

**Health Connector Administrative Bulletin 03-13:
Changes for Employers Regarding Section 125 Plans and Other Policies**

Overview

This notice describes recent federal guidance regarding Section 125 (or “cafeteria”) plans. This guidance affects the Commonwealth’s requirement that employers with 11 or more full-time equivalent employees offer Section 125 plans as a way for non-benefits eligible employees to purchase health insurance using pre-tax income. This notice provides information about how the Commonwealth of Massachusetts is addressing this recent guidance, specifically regarding the state’s Section 125 requirement, Employer Health Insurance Responsibility Disclosure (Employer HIRD) requirement, Free Rider Surcharge, and recently created Section 125 Notification requirement.

Background

Recent federal guidance issued by the Department of Labor and the Internal Revenue Service via Technical Release 2013-03 and IRS Notice 2013-54 states that under the Affordable Care Act, 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 appears incompatible with the provisions of a Massachusetts regulation, 956 CMR 4.07(3), which requires employers to offer Section 125 plans under which an employee can purchase health insurance without any employer contribution.

Anticipated Steps to Address Conflict

The Health Connector’s regulation has been reviewed to determine the impact of this recent guidance about federal law. In addition, state officials have also evaluated the impact of this federal guidance on other related employer health insurance laws in Massachusetts (*e.g.*, the Free Rider Surcharge, Health Insurance Responsibility Disclosures, etc.) as these policies were all designed to support and enforce the state’s Section 125 requirement. In light of that review, the Administration plans to pursue legislation to repeal the state’s Section 125 requirement, Employer Health Insurance Responsibility Disclosure (Employer HIRD) requirement, Free Rider Surcharge, and recently created Section 125 Notification requirement.

During the interim period, the Health Connector plans to pursue a path of “non-enforcement” with respect to the Free Rider Surcharge. It also plans to take no further steps on the development of the Employer HIRD filing application and will also not take any further steps with respect to the Section 125 notification requirement.

What does this mean for employers?

Employers that currently permit non-benefits eligible employees to use Section 125 plans to purchase individual plans on a pre-tax basis may leave those plans in place until the expiration of the employee’s

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plans in 2014. The federal guidance states that individuals may use Section 125 plans to continue paying for plans with a plan year that commenced in 2013.

For plan years starting in 2014, under the federal guidance, employers may no longer offer Section 125 plans that permit their non-benefits eligible employees to purchase their own non-group health insurance policies using pre-tax income. Section 125 plans can continue to be offered to employees for other purposes, such as the purchase of group health insurance or other benefits.

Employers with questions about their particular situations should seek advice from attorneys or tax professionals.

Massachusetts employers have continued to be strong partners in health reform implementation, and make strong offers of health insurance coverage to workers – at rates far beyond their national counterparts. The implementation of the Affordable Care Act in general as well as a number of other state-level policies continue to promote and ensure employer engagement in the shared success of health reform and the expansion of coverage to Massachusetts residents.

Massachusetts employers looking for information about national health reform in Massachusetts and about health insurance coverage for individuals and small businesses can visit **MAhealthconnector.org**.