

105 CMR 216.000 MASSACHUSETTS WELLNESS TAX CREDIT INCENTIVE

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216.001: Purpose

The purpose of 105 CMR 216.000 is to establish an incentive for business entities that offer health benefits to adopt evidence-based workplace wellness programming that satisfies the Department of Public Health's criteria for its seal of approval as a pre-requisite for the business entity to claim an allowable tax credit against taxes owed to the Commonwealth under M.G.L. c. 62 or M.G.L. c. 63.

216.002: Citation

105 CMR 216.000 shall be known and may be cited as 105 CMR 216.000: *Massachusetts Wellness Tax Credit Incentive*.

216.003: Scope

The requirements of 105 CMR 216.000 shall apply to business entities that are engaged in business in the Commonwealth and that offer health benefits, including but not limited to business entities in the small group health insurance market, and that implement a wellness program. These requirements apply to business entities with 200 or fewer employees. These requirements do not apply to a federal, state, city, town, district, authority, agency or other governmental unit that offers a wellness program.

216.004: Definitions

Business Entity means a trade or business, whether organized as a sole proprietorship or partnership or corporation, that is engaged in business in the Commonwealth, and is subject to taxation under M.G.L. c. 62 or M.G.L. c. 63, and has 200 or fewer employees, the majority of whom work in the Commonwealth. In the case of partnerships where individual partners, not the partnership, are subject to taxation, all partners shall be treated as one business entity for purposes of 105 CMR 216.000. The term business entity includes associations and group purchasing cooperatives that offer wellness programs to association members or sole proprietors. Affiliated corporations or other commonly owned entities will be treated as a single business entity for the purposes of the credit by the Department of Revenue.

Certification means the Department's written seal of approval.

Commissioner means the Commissioner of the Department of Public Health.

Department means the Department of Public Health.

Denial means action by the Department rejecting an initial application for certification.

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Employee means an employee who works on a full-time basis or part-time basis, and includes an owner, a sole proprietor or a partner of a partnership; provided however, that such owner, sole proprietor or partner is included as an employee under a health insurance plan or a health benefits plan offered by the business entity but does not include an employee who works on a temporary or substitute basis.

Engaged in Business in the Commonwealth means a business entity that has:

- (1) a business location in the Commonwealth; or
- (2) employees conducting business activities on its behalf in the Commonwealth.

Health Risk Assessment means a systemic process for collection of information from individuals regarding health status and well-being so as to identify their health risk factors or chances of getting a disease or health condition. The aggregate results of such process guide the design of comprehensive workforce wellness programming.

Submission Date means date received by the Department.

Taxable Year means any fiscal or calendar year or period for which the taxpayer is required to make a return to the federal government; or the period for which a return is made by the taxpayer, if a return is made:

- (1) for a period less than 12 months, or
- (2) for a period for which no return to the federal government is required.

Taxpayer means an individual or entity subject to taxation under M.G.L. c. 62 or M.G.L. c. 63 and potentially eligible take a credit under M.G.L. c. 62, § 6N or M.G.L. c. 63, § 38FF, as applicable.

Wellness means a formalized plan designed to improve the overall health of participants through activities that may include, but shall not be limited to education, health risk assessment, lifestyle coaching, behavior modification and targeted disease management.

216.005: Eligibility Criteria

Only business entities that have implemented wellness programs that meet the following eligibility criteria shall be eligible to apply to the Department for certification as a pre-requisite for the business entity to claim an allowable Massachusetts wellness tax credit:

(A) The business entity offers health benefits to employees and is in compliance with all legal obligations of employers including but not limited to those enumerated in M.G.L. c. 149; and with all applicable labor, licensing and tax laws;

(B) The wellness program is workplace-based or sponsored by the business entity;

(C) The wellness program is evidence-based and utilizes activities associated with demonstrably maintaining and improving participants' health and overall well-being, as determined by the Commissioner;

(D) The wellness program is aligned with the Department's current research, evaluation and statistics and targeted to reduce the incidence of mortality and morbidity for diseases, health conditions, or accidents that are the most prevalent and preventable in the Commonwealth, as determined by the Commissioner;

(E) The wellness program educates, promotes screening of, or screens particular groups of the general public at risk with respect to particular diseases, health conditions, or accidents that are the most prevalent and preventable in the Commonwealth, as determined by the Commissioner;

(F) The wellness program is established by the business entity based on health risk assessment of the workforce and individualized to the health needs and interests of the workforce to encourage compliance with wellness goals and activities that lead to desired health outcomes;

