



Final Repeal of Employer-Related Regulations (VOTE)

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Board of Directors Meeting, August 14, 2014

Agenda

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

Background on Employer-Related Regulations



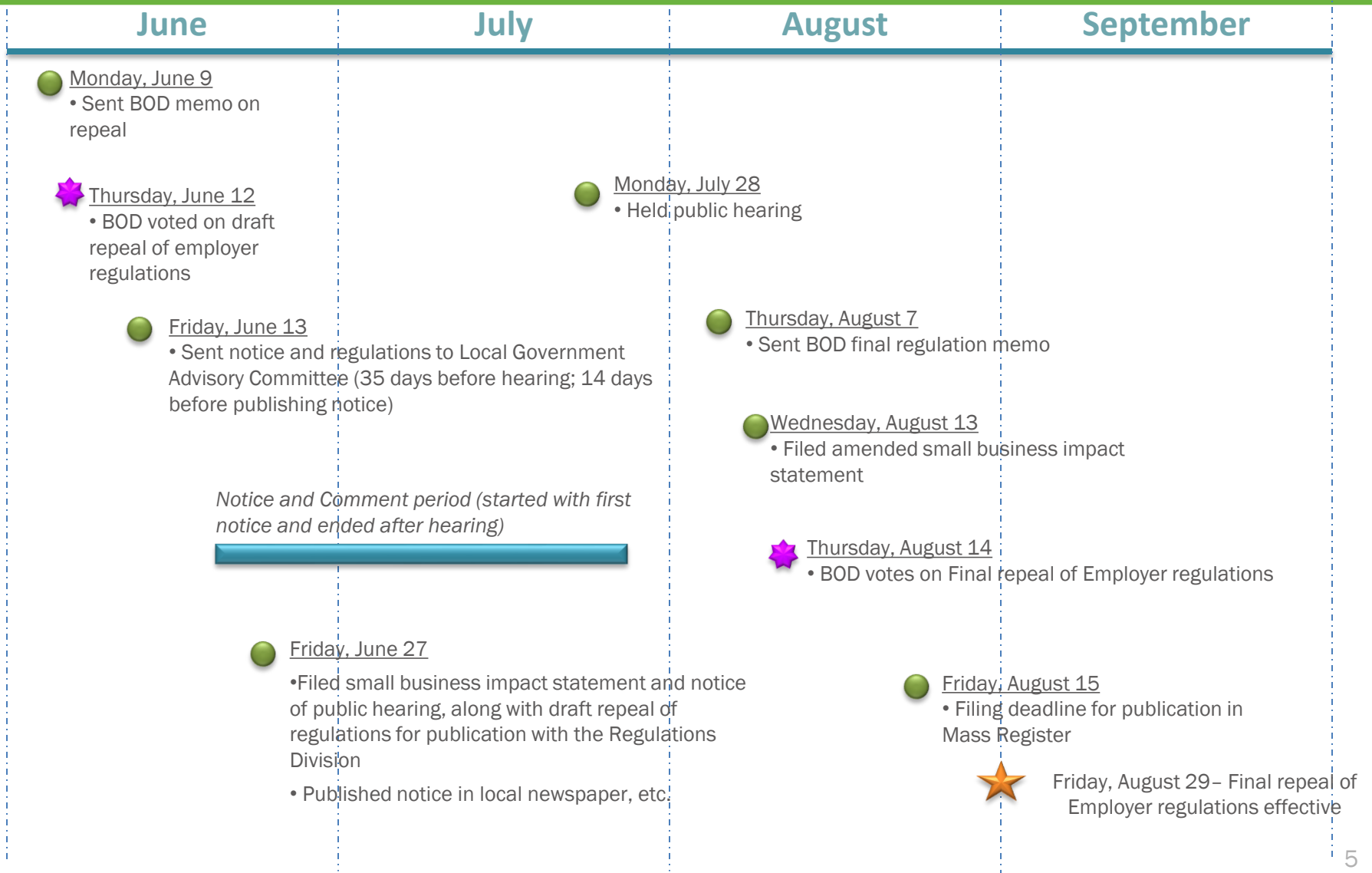
- Chapter 224 of the Acts of 2012, transferred authority and regulatory responsibility of the following regulations from CHIA to the Health Connector – and the Health Connector Board voted to issue those regulations under the Health Connector’s authority as final on May 9, 2013
 - Free Rider Surcharge
 - Health Insurance Responsibility Disclosure requirement (HIRD)
 - Employer Fair Share Contribution program
- 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- The Fair Share Contribution was repealed effective July 1, 2013 via Chapter 38 of the Acts of 2013 (the Fiscal Year 2014 (FY14) budget)
- The Section 125 Requirement, HIRD and the Free Rider Surcharge were repealed on March 17, 2014 in Chapter 52 of the Acts of 2014 (an FY14 Supplemental Appropriations Act)
- **Given the repeal of the underlying statutes, the Health Connector’s accompanying regulations no longer have legal force. For these reasons, staff proposed to repeal the regulations to minimize any confusion about their legal effect**

Overview of Regulations/Policies



Policy	Summary	Reason for Statutory Repeal
Fair Share Contribution 956 CMR 11.00	Assessed employers determined to not be making a “fair and reasonable” contribution towards health care costs	In light of ACA implementation (which includes its own employer responsibility policies and provisions), the Fair Share Contribution policy was repealed in the FY14 budget, effective July 1, 2013
Section 125 Requirement 956 CMR 4.00	Requires employers to provide a Section 125 plan that allows employees to pay health insurance premiums using pre-tax wages	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 was incompatible with the provisions of 956 CMR 4.00. Statute (Ch. 151F) was repealed in an FY14 Supplemental Budget
Free Rider Surcharge 956 CMR 9.00	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	The Free Rider Surcharge statute (Ch. 176Q, section 18) was repealed in a Supplemental FY14 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)
Employer and Employee HIRD 956 CMR 10.00	<p><u>Employer HIRD Form</u>—Employers required to regularly submit information about the employer’s compliance with the requirement to adopt and maintain a Section 125 Plan</p> <p><u>Employee HIRD Form</u> —collected by employers from each employee who declines to enroll in employer-sponsored insurance or declines to use the employer’s Section 125 Plan</p>	<p><u>Employer HIRD</u> repeal (Ch. 176Q, section 17) was included in a Supplemental FY14 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)</p> <p><u>Employee HIRD</u> repeal (Ch. 176Q, section 17) was included in the Governor’s FY14 budget in July 2013, to be replaced by a new noticing requirement regarding Section 125 eligibility</p>

Timeline



Public Comment Period and Hearing



- The Health Connector issued the proposed repeal of the regulations for public comment following the Board meeting on June 12, 2014
- A public hearing was held on July 28, 2014 at the Health Connector's offices in Boston
- No parties testified at the public hearing, nor were any written comments submitted
- At this time, Health Connector staff is not recommending any changes to the proposed repeal of the aforementioned regulations

Staff Recommendation



- Health Connector staff recommend that the Board vote to issue a final repeal of the regulations at:
 - 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 final repeal of 956 CMR 4.00 (Section 125 Cafeteria Plans); 956 CMR 9.00 (Free Rider Surcharge) and 956 CMR 10.00 (HIRD), 956 CMR 11.00 (Fair Share Contribution) as set forth in the staff recommendation