

## 956 CMR 6.00: DETERMINING AFFORDABILITY FOR THE INDIVIDUAL MANDATE

## Section

- 6.01: Authority
- 6.02: Purpose
- 6.03: Scope
- 6.04: Definitions
- 6.05: Determining Affordability
- 6.06: Annual Certification
- 6.07: Hardship Appeals
- 6.08: Grounds for Hardship Appeals
- 6.09: Hearings
- 6.10: Administrative Information Bulletins
- 6.11: Severability of Provisions

6.01: Authority

956 CMR 6.00 is promulgated in accordance with the authority granted to the Connector by M.G.L. chs. 111M, 118H, and 176Q.

6.02: Purpose

The purpose of 956 CMR 6.00 is to implement the provisions of M.G.L. chs. 111M, 118H, and 176Q, pertaining to how state agencies, and Massachusetts residents will determine whether health insurance is affordable so that individuals who have not purchased health insurance may then determine whether they are obligated to pay a penalty pursuant to M.G.L. c. 111M, § 2. In general, if an individual is deemed able to afford to purchase insurance in accordance with 956 CMR 6.00 and does not do so, that individual will be assessed the appropriate penalty by the Massachusetts Department of Revenue. Individuals who can demonstrate that no Connector health plans are affordable for them under the standards set pursuant to 956 CMR 6.00 may seek a certificate that the penalty should not be assessed. At the same time, the Connector will implement, through 956 CMR 6.00, an appeal process that will set standards allowing residents to claim that a penalty should not be assessed because of financial hardship that prevented them from purchasing coverage. 956 CMR 6.00 arises out of the health care reform enactments in St. 2006, ch. 58 which provide for an individual mandate designed to encourage Massachusetts residents to purchase health insurance.

6.03: Scope

956 CMR 6.00 contains the Connector's regulations governing how state agencies and individuals will determine whether, based on their income and other factors, Massachusetts residents are able to afford to purchase health insurance, as specified in M.G.L. chs. 111M, 118H, and 176Q. The Connector also promulgates other regulations, and publishes other documents affecting its programs, including statements of policy and procedure, conditions of participation, guidelines, billing instructions, administrative information bulletins and other documents as necessary

6.04: Definitions

As used in 956 CMR 6.00, the following terms shall mean:

Adjusted Gross Income – as defined in the Internal Revenue Code § 62.

Appellant – an individual who brings:

- (a) a hardship appeal under 956 CMR 6.07; or
- (b) an appeal of the denial of a certificate under 956 CMR 6.06.

6.04: continued

Assessment - the imposition of the penalty when either:

- (a) a Massachusetts resident income tax return is filed, as provided in M.G.L. c. 62C, § 26(a); or
- (b) the Commissioner of Revenue issues a deficiency assessment, as provided in M.G.L. c. 62C, § 26(b).

Board - the Board of the Commonwealth Health Insurance Connector Authority, established by M.G.L. c. 176Q, § 2.

Commonwealth Health Insurance Connector Authority or Connector or Authority - the entity established pursuant to M.G.L. c. 176Q, § 2.

Couple - two persons who are married and filed the Massachusetts resident income tax return as persons married filing jointly.

Dependent - as defined in Internal Revenue Code § 152.

Family - shall include any couple or head of household and their dependents.

Head of Household - a person who meets the definition in Internal Revenue Code § 2(b) and who files the Massachusetts resident income tax return as a head of household.

Hardship Appeals - any appeal brought under 956 CMR 6.07 through a from provided by the Department of Revenue in 830 CMR 111M.2.1

Hearing - an administrative, adjudicatory proceeding pursuant to 801 CMR 1.00 to determine the legal rights, duties, benefits or privileges of Appellants.

Individual - a resident of the Commonwealth who files the Massachusetts resident income tax return as an individual or as a married person filing separately .

Minimum Creditable Coverage or Creditable Coverage - As defined in 956 CMR 5.03.

Penalty - the penalty imposed by M.G.L. c. 111M, § 2, for failure to obtain health insurance meeting standards for minimum creditable coverage.

Potential Assessment - the filing of a Massachusetts resident income tax return showing that a penalty is owed, accompanied by the filing of an appeal of that penalty under 956 CMR 6.07(2).

Premium or Premiums - The periodic payment made by a resident for health insurance. The premium does not include any portion of the insurance cost paid by an employer or government agency.

Resident - as defined under M.G.L. c. 111M.

Section 125 Plan - as defined in 956 CMR 4.05.

6.05: Determining Affordability

(1) Affordability Schedule.

