



The Vita Viewpoint Important Information for Decision Makers

Bombarded by Regulations! 4 New Sets of Regulations Issued Last Week January 2001

125 Final Regulations

- Final guidance has been issued by the IRS on when cafeteria plan participants may change their elections outside of annual open enrollment.
- The 2001 final regulations modify a few provisions in the 2000 final regulations and substantially change several provisions in the proposed regulations. Generally, the 2001 regulations have expanded the possible election changes.
- Cafeteria plan elections can now be changed mid-year as a result of a significant change (increase or decrease) in the cost of a qualified benefits plan or benefits package option. Unfortunately, the IRS did not provide guidance on what constitutes a "significant cost" increase or decrease. The change in cost rules do not apply to health FSAs.

COBRA Final Regulations

- The IRS has issued final COBRA regulations that adopt the 1999 proposed rules and that also make certain changes to the 1999 final regulations. The following bullets address the major issues addressed in the regulations.
- Insignificant shortfall in premium is defined as not greater than the lesser of \$50 or 10% of the required premium amount.
- Clarification provided that employers must offer existing alternative coverage to relocating Qualified Beneficiaries.
- Clarification provided regarding COBRA during election and premium payment periods. It is okay to terminate and retroactively reinstate coverage.
- COBRA health FSA rules retained and clarified. Minor clarifications were provided regarding mergers & acquisitions.

HIPAA Nondiscrimination Regulations

- HIPAA prohibits discrimination in eligibility or contributions based on an individual's health status. Interim final and proposed regulations provide much-needed guidance about the nondiscrimination requirements that apply to group health plans and health insurance issuers.
- These detailed regulations include many examples that resolve important and controversial issues that have been troubling plan sponsors, issuers, and their advisors since the passage of HIPAA. The bullets on the following page summarize some of the most important issues covered in these regulations.

HIPAA Nondiscrimination Regulations (Continued)

- A Pre-existing Condition Exclusion (PCE) is permissible even though such clauses (by definition) discriminate based on health factors, so long as the PCE applies uniformly to individuals and is not directed at individuals based on a health factor.
- Benefit Limitations. Plans are not required to provide coverage for any particular benefits, and plan designs can provide different benefits to different groups of similarly-situated employees, so long as such benefit limitations are applied uniformly and are not directed at specific individuals. Permissible plan provisions include lifetime maximums and limits on specific types of treatments or drugs.
- Source of Injury Restrictions. Clauses such as "dangerous activity" provisions that impact the amount of benefits (but not coverage eligibility) based on the source of the injury are generally permissible. However, a plan may not deny eligibility for coverage based upon an individual's participation in a dangerous activity (e.g., bungee jumping, riding horses). Under this rule, limitations and exclusions for injuries sustained as a result of failing to wear a seatbelt, committing a crime, or participating in specified recreational activities should be allowable. On the other hand, limits or exclusions related to domestic violence or based on a medical condition (e.g., depression) are not permissible.
- Discrimination in Premiums/Contributions. HIPAA does not limit an insurer's ability to rate groups based on health status so long as the premium rate calculation is "blended" for all employees. However, the regulations prohibit rates that separately break out specific individuals based on health status factors.
- Non-Confinement Clauses. A plan cannot restrict coverage eligibility or benefits for an employee or dependent based upon hospital confinement or an inability to perform normal life activities. Thus, non-confinement clauses must be eliminated.
- Actively-At-Work Limitations. Actively-at-work and continuous service provisions that condition initial coverage eligibility upon an individual's being actively at work (or upon completion of a specified service period) are specifically prohibited. Such clauses may only be retained if employees who are absent due to health conditions are treated as if they are actively at work. Plans may, however, continue to condition coverage upon commencement of employment and can terminate coverage for the employee's failure to satisfy a minimum hours or service requirement (so long as individuals on sick leave are treated no less favorably than those on other leaves).
- Wellness Programs. While HIPAA generally prohibits plans from varying benefits based on health status, limited coverage variations are allowed to promote wellness under bona fide wellness programs. The proposed regulations provide that any program that provides a "reward" based on the ability to meet a health standard must meet certain criteria.

Proposed 132 Transportation Fringe Benefit Plan Regulations

- Code section 132(f) provides that employees can exclude qualified transportation fringe benefits from gross income (thereby avoiding federal income and employment taxes on the benefits), up to certain limits. There are three types of qualified transportation fringe benefits that may be included in an employer-sponsored plan: qualified parking expenses, transit passes, and transportation in commuter highway vehicles.
- Readily Available Vouchers (the 1% rule) is retained and clarified. Cash reimbursements for transit passes may be provided only if a voucher is not "readily available" for direct distribution to the employee. Vouchers are considered readily available

Proposed 132 Transportation Fringe Benefit Plan Regulations (Continued)

- Substantiation requirements are clarified to reflect that an employee's certification plus a receipt (if available) is sufficient documentation.
- The final regulations provide that if an employee receives a multiple-month transit pass and the employee's employment terminates before a multiple-month transit pass expires, the value of the transit pass covering the month(s) that begin after termination must be included as W-2 wages. But, that value is not considered income for employment tax purposes (FICA, FUTA, and income tax withholding).
- The final regulations require that an election and salary reduction agreement election must be irrevocable for the specified period. Additionally, a qualified transportation fringe benefit plan may not permit unused amounts to be refundable (e.g., upon termination of employment).

Source: Federal Regulations and
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