

Massachusetts Health Care Reform Update: Connector Seeks Comment on Cafeteria Plan Regulations

The Commonwealth Health Insurance Connector Authority (the “Connector”) is seeking comment on certain draft regulations promulgated under the Massachusetts Health Care Reform Act. The regulations would implement the provision of the Act requiring employers who employ more than 10 employees within the Commonwealth to (1) establish and maintain a cafeteria plan in accordance with section 125 of the Internal Revenue Code and the rules and regulations promulgated by the Connector, and (2) file a copy of the plan with the Connector.

The regulations, issued on February 23, 2007, are set to take effect July 1. The Connector is seeking comments from employers and other interested parties before issuing emergency regulations in March 2007. Please click [here](#) for a copy of the regulations and [here](#) for information about submitting comments.

The regulations describe those employers who are subject to the cafeteria plan mandate (called “151F Employers”); how employers can adopt and maintain the cafeteria plan; and how and when to file the plan with the Connector. Among other things, the regulations:

- define “employer” and “employee” broadly;
- count as an employee any full-time, part-time, seasonal, or temporary employee, including any employee subject to a collective bargaining agreement;
- exempt from its requirements any employer who pays 100% of the cost of medical coverage for all of its employees;
- describe the requirements that the cafeteria plan must satisfy, including that it must, at a minimum, be a premium-only plan offering access to two or more medical coverage options in lieu of regular cash compensation;
- permit an employer to exclude from eligibility employees who are: under 18 years old; temporary employees; part-time employees working, on average, fewer than 32 hours per month for the employer; certain waitstaff, service employees or service bartenders; student interns or co-op students; and certain seasonal employees who are international workers;
- do not require an employer to contribute to the cost of medical coverage;
- permit the cafeteria plan to be a separate document established for employees not otherwise eligible for the employer’s subsidized medical coverage options;
- permit the cafeteria plan to cover employees of two or more 151F Employers if the employers are affiliated with or related to one another; and
- clarify that the regulations are not intended to require any employer to take any action that would violate Section 125 of the Code or to establish an ERISA welfare benefit plan.

The Connector is on a fast track and has requested that all comments be submitted by Friday, March 2. Please contact your Ropes & Gray benefits attorney or consultant if you have any questions or need assistance in preparing any comments. We will keep you apprised of any further developments.