

## PROPOSED TRICARE REGULATIONS

In 2007 President Bush signed into law the John Warner National Defense Authorization Act for Fiscal Year 2007 (the Act). The Act added Section 1097c to Title 10 of the United States Code, prohibiting employers from offering financial or other incentives to certain TRICARE eligible employees to not enroll in an employer sponsored group health plan. This legislation applies to employers with 20 or more employees and states and local units of government and was effective January 1, 2008. On March 28, 2008 the Department of Defense issued proposed regulations addressing the Act.

### General Rule

The proposed regulations state that an employer is prohibited from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in or terminate enrollment in a group health plan that is or would be primary to TRICARE. An employer is prohibited from offering TRICARE beneficiaries an alternative to the employer's primary plan unless: 1) the beneficiary has primary coverage other than TRICARE, or 2) the benefit is a cafeteria plan under Code Section 125 and is offered to all employees, including non-TRICARE eligible employees.

This prohibition mirrors the prohibition of incentives under the Medicare Secondary Payer Rule prohibiting a group health plan from providing financial incentives to Medicare eligible employee to not enroll, or terminate enrollment from a group health plan that pays primary.

### Cafeteria Plan Exception

An employer who adheres to the requirements of Code Section 125 and offers ALL employees without regard to TRICARE eligibility a choice between health insurance and cash payment will not be considered in violation of the Act. Therefore, a TRICARE beneficiary's election of a cash benefit under a bona fide cafeteria plan arrangement where such election is available to all other employees would not be a prohibited incentive.

### TRICARE Supplemental Policies & Cafeteria Plans

Generally, an employer may not sponsor TRICARE supplemental insurance plans as an option for health coverage under the employer sponsored group health plan. This includes offering such supplemental insurance plans under a cafeteria plan, as they are not open to all employees and therefore would be a prohibited incentive targeted for TRICARE eligible individuals.

### Penalties

Penalties may be assessed up to \$5,000 for each violation.

### Period for Comment

These regulations are in proposed format and comments are being accepted between now and May 27, 2008.

#### RESOURCES

- Federal Register Vol. 73 No. 61, pg. 16612, March 28, 2008  
<http://edocket.access.gpo.gov/2008/pdf/E8-6419.pdf>

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