



Repeal of Employer-Related Regulations (VOTE)

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Agenda

- Overview of policies / regulations being proposed for repeal
 - Employer Fair Share Contribution
 - Section 125 Requirement
 - Health Insurance Responsibility Disclosure (HIRD)
 - Free Rider Surcharge
- Timeline of regulatory process
- Staff recommendation and vote

Background on Employer-Related Regulations



- Chapter 224 of the Acts of 2012, transferred authority and regulatory responsibility of the following regulations from CHIA to the Health Connector
 - Free Rider Surcharge
 - Health Insurance Responsibility Disclosure requirement (HIRD)
 - Employer Fair Share Contribution program
- The Health Connector Board unanimously voted to issue those regulations under the Health Connector’s authority as final on May 9, 2013 and they were subsequently published in the Massachusetts Register on May 24, 2013
- Additionally, under the Commonwealth’s health reform law, Chapter 58 of the Acts of 2006, the Health Connector was given regulatory authority over another employer-related health reform policy, the Section 125 Requirement
- The Fair Share Contribution was repealed effective July 1, 2013 via Chapter 38 of the Acts of 2013 (the Fiscal Year 2014 budget)
- The Section 125 Requirement, HIRD and the Free Rider Surcharge were repealed on March 17, 2014 in Chapter 52 of the Acts of 2014 (an FY2014 Supplemental Appropriations Act)
- Given the repeal of the underlying statutes, the Health Connector’s accompanying regulations no longer have legal force. For these reasons, we are proposing to repeal the regulations to minimize any confusion about their legal effect

Fair Share Contribution (956 CMR 11.00)



- Policy background:
 - Part of Chapter 58 of the Acts of 2006
 - Assesses employers with 11+ FTEs that do not make a “fair and reasonable contribution” to its employees’ health insurance
 - Employer faces a per employee assessment of up to \$295 per FTE annually
 - Revenue from assessment is used to finance the Commonwealth Care Trust Fund, in part
- Statutory repeal background:
 - In light of ACA implementation (which includes its own employer responsibility policies and provisions), the Fair Share Contribution policy was repealed in the FY2014 budget, effective July 1, 2013

Section 125 Cafeteria Plans (956 CMR 4.00)



- Policy background:
 - Part of Chapter 58 of the Acts of 2006
 - Requires employers to provide a Section 125 plan that allows employees to pay health insurance premiums using pre-tax wages
 - Enforced through the Employer HIRD and the Free Rider Surcharge
- Statutory repeal background:
 - Guidance issued by the US Dept. of Labor and the IRS stated that, starting in 2014, employers can no longer offer Section 125 plans to employees to purchase non-group health insurance without an employer contribution
 - This language appeared incompatible with the provisions of 956 CMR 4.00, which requires employers to offer Section 125 plans under which an employee can purchase health insurance without any employer contribution
 - As such, the statute (Ch. 151F) was repealed in an FY2014 Supplemental Budget

Employer Surcharge for State Funded Health Costs (Free Rider Surcharge) (956 CMR 9.00)



