

# Section 125 - Permitted Election Changes

## Guidelines for Cafeteria Plans

The Mutual of Omaha Companies have prepared the following informational guidelines to summarize the permitted election changes contained in Section 125 of the Internal Revenue Code and regulations, thereunder; and our handling of election changes under your group policy/plan. The information contained herein has been prepared for informational purposes only and is not to be considered legal advice, consulting, or other professional advice or services. The information contained herein may not reflect the most current information regarding Section 125 permitted election changes. You should consult with your own legal counsel or other qualified professional advisor before making any decision or acting on any of the information contained herein. You should also consult with your own legal counsel or other qualified professional advisor for assistance in preparing any plan document or summary plan description for your Section 125 cafeteria plan or other communication to plan participants regarding permitted election changes under your cafeteria plan.

### Permitted Election Changes

An employer may choose to provide certain insurance benefits to their employees (and their eligible dependents) under a Section 125 cafeteria plan. A cafeteria plan permits employees to elect to pay their share of the benefit cost with pretax deferrals. Such cafeteria plans permit an employee to change their pre-tax deferral election only when certain specific event occurs (other than during an enrollment period.) **An eligible employee MUST submit a written request to us regarding** any such event(s) within 31 days from the date of the event. Your plan document should include this requirement.

The Plan Administrator is responsible for providing employees with the information regarding the election changes that are permissible under the employer's cafeteria plan. Permitted election changes are subject to change by the Internal Revenue Service. Election changes are only allowed if they are permissible under the employer's cafeteria plan and in accordance with the requirements of Section 125 of the Internal Revenue Code and regulations thereunder. Section 125 does not require a cafeteria plan to permit any or all of the permitted election changes as later described in these guidelines. Employers should consult their legal counsel for further assistance.

A Section 125-cafeteria plan allows employees to deduct contributions for qualified contributory coverages on a pre-tax basis. Qualified contributory coverages include dental, vision, AD&D, STD, LTD, Section 79 Group Term-Life Insurance, and contributions for un-reimbursed health care and dependent/child care expenses (reimbursement accounts). **If the employer pays the full cost of insurance, the plan is not a Section 125 plan because there are no employee contributions that can be converted to pre-tax dollar.**

If the employer pays the full cost of employee coverage and the employee contributes toward the dependent coverage, only the employee's eligible dependent(s) will be subject to the permitted election changes as described in these guidelines

**Note: Section 125 regulations restrict an employee from revoking or making new elections with respect to contributory coverage(s) other than during the plan year unless a permitted election change has occurred.**

Permitted election changes applicable to coverage for eligible employees and/or dependent(s) may be made when any of the events occur as shown on the following pages.

If an employee's election change does not meet Section 125 cafeteria plan requirements, the employee may only make an election change during a Subsequent Enrollment Period as specified in the group policy/plan.

If an employee makes a written request to begin employee and/or dependent coverage(s) within 31 days after an event for which an election change is permissible, the coverage will become effective on the first day of the first calendar month following our receipt of the enrollment request; or on an earlier date, as agreed to by us. If an employee makes a written request to end coverage within 31 days after an event for which an election change is permissible, coverage will end as specified in your group policy/plan.

If the employee makes a written request to begin coverage more than 31 days following an event for which an election change is permissible, the employee and/or dependent(s) will be subject to the requirements of the Subsequent Enrollment Periods provision as shown in the group policy/plan.

### **When Election Changes are Permitted for Employees and their Eligible Dependents**

Permissible election changes vary depending upon the type of benefit involved. Please consult your legal advisor to obtain information as to how the Section 125 requirements apply to different types of benefits.

1. **Special Enrollment Rights:** An event described in the Special Enrollment provisions as shown in the group policy/plan;
2. **Entitlement to or loss of eligibility for Medicare or Medicaid:** The employee or the employee's dependent becomes entitled to or loses eligibility for Medicare (Part A or Part B) or Medicaid, other than coverage consisting solely of benefits under the program for distribution of pediatric vaccines);
3. **Special Requirements relating to the Family and Medical Leave Act (FMLA):** An employee takes leave under FMLA, in which case the employee may revoke an existing election of health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under FMLA;
4. **Significant cost or coverage changes:** Refer to Definitions section below;
5. **A judgment, decree or order:** Resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified child support order) that requires health coverage for an employee's dependent child or for a foster child who is a dependent of the employee. The judgment, decree, or order is satisfied if it changes the employee's election to provide the required coverage under the employee's plan for the dependent child; or permits the employee to make an election change to cancel coverage for the child if the order requires the spouse, former spouse or other individual to provide coverage for the child; or
6. **Changes in status events, which include the following:**
  - a) **Legal marital status:** Change in the employee's legal marital status, including marriage, death of spouse, divorce, legal separation and annulment;
  - b) **Number of dependents:** Change in the employee's number of dependents, including birth, death, adoption and placement for adoption. If dependent coverage is available under the group policy/plan and an eligible employee who has previously not elected coverage acquires a dependent, we require that the employee must become insured when the eligible dependent becomes insured;
  - c) **Employment status:** Change in the employment status of the employee or the employee's dependent, including termination or commencement of employment, a strike or lockout, a commencement of or return from an unpaid leave of absence or a change in worksite. This also includes a change in the employee's or the employee's dependent's employment status resulting in the individual becoming or ceasing to be eligible under the group policy/plan;
  - d) **Eligible dependent status:** Change in the eligibility of a dependent due to reaching a limiting age, change in student status or any similar circumstance; and
  - e) **Residence:** Change in the place of residence of the employee or the employee's dependent provided that the change in place of residence affects the eligibility for the employee or the employee's dependent's coverage under the group policy/plan.

