



# Board Agenda Item 28

DATE: September 1, 2020

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, Director of Human Resources

SUBJECT: Amendments to the Cafeteria Plan for the Employees of County of Fresno

RECOMMENDED ACTION(S):

**Adopt a Resolution amending the Cafeteria Plan for the Employees of County of Fresno to implement changes due to updated Federal regulations and Internal Revenue Service Notice 2020-29**

There is no increase in Net County Coast associated with the recommended action. Adoption of the proposed resolution will amend the Cafeteria Plan for the Employees of County of Fresno (the "Plan") to extend health and daycare claims deadlines, extend COBRA election deadlines, and extend the deadline to incur eligible expenses. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may choose not to extend the deadline to incur eligible expenses, known as the Grace Period. The other provisions in the resolution are required under the Code of Federal Regulations.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action.

DISCUSSION:

The County has offered health and dependent care flexible spending accounts to participating employees since 1988. Flexible Spending Accounts allow employees to set aside tax-free funds that can be used for healthcare and childcare expenses. Contributions reduce the base upon which an employee's Federal, State, Social Security, and Medicare taxes are calculated, thereby reducing the amount of taxes paid by the employee and reducing the Social Security and Medicare taxes paid by the County. For Plan Year 2020, there are currently 1,751 employees enrolled in a health care flexible spending account with over \$2.3 million in annual elections; there are 108 employees enrolled in a dependent daycare flexible spending account with over \$280,000 in annual elections. The Plan was most recently amended and restated November 17, 2015.

Due to the ongoing COVID-19 Public Health Emergency, regulations have been updated and new guidance has been issued by Federal government agencies related to cafeteria plans. Such regulation updates and guidance and their impact on the County's Plan are summarized as follows:

- On March 13, 2020, President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak and by separate letter declared a national emergency under the Stafford Act effective March 1, 2020.
- On May 4, 2020, the Department of Treasury updated Title 26, Part 54 of the Code of Federal

Regulations (“CFR”) and the Department of Labor updated Title 29, Parts 2560 and 2590 of the CFR, extending certain timeframes for group health plans, disability and other welfare plans, pension plans and participants and beneficiaries of these plans during the COVID-19 National Emergency. These updates establish a period of time from March 1, 2020 until 60 days after the announced end of the COVID-19 National Emergency or such other date announced by the Employee Benefits Security Administration and the Internal Revenue Service in future guidance, hereinafter referred to as the “Outbreak Period.” Specifically:

- Group health plans must disregard the Outbreak Period for purposes of the 30-day period to request a special enrollment in a group health plan and the 60-day period to request enrollment into a group health plan upon losing eligibility for CHIP coverage becoming eligible for the CHIP subsidy;
- Individual and group health, disability and pension plans must disregard the Outbreak Period for purposes of the date within which individuals may file a benefit claim under a plan’s claims procedures and the date within which a claimant may file an appeal of an adverse benefit determination under a plan’s claims procedures;
- Individual and group health plans must disregard the Outbreak Period for purposes of the date within which a claimant may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination and the date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete; and
- All plans subject to Consolidated Omnibus Budget Reconciliation Act of 1985 (hereinafter referred to as “COBRA”) continuation must disregard the Outbreak Period for purposes of the COBRA deadlines:
  - the 60-day election period for COBRA continuation coverage;
  - the date for making COBRA premium payments; and
  - the date for a group health plan, sponsor or administrator to provide a COBRA election notice.
- On May 12, 2020, the Internal Revenue Service released Notice 2020-29, which allows section 125 cafeteria plans to permit participants to use funds from the 2019 plan year for expenses incurred through December 31, 2020.

The proposed amendments to the Plan and the relevant sections of the current Plan Document - attached to this Item as Exhibit A - are summarized as follows:

1. The deadlines for HIPAA Special Enrollment rights, as defined in Section 6.4 of Exhibit A, are extended for the duration of the Outbreak Period.
2. The 2019 Plan Year claims run-out deadline, as defined in Schedules B, C, and D of Exhibit A, is extended for the duration of the Outbreak Period. Pursuant to item #5, below, the new claims run-out period end date for the 2019 Plan Year shall be no earlier than December 31, 2020.
3. The appeal deadlines, as defined in Section 7 of Exhibit A, are extended for the duration of the Outbreak Period.
4. The deadlines for employees to elect COBRA continuation coverage and to timely pay the applicable COBRA premiums, as referenced in Schedules A, B, and C of Exhibit A, are extended for the duration of the Outbreak Period.
5. The Plan’s Grace Period ending in calendar year 2020, as referenced in Schedules B, C, and D of Exhibit A, is extended from March 15, 2020 to December 31, 2020.

The changes in the Resolution summarized in items 1 through 4, above, are currently active as required by federal regulation. The change to the Grace Period, summarized in item 5, above, will become effective upon your Board’s approval.

#### OTHER REVIEWING AGENCIES:

Navia Benefit Solutions, the County’s flexible spending account administrator and Keenan & Associates, the County’s health benefits consultant, as experts on Code Section 125, assisted in drafting the proposed resolution.

REFERENCE MATERIAL:

BAI #41, November 17, 2015

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Exhibit A

On file with Clerk - Resolution

CAO ANALYST:

Yussel Zalapa