



COUNTY ADVISORY BULLETIN

CAB

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BULLETIN 2012-04

March, 2012

INSURANCE AND EMPLOYEE BENEFIT CHANGES

APPLICABLE LEGISLATION: Am. Sub. HB 225

APPLICABLE REVISED CODE SECTIONS:

Amends ORC Sections 305.171 and 3917.04

SPONSORS: Peterson and Landis

Reps. J. Adams, R. Adams, Amstutz, Anielski, Antonio, Baker, Balderson, Barnes, Batchelder, Beck, Blair, Blessing Boose, Brenner, Bulp, Buchy, Carey, Carney, Damschroder, DeGeeter, Derickson, Dovilla, Duffey, Foley, Goodwin, Grossman, Hackett, Hall, Hayes, Henne, Hollington, Huffman, Letson, Maag, Mallory, McClain, McKenney, Milkovich, Newbold, O'Brien, Pillich, Ramos, Ruhl, Schuring, Sears, Slaby, Sprague, Stebelton, Stinziano, Szollosi, Thompson, Uecker, Weddington, Yuko

Sens. Coley, Daniels, Eklund, Hite, LaRose, Lehner, Niehaus, Seitz

EFFECTIVE DATE: March 22, 2012

AUTHORIZATION FOR COUNTIES TO OFFER HEALTH AND WELLNESS BENEFITS

Background

Some county prosecutors had interpreted existing ORC Sec 305.171 to not explicitly authorize counties to offer health and wellness benefits to their employees as a part of health benefits. Further, the Ohio Attorney General issued an opinion (OAG 2009-040) stating that boards of county commissioners did not have express or implied statutory authority to construct an employee fitness center for county employees.

Summary

New language in H.B. 225 provides that counties may now offer and pay for all or any part of the cost of:

A health and wellness benefit program through which the county provides a benefit or incentive to county officers, employees, and their immediate dependents to maintain a healthy lifestyle, including, but not limited to, programs to encourage healthy eating and nutrition, exercise and physical activity, weight control or the elimination of obesity, and cessation of smoking or alcohol use.

Commissioners who would like to offer health and wellness benefit programs to their employees may want to confer with the following resources for ideas and best practices:

- Wellness Council of America: <http://www.welcoa.org/>
- Centers for Disease Control and Prevention's Workplace Health information: <http://www.cdc.gov/workplacehealthpromotion/model/index.html>
- Wellness Proposals: <http://www.wellnessproposals.com/>

In addition, CEBCO's Wellness Coordinator may be able to be of assistance.

AUTHORIZATION TO OFFER ANY QUALIFIED BENEFIT AVAILABLE UNDER A CAFETERIA PLAN

Background

ORC Sec 305.171 also lacked explicit authority for commissioners to offer flexible spending accounts, or any other benefit authorized by the IRS to be offered under Section 125 (cafeteria) plans. More importantly, according to at least two different Ohio Attorney General Opinions, county auditors also lacked the statutory authority to deduct from an employee's salary or wages the amount authorized to be paid by the employee for qualified and available benefits.¹

As defined by the IRS, a cafeteria plan "is a written plan the allows your employees to choose between receiving cash or taxable benefits instead of certain qualified benefits for which the law provides an exclusion from wages."²

Summary

HB 225 includes language which both:

1. Explicitly includes authorization for a board of county commissioners to offer "any other qualified benefit available under section 125 of the "Internal Revenue Code of 1986," 26 U.S.C. 125;"³ and,
2. Provides for payroll deduction with new language that provides "a county auditor may deduct from a county employee's salary or wages the amount authorized to be paid by the employee for one or more qualified benefits available under Section 125" plans, as long as the following criteria are met:⁴

¹ OAG 85-051, OAG 89-031

² <http://www.irs.gov/publications/p15b/ar02.html>

³ ORC Sec 305.171(A)(2)

⁴ ORC Sec 3917.04(C)

- a. The benefit must be offered on a group basis;
- b. The employee must authorize the deduction in writing; and
- c. At least ten percent of the county's employees must voluntarily elect to participate in the receipt of that benefit.