**Consistency Rule:** In all cases, any election change as a result of any change in status must be on account of and correspond with a change in status that affects eligibility for coverage under the plan. For example, if the change in status is the employee's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent child, or a dependent ceasing to satisfy the eligibility requirements for coverage, an employee's election to cancel health coverage will apply only to the spouse involved in the divorce, annulment or legal separation, the deceased spouse or dependent child, or the dependent that ceased to satisfy the eligibility requirements.

## Definitions

**Benefit Package Option** means a qualified benefit under section 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as indemnity option, an HMO option or a PPO option under an accident or health plan). A benefit package option does not include any product, which is advertised, marketed, or offered as long-term care insurance.

**Significant cost changes** consist of the following events:

1. **Automatic** changes. If the cost of coverage increases or decreases and employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase or decrease in the employee's contributions;
2. **Significant cost increases or decreases.** If the cost charged to an employee for a Benefit Package Option significantly increases or decreases during a period of coverage, the employee may make a corresponding change in election under the cafeteria plan. Changes that may be made include starting participation in the plan for the option with a decrease in cost or revoking an election for the coverage with an increase in cost and, instead, either receiving on a prospective basis coverage under another Benefit Package Option providing similar coverage or dropping coverage if no other Benefit Package Option providing similar coverage is available.

A cost increase or decrease refers to an increase or decrease in the amount of the elective contributions under the cafeteria plan, whether that increase or decrease results from an action taken by the employee (such as switching between full-time and part-time status) or from an action taken by an employer (such as reducing the amount of employer contributions for a class of employees).

**Significant coverage changes** consist of the following events:

1. **Significant curtailment without loss of coverage.** If an employee or employee's dependent has a significant curtailment of coverage that is not a loss of coverage, any employee who had been participating in the plan may revoke the election for that coverage and instead elect to receive on a prospective basis coverage under another Benefit Package Option providing similar coverage. A significant curtailment of coverage consists of an overall reduction in coverage provided under the group plan so as to constitute reduced coverage generally (e.g., a significant increase in the deductible, the co-payment, or the out-of-pocket cost sharing limit under a health plan);
2. **Significant curtailment with loss of coverage.** If an employee or employee's dependent has a significant curtailment that is a loss of coverage, the employee may revoke the election under the plan and instead elect either to receive on a prospective basis coverage under another Benefit Package Option providing similar coverage or to drop coverage if no similar Benefit Package Option is available. A loss of coverage means a complete loss of coverage under the Benefit Package Option or other coverage option (e.g., the elimination of a benefits package option, an HMO ceasing to be available in the area where the individual resides, or loss of coverage by reason of an overall lifetime or annual limitation). In addition, the following will be treated as a loss of coverage:
  - a) a substantial decrease in the health care providers available under the option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the physicians participating in a preferred provider network or an HMO);
  - b) a reduction in the benefits for a specific type of condition or treatment with respect to which the employee or dependent is currently in a course of treatment; or
  - c) any other similar fundamental loss of coverage.
3. **Addition or improvement of a benefits package option.** If a plan adds a new Benefit Package Option or other coverage option, or if coverage under an existing Benefit Package Option or other coverage option is significantly improved during a period of coverage, employees may revoke their election under the cafeteria plan (whether or not they have previously made an election under the cafeteria plan or have previously elected the Benefits Package Option) and instead make an election on a prospective basis for coverage under the new or improved Benefit Package Option.

4. **Change in coverage under another employer plan.** An employee may make a prospective election change that is on account of and corresponds with a change made under another employer plan (including a plan of the Policyholder or of another employer) if:
  - a) the other cafeteria plan or qualified benefits plan permits participants to make an election change that would be permitted under the applicable provisions of Section 125; or
  - b) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the other cafeteria plan or qualified benefits plan.
5. **Loss of coverage under other group health coverage.** An employee may make an election on a prospective basis to add coverage under the group policy/plan for the employee or employee's dependent if such employee or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, including a:
  - a) State's children's health insurance program under Title XXI of the Social Security Act;
  - b) medical care program of an Indian Tribal government, the Indian Health Service, or a tribal organization;
  - c) a State health benefits risk pool; or d) a foreign government group health plan.