

Massachusetts Connector Announces Significant Changes to the Commonwealth's Cafeteria Plan Rules

Article By:

Patricia A. Moran

On October 29, 2013, the Massachusetts Connector released Bulletin 03-13, which sets forth a significant course change in the Commonwealth's cafeteria plan, HIRD, and free rider surcharge rules.

History

Under current Massachusetts law, employers with at least 11 employees are required to offer certain eligible employees an opportunity to purchase coverage under one or more "medical care coverage options" on a pre-tax basis through an employer-sponsored "cafeteria plan."¹ For many employers in the Commonwealth, the group of employees eligible for the pre-tax cafeteria plan was broader than the set of employees eligible for the employer's group health plan.² But employers could meet the requirements of the law by establishing a cafeteria plan which allowed employees to use pre-tax salary reductions to purchase coverage through the Massachusetts Connector. Employers who did not meet these requirements were required to pay a "free rider" surcharge to the Commonwealth.³ In addition, employers were required to submit certain "Health Insurance Responsibility Disclosure" or "HIRD" reports to the Commonwealth,⁴ and inform eligible employees of the cafeteria plan opportunity.⁵

The Affordable Care Act Shifts the Commonwealth's Position

The Affordable Care Act establishes public exchanges modeled on (but not identical to) the Commonwealth Connector. Unlike the Commonwealth Connector, individuals may not purchase coverage through public exchanges with pre-tax cafeteria plan dollars.⁶ Accordingly, exchange purchasers cannot reap the benefits of both an exchange subsidy and a pre-tax purchasing option.

Massachusetts has aligned the Connector's purchasing rules with the Affordable Care Act's requirements; accordingly, effective January 1, 2014, pre-tax cafeteria plan money can no longer be used to purchase coverage from the Connector. But until now, the Commonwealth has held firm to its cafeteria plan rules, and insisted that subject employers find a way to provide a pre-tax option to all eligible employees under a "medical care coverage option." Employers thus faced two choices: either offer all cafeteria-plan eligible employees employer-sponsored group coverage, or arrange for

their employees to purchase non-group coverage elsewhere, such as through a private exchange. This dilemma was discussed at length in our previous alert accessible at <http://www.mintz.com/newsletter/2013/Advisories/3268-0713-NAT-ELB/index.html>.

IRS Guidance Causes Further Conflict

On September 13, 2013, the IRS issued Notice 2013-54, which provided that employers cannot offer cafeteria plans to employees to purchase non-group health insurance without an employer contribution. Notice 2013-54 is accessible at <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions>. This new guidance created a conflict between the Commonwealth's cafeteria plan rules and position on the one hand and the Affordable Care Act's guidance on the other.

Bulletin 03-13: the Connector Changes Course

In Bulletin 03-13, in response to IRS Notice 2013-54, the Connector announced significant changes in its cafeteria plan and related rules. Specifically, the Commonwealth plans to pursue legislation to repeal the state's cafeteria plan, HIRD, free rider surcharge, and cafeteria plan notification requirements. Pending repeal, the Health Connector plans to pursue a path of "non-enforcement" with respect to the free rider surcharge, and plans to cease development of the HIRD filing and the cafeteria plan notification requirements.

Next Steps for Employers

For plan years beginning in 2013, employers may continue to permit employees to use cafeteria plans to purchase individual plans on a pre-tax basis until the plan year expires in 2014. For plan years starting in 2014, under the federal guidance, employers may no longer offer cafeteria plans that permit their employees to purchase their own non-group health insurance policies using pre-tax income. Cafeteria plans can continue to be offered to employees for other purposes, such as the purchase of group health insurance or other benefits. Employers are advised to review and amend their cafeteria plans accordingly.

1 MGL Chapter 151F, Section 2.

2 For example, many employers in Massachusetts provide health care to employees working 35 or more hours per week (approximately 140 hours per month). However, all employees working at least 64 hours per month must be offered access to an employer-sponsored cafeteria plan.

3 MGL Chapter 176Q Section 18.

4 MGL Chapter 176Q Section 17(a).

5 MGL Chapter 176Q Section 17(b).

6 See Internal Revenue Code Section 125(f)(3), effective January 1, 2014.

Source URL:<https://natlawreview.com/article/massachusetts-connector-announces-significant-changes-to-commonwealth-s-cafeteria>