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- (G) The business entity informs all employees that participation in the health risk assessment and in the wellness program is voluntary;
- (H) The business entity ensures confidentiality of all employee information gathered through the wellness program and informs employees of its confidentiality policy;
- (I) The wellness program promotes physical and mental health, fitness or behavior change measures, including but not limited to dietary change and smoking cessation, associated with the prevention of diseases, health conditions or accidents or with improvement of participants' physical and mental health and overall well-being;
- (J) The wellness program established by the business entity for its workforce may identify and promote access to community-based, insurer or vendor-sponsored programs, resources and facilities, provided that such arrangements are incorporated into the business entity's formal wellness plan;
- (K) The wellness program promotes a healthy workplace environment, and healthy workplace habits; and
- (L) The wellness program meets guidelines and metrics that the Commissioner deems reasonable for health promotion and prevention of morbidity and mortality.

216.006: Application, Certification, and Provisional Certification

- (A) A business entity that seeks to claim a tax credit for the taxable year in which an eligible wellness program is implemented may apply to the Department for certification of its wellness program by submission of documentation required by 105 CMR 216.007.
- (B) Each business entity that submits sufficient documentation of its implementation of an eligible wellness program shall be issued an annual certification with a unique Department generated certification number or provisional certification number that such taxpayer may provide to the Department of Revenue in connection with filing a tax return in order to claim the tax credit.
- (C) Certification shall be good for one taxable year.
- (D) A business entity shall apply with documentation required by 105 CMR 216.007 for each taxable year in which the business entity seeks to apply a wellness program tax credit against the taxpayer's liability.
- (E) Applications shall be submitted to the Department by a deadline determined by the Commissioner.
- (F) The annual allocation for the Massachusetts wellness tax credit incentive program is limited by state law.
- (G) Applications shall be dated and processed on a first come first serve basis and shall be ranked in order of the date and time a completed application is received by the Department. Applications submitted by business entities previously certified who seek to continue an eligible wellness program may be processed ahead of first time applicants, at the sole discretion of the Commissioner.
- (H) In order to properly manage the annual statutory allocation for the Massachusetts wellness tax credit incentive, the Commissioner, in consultation with the Commissioner of Revenue, may establish a wait list and provide a wait-listed applicant with provisional certification.
- (I) The Commissioner shall give preference to businesses with 100 employees or fewer in managing the annual statutory allocation.

216.007: Required Documentation

(A) Documentation shall be on a form, or electronic format, or through use of a Department-approved tool as specified by the Commissioner.

(B) Documentation required by the Commissioner shall include but not be limited to the following:

- (1) Name of the business entity that is the taxpayer;
- (2) Billing address or the location indicated in the books and records of the taxpayer on the first day of the taxable year;
- (3) Employer identification number or social security number as required by law;
- (4) Name, title and contact information of the agent responsible for filing the business entity's tax return;
- (5) The number and percentage of employees who utilize the business entity's wellness program;
- (6) Information regarding expenditures associated with implementation of the business entity's wellness program;
- (7) An affirmation that the business entity is in compliance with all legal obligations of employers, including those enumerated in M.G.L. c. 149; all applicable labor, licensing and tax laws; has purchased workers' compensation insurance as required by law; has not been cited by the United States Department of Labor Occupational Safety and Health Administration for willful or repeat safety or health violations within the last five years; and has not been cited by federal or state authorities for violation of wage and hour laws within the last five years;
- (8) A jurat or an attestation signed under the pains and penalties of perjury by a person with legal authority to bind the business entity, who attests to the truth and accuracy of the information in its application for certification; and
- (9) Other criteria that the Commissioner deems necessary.

216.008: Non-transferability of Certification or Provisional Certification

(A) No certification or provisional certification issued to a business entity shall be transferable from one business entity to another.

(B) In the event of a transfer of ownership of the business entity or sale of the business entity, only the business entity that applied and received a unique Department generated certification number or provisional certification number may use such number to claim or apply a tax credit against its tax liability.

(1) A business entity that has been issued a unique Department generated certification number or provisional certification number shall provide written notice to the Massachusetts wellness tax incentive program within the Department within five days of the business entity's cessation of operations or within 30 days of a transfer of ownership of the business during the taxable year in which the wellness program is implemented. Such notice shall include the date of the cessation of operations or transfer of ownership and updated information about annual expenditures for the certified wellness program and such other information as deemed necessary by the Commissioner.

