



Commonwealth
of Massachusetts

Center for Health
Information and Analysis

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Fair Share Contribution and Employer Health Insurance Responsibility Disclosure: Filing Year 2011 Results and Analyses

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**Center for Health
Information and Analysis**

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Executive Summary

Under Massachusetts General Law, Chapter 151F, an employer with eleven or more full-time equivalent employees (FTEs) must offer a Section 125 Cafeteria Plan (Section 125 Plan) as a way for workers to be able to purchase health insurance using pre-tax income.¹ Chapter 149 (the Statute) further requires employers with eleven or more FTEs to make a “fair and reasonable” contribution toward the healthcare costs of its workers.² The Statute also requires an employer that does not make a fair and reasonable contribution pay a Fair Share Contribution (FSC) to the Commonwealth Care Trust Fund of up to \$295 per FTE.³ These policies were created to help finance the care of uninsured individuals and to provide for a more level playing field between “contributing” employers and “non-contributing” employers. In June 2012, the Division of Health Care Finance and Policy (the Division)⁴ analyzed the FSC filings to date. This report presents the findings from our analysis of this data as well as the data collected from the Employer Health Insurance Responsibility Disclosure (eHIRD) filings.

Key findings from the 2011 report

- The percent of employers with 11-50 FTEs determined liable for the FSC has dropped since 2010, but the percent of employers with 51+ FTEs found liable has risen slightly. The net percent of all employers subject to the FSC filings determined to have met the FSC standard (5.4%) is largely unchanged from Filing Year 2010.
- For Filing Year 2011, the Division estimates total FSC liability owed at approximately \$18.4 million, a drop from the estimated \$20.4 million liability owed for Filing Year 2010.
- Nearly 80% of the estimated total liability owed is ascribed to firms with 51 FTEs or more.
- The percent of firms with 11 FTEs or more offering their employees a Section 125 Plan has remained largely unchanged since Filing Year 2010 (at 93-94%), although the eHIRD data show relatively consistent but modest gains each year since the regulation was implemented (with 2009 being the exception).

This report also marks the Division’s last annual analysis of the Fair Share and eHIRD data, as oversight of the Fair Share and Section 125 Plan regulations moves from the Division to the Massachusetts Connector Authority (the Connector). Although process changes brought on by the recent healthcare cost containment legislation are still in transition, the Division expects that, moving forward, Fair Share and eHIRD oversight and analysis will be conducted by the Connector, in collaboration with the Department of Unemployment Assistance.

1 Massachusetts General Laws, Part I, Title XXI, Chapter 151F, Section 2.

2 Massachusetts General Laws, Part I, Title XXI, Chapter 149, Section 188(b).

3 Massachusetts General Laws, Part I, Title XXI, Chapter 149, Sections 188(c)10 and 188(d).

4 Now the Center for Health Information and Analysis.

Part 1: Introduction

Under Massachusetts General Law, Chapter 151, an employer with eleven or more full-time equivalent employees (FTEs) must offer a Section 125 Cafeteria Plan (Section 125 Plan) as a way for workers to be able to purchase health insurance using pre-tax income.⁵ Chapter 149 (the Statute) further requires employers with eleven or more FTEs to make a “fair and reasonable” contribution toward the healthcare costs of its workers.⁶ The Statute also requires an employer that does not make a fair and reasonable contribution pay a Fair Share Contribution (FSC) to the Commonwealth Care Trust Fund of up to \$295 per FTE.⁷ These policies were created to help finance the care of uninsured individuals and to provide for a more level playing field between “contributing” employers and “non-contributing” employers.

In June 2012, the Division of Health Care Finance and Policy (Division)⁸ analyzed the FSC filings to date. This report presents the findings from our analysis of this data as well as the data collected from the Employer Health Insurance Responsibility Disclosure (eHIRD) filings.

Policies enacted by the Massachusetts health reform laws of 2006, including several that directly affect employers – such as the FSC Statute and the requirement that employers have Section 125 plans in place – have contributed to Massachusetts having the lowest uninsurance rate in the nation at only 4 percent.⁹ Massachusetts’s low rate of uninsurance coverage is due in large part to the continued engagement of the Massachusetts employer community. Since reform, the Massachusetts employer offer rate has increased to 77 percent.¹⁰ Indeed since the implementation of the FSC Statute, the vast majority of employers – across firm sizes and industries – have been able to comply with the standards (were determined to be making “fair and reasonable” contributions toward the healthcare costs of their workers).

Key findings from the 2010 report

- Approximately 95% of all employers subject to the FSC filings meet the FSC standards and do not owe a liability.
- The number of employers subject to FSC and filing their FSC information with the Department of Unemployment Assistance (DUA) has remained roughly consistent across years.
- Revisions to the FSC standards that became effective shortly into Filing Year 2009 (FY 2009¹¹) appear to have slightly increased both the number of employers found liable and the amount of liability generated. These revisions set a slightly different standard for employers with 11-50 FTEs and those with 51 FTEs or more.
- Compliance with the Section 125 Cafeteria Plan requirement has risen across all employer sizes – 95% of employers subject to the requirement are offering Section 125 plans, a figure that increased over 9% between 2007 and 2010.