Attached to this CAB as Exhibit 1 is a copy of ORC Sections 305.171 and 3917.04 as amended by the Act.

EXHIBIT 1

OHIO REVISED CODE SECTIONS 305.171 AND 3917.04

AS AMENDED BY SUB. H.B. 225 OF THE 129TH GENERAL ASSEMBLY

Sec. 305.171. The following applies until the department of administrative services implements for counties the health care plans under section 9.901 of the Revised Code. If those plans do not include or address any benefits listed in division (A) of this section, the following provisions continue in effect for those benefits.

(A) The board of county commissioners of any county may contract for, purchase, or otherwise procure and pay all or any part of the cost of ~~group any of the following insurance, coverage, or benefits issued by an insurance company or administered by a board of county commissioners or a contractor, for county officers and employees and their immediate dependents from the funds or budgets from which the county officers or employees are compensated for services:~~

(1) Group insurance policies that may provide ~~benefits any of the following:~~

(a) Benefits including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, ~~and that may provide sickness;~~

(b) Sickness and accident insurance, ~~group;~~

(c) Group legal services, ~~or group;~~

(d) Group life insurance^{^^}

(2) Any other Qualified benefit available under section 125 of the "Internal Revenue Code of 1986." 26 U.S.C. 125;

(3) A health and wellness benefit program through which the county provides a benefit or incentive to county officers, employees, and their immediate dependents to maintain a healthy lifestyle, including, but not limited to, programs to encourage healthy eating and nutrition, exercise and physical activity, weight control or the elimination of obesity, and cessation of smoking or alcohol use.

(4) Any combination of any of the foregoing types of insurance ~~ef~~_a coverage, ~~ef~~_e county officers and employees and their immediate dependents from the funds or budgets from which the county officers or employees are compensated for services, issued by an insurance company or benefits.

(B) The board of county commissioners also may negotiate and contract for any plan or plans of health care services with health insuring corporations holding a certificate of authority under Chapter 1751. of the Revised Code, provided that each county officer or employee shall be permitted to do both of the following:

(1) Exercise an option between a plan offered by an insurance company and a plan or plans offered by health insuring corporations under this division, on the condition that the county officer or employee shall pay any amount by which the cost of the plan chosen by the county officer or employee pursuant to this division exceeds the cost of the plan offered under division (A) of this section;

(2) Change from one of the plans to another at a time each year as determined by the board.

(C) Section 307.86 of the Revised Code does not apply to the purchase of benefits for county officers or employees under divisions (A) and (B) of this section when those benefits are provided through a jointly administered health and welfare trust fund in which the county or contracting authority and a collective bargaining representative of the county employees or contracting authority agree to participate.

(D) The board of trustees of a jointly administered trust fund that receives contributions pursuant to collective bargaining agreements entered into between the board of county commissioners of any county and a collective bargaining representative of the employees of the county may provide for self-insurance of all risk in the provision of fringe benefits, and may provide through the self-insurance method specific fringe benefits as authorized by the rules of the board of trustees of the jointly administered trust fund. The fringe benefits may include, but are not limited to, hospitalization, surgical care, major medical care, disability, dental care, vision care, medical care, hearing aids, prescription drugs, group life insurance, sickness and accident insurance, group legal services, or a combination of any of the foregoing types of insurance or coverage, for county employees and their dependents.

(E) The board of county commissioners may provide the benefits described in divisions (A) to (D) of this section through an individual self-insurance program or a joint self-insurance program as provided in section 9.833 of the Revised Code.

(F) When a board of county commissioners offers health benefits authorized under this section to a county officer or employee, the board may offer the benefits through a cafeteria plan meeting the requirements of section 125 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 125, as amended, and, as part of that plan, may offer the county officer or employee the option of receiving a cash payment in any form permissible under such cafeteria plans. A cash payment made to a county officer or employee under this division shall not exceed twenty-five per cent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the county officer or employee under a policy or plan.

