

**Administrative Information Bulletin 03-07:**  
**Guidance Regarding M.G.L. c. 151F, as implemented by 956 CMR 4.00**  
**September 5, 2007**

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Pursuant to 956 CMR 4.08(4), the Commonwealth Health Insurance Connector Authority (the “Connector”) is issuing this Administrative Information Bulletin (“Bulletin”) to provide guidance in connection with the section 125 cafeteria plan requirement set forth in M.G.L. c. 151F and 956 CMR 4.00. The Bulletin provides guidance concerning (a) the filing of employer-maintained section 125 cafeteria plan documents with the Connector under 956 CMR 4.07, (b) certain classes of employees that are excludable from participation in an employer’s section 125 cafeteria plan in accordance with 956 CMR 4.06, and (c) definitions in 956 CMR 4.04.

(1) Revised Section 125 Cafeteria Plan Filing Requirement. In accordance with 956 CMR 4.07 (2)(d), by this Bulletin the Connector is revising the filing requirement stated in 956 CMR 4.07 (2)(a), effective September 1, 2007, to provide as follows:

**Each 151F Employer shall, upon the request of the Connector, submit a copy of its Section 125 Cafeteria Plan(s) to the Connector within seven (7) business days of the Connector’s request. Any Section 125 Cafeteria Plan maintained by a 151F Employer that is not available to any Employees employed at a Massachusetts location is not subject to the filing requirement.**

The remainder of 956 CMR 4.07(2) is not modified by this Bulletin and shall remain in full force and effect. Paragraph (1) of Connector Administrative Information Bulletin 02-07 is superseded by this Bulletin, effective September 1, 2007.

(2) Certain Student Employees as an Excludable Class. In accordance with 956 CMR 4.06 (3)(b), a 151F Employer may, at its option, specifically exclude from eligibility to participate in its section 125 cafeteria plan one, none, or any combination of the specified employee classes and still be compliant with M.G.L. c. 151F with respect to such excluded employees. 956 CMR 4.06(3)(b) is revised to add the following class of employees to the list of excludable classes as 4.06(3)(b)h:

**h. Students who are employed part-time as Employees of the educational institution they attend and who, as a condition of attending that educational institution, participate in a qualifying student health insurance program (i.e., section 18 of MGL c. 15A or a qualifying student health insurance program of another state) or in a health plan with comparable coverage, as required by state law.**

(3) Definition of Independent Contractor. Independent Contractor, as defined in 956 CMR 4.04, is revised as follows:

An individual that provides services not deemed to be employment under M.G.L. c. 151A, § 2 because:

(a) such individual has been and will continue to be free from control and direction in connection with the performance of such services, both under his contract for the performance of service and in fact; and

(b) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

**Independent Contractor shall also include an individual who provides services not deemed to be employment for federal employment tax and wage withholding purposes in accordance with Internal Revenue Code sections 3121 and 3401 and with the 20-factor test established by Internal Revenue Service Rev. Rul. 87-41.**

This Administrative Bulletin takes effect immediately.