5 Massachusetts General Laws, Part I, Title XXI, Chapter 151F, Section 2.

6 Massachusetts General Laws, Part I, Title XXI, Chapter 149, Section 188(b).

7 Massachusetts General Laws, Part I, Title XXI, Chapter 149, Sections 188(c)10 and 188(d).

8 Now the Center for Health Information and Analysis.

9 The Kaiser Family Foundation. *statehealthfacts.org*, “Health Insurance Coverage of the Total Population, states (2010-2011), U.S. (2011)”: <http://www.statehealthfacts.org/comparetable.jsp?typ=2&ind=125&cat=3&sub=39&sortc=6&o=a>.

10 Division of Health Care Finance and Policy, (July 2011). *Massachusetts Employer Survey 2010*: <http://www.mass.gov/chia/docs/r/pubs/11/mes-results-2010.pdf>.

11 For the purposes of this report, “FY” refers to Filing Year rather than Fiscal Year.

Key findings from the 2011 report

- The percent of employers with 11-50 FTEs determined liable for the FSC has dropped since 2010, but the percent of employers with 51+ FTEs found liable has risen slightly. The net percent of all employers subject to the FSC filings determined to have met the FSC standard (5.4%) is largely unchanged from FY 2010.
- For FY 2011, the Division estimates total FSC liability owed at approximately \$18.4 million, a drop from the estimated \$20.4 million liability owed for FY 2010.
- Nearly 80% of the estimated total liability owed is ascribed to firms with 51 FTEs or more.
- The percent of firms with 11 FTEs or more offering their employees a Section 125 Plan has remained largely unchanged since FY 2010 (at 93-94%), although the eHIRD data show relatively consistent but modest gains each year since the regulation was implemented (with 2009 being the exception).

Part 2 of this report presents the results and analysis of the Fair Share Contribution data, Part 3 presents the results and analysis of the eHIRD data, Part 4 discusses data considerations and limitations of the analyses, and Part 5 provides discussion and conclusion.

Part 2: Fair Share Contribution Data

Details of the Regulation¹²

Historically, the Division has been responsible for setting the standard via regulation regarding what constitutes a “fair and reasonable” contribution toward the cost of health coverage. Firms with 11-50 FTEs must offer to contribute at least 33 percent towards the cost of a group health insurance premium for full-time workers, *or* have at least 25 percent of full-time workers enrolled in a group health plan. Firms with more than 50 FTEs must offer to contribute at least 33 percent towards the cost of a group health insurance premium for full-time workers and have at least 25 percent of full-time workers enrolled in a group health plan, *or* have at least 75 percent of full-time workers enrolled in a group health plan.

The FSC standard outlined here became effective during the second quarter of filing year 2009. Prior to that, the standard for all firms with 11 or more FTEs was uniform (there was no difference for firms on either side of the 50 FTE employee benchmark), and the standard that now only applies to the 11-50 FTE sized firms (i.e., 33% contribution or 25% take-up) applied to firms with 51 or more FTEs as well. The test standards were changed, effective October 1, 2008.

As previously noted, firms that do not meet these standards are required by the Statute to pay up to \$295 per FTE. DUA determines liability and then assesses the FSC from employers.¹³ The revenue generated by the contributions is deposited into the Commonwealth Care Trust Fund,¹⁴ which finances Commonwealth Care, a subsidized insurance program for low-income residents of Massachusetts. This money is not mixed with other state revenue.

Filing Year 2011 Results and Analysis

As shown in Table A, there were 23,419 employers subject to Fair Share Contribution (FSC) in filing year 2011 (FY2011). The variation in number of firms filing for each FSC year does not signify change in total number of employers in Massachusetts. Rather, these data represent all firms in Massachusetts with 11 or more full-time equivalent employees that have submitted Fair Share Contribution data as of June 2012 for FY2011.

Table A: Total Number of Firms that filed FSC Data in FY2011, by Year and Firm Size

	2007	2008	2009	2010	2011
11-25 FTEs	12,616	11,661	12,520	11,324	10,727
26-50 FTEs	5,272	5,244	5,434	4,870	4,854
51+ FTEs	7,079	6,915	7,284	7,997	7,838
All 11+ FTEs	24,967	23,820	25,238	24,191	23,419