- (a) The Board will formally vote to adopt an affordability schedule annually, no later than June 1<sup>st</sup> of every year, that shall establish the percentage of an individual's adjusted gross income that the individual can be expected to contribute toward the cost of health insurance that meets minimum creditable coverage standards. The Board shall also consider whether the affordability schedule should establish percentages of adjusted gross income that couples without dependents and/or families can be expected to contribute toward the cost of health insurance that meets minimum creditable coverage standards. The affordability schedule shall be issued for use by the Massachusetts Department of Revenue, other state agencies, and members of the public for their use in determining whether residents who have not purchased health insurance can purchase affordable insurance and are thus subject to a penalty for their failure to purchase insurance.

6.05: continued

(b) The Board shall allow public comments before it formally votes to adopt its annual affordability schedule.

(c) Before formally voting to adopt, the Board will provide a copy of the schedule to the House and Senate Committee on Ways and Means and the Joint Committee on Health Care Financing.

(2) Schedule of Premiums.

(a) The Board will formally vote to adopt a Premium schedule that establishes the lowest levels of Premium (or Premiums) that are deemed by the Board to be available for minimum creditable coverage for Individuals, couples without dependents, and families for a calendar year. The Premium schedule may be combined with the affordability schedule.

(b) The Board shall consider deductibles in setting the Premium schedule and shall also allow for variances based on age and rate basis types.

(c) The Board shall allow public comments before it formally votes to adopt its Premium schedule.

(d) The Board will deliver the Premium schedule to the Massachusetts Department of Revenue by December 1<sup>st</sup> of each year.

6.06: Annual Certification

(1) The Connector will accept requests from residents who:

(a) will be filing a Massachusetts resident income tax return;

(b) have sought to purchase health insurance coverage through plans from the Connector;  
and

(c) seek a certificate stating that no Connector health plans are affordable to them.

(2) Requests for certificates must be received by the Connector before the first day of December in the tax year for which the penalty may be assessed. Furthermore, requests for certificates will only be considered if the request is made in the same tax year for which the penalty may be assessed.

(3) The Connector will determine whether to grant a request for a certificate by considering the resident's situation, including, without limitation, the affordability and Premium schedules and all the factors set forth in 956 CMR 6.08.

(4) The Connector will notify the resident in writing of its decision on whether to grant a certificate.

(5) Any person aggrieved by a decision of the Connector on a request for a certificate has a right to appeal that decision and request a hearing. The appeal must be received by the Connector within 30 days of the notice of decision.

(6) For 2007, any certificates of exemption will be granted for the full calendar year. For 2008 and years thereafter, the Connector may grant a certificate of exemption in whole or in part, depending on whether it determines that the Appellant has established that grounds for the exemption existed for all or part of the calendar year for which the exemption is sought.

6.07: Hardship Appeals

(1) Any person aggrieved by the assessment or potential assessment of a penalty may bring a hardship appeal in accordance with the provisions of 956 CMR 6.07. Filing a hardship appeal in accordance with 956 CMR 6.07 will be the only means for a taxpayer to appeal the penalty.

(2) All hardship appeals must be filed by completing the form provided by the Department of Revenue for that purpose. The Connector will not accept any other form of appeal.

(3) A hardship appeal form must be filed within the time limits established by M.G.L. c. 62C, § 37 for the filing of an abatement.

## 6.07: continued

- (4) A person aggrieved by the potential assessment of a penalty may file the hardship appeal form along with his Massachusetts resident income tax return. In such a case, the penalty will not be assessed unless and until the appeal has been decided adversely to the taxpayer.
- (5) After receipt of the hardship appeal form, the Connector may request the Appellant to provide further information about the grounds for the hardship appeal. Failure to respond to this request within the time specified in the request will constitute grounds for dismissal with prejudice of the hardship appeal.
- (6) The Connector may authorize the Department of Revenue to accept on its behalf hardship appeals and to request further information from Appellants. The Connector may further authorize the Department of Revenue to conduct an initial review of the information supplied by the taxpayer, and to allow the appeal if, based on information supplied by the taxpayer, the Department determines in accordance with standards set by the Connector that the taxpayer has established grounds for the penalty to be waived. If, after initial review the Department does not allow the appeal, it will refer the matter to the Connector for further review pursuant to 956 CMR 6.09.
- (7) For 2007, any hardship appeals granted will be granted for the full calendar year.
- (8) For 2008 and years thereafter, the Connector may waive the penalty in whole or in part, depending on whether it determines that the Appellant has established that grounds for the hardship appeal existed for all or part of the calendar year for which the penalty was assessed.
- (9) A taxpayer will be entitled to file only one hardship appeal to challenge the imposition of a tax penalty for a particular tax year. After that appeal is heard and decided, the Connector will dismiss any subsequent appeals concerning the same tax penalty or tax year without a hearing.

