



ACA: Amendment to Section 125 Regarding Election Rules for Non-Calendar Plan Years

Important Note: This e-Alert is intended only for our valued clients whose renewal is any month other than January. If your plan year runs from January 1- December 31, each year, please disregard this e-Alert.

On January 1, 2014, the Affordable Care Act (ACA) will require most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a federal penalty. This rule is often referred to as the “individual mandate.” For those of us living in Massachusetts, this is not a new concept. Massachusetts residents over the age of 18 have been subject to a similar mandate since 2008.

“Individual Mandate” Deadlines Looming

Under the individual mandate, a penalty will be assessed against an individual for any month during which he or she does not maintain “minimum essential coverage,” beginning in 2014 (unless an exemption applies). A taxpayer is also liable for the penalty for any nonexempt individual whom the taxpayer may claim as a dependent.

With this deadline looming over both individuals, employees will most likely be requesting to enroll in their employer’s group plan off-cycle on January 1, 2014 to avoid penalties.

However, employers who offer Section 125 Plans on a pre-tax basis cannot allow employees to enroll in or cancel coverage mid-year unless the employee experiences a “change in status” also known as a “qualifying event”.

IRS “Transition Relief” Period

In general, most employer-sponsored plans do not permit employees to enroll or make changes mid-plan year unless certain triggering events occur, such as a change in employment status.

IRS Notice 2013-42 provides transition relief from the individual mandate penalty for certain months in 2014 for individuals who are eligible to enroll in eligible employer-sponsored health plans with plan years other than the calendar year (non-calendar year plans). Under the transition relief in IRS Notice 2013-42:

“The transition relief applies to an employee, or an individual having a relationship to the employee, who is eligible to enroll in a non-calendar year eligible employer-sponsored plan with a 2013-2014 plan year. The transition relief begins in January 2014 and continues through the month in which the 2013-2014 plan year ends.”

The following two examples are included in Notice 2013-42 to clarify the transition relief rules:

Example 1: An unmarried employee and the employee’s dependent child are eligible to enroll in a non-calendar year employer-sponsored plan offered by the employee’s employer. The employer’s plan year for its group health plan begins on August 1, 2013 and ends on July 31, 2014. Neither the employee nor



child enrolls in the employer's plan for the 2013-2014 plan year. Both the employee and child are eligible for transition relief from the Individual Mandate for January 2014 through July 31, 2014.

Example 2: Two married individuals are each eligible for enrollment in an employer's non-calendar year plan for the August 1, 2013 – July 31, 2014 plan year and in a calendar year plan of an employer of the other spouse for calendar year 2014. The spouses decline to enroll in either the non-calendar year plan or the calendar year plan. Both individuals are eligible for the transition relief from the Individual Mandate beginning January 1, 2014 and ending July 31, 2014.

Employer Plan Amendments

Most employer Section 125 plan documents do not allow for a mid-year cancellation due to the availability of the Marketplace. The ACA regulations contain "pre-tax election" transitional relief for non-calendar year cafeteria plans and will allow eligible employers to amend their written Section 125 plan document to permit a plan participant to prospectively revoke/change their election once during the plan year that straddles 2013 and 2014. Eligible plans must be amended by December 31, 2013 to be effective retroactively to the first day of the 2013 Section 125 plan year.

Next Steps

- **Employers may advise employees that** (*while employers are not in the position to provide tax advice*), employees who declined enrollment in a non-calendar year plan can wait to enroll in the employer's 2014 open enrollment and he/she will not be penalized for noncompliance with the January 1, 2014 individual mandate .
- **Employers may be eligible to amend their Section 125 Plan documents by December 31, 2013.** *If HR Knowledge is your current medical insurance plan broker and you would like to make changes please contact: Linda Sullivan at Linda@hrknowledge.com*
- **Carriers are giving groups with fewer than 50 employees the option to move their renewal date to 12/1/13.** Health Care Reform requires that all small groups' (fewer than 50 employees) fully insured plans become "community rated" as of their first renewal date in 2014. Employers should contact their broker and discuss the option to move your renewal date. *If HR Knowledge is your current medical insurance plan broker and you would like to make changes please contact: Denise LaCarubba at Denise@hrknowledge.com*

For More Information

- Read [IRS Notice 2013-42](#)
- Additional information for employers regarding the Affordable Care Act (ACA) is available at:
 - www.healthcare.gov
 - www.dol.gov/ebsa/healthreform
 - <http://www.irs.gov/uac/Affordable-Care-Act-of-2010:-News-Releases,-Multimedia-and-Legal-Guidance>

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