



SHIFTING GEARS ON APPEALS OF THE BIG EMAC ATTACK

By now you may be hearing from clients that their EMAC Supplement appeal request – filed with the DUA within 15 days of receiving their 1st quarter EMAC Supplement assessment -- has been summarily denied. This is less than desirable news for employers with significant EMAC Supplement liabilities. “So now what?”, your client asks. Read on for the answer.

For those under the proverbial rock, the EMAC Supplement is a two-year targeted assessment that is 5% of the first \$15,000 in wages paid to an employee receiving MassHealth or subsidized ConnectorCare coverage during the quarter (capped annually at \$750 per affected employee). This assessment is paid by the employer -- a tax/revenue grab by the state based on wages paid and NOT hours worked.

WHY WAS THE APPEAL REQUEST DENIED?

The appeal request was denied because the DUA appeal process is (perhaps intentionally so) incredibly limited in scope to statutory matters like the employer having less than 6 employees, the employee being an independent contractor and the employee having less than 56 continuous days of qualifying coverage.

Unfortunately, these limited reasons for DUA appeal do not address why most employers are being assessed in the first place. The two most common complaints by employers is that employees on the EMAC listing are either:

- Also enrolled in the employer’s group health plan making any MassHealth coverage secondary –and thus the employee is not EMAC assessable, or
- Enrolled in or simply eligible for employer sponsored coverage that meets MV and is affordable under the ACA – making the employee ineligible for a federal premium tax credit for ConnectorCare coverage and, therefore, not EMAC assessable.

THE NEW EMPLOYEE INFORMATION FORM TO THE RESCUE

The Baker Administration has received an earful from angry employers reeling from their 1st quarter EMAC Supplement assessments and the Administration has been moved to QUICKLY remediate the situation – not to mention that DUA has been inundated with appeal requests (that would have been denied anyways given the narrow scope of the DUA appeal).



A new EMAC Employee Information Form is now available on the DUA website here:

https://www.mass.gov/files/documents/2018/05/11/EMAC%20employee%20data%20form%205-11_0.pdf

This form creates a new process by which employers may request a MassHealth or Connector redetermination of eligibility for MassHealth or subsidized ConnectorCare coverage for listed employees in order to determine whether or not particular EMAC Supplement charges are correct. This process clearly seems to be a better option for employers given their concerns with employee listings.

Employers wishing to use this new Form were required to file it by May 15, 2018. However, the due date for **use of these forms for 1st quarter inquiries has been extended to June 30, 2018. This is huge and should give employers sufficient time to refer listed employees for review by the appropriate agency.**

THE NEW EMAC EMPLOYEE INFORMATION FORM

An employer wishing to use this process will use a separate form for each listed employee it wants reviewed. The form can be used to review the following situations:

1. **The employee is enrolled in employer sponsored insurance (ESI) or in union insurance for which the employer pays a premium contribution**
2. **The employee is not a Massachusetts resident**
3. **The employee has income which is inconsistent with subsidized public health coverage eligibility**
4. **Other, as specified by the employer**

FILING THE FORM

The completed, signed forms and any attachments with supporting information must be sent via secure email to EMACemployeeedata@State.MA.US.

Remember: one form and one email submission per employee – do not batch multiple forms and send via a single email. Generally, employers must submit forms no later than 15 days after EMAC Supplement payments are due for the quarter. As indicated earlier in this bulletin, **the due date for use of these forms for 2018 1st quarter inquiries has been extended to June 30, 2018.**

WHAT HAPPENS AFTER THE FORMS ARE FILED?

As described in the form:

- Investigation -- MassHealth and/or the Connector (depending on the employee's enrollment) will investigate the employer's referral for review. The length of time taken by the agencies to make determinations on each form will depend on the nature of the discrepancy, the accuracy of the information submitted, and the volume of submissions.
- Employee Privacy Maintained -- Interestingly, neither MassHealth nor the Connector will contact the employer directly with any investigation results due to restrictions on the disclosure of member information under federal and state privacy laws.
- Employer Credit Issued -- If the employer's information results in a determination that an employee was either enrolled in qualifying employer sponsored insurance or was not eligible for subsidized benefits, then DUA will revise the amount of EMAC Supplement liability generated by the employee(s) at issue and credit the employer's EMAC Supplement account in the following quarter

The final bullet seems a bit odd. Amounts may be credited to the next quarter, but employers will not know which employees the credits are attributable to or how the DUA calculated the credits.

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