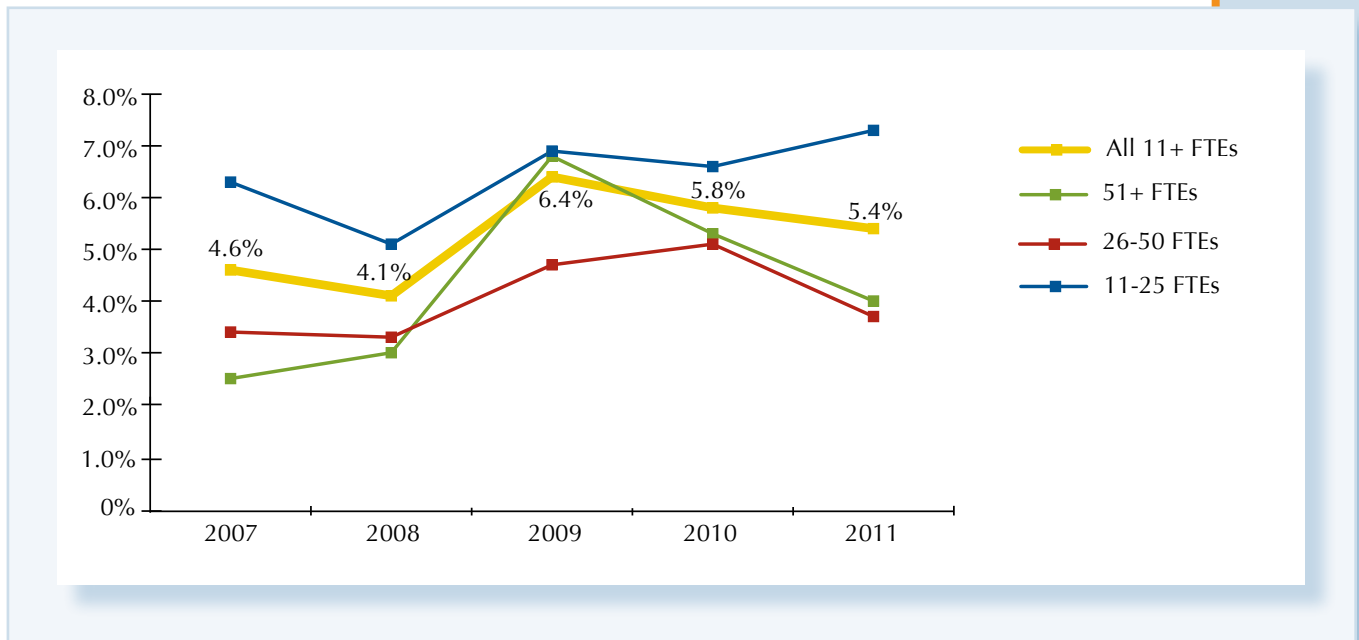
12 Division of Health Care Finance and Policy, (July 2011). Massachusetts Household Insurance Survey, 2010: <http://www.mass.gov/chia/docs/r/pubs/10/mhis-report-12-2010.pdf>; Division of Health Care Finance and Policy, (July 2011). Massachusetts Employer Survey on Health Insurance, 2010: <http://www.mass.gov/chia/docs/r/pubs/11/mes-results-2010.pdf>; and Division of Health Care Finance and Policy, (2009). *Analysis in Brief: Massachusetts Employers and Health Reform*: <http://www.mass.gov/chia/docs/r/pubs/10/mes-aib-2009.pdf>.

13 Massachusetts General Laws, Part I, Title XXI, Chapter 149, Section 188(d).

14 Massachusetts General Laws, Part I, Title XXI, Chapter 149, Section 188(d).

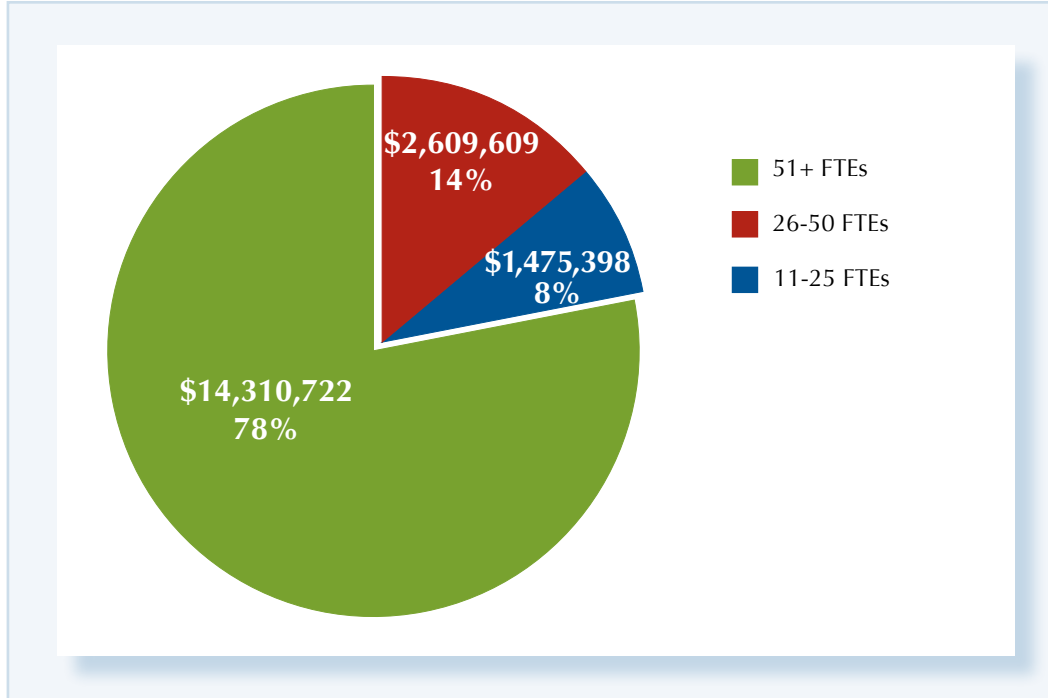
Of these 23,419 firms, 5.4 percent (1,272 firms total) were found liable for the Fair Share Contribution. Figure A shows that, although both the proportion of total firms filing and the total number of firms found liable was higher in filing year 2011 than when the FSC regulation was implemented and the assessment was first collected (5.4 versus 4.6%; 1,272 versus 1,151 firms), there has been a modest year-over-year decrease in the percent of all firms found liable for the contribution for the past three years, with a 1.0 percent decrease between filing years 2009 and 2011 (from 6.4 to 5.4%). The data also show that smaller firms (those with 11-25 FTEs) consistently have a slightly higher rate of liability. The firm size categories generally move together, but there was a departure from this trend in 2011, during which most firms saw a decrease in liability (and a higher “pass” rate) but smaller firms’ liability increased (from 6.6% in 2010 to 7.3% in 2011). A more detailed breakdown of failing firms can be found in the Appendix (A1).

