

# Health Care Reform Management Alert Series



## New Election Changes Permitted Under Cafeteria Plans

Issue 85

By Ajay A. Athavale, Benjamin J. Conley and Joy Sellstrom

*This is the eighty-fifth issue in our series of alerts for employers on selected topics in health care reform. (Click [here](#) to access our general summary of health care reform and other issues in this series) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.*

The IRS recently issued Notice 2014-55, which expands the change in election rules for cafeteria plans operated under Section 125 of the Internal Revenue Code. Cafeteria plans are now permitted to allow employees to revoke their coverage election mid-year in two new scenarios.

### Background

Generally elections under a cafeteria plan must be irrevocable, except to the extent a plan permits election changes in accordance with the cafeteria plan regulations (Regulations). Prior to Notice 2014-55 being issued, cafeteria plans were permitted to allow an employee to revoke a health plan election mid-year and make a new election:

- If there was a change in status and the election change met the consistency rule. Under the consistency rule, the election change must be on account of and correspond with a change in status that affects eligibility for coverage under the employer-sponsored plan; or
- Special enrollment rights applied. Special enrollment rights give individuals the right to enroll in the employer-sponsored group health plan due to loss of other coverage or certain family events, but do not allow individuals the ability to enroll in a plan in the Health Insurance Marketplace (also referred to as the Exchange).

Under existing Regulations, if an employee incurs a reduction in hours that does not affect the employee's eligibility for coverage, the employee may not make an election change. Similarly, an employee may not simply choose to revoke coverage mid-year in order to purchase coverage in the Marketplace.

### Notice 2014-55

Beginning September 18, 2014, plan participants may change their elections in two new scenarios, provided plan sponsors

timely amend their cafeteria plans. (These new scenarios apply to cafeteria plan elections other than those offered through a flexible spending arrangement (FSA).)

### **Reduction in Hours**

If an employee has a reduction in hours to less than 30 per week, the cafeteria plan may allow the employee to revoke coverage if the employee intends to enroll in coverage offered through the Marketplace or in another group health plan. This election change may be made even if the employee would not lose coverage under the employer's plan. The plan administrator may rely on the employee's representation that he or she intends to enroll in another plan with coverage effective no later than the first day of the second month following the revocation.

### **Marketplace Enrollment**

If an employee chooses to cease coverage under an employer-sponsored group health plan in order to purchase coverage offered through the Marketplace during a designated open enrollment or special enrollment period, a plan may allow the employee to revoke coverage and enroll in Marketplace coverage. The plan administrator may rely on the employee's representation that the employee, and any dependents who ceased coverage, intend to enroll through the Marketplace for new coverage that is effective no later than the day after the last day of employer-sponsored coverage.

## **Required Plan Amendment**

Plan sponsors should assess whether they want to allow employees to revoke their elections under these new situations. Amending a cafeteria plan to allow for these new revocation scenarios will provide increased flexibility for employees in a stability period due to a reduction of hours in addition to closing a logistical loophole for plans whose enrollment period did not align with the enrollment period for Marketplace coverage (typically non-calendar year plans).

Plans must be amended by December 31st of the year in which they choose to permit these election changes. Under special transition relief, a plan implementing these changes for a plan year beginning in 2014 may amend anytime on or before December 31, 2015.

*Ajay A. Athavale, Benjamin J. Conley and Joy Sellstrom* are members of Seyfarth's Employee Benefits & Executive Compensation Department. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Ajay A. Athavale at [aathavale@seyfarth.com](mailto:aathavale@seyfarth.com), Benjamin J. Conley at [bconley@seyfarth.com](mailto:bconley@seyfarth.com) or Joy Sellstrom at [jsellstrom@seyfarth.com](mailto:jsellstrom@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

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