(G) The board of county commissioners may establish a policy authorizing any county appointing authority to make a cash payment to any county officer or employee in lieu of providing a benefit authorized under this section if the county officer or employee elects to take the cash payment instead of the offered benefit. A cash payment made to a county officer or employee under this division shall not exceed twenty-five per cent of the cost of premiums or

payments that otherwise would be paid by the board for benefits for the county officer or employee under an offered policy or plan.

(H) No cash payment in lieu of a health benefit shall be made to a county officer or employee under division (F) or (G) of this section unless the county officer or employee signs a statement affirming that the county officer or employee is covered under another health insurance or health care policy, contract, or plan, and setting forth the name of the employer, if any, that sponsors the coverage, the name of the carrier that provides the coverage, and the identifying number of the policy, contract, or plan.

(I) The legislative authority of a county-operated municipal court, after consultation with the judges, or the clerk and deputy clerks, of the municipal court, shall negotiate and contract for, purchase, or otherwise procure, and pay the costs, premiums, or charges for, group health care coverage for the judges, and group health care coverage for the clerk and deputy clerks, in accordance with section 1901.111 or 1901.312 of the Revised Code.

(J) As used in this section:

(1) "County officer or employee" includes, but is not limited to, a member or employee of the county board of elections.

(2) "County-operated municipal court" and "legislative authority" have the same meanings as in section 1901.03 of the Revised Code.

(3) "Health care coverage" has the same meaning as in section 1901.111 of the Revised Code.

Sec. 3917.04. (A)(1) If any employee of a political subdivision or district of this state, or of an institution supported in whole or in part by public funds, authorizes in writing the proper officer of the political subdivision, district, or institution, of which the individual is an employee to deduct from the employee's salary or wages the premium or portion of the premium agreed to be paid by the employee to an insurer authorized to do business in the state for life, endowment, accident, health, or health and accident insurance, annuities, or hospitalization insurance, or salary savings plan, the political subdivision, district, or institution of which the individual is an employee may deduct from the employee's salary or wages the premium or portion of the premium agreed to be paid by that employee and pay it to the insurer, provided that life, endowment, accident, health, health and accident, and hospitalization insurance is offered to the employee on a group basis and also that at least ten per cent of the employees at any institution, or of any political subdivision, or in any department, agency, bureau, district, commission, or board voluntarily elect to participate in that group insurance.

Division (A)(1) of this section does not apply to employees paid by warrant of the director of budget and management.

(2) The proper officer of a political subdivision, district, or institution of which an individual is an employee may issue warrants covering salary or wage deductions that have been authorized by the employee in favor of the insurer and in the amount so authorized by the employee.

(B)(1) The department of administrative services shall only offer employees paid by warrant of the director of budget and management voluntary supplemental benefit plans that are selected through a state-administered request for proposals process. If an employee authorizes the director of administrative services, in writing, to deduct the premium or a portion of the premium agreed to be paid by the employee to a voluntary supplemental benefit plan provider from the employee's salary or wages, the director may deduct this amount from the employee's salary or wages and pay it to the provider. Only those employees enrolled in a voluntary supplemental benefit plan on or before the effective date of this amendment June 30, 2006, may continue to participate in a plan that was not selected through a state-administered request for proposals process.

(2) The director of budget and management may issue warrants covering salary or wage deductions that have been authorized by employees paid by warrant of the director in favor of the voluntary supplemental benefit plan provider in the amount authorized by those employees.

(C) A county auditor may deduct from a county employee's salary or wages the amount authorized to be paid by the employee for one or more qualified benefits available under section 125 of the "Internal Revenue Code of 1986." 26 U.S.C. 125. and other benefits authorized under section 305.171 of the Revised Code, if the employee authorizes in writing that the county auditor may deduct that amount from the employee's salary or wages, and the benefit is offered to the employee on a group basis and at least ten per cent of the county employees voluntarily elect to participate in the receipt of that benefit.

The county auditor may issue warrants for amounts deducted under this division to pay program administrators or other insurers for benefits authorized under this section.