(2) Nothing in 105 CMR 216.000 shall prohibit a new owner or successor business entity from submitting an application under 105 CMR 216.006 provided that such business entity has implemented a wellness program that satisfies the Department's eligibility criteria for a wellness program in accordance with 105 CMR 216.005 and submits sufficient documentation as required by 105 CMR 216.007.

216.009: Grounds for Denial of Certification

(A) Each of the following, in and of itself, shall constitute full and adequate grounds on which to deny certification:

- (1) Failure to submit a completed application;
- (2) Failure to submit a timely application in accord with 105 CMR 216.006(E);
- (3) Submission of an application after the Commissioner reasonably has determined that the annual statutory allocation for the Massachusetts wellness tax credit incentive program may be reached;

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- (4) Failure to meet eligibility criteria as set forth in 105 CMR 216.005, or associated guidelines or metrics that the Commissioner deems reasonable for health promotion and prevention of morbidity and mortality;
- (5) Failure to submit required documentation in accord with 105 CMR 216.007;
- (6) Failure to achieve a minimally passing score on any metric or scored application; or
- (7) Making false, fictitious, fraudulent claims or misleading statements or intentional misrepresentations to the Commonwealth or concealing facts or withholding facts from the Commonwealth to obtain certification of a wellness program or a wellness program tax credit.

(B) Nothing in 105 CMR 216.009 shall limit the Department's adoption of policies and grounds for denial of certification.

216.010: Procedure for Denial of Certification

(A) The Commissioner or her designated representative shall provide the business entity with written Notice of the ground(s) for the agency's action and the applicable provision(s) of 105 CMR 216.000 or guidelines or metrics relied upon and an opportunity to request further consideration or review as specified in 105 CMR 216.010(B) through (E).

(B) Nothing shall prohibit a business entity that is denied based on 105 CMR 216.009(A)(1) because of its failure to submit a completed application from subsequently submitting a completed application later in time during the same taxable year.

(C) Applicants denied on the basis of 105 CMR 216.009(A)(2) shall have an opportunity to submit documentary evidence of timely submission of an application for consideration within 15 business days of the date of the Notice. If the applicant is unable to satisfactorily resolve the reason for the agency's action, the application shall be denied.

(D) In the event that the Commissioner denies a business entity's application for certification for grounds specified in 105 CMR 216.009(A)(4) or (5) because of the applicant's failure to demonstrate eligibility or to submit sufficient documentation, the business entity shall have an opportunity to submit revised or corrected information for consideration within 15 business days of the date of the Notice. If the applicant is unable to satisfactorily resolve the reason for the agency's action, the application shall be denied.

(E) Nothing shall prohibit a business entity that is denied for grounds specified in 105 CMR 216.000(A)(6) from submitting one or more subsequent applications using the same self-guided metric or scored application form or format to the Massachusetts wellness tax incentive program within the Department in a given taxable year until the business entity achieves a minimally passing score.

216.011: Record Retention and Sharing of Information

(A) The business entity is responsible for retention of its own business records for tax audit purposes, including but not limited to a copy of its satisfactory completion of an application for the Massachusetts wellness tax credit incentive program and documentation under 105 CMR 216.006 and 216.007 and any certifications issued by the Commissioner to the business entity.

(B) Nothing in 105 CMR 216.000 shall prohibit the sharing of information by and between the Department and the Department of Revenue and the Division of Insurance and the Executive Office of Labor and Workforce Development with the consent of the business entity for purposes related to the Massachusetts Wellness Tax Credit Incentive or as required or permitted by law.

216.012: Non-discrimination

(A) A business entity implementing a wellness program, by itself or its agent, shall not discriminate on the basis of the race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry of any individual or on the basis of disability of any person alleging to be a qualified disabled or deaf or hearing impaired person, in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

(B) The business entity implementing a wellness program, by itself or its agent, shall not discriminate in compensation or in terms, conditions or privileges of employment based on the employee's participation in the wellness program or based on the attainment of certain health benchmarks associated with wellness goals and activities.

216.013: Severability

The provisions of 105 CMR 216.000 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and will not affect the remainder of 105 CMR 216.000.

REGULATORY AUTHORITY

105 CMR 216.000: M.G.L. c. 62, § 6N, c. 63, § 38FF, and c. 111, §§ 2G, 206, and 206A.

(105 CMR 217.000 THROUGH 219.000: RESERVED)

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