6.08: Grounds for Hardship Appeal

- (1) As grounds for the hardship appeal, the Appellant must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship. In determining whether a hardship existed, the Connector shall consider whether, within the tax year for which the penalty was assessed, the Appellant:
- (a) was homeless, or was more than 30 days in arrears in rent or mortgage payments, or received an eviction or foreclosure notice;
  - (b) received a shut-off notice, or was shut off, or was refused the delivery of essential utilities (gas, electric, oil, water, or telephone);
  - (c) for the period ending December 31, 2008, had non-cosmetic medical and/or dental out-of-pocket expenses (exclusive of premium payments), totaling more than 7.5% of his household's adjusted gross income that were not subject to payment by a third-party;
  - (d) incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of:
    1. domestic violence;
    2. the death of a spouse, family member, or partner with primary responsibility for child care where that spouse, family member or partner had shared household expenses;
    3. the sudden responsibility for providing full care for an aging parent or other family member, including a major, extended illness of a child that requires a working parent to hire a full-time caretaker for the child; or
    4. a fire, flood, natural disaster, or other unexpected natural or human-caused event causing substantial household or personal damage for the individual filing the appeal; or
  - (e) experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.
- (2) In considering whether the Appellant could afford insurance that met minimum creditable coverage standards, the Connector may also consider, with respect to the tax year for which the penalty was assessed:

6.08: continued

- (a) Whether the Appellant had access to a Section 125 Plan through an employer;
  - (b) Whether the Appellant had access to health insurance through an employer, union or other group and, if so, whether that insurance met minimum creditable coverage standards and what was the cost of that insurance (including the premiums, deductibles, copayments and co-insurance);
  - (c) If the Appellant purchased health insurance, what was the cost to the Appellant of that insurance, including the premiums, deductible, copayment and co-insurance;
  - (d) If the Appellant purchased health insurance, the extent to which it deviated from or substantially met minimum creditable coverage standards;
  - (e) When the Appellant last had the opportunity to purchase insurance through an employer, relative to July 1, 2007, the effective date of the requirement to obtain health insurance under M.G.L. c. 111M.; and
  - (f) Whether Appellant's family size was so large that reliance on the affordability schedule for a family would result in a significant inequity
- (3) The Connector shall consider any other grounds that an Appellant may claim demonstrates that he could not afford to purchase health insurance that met minimum creditable coverage standards.

6.09: Hearings

- (1) Appeals brought to the Connector under either 956 CMR 6.06 or 6.07 will be reviewed by the Connector. The Connector may approve or deny the appeal based on the appeal request, documents, and other written materials that the Appellant provides.
- (2) The Connector may dismiss any request for hearing if:
- (a) it is not received within the time periods specified in 956 CMR 6.07;
  - (b) it does not state a ground for appeal or is not a valid ground for appeal under 956 CMR 6.08;
  - (c) the appeal is subject to dismissal under 801 CMR 1.02; or
  - (d) the appeal is withdrawn by the Appellant or his representative.
- (3) The Connector may refer the appeal to a hearing conducted by a hearing officer designated by the Connector. The decision of the hearing officer will be the final decision of the Connector.
- (4) Hearings will be conducted using the policies and procedures set forth for informal hearings pursuant to 801 CMR 1.02 or in any administrative bulletins issued by the Connector pursuant to 956 CMR 6.10. The hearing may be conducted by telephone.
- (5) The final decision of the Connector will be subject to an action for judicial review under M.G.L. c. 30A, § 14.

6.10: Administrative Information Bulletins

The Connector may issue administrative information bulletins that set out policies that are consistent with the substantive provisions of 956 CMR 6.00. In addition, the Connector may issue administrative information bulletins which specify the information and documentation necessary to implement 956 CMR 6.00. The Connector may also issue administrative bulletins containing interpretations of 956 CMR 6.00 and other information to assist persons subject to 956 CMR 6.00 meet their obligations under 956 CMR 6.00.

6.11: Severability of Provisions

The provisions of 956 CMR 6.00 are hereby declared to be severable. If any such provisions or the application of such provisions or circumstances shall be held invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 956 CMR 6.00 or the applications of such provisions or circumstances other than those held invalid.

REGULATORY AUTHORITY

956 CMR 6.00: M.G.L. chs. 111M, 118H, and 176Q.