Figure A: Percent of Firms Found Liable for FSC, by Year and Firm Size



The estimated total liability for filing year 2011 is approximately \$18.4 million. Although Figure A shows that a consistently higher percentage of firms with 11-25 FTEs are determined liable for the Fair Share Contribution, larger firms will most likely account for a proportionally larger share of the total liability assessed by the DUA. This is because larger firms found liable are required to make the contribution for a larger number of employees than smaller firms found liable, as Figure B illustrates. The fact that firms with 11-25 FTEs were liable for 6 percent more of the total liability than firms with 26-50 FTEs can be attributed to the fact that there were approximately 780 small firms found liable and only about 180 mid-sized firms found liable. Even if the smaller firms had only 11 FTEs each and the mid-sized firms had 50 FTEs each, their liability would come in as equal. Since this scenario is extremely unlikely, it follows that small firms bear a larger share of the total liability.

Figure B: Estimated Total Liability for 2011, by Firm Size



Amore detailed breakdown of estimated total liability since 2007 can be found in the Appendix (A2).

With over 20,000 FSC data submissions just for 2011,¹⁵ and nearly 1,000 different industry codes, presenting the analysis of each industry unnecessarily obfuscates the bigger picture. Therefore in an effort to identify larger trends, the following table (Table B) provides a snapshot of industry-specific analysis.

This first list shows the ten largest industries¹⁶ in Massachusetts and the rate at which employers in that industry meet (or “pass”) the Fair Share Contribution standard. As there are over 500 industry codes with fewer than ten corresponding firms, a look at the passing rates for the ten smallest industries adds no significant value to this analysis. The following two lists show the ten industries with the highest and lowest passing rates. In order to discern these industries from the complete list of over 900, we consider only the industries with 50 firms or more.

¹⁵ Only 20,914 firms filing for 2011 included their NAICS code, representing 90% of all firms filing for 2011.

¹⁶ For the purpose of this analysis, industry size is based on the number of firms per industry, *not* the number of employees per firm or the number of employees per industry.

Table B: Fair Share Passing Rates - Industry Analysis

Industry	No. of Firms	Rate
FSC Passing Rates of 10 Largest Industries in Massachusetts:		
Full-Service Restaurants	1,172	80.5%
Offices of Physicians (except Mental Health Specialists)	550	99.1%
Snack and Non-alcoholic Beverage Bars	462	93.9%
Elementary and Secondary Schools	385	99.5%
Nursing Care Facilities	372	99.2%
New Car Dealers	319	99.1%
Child Day Care Services	303	95.0%
Wholesale Trade Agents and Brokers	301	99.0%
Temporary Help Services	300	51.7%
Offices of Lawyers	299	100.0%
10 Industries with the Highest Passing Rates:		
Offices of Lawyers	299	100%
Other General Government Support	290	100%
Insurance Agencies and Brokerages	238	100%
Research and Development in Biotechnology	152	100%
Software Publishers	149	100%
Saving Institutions	142	100%
Commercial and Institutional Building Construction	135	100%
Portfolio Management	131	100%
Offices of Certified Public Accountants	114	100%
Industrial Machinery and Equipment Merchant Wholesalers	105	100%
10 Industries with the Lowest Passing Rates:		
Temporary Help Services	300	52%
Employment Placement Agencies	85	66%
Security Guards and Patrol Services	65	66%
School and Employee Bus Transportation	56	70%
Full-Service Restaurants	1,172	81%
Janitorial Services	180	82%
Home Healthcare Services	205	86%
Supermarkets and Other Grocery (except Convenience) Stores	126	87%
Limited-Service Restaurants	279	88%
Beauty Salons	104	90%

Further distinguishing passing and failing firms from one another are the take-up and contribution rates. Ultimately the data show that the take-up rate for passing firms has a mean of 70 percent, with the majority of firms exhibiting a slightly higher rate, and thus a median of 73 percent. Failing firms, however, have a mean take-up rate of just 5 percent, and a median of zero percent. The same trend is evident with regards to the contribution rates of passing and failing firms, with almost identical values. The data also show very little or zero change in these values year to year since the implementation of the Fair Share Contribution regulation.

Additional data regarding take-up and contribution rates can be found in the Appendix (A3-A5).

Part 3: Employer HIRD Data

Details of the Regulation

In addition to submitting FSC data, employers with 11 or more FTEs are required to file an Employer Health Insurance Responsibility Disclosure report (eHIRD).¹⁷ The eHIRD form asks employers for information about their compliance with the M.G.L. c.151F requirement to adopt and maintain a Section 125 Cafeteria Plan. The law stipulated that these employers must offer a Section 125 Plan to employees who work, on average, 64 hours or more per month.¹⁸

The adoption of Section 125 Plans by employers allows employees to pay their contributions towards health insurance using pre-tax income. “Section 125” refers to section 125 of the Internal Revenue Code, which allows health insurance expenditures to be tax deductible. Workers that are not offered insurance with an employer contribution are able to realize savings by purchasing individual health insurance plans using pre-tax income. Non-compliance with the regulation results in a penalty known as the “Free-Rider Surcharge” only if it is then determined that the employer has employees utilizing free care through the Health Safety Net above set cost thresholds.¹⁹ According to M.G.L. c.118G §18B, “The free rider surcharge shall only be triggered upon incurring \$50,000 or more, in any hospital fiscal year, in free care services for any employer’s employees, or dependents of such persons, in aggregate, regardless of how many state-funded employees are employed by that employer.”²⁰

The eHIRD form asks questions that allow the Division to monitor trends in employer-sponsored health insurance coverage in Massachusetts, such as costs of health insurance premiums, waiting periods, benefit design, and coverage trends. This data is collected separately from the 50 Plus Employer Survey and the Household Insurance Survey, and therefore offers an addition perspective of health insurance coverage in the Commonwealth.