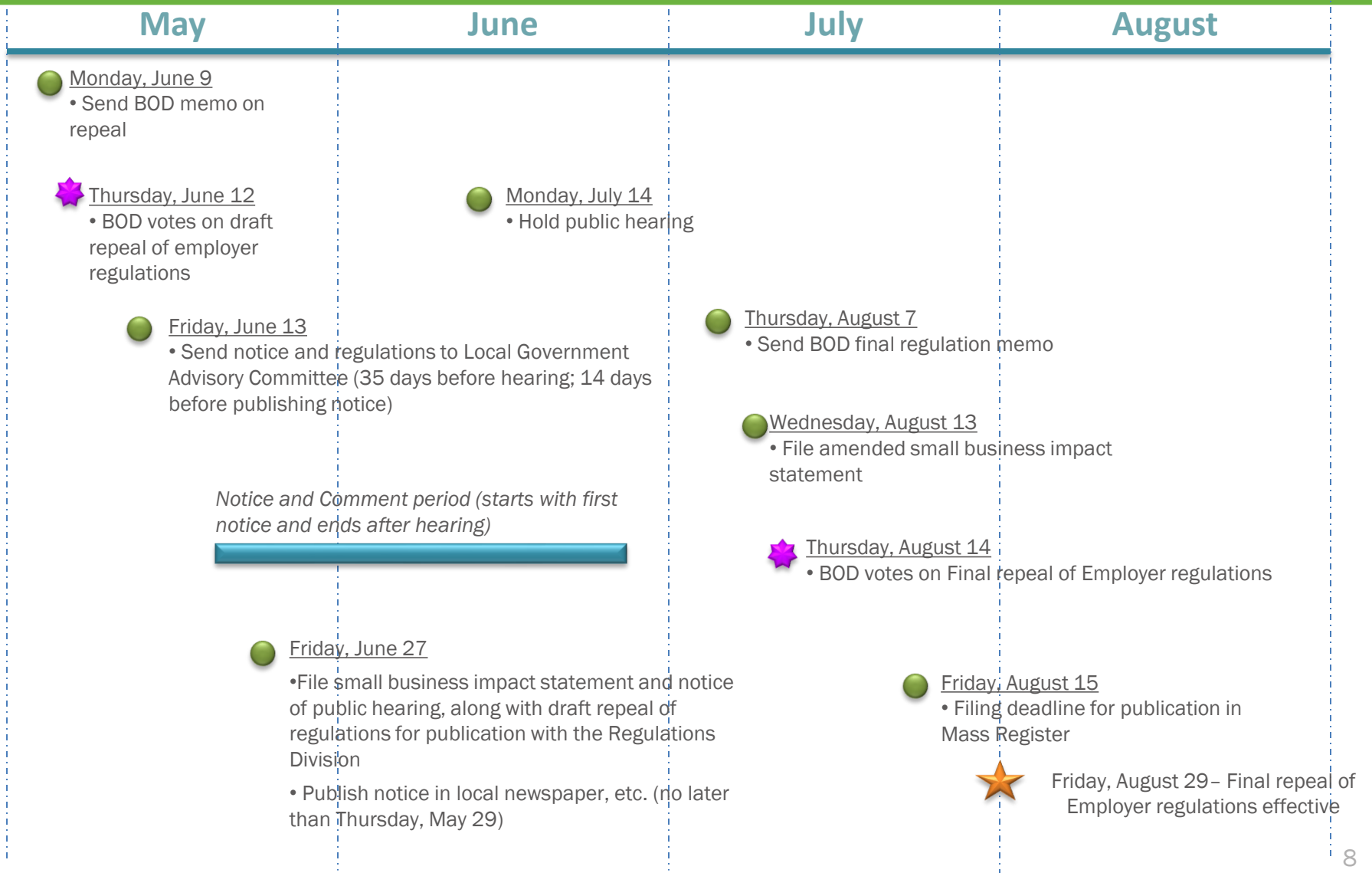
- Policy background:
 - Part of Chapter 58 of the Acts of 2006
 - Employers with 11+ FTEs in MA are required to provide a Section 125 plan that allows employees to pay health insurance premiums using pre-tax wages
 - Employers without Section 125 plans whose workers access medical care through Health Safety Net may be assessed a penalty between 20%-100% of the cost of the medical services that exceed \$50,000
- Statutory repeal background:
 - The Free Rider Surcharge statute (Ch. 176Q, section 18) was repealed in a Supplemental FY2014 Budget as a result of the fact that it was designed to support the Section 125 Cafeteria Plan Requirement (which was determined to be in conflict with new federal guidance and also repealed)

Health Insurance Responsibility Disclosure (HIRD) (956 CMR 10.00)



- Policy background:
 - Part of Chapter 58 of the Acts of 2006
 - Employer HIRD Form—Massachusetts employers with 11+ FTEs are required to regularly submit information about the employer’s compliance with the requirement to adopt and maintain a Section 125 Plan
 - Employee HIRD Form—collected by employers from each employee who declines to enroll in employer-sponsored insurance or declines to use the employer’s Section 125 Plan
- Statutory repeal background:
 - *Employee* HIRD repeal (Ch. 176Q, section 17) was included in the Governor’s FY2014 budget in July 2013, to be replaced by a new noticing requirement regarding Section 125 eligibility
 - *Employer* HIRD repeal (Ch. 176Q, section 17) was included in a Supplemental FY 2014 Budget as a result of the fact that it was designed to support the Section 125 Cafeteria Plan requirement (which was determined to be in conflict with new federal guidance and also repealed)

Timeline



Staff Recommendation



- Staff recommends that the Board repeal the following regulations:
 - 956 CMR 11.00 (Fair Share Contribution)
 - 956 CMR 4.00 (Section 125 Cafeteria Plans)
 - 956 CMR 9.00 (Free Rider Surcharge)
 - 956 CMR 10.00 (HIRD)

VOTE



Move that the Board approve the draft repeal of 956 CMR 11.00 (Fair Share Contribution); 956 CMR 4.00 (Section 125 Cafeteria Plans); 956 CMR 9.00 (Free Rider Surcharge) and 956 CMR 10.00 (HIRD), as set forth in the staff recommendation.