACHUSETTS

November 27, 2017

Richard A. Jeffers, Director  
Massachusetts Department of Unemployment Assistance  
19 Staniford Street  
Boston, MA 02114

VIA Email: [EMACSupplement@massmail.state.ma.us](mailto:EMACSupplement@massmail.state.ma.us)

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Dear Director Jeffers:

The Retailers Association of Massachusetts (RAM), established in 1918, is a statewide trade association of approximately 4,000 member companies. Our membership ranges from independent, "mom and pop" owned stores to larger, national chains operating in the general retail, restaurant and service sectors of the retail industry. The retail industry in the Commonwealth is the backbone of our local Main Streets, supporting over 928,000 jobs and operating in more than 73,000 brick-and-mortar establishments.

On behalf of the membership of RAM, I respectfully submit the following comments for your consideration as you review the proposed "Draft Regulations for EMAC Tier II."

These regulations were born out of changes in the law that were initially proposed by the Governor in H.3822, An Act relative to employer contributions to health care. That initial package included the two tiered EMAC assessment on employers, and also a series of significant reforms in the Medicaid/MassHealth program and commercial insurance market reforms. Unfortunately, the promised reforms have yet to be adopted by the Legislature, but employers are now facing a temporary \$400 million tax increase over the next two years, being unjustly singled out to pay for a solution to a problem that they did not create. The Commonwealth has not delivered in its pursuit of lower health care costs over the past decade, and commercial health insurance premiums, particularly for small business plans, have become increasingly unaffordable.

When the Connector failed at the launch of the ACA, many individuals were placed into taxpayer funded coverage that never should have qualified. The Commonwealth also began to allow those who were offered affordable, employer based coverage to turn down that coverage in favor of a cheaper – often free – plan from MassHealth. These taxpayer funded plans are far more generous than most small business plans. With no gate to stop them, individuals were making sound financial decisions for themselves and their families, and there was nothing the employer could do about it.

Yet, to date, the Connector has never verified that a member is actually employed by the employer they self-identify with on their application for subsidized coverage. The Connector has not verified that the member does not have access to affordable coverage. This is one area of the regulation that should be modified to fall in line with federal law. Employers who who make an offer of affordable, minimum value coverage to employees but whose employees decline that coverage and still go to Mass Health or Connector Care, should not be liable for the EMAC Supplement. We specifically suggest the following change:

**(2) Liability for Employer Medical Assistance Contribution Supplement.** An employer subject to the EMAC Supplement for a quarter is liable for payment of the EMAC Supplement applicable to that quarter if one or more of its employees received health insurance coverage either through the MassHealth agency or through ConnectorCare for a continuous period of at least fourteen days;; provided, an employer shall not be liable for the EMAC Supplement in a quarter for any of its employees who in that quarter **1) have health insurance coverage through the MassHealth agency either on the basis of permanent and total disability as defined under Title XVI of the Social Security Act or under applicable state laws or as a secondary payer because such employees are enrolled in employer-sponsored insurance or, 2) received from the employer an offer of qualifying healthcare coverage, as defined by the Affordable Care Act.**

Also in that same Section 3(2), an employer “subject to the EMAC Supplement for a quarter is liable for payment of the EMAC Supplement applicable to that quarter if one or more of its employees received health insurance coverage either through the MassHealth agency or through ConnectorCare for a continuous period of at least fourteen days.” In the retail and restaurant industries, employee turnover is high. Most employers utilize a waiting period of 60 or 90 days before an employee becomes benefits eligible, mainly because you do not know if that employee is going to stay with you that long. Under this scenario, the “fourteen days” threshold for liability of the EMAC Supplement is simply too low, and burdensome for the small employer. A 90 day waiting period would be fair. At a minimum, the EMAC Supplement should not kick in until wages are shown for the same employee in two consecutive quarters. This would help to mitigate the issue of high employee turnover.

We would also ask the Department to consider a quarterly cap on the EMAC Supplement amount that an employer would pay per employee. While we know that the current system is simply wage based, quarterly caps would allow employers to spread their costs more evenly over the course of the year, rather than heavily weighting payments in the first two quarters. This would also provide a more balanced and fair system to those employers of seasonal and part time workforces. A per employee quarterly cap of \$187.50 should be considered.

When the Department began this process, it was widely held that the federal penalties contained within the ACA would never be implemented. That has now changed. Massachusetts employers have begun to receive letters from the I.R.S. saying that they

owe a tax penalty for 2015 because they failed to offer health insurance. This is occurring despite the fact that the MA Health Connector has never notified any Massachusetts employer that they have an employee receiving a subsidy and might be subject to a tax penalty – as required by law.

In a September 8<sup>th</sup> letter to the federal government, the Governor requested transitional relief from the federal employer shared responsibility requirements, finding that “the federal employer mandate is not meeting state needs,” and highlighting that the “federal penalties have never been enforced.” The request continues, “To remedy this concern, Massachusetts proposes to work with the Treasury Department and the Department of Health and Human Services (“the Departments”), seeking transitional relief from the federal employer mandate and the related reporting requirements, while reviving a comprehensive state approach to ensuring employers appropriately contribute to health coverage effective January 1, 2018.”

Given that the referenced “state approach” is the EMAC Supplement, and that the federal government has in fact begun to issue tax penalties and enforce the federal mandate, we would urge the Department to halt implementation of the EMAC Supplement until it can be determined that Massachusetts employers will not be subject to double reporting requirements and double tax penalties.

In closing, employers have been left without a carrot – attractive lower cost plan options – or a stick – employees don’t have to take up their offer and can still get on a public plan – when it comes time to talk to their employees about health insurance. The new tax, taken on its own, will do nothing to address the ever rising costs in the MassHealth program or to abate the appetite of the provider community for more and more taxpayer and premium dollars. Reform of the Medicaid program is badly needed. Until we actually are willing to tackle substantive Medicaid reform, we should not expect to see cost growth slow at all. It is of major concern to our members that the EMAC Supplement is proposed to be implemented on January 1 for any employee on public health assistance, absent any effort by the state to reform the Medicaid program. Our members feel strongly that if true Medicaid cost savings and reforms do not occur, and if premium fairness isn’t delivered for small business and their employees who pay their own way in the merged market, then the EMAC Supplement should be rescinded.

Thank you.

Sincerely,



Jon B. Hurst  
President