

Public Notice of Direct Final Rulemaking

Rhode Island Government Register

AGENCY: Office of the Health Insurance Commissioner (“OHIC”)
DIVISION: Insurance
RULE IDENTIFIER: N/A
ERLID: 5638
REGULATION TITLE: Cafeteria Plans - OHIC Regulation 10

RULEMAKING ACTION: Direct Final

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Date of Public Notice: **June 27, 2018**
End of Comment Period: **July 27, 2018**

SUMMARY OF PROPOSED ACTION ON THE RULE:

OHIC proposes repealing this regulation, which attempts to implement a statute which is included in title 27 but which by its terms provides jurisdiction to Department of Labor and Training. The regulation attempts to regulate employers who are not licensees of OHIC and is, therefore, unenforceable. OHIC does not expect this repeal to be controversial.

WHERE AMENDMENTS MAY BE INSPECTED:

A copy of the proposed repeal will be available for examination from June 27, 2018, through July 27, 2018, by mail or at the offices of the Department of Business Regulation, Attn: Amy Stewart, Esq., 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by emailing amy.stewart@dbr.ri.gov or by calling Amy Stewart at (401) 462-9619. Electronic copies of the proposed repeal will also be available on the DBR website at www.dbr.ri.gov and Secretary of State’s at <http://sos.ri.gov/ProposedRules/>. A copy of the proposed repeal is also found below in the body of this webpage.

COMMENTS:

Interested persons may submit written objections to the proposed repeal of this regulation. If no objection is received on or before July 27, 2018, the Department will file the repeal without opportunity for public comment and the repeal will be effective on July 27, 2018. Any written objections should be sent to the following addresses and must be received no later than 11:59 PM on July 27, 2018.

amy.stewart@dbr.ri.gov

OR

Department of Business Regulation
Legal Division
Attn: Amy Stewart
1511 Pontiac Ave, Bldg 68-1

FOR FURTHER INFORMATION CONTACT:

Amy Stewart, Esq., at (401) 462-9619, or at the email or mailing address listed above.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis:

These proposed amendments will result in no impact upon small businesses.

Authority for This Rulemaking: R.I. Gen. Laws §§ 42-14.5-1 et seq., 42-14-5, and 42-14-17.

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

Consistent with the above Summary of Proposed Action on the Rule, the Office of the Health Insurance Commissioner proposes to repeal OHIC Regulation 10 – Cafeteria Plans as specifically shown in the attached redlined document.

State of Rhode Island and Providence Plantations
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
1511 Pontiac Avenue, Bldg 69-1
Cranston, RI 02920

OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 10
CAFETERIA PLANS

Table of Contents

Section 1 — Statement of Authority and Purpose
Section 2 — Definitions
Section 3 — Applicability and Scope
Section 4 — Requirements
Section 5 — Severability
Section 6 — Effective Date

Section 1 — Statement of Authority and Purpose

This regulation is promulgated pursuant to the authority granted to the health insurance commissioner under R.I. Gen. Laws §§ 27-70-1 *et seq.*, 42-14-5, 42-14-17, 42-14.5-1 *et seq.* and 42-35-1 *et seq.*

This regulation is intended to implement the provisions of Title 27, Chapter 70, entitled “The Health Insurance Tax Incentive” (the “HITI”). The HITI requires each Rhode Island employer that meets certain size requirements to adopt and maintain for its employees a cafeteria plan (also referred to as a “Section 125 plan”) so that the employees and their dependents may purchase health insurance with pre-tax wages.

Nothing in this regulation should be construed as requiring an employer to establish a group health plan or to pay for, or otherwise contribute to, the cost of any health insurance purchased through the cafeteria plan. Furthermore, nothing in this regulation shall be construed as requiring an employer to establish a cafeteria plan in a manner that would violate any federal law, including The Employee Retirement Income Security Act of 1974 (“ERISA”), the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) or The Health Insurance Portability and Accountability Act (“HIPAA”).

Section 2 — Definitions

All words or phrases used in this regulation shall have the following meaning:

- (a) “Cafeteria plan” is a plan that satisfies section 125 of the Internal Revenue Code, 26 U.S.C. § 125, and the regulations promulgated thereunder by the United States Department of the Treasury.
- (b) “Employee” has the meaning set forth in subsection R.I. Gen. Laws § 28-42-3(14).
- (b) “Employer” has the meaning set forth in R.I. Gen. Laws § 28-42-3(15).

- (c) ~~“Commissioner” shall mean the health insurance commissioner.~~
- (d) ~~“Group health plan” has the same meaning as an employee welfare benefit plan as defined in § 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.~~

Section 3 — Applicability and Scope

- (a) ~~These regulations apply to employers that meet the following conditions:~~
- ~~(1) The employer has an annual average employment of more than twenty five employees for six consecutive months of the year in the state of Rhode Island;~~
 - ~~(2) The employer has established a group health plan;~~
 - ~~(3) The group health plan is not provided on a self-funded or self-insured basis; and~~
 - ~~(4) The employer’s group health plan provides health insurance coverage for which any portion of the premium is deducted from the employee’s salary or wages.~~
- (b) ~~Nothing in this section shall be construed to require an employer to set up or maintain a group health plan or take any action that affects an existing group health plan.~~
- (c) ~~Nothing in this section shall be construed to prohibit or otherwise restrict an employer’s ability to either provide a group health benefit plan or create a premium-only cafeteria plan with defined contributions and in which the employee purchases the policy.~~

Section 4 — Requirements

- (a) ~~An employer that meets the requirements of Section 3 of this regulation shall, if it has not already done so, adopt and maintain a Section 125 Cafeteria Plan for its employees that participate in the employer’s group health plan.~~
- (b) ~~A Section 125 Cafeteria Plan must satisfy applicable Internal Revenue Code Section 125 requirements, any applicable United States Department of the Treasury rulings, regulations and guidance, as determined by the United States Department of the Treasury and the United States Internal Revenue Service.~~

Section 5 — Severability

~~If any provision of this regulation or the application thereof to any person or circumstances are for any reason held to be invalid, the remainder of the regulation and the application of its provisions to other persons or circumstances shall not be affected thereby.~~

Section 16 Effective Date

~~This regulation shall become effective as indicated below.~~

~~EFFECTIVE DATE: July 1, 2009~~