Employers fill out the eHIRD form online immediately following the submission of their FSC data. They are prompted to do so immediately upon submitting the FSC filing. Employer HIRD data is also then collected by DUA and shared with the Division for processing and analysis. The Massachusetts Health Connector, the Commonwealth’s health insurance exchange, promulgates the regulation for the Section 125 Plan requirement.

17 Massachusetts General Laws, Part I, Title XVII, Chapter 118G, Section 6C(a).

18 Division of Health Care Finance and Policy, (July 2011). *The Employer Free-Rider Surcharge: Policy, Objectives, and Results*: <http://www.mass.gov/chia/docs/r/pubs/11/free-rider-2011.pdf>.

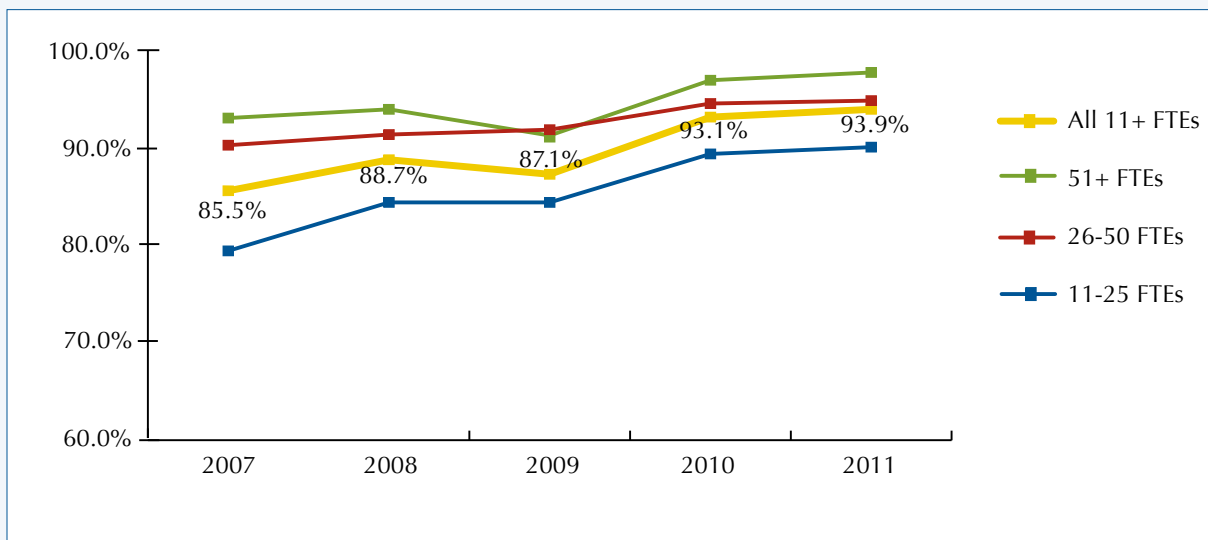
19 Division of Health Care Finance and Policy, (July 2011). *The Employer Free-Rider Surcharge: Policy, Objectives, and Results*: <http://www.mass.gov/chia/docs/r/pubs/11/free-rider-2011.pdf>.

20 Massachusetts General Laws, Part I, Title XVII, Chapter 118G, Section 18B(b).

Filing Year 2011 Results and Analysis

Figure C illustrates the rate at which firms offer a Section 125 Plans. The percent of firms with 11 FTEs or more offering their employees a Section 125 Plan has remained largely unchanged since FY 2010, although the eHIRD data show relatively consistent but modest gains each year since the regulation was implemented. The economic downturn following the financial crisis of 2008 can most likely account for the exception to this trend – the slight dip in offer rate in 2009.

Figure C: Section 125 Plan Offered, by Year and Firm Size



It is important to note that, despite the fact that the Division's eHIRD analysis has consistently found Section 125 compliance to be less than 100 percent, the Division has never assessed a Free-Rider Surcharge. This is because, as was stated in the introduction to this section, employers not offering a Section 125 Plan are only determined to be liable for the Free-Rider Surcharge if, upon investigation by the Connector, it is also determined that their employees utilized above set cost thresholds free care through the Health Safety Net. As this has never been the case since implementation of the eHIRD, Section 125 Plan, and Free-Rider Surcharge regulations, it is expected that the same will be true of 2011 and 2012 going forward.²¹

The eHIRD form provides insight, not just into Section 125 Plan adherence, but also several other indicators of employer-sponsored health insurance. Table C presents some of this additional data relative to the aforementioned ten largest industries in the Commonwealth, in descending order by size.

²¹ According to the recent cost containment legislation (Massachusetts Session Laws, Acts of 2012, Chapter 224, Sections 145 and 215) any assessment will be collected by the Massachusetts Health Connector in the future: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter224>.

