

BOBBY JINDAL
GOVERNOR



KRISTY H. NICHOLS
COMMISSIONER OF ADMINISTRATION

State of Louisiana

Division of Administration
Office of General Counsel

October 3, 2014

Dear Members of the Louisiana Legislature:

We have consulted with several health care lawyers in evaluating the issues involved with postponing the implementation date of certain benefit options in our group plan.

We evaluated the impact to our group plan as well as our enrollees from a federal tax perspective, the potential impact to our EGWP subsidy from Medicare (because OGB offers a prescription drug benefit to retirees who are eligible for prescription drug coverage under Medicare Part D, Medicare subsidizes OGB for the cost of providing that benefit if certain conditions are satisfied), and logistics of the delay in implementation dates. While this was a difficult decision, we have tried to be responsive to the committee members' request to postpone implementation of the changes, which would in turn allow greater time for open enrollment. While we believe and have advised the committee that these changes are necessary for the upcoming year, we have made every effort to allow more time for communicating with, educating, and assisting our members so they can make the best selection for them.

We wanted to be absolutely sure that we could legally implement changes later than the beginning of the calendar year without significant adverse consequences to our plan or members. We have consulted with several health care lawyers who specialize in health benefits law, particularly in the areas of the operation and management of health care plans and CMS/Medicare rules. They have all confirmed that it is permissible to implement changes to the benefit options available through a group health plan during the plan year; however, the law does require an open enrollment period if material modifications are made to the benefits available through the plan.

Other issues come into play in determining when to conduct the annual enrollment. Since the state is a governmental entity, it is not bound by the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), but is subject to certain provisions of the Internal Revenue Code of 1986, as amended (the "Code"). Section 125 of the Internal