



Missouri's New Cafeteria Plan Mandate

On June 1, 2007 Gov. Matt Blunt signed HB 818, the Missouri Health Insurance Portability and Accountability Act (Act), which received tremendous support from both political camps offering health care reform, including a cafeteria plan mandate for Missouri employers. While incorporating the name of an important federal statute, HB 818 bears little resemblance to the federal HIPAA legislation.

Specifically, the Act codifies new RSMo Section 376.453, which *requires* an employer that pays any portion of the health insurance premium for an employee to establish a premium-only cafeteria plan under 26 U.S.C. Section 125. An employer *may also* create a premium-only cafeteria plan and contribute defined contributions to an employee-purchased health plan. However, the requirement does not apply to an employer who offers health insurance through any self-insured or self-funded health plan.

Missouri is the latest state to enact a cafeteria plan mandate, and many observers indicate that the Missouri law makes the most sense for both employees and employers so far. The other states enacting cafeteria plan requirements under Section 125 include Massachusetts, Rhode Island and Connecticut.

Massachusetts was the first state to enact a cafeteria plan requirement for employers.¹ The Massachusetts law basically requires nearly all state residents to have health insurance coverage effective July 1, 2007. The cafeteria plan requirement was also effective July 1, 2007 and provides that employers with eleven or more full-time equivalent employees in Massachusetts establish and maintain a Cafeteria 125 Plan. There are several exceptions to the cafeteria plan requirement, but if not otherwise exempt, employers must comply with various rules established by the new Commonwealth Health Insurance Connector Authority. Several industry groups are mounting political and potential legal challenges to the Massachusetts legislation.

Industry groups in Missouri are considering similar challenges to the Act. Proponents of the Missouri Act argue that the Missouri law differs from those in other states because it enables Missouri's overwhelmingly large number of small employers to create Cafeteria 125 Plans allowing individuals to purchase the health coverage right for them with tax-free dollars. The most obvious advantage to the cafeteria plan mandate is the tax incentive it provides since individual health insurance premiums are tax-free to the employee as well as the tax-free nature of the employer's portion of the premium. Other advantages of the

¹ Massachusetts Health Care Reform Act.

health care provisions of the Act include individual portability, less employer involvement in selection and maintenance of a group health plan and very little continuing government involvement or oversight.

Critics of the Missouri Act argue that group health coverage premiums may increase if healthy employees purchase less expensive individual policies and less healthy employees remain under employer plans. Critics also argue that it may become more difficult for uninsurable employees to afford health care coverage due to the higher premiums and fewer affordable health care options.

Some industry groups may argue that ERISA preempts the Missouri Act. In general, cafeteria plans are not ERISA plans. However, cafeteria plans generally are intricately intertwined with ERISA group health plans which are subject to ERISA, and therefore the cafeteria plans' mandate will impact ERISA plans. If so, affected employers may argue that ERISA's preemption provision applies. This issue likely will be left to the courts to decide.

Regardless of whether you support or criticize this new legislation, the Missouri Act requires that all employers implement a cafeteria plan by January 1, 2008. On a similar note, the Internal Revenue Service has issued new regulations regarding cafeteria plans, which will be the subject of an upcoming Haynes Benefits Alert. Haynes Benefits stands ready to assist employers in complying with these new state and federal changes.

For more information, please contact Haynes Benefits PC at 816-875-1919 or visit www.haynesbenefits.com.