Table C: eHIRD Highlights (FY2011)

Industry	Section 125 Offer (%)	Waiting Period (months)	Median Monthly Plan Premium	
			Individual	Family
Full-Service Restaurants	86.6%	3	\$324	\$816
Offices of Physicians (except Mental Health Specialists)	95.7%	1	\$491	\$1,347
Snack and Non-alcoholic Beverage Bars	96.7%	3	\$416	\$1,080
Elementary and Secondary Schools	99.1%	0	\$449	\$1,248
Nursing Care Facilities	99.2%	2	\$446	\$1,237
New Car Dealers	99.4%	3	\$440	\$1,191
Child Day Care Services	94.0%	2	\$406	\$1,056
Wholesale Trade Agents and Brokers	95.5%	1	\$363	\$1,042
Temporary Help Services	94.3%	3	\$344	\$887
Offices of Lawyers	97.6%	0	\$461	\$1,263
All Industries	95.0%	1.7	\$420	\$1,058

Premium Reimbursement Arrangements

Effective October 1, 2009, the Division amended its Fair Share Contribution regulation to indicate that Premium Reimbursement Arrangements (PRAs) could meet the standard of a group health plan if certain criteria were met by employers. PRAs enable employers, particularly small ones that may not be able to offer a traditional group health plan because they lack sufficient take-up, to meet FSC offer standards by allowing workers to purchase an individual health insurance product and then be reimbursed by the employer for a portion of the cost of the premium. Table D shows the proportion of employers that offer PRAs. As the PRA regulation was only adopted in 2009, our data is only presented for 2010 and 2011; we therefore see no significant trends.

Table D: Percent of Employers that Indicate They Offer PRAs

	2010	2011
11-25 FTEs	2.5%	2.1%
26-50 FTEs	2.6%	2.2%
51+ FTEs	1.7%	1.6%
All 11+ FTEs	2.2%	2.0%

Part 4: Data Considerations and Limitations

As stated in the introduction, all eHIRD and FSC data are self-reported by employers. Furthermore, only firms with 11 or more FTEs that submitted their FSC and filing data are reflected in this analysis. In addition to this caveat, we note that not all FSC data submissions were paired with eHIRD data submissions – this is likely due to complications with the online data submission process. All data are current through August 29, 2012 and based on analyses of Division of Unemployment Assistance FSC and eHIRD data, unless otherwise noted.

A small number of outlier filings based on unrealistic reported payroll hours and/or number of full-time employees were removed from the population subset for purposes of analyses.

Historical FSC Data: Differences between the 2010 and 2011 Reports

Data are subject to some fluctuation because of late filing firms and ongoing compliance reviews by the Division of Unemployment Assistance. As a result, one cannot compare the aforementioned data to similar data published in *Fair Share Contribution: Filing Year 2010 Results and Analyses*. Although both reports present the analysis of data from 2007 through the most recently completed filing year (filing year 2011 in this case and filing year 2010 in the previous report), submissions made in any filing year include retroactive submissions by employers for any year from 2007 to present. As such, the historical data appears to change. It is precisely for this reason that each report includes updated historical data rather than just the data relevant to the most recently completed filing year.

The following three tables present an analysis of changes from the 2010 to 2011 filing years. The data show that there were 8.36 percent more firms (4,007 firms in total)²² that retroactively submitted data in filing year 2011 for years 2007 through 2010. Table E shows the percent increase from filing year 2010 to filing year 2011 in the number of firms filing for each year prior to 2011. (Due to the manner in which data is filed and processed, the total number of firms filing can only increase from year to year, hence only positive percent changes.)

Table E: Percent Change in Number of Firms that Filed FSC Data from FY2010 to FY2011, By Year and Firm Size

	2007	2008	2009	2010
11-25 FTEs	0.21%	0.49%	13.58%	13.01%
26-50 FTEs	0.13%	0.63%	7.39%	4.96%
51+ FTEs	0.18%	0.58%	1.29%	4.34%
All 11+ FTEs	0.18%	0.55%	8.44%	8.36%

²² These figures were derived by subtracting the data presented in slide 8 of the 2010 report from those shown in Table A of this report. The 2010 data is available here: <http://www.mass.gov/chia/docs/r/pubs/11/fair-share-analyses-2010.pdf>.

Of the firms filing retroactively, only 176 filings were relevant to years 2007 and 2008 (1,964 additional data submissions were for 2009 and 1,867 were for 2010). It follows that the change in percent of total firms found liable for those years is zero or negligible. Table F, however, illustrates the change in liability for years 2009 and 2010.

Table F: Change in Percent of Firms Liable for FSC from FY2010 to FY2011, By Year and Firm Size

	2009	2010
11-25 FTEs	1.9%	1.7%
26-50 FTEs	1.2%	1.2%
51+ FTEs	3.6%	0.8%
All 11+ FTEs	2.3%	1.2%

As the above table shows, a larger percentage of the total number of firms were found liable for the Fair Share Contribution in this year’s analysis than in last year’s analysis for both 2009 and 2010. Table G below shows considerable increases to the estimated total Fair Share Contribution liability for those years.

