



TaxNewsFlash

United States



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Notice 2022-41: Additional permitted election changes for health coverage under “cafeteria plans”

The IRS today released [Notice 2022-41](#) [PDF 131 KB] allowing a participant in a section 125 “cafeteria plan” to revoke or modify, during a period of coverage, an election under the plan for family coverage under a group health plan (other than a flexible spending arrangement (FSA)) in order for one or more family members to enroll in a qualified health plan (QHP) through a health insurance exchange in the individual market.

Today’s notice states that it is being issued in conjunction with regulations under section 36B, which provide that the affordability of an offer of group health plan coverage for a related individual is based on the employee’s cost to cover the employee and the employee’s related individuals. Read [TaxNewsFlash](#)

The guidance in today’s notice is effective for elections effective on or after January 1, 2023. The notice states that the Treasury Department and the IRS intend to modify the regulations under section 125 consistent with the notice, and taxpayers may rely on the guidance in the notice pending further guidance.

The notice further provides that to allow the new permitted election changes under the notice, an employer must amend a cafeteria plan to provide for these election changes. An employer must adopt the amendment on or before the last day of the plan year in which the elections are allowed, and the amendment may be effective retroactively to the first day of that plan year, provided that the cafeteria plan operates in accordance with the guidance under the notice and the employer informs participants of the amendment. In addition, an employer may amend a cafeteria plan to adopt the new permitted election changes for a plan year that begins in 2023 at any time on or before the last day of the plan year that begins in 2024. However, in no event may an employer amend a cafeteria plan to allow an election to revoke coverage on a retroactive basis.

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