

REFORM *Update*

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The recently released IRS Notice 2013-71 allows employers to include a \$500 rollover amount for medical Flexible Spending Accounts (FSAs). This notice also clarifies a transitional rule for employers with non-calendar year cafeteria plans.

The transitional rule is the one that the IRS included in the employer shared responsibility regulations released at the beginning of this year. This guidance is discussed in our *Reform Update* at http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_57.pdf.

In a nutshell, employers with non-calendar year Section 125 plans can amend their plans to allow the following election changes:

1. An employee who elected a salary deduction for an accident or health plan for a plan year beginning in 2013 can revoke or change that election prospectively once during the year, regardless of whether there is a qualified change in the employee's status.
2. An employee who did not elect a salary deduction for an employer's cafeteria plan year beginning in 2013 can make an election prospectively once during the year, regardless of whether there is a qualified change in the employee's status.

These optional amendments will allow employees to make changes and possibly obtain the mandated coverage as the new Marketplaces launch.

These rules apply only to employees' pre-tax deductions for health coverage. If an employer wants to allow an employee to elect health plan coverage mid-year, then the health plan (insurance carrier or stop loss vendor) must permit the change as well.

The FSA guidance clarifies the following:

1. Initially, this transition rule applied only to employers with 50 or more full-time and full-time equivalent employees. The notice now allows these two mid-year optional election changes for any employer with a non-calendar year Section 125 plan, regardless of the number of employees.
2. Employers can amend their plans to allow more restrictive changes. Presumably, an employer can limit revocations of annual elections if the employee qualifies for the newly expanded Medicaid program.

These clarifications apply as of December 28, 2012, the date the original guidance was issued.

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