Table G: Estimated Total FSC Liability (in Millions), FY2010 and FY2011

	2007	2008	2009	2010	2011
FY2010 Liability	\$14.8	\$14.4	\$16.5	\$17.1	-
FY2011 Liability	\$14.2	\$14.5	\$21.4	\$20.4	\$18.4
Change, FY10-FY11	-4.05%	0.69%	29.70%	19.30%	-

Another problem with the FSC and eHIRD analyses is borne from the fact that currently the regulations are promulgated and data is analyzed by the Division, but the Department of Unemployment Assistance is responsible for actually collecting the FSC liability from employers. The FSC liability projections presented in this report, current and historical, are thus merely estimations. Since the Division does not actually collect the liability from employers and is not a part of that process, the accuracy of these estimations must be considered, not on their own, but in conjunction with data from the DUA.

Part 5: Discussion and Conclusion

The Division ultimately finds no significant trends in the FSC and eHIRD data. While it appears as though employers of 11 or more FTEs are increasingly meeting the FSC requirement, closer examination shows that this is not the case for employers of 51 or more FTEs, who ultimately also bear the bulk of the liability owed to the state. We also note that, although Section 125 Plans are increasingly being offered by employers, the fluctuations in the offer rate are small. Furthermore, no liability has historically been collected in association with a firm's failure to offer a Section 125 Plan; this is because no firm not offering a plan has been found to employ individuals utilizing free care above the predetermined cost threshold.

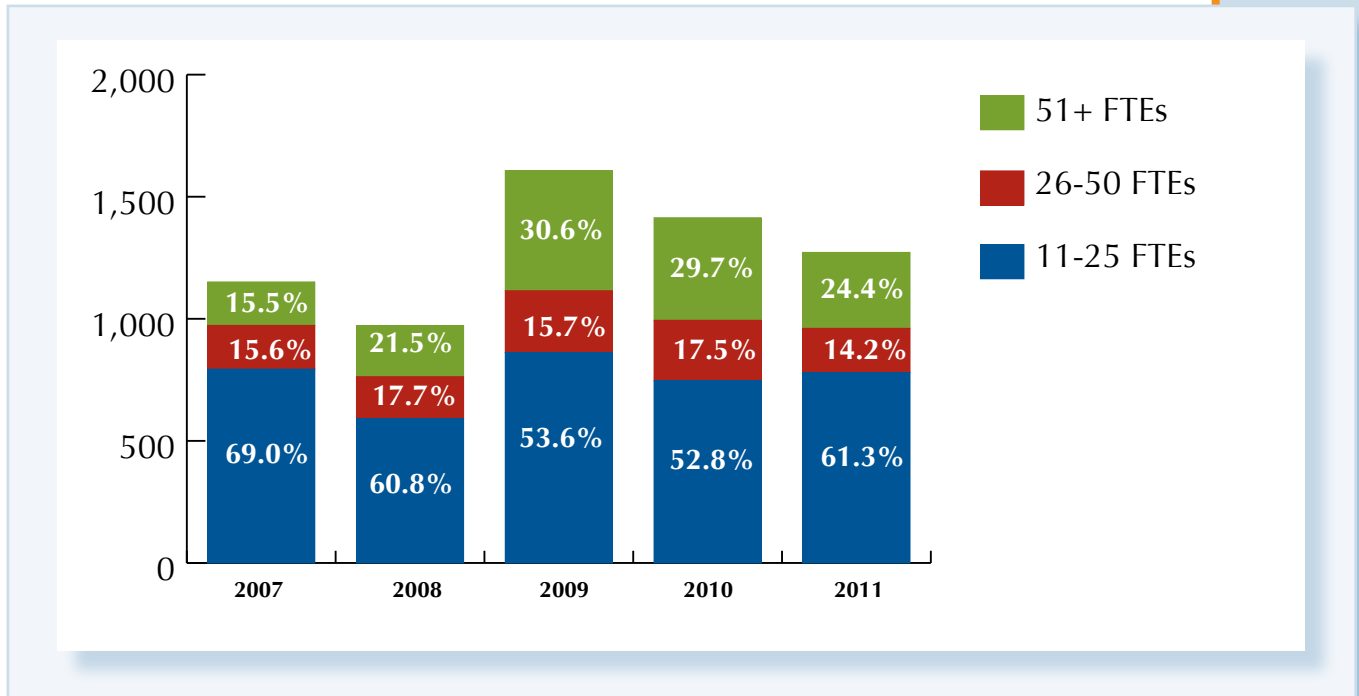
In light of this and the data's many other limitations, these conclusions give limited evidence in determining actual compliance with the Fair Share Contribution regulation and various other employer health insurance responsibilities. As a result, some stakeholders recommend that the FSC and eHIRD policies be overhauled. Massachusetts policymakers have seized the opportunity presented by the need to reconcile state regulations with policies under the Affordable Care Act (ACA) to do just this.

Signed into law in March 2010, the ACA includes several new responsibilities for employers, among them an employer assessment that will go into effect in 2014. To ensure a smooth transition from Massachusetts policies to national policies, policy makers are currently working with stakeholders to determine how to best prepare and support Commonwealth employers for those changes. As part of this effort, a work group was convened several years ago to make specific recommendations regarding the future of the FSC. Resulting in part from these recommendations are provisions in Massachusetts's recent cost containment legislation signed by the Governor in August 2012 (Chapter 224). Most significantly, Chapter 224 moves analysis of the FSC and Section 125 Plan policies from the Division over to the Massachusetts Health Connector, the Commonwealth's health insurance exchange. While this may only be a first step prior to further procedural changes, it is expected that this adjustment will assuage many of the concerns arising from the data's limitations and ultimately help to enrich forthcoming analyses both empirically and contextually.

