



AMENDMENT AND SMM FOR SECTION 125 PLAN

BPC, Inc. is providing this Amendment and Summary of Material Modification (SMM) to amend your Section 125 Plan to comply with the 2010/2011 effective date provisions of the Affordable Care Act of 2010 (the umbrella title for the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act aka "health care reform").

Are Section 125 Plans required to be amended for the Affordable Care Act?

Yes, if the plan includes any of the following:

1. The plan provides (or permits the payment for) health coverage for dependents (the Affordable Care Act requires coverage of children through age 26). This is effective March 30, 2010 for the Health FSA and any premiums that may be paid on a pre-tax basis for an eligible dependent. This does not change your insurance contract or plan. That will be done separately through your insurance carrier and may be effective at a later date. This change allows pre-tax salary to be used to pay for "adult children" health insurance premium on or after March 30, 2010.
2. The plan includes a health care flexible spending account (Health FSA) that permits reimbursements of "over-the-counter" drugs (the Affordable Care Act prohibits the reimbursement of over-the-counter drugs without a prescription). Please remember BPC Benefit Cards (flex debit cards) will not authorize the purchase of OTC drugs after December 31, 2010.

What does an employer need to do to adopt this amendment?

The employer will need to complete the last page of the amendment by December 31, 2010 with Employer Name, signature of authorized person and date signed. Please return copy of completed signature page to BPC by fax, email or regular mail for compliance. NOTE: An *optional* Adopting Resolution page is also provided for signature, if your organization requires a Board of Directors, Trustees or similar group to authorize Section 125 Plan changes. If there are any provisions of this amendment or SMM that the employer does not want to adopt please contact BPC at 217-531-9000 so that we can remove any provisions that do not apply.

Please distribute copies of SMM to Plan Participants as notice of this update to your Section 125 Plan. Retain copies of signed, dated Amendment and SMM for your records.

When do the amendments become effective?

The "over-the-counter" drug provision takes effect on January 1, 2011, or the date specified by law, if later. The dependent provision is effective March 30, 2010, which is the earliest date possible, as long as you adopt this amendment no later than December 31, 2010.

There will be a \$100 fee for this Amendment/SMM that will be invoiced separately. If you have any questions, please contact BPC's Document – Compliance Department at 217-531-9000 or 800-355-2350.

Sincerely,

Patricia M. Merna, CPA, CEBS, CFC
Director of Benefit Compliance

2010 HEALTH CARE REFORM PROVISIONS
SECTION 125 PLAN AMENDMENT

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to the Employer's Section 125 Plan ("Plan") to reflect certain provisions of the Affordable Care Act of 2010 (the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act). The sponsor intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the date the Employer elects in Section 2.1 below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

**ARTICLE II
ELECTIONS**

- 2.1 **Effective Date for Article III.** The provisions of Article III, unless otherwise indicated are effective as of March 30, 2010.

**ARTICLE III
MISCELLANEOUS PROVISIONS**

- 3.1 **Change in Reimbursement.** Effective January 1, 2011, or the date specified by law, if later, the Plan's definition of "Medical Expenses" under the Health Flexible Spending Account is amended by the addition of the following:

Notwithstanding anything in the Plan to the contrary, a Participant may not be reimbursed for the cost of any medicine or drug that is not "prescribed" within the meaning of Code Section 106(f) or is not insulin.

- 3.2 **Dependent.** The Plan's definition of "Dependent" is amended by the addition of the following:

"**Dependent**" shall include any child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Flexible Spending Account as allowed by reason of the Affordable Care Act.

A Participant's "Child" includes his natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. An Employee's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Participant or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Participant of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

- 3.3 **Dependent.** The Plan's Change in Status provisions are amended by the addition of the following:

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child up to the end of the year in which a child attains age 26, as allowed under Code Sections 105(b) and 106 and IRS Notice 2010-38, shall qualify as a change in status.

2010 HEALTH CARE REFORM PROVISIONS

This amendment has been executed this _____ day of _____, 2010.

Name of Employer Sponsoring Section 125 Plan: _____

By: _____
AUTHORIZED SIGNATURE OF EMPLOYER

[print name/title]

Please return a signed copy of this page and the Certificate of Corporate Resolution (if applicable) to BPC by fax to 217-239-4499 or by email at docdeptbenefits@bpcinc.com. If you prefer to return a copy by mail, please send to:

BPC, Inc. - P. O. Box 7500, Champaign, IL 61826-7500

2010 HEALTH CARE REFORM PROVISIONS
CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of _____ (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on _____, 2010, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the Employer's Section 125 Plan (the Amendment) is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: _____

Signed: _____

[print name/title]

2010 HEALTH CARE REFORM PROVISIONS

SUMMARY OF MATERIAL MODIFICATIONS for the Employer's Section 125 Plan

I INTRODUCTION

This is a Summary of Material Modifications regarding the Employer's Section 125 Plan ("Plan"). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description ("SPD") previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

II SUMMARY OF CHANGES

Medical expenses:

Effective January 1, 2011, or the date specified by law, if later, you may not request reimbursement of "over the counter" drugs unless the drug is insulin or the drug is prescribed for you for treatment of a medical condition.

Definition of "child":

Effective March 30, 2010, you may pay for insurance coverage or eligible medical expenses on a pretax basis for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.