

Connector Provides Guidance on Massachusetts Health Care Reform Act

Cafeteria Plan Regulations

Last week, the Commonwealth Health Insurance Connector Authority (the “Connector”) submitted to the Connector Board for approval final regulations implementing the provisions of the Massachusetts law requiring employers of 11 or more employees to establish and maintain a Section 125 cafeteria plan that complies with applicable federal law as well as regulations and rules promulgated by the Connector. Employers who are subject to the regulations (called “151F Employers,” for the section of the law governing this requirement) must establish their Section 125 plan and file it with the Connector by July 1, 2007, but they have until September 1, 2007 to start enrolling eligible employees in their plan.

The final regulations, which the Connector Board is expected to act on at its meeting on June 5, retain the core rules set forth in the draft regulations (described in a February 2007 [client alert](#)) about who is a 151F Employer and what employers can do to comply with the cafeteria plan mandate. However, the regulations make some changes to the earlier draft, which was adopted on an emergency basis in late March. Significantly, the regulations:

- expand the list of those employees who can be excluded from eligibility under a 151F Employer’s Section 125 plan to include employees working for employers who pay into Taft Hartley Funds;
- expand the category of employers who may be exempt from the Section 125 plan requirements to include any employers who pay the full cost of the health insurance for those employees who are not excluded from eligibility under the regulations. For instance, if an employer pays the full cost of health insurance for all of its employees except for employees who work, on average, fewer than 64 hours per month (increased from 32 hours per month in the original draft of the regulations issued in February) and who, as a result, are excluded from eligibility under the regulations, that employer will not be required to maintain a cafeteria plan;
- clarify the “determination period,” which is the period during which an employer calculates whether it has 11 or more employees and is a 151F Employer.

What Do I Need To Do?

While there are a number of questions yet to be resolved, 151F Employers can take steps to prepare for implementation of the Section 125 cafeteria plan mandate.

1. Establish a Section 125 Plan. Either adopt a separate plan for those employees who are covered by the regulations but are not eligible to participate in your existing Section 125 plan (“Connector Employees”), or amend your existing plan. For ease of administration and interpretation, Ropes & Gray is generally recommending that its clients who are 151F Employers establish a separate “premium-only” Section 125 plan for their Connector Employees.
2. Consult with your Ropes & Gray Benefits Attorney or Consultant. We are preparing a simplified model plan that, while based on the sample provided by the Connector, may be better suited for employers who have established cafeteria plan processes. We will provide a draft for review not later than the end of May to each of our clients who have Massachusetts employees. Once finalized, employers can adopt the plan in accordance with their established corporate

procedures and file it with the Connector. We would be happy to discuss an alternate approach with you if you so desire and to talk generally with anyone interested in establishing a Section 125 plan.

3. Review the Section 125 Handbook. The Connector has created a “Section 125 Plan Handbook for Employers” that is available on the Connector website at www.mass.gov/connector. The Handbook contains, among other things, a number of administrative tools that may be helpful as you begin to enroll Connector Employees in your Section 125 plan. These include:

- a sample description of the plan that can be provided to Connector Employees;
- a sample adoption form, which would be most helpful to employers who do not already have established plan adoption procedures;
- a sample benefit election form through which employees can elect pre-tax health insurance benefits;
- a census form that asks employers to provide to the Connector the name, birth date, date of hire, home ZIP Code, and email address of those employees enrolling in coverage through the Connector; and
- a form through which employees can change their benefit election when the law allows them to do so.

4. Regularly Check the Connector Website. We expect that the Connector will provide further information on a number of topics, including:

- the Section 125 plan filing requirements;
- the Small Business Service Bureau (“SBSB”), which is the “Subconnector” designated by the Connector to interact with employers. Employers will remit to SBSB contributions they withhold on a pre-tax basis from the pay of any Connector Employee. In turn, SBSB will remit those payments to the appropriate insurance carrier; and
- the Health Insurance Responsibility Disclosure (“HIRD”) requirements. The Division of Health Care Finance and Policy is expected to issue for public comment draft regulations on these requirements shortly. They take effect on July 1, 2007 and will likely require employers to file the HIRD form later this year. There will be both an Employer and Employee HIRD form, the latter of which will need to be filled out by employees who have declined to enroll in employer-sponsored coverage or to participate in a Section 125 plan.

We will provide further updates as information becomes available. In the meantime, please contact your Ropes & Gray attorney or benefits consultant with any questions. We look forward to working with you to finalize your Section 125 plan and to provide any assistance you need in implementing any of the requirements under the Massachusetts Health Care Reform Act.