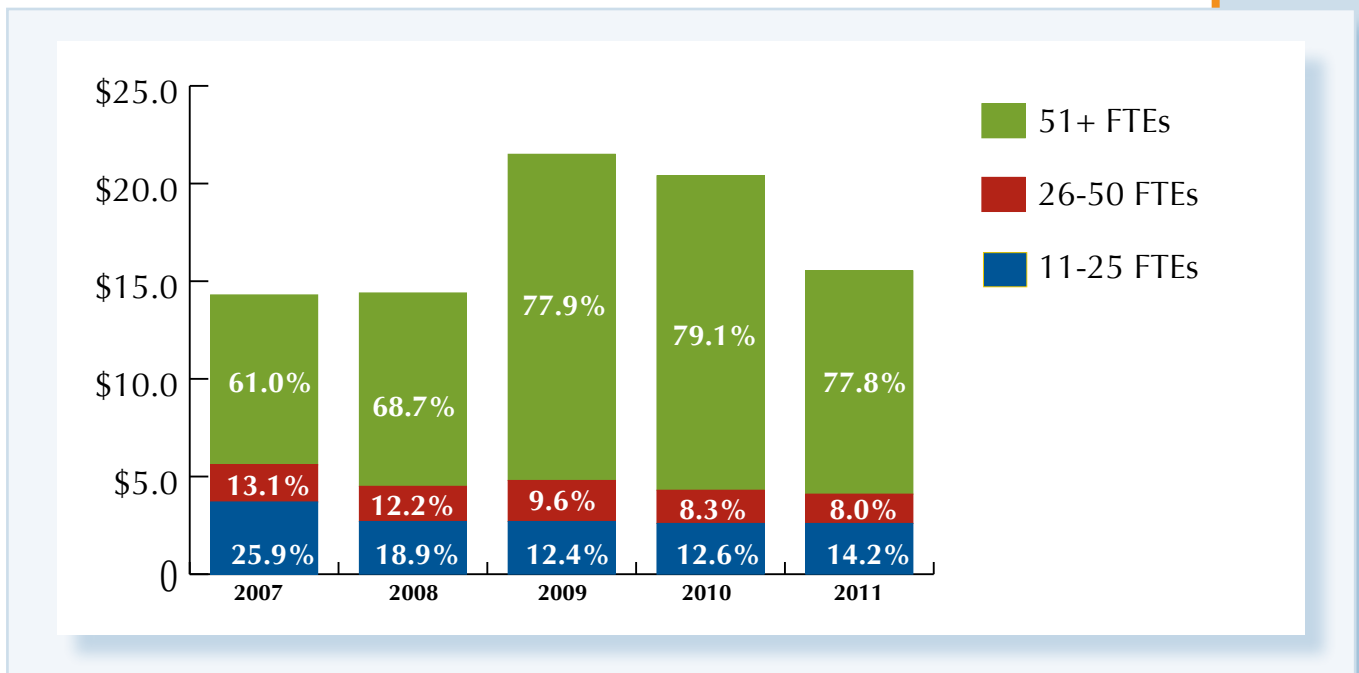
Additional efforts to further reconcile state and federal legislation are ongoing; the Division expects legislative action sometime in State Fiscal Year 2013.

Appendix

A1: Total No. of Failing Firms, by Year and Firm Size



A2: Estimated Total Liability, by Year and Firm Size (Dollars in Millions)



A3: Employee Take-Up Rates²³ and Employer Contribution Rates,²⁴ by Year and Firm Size

	2007	2008	2009	2010	2011
Median Employee Health Insurance Take-Up Rate, by Year and Firm Size					
11-25 FTEs	72%	75%	71%	71%	68%
26-50 FTEs	75%	76%	74%	73%	71%
51+ FTEs	77%	77%	77%	77%	77%
All 11+ FTEs	74%	75%	74%	74%	72%
Mean Employee Health Insurance Take-Up Rate, by Year and Firm Size					
11-25 FTEs	66%	68%	66%	65%	63%
26-50 FTEs	69%	70%	68%	67%	66%
51+ FTEs	71%	71%	71%	72%	72%
All 11+ FTEs	68%	70%	68%	68%	67%
Median Employee Health Insurance Contribution Rate, by Year and Firm Size					
11-25 FTEs	70%	68%	68%	67%	65%
26-50 FTEs	70%	70%	70%	70%	70%
51+ FTEs	75%	75%	75%	75%	75%
All 11+ FTEs	73%	71%	70%	70%	70%
Mean Employee Health Insurance Contribution Rate, by Year and Firm Size					
11-25 FTEs	64%	64%	64%	64%	63%
26-50 FTEs	66%	66%	65%	64%	65%
51+ FTEs	69%	68%	68%	70%	71%
All 11+ FTEs	66%	66%	66%	66%	66%

A4: Passing vs. Failing Firms - Mean and Median Take-Up Rates (2011)

	Median	Mean
Passing Firms	73%	70%
Failing Firms	0%	5%

A5: Passing vs. Failing Firms - Mean and Median Contribution Rates (2011)

	Median	Mean
Passing Firms	72%	69%
Failing Firms	0%	4%

23 "Take-up rate" is the percentage of full-time employees eligible for health benefits that choose to participate in the group health plan offered by their employer.

24 "Contribution rate" is the lowest percentage of the cost of a monthly premium an employer offers to pay for any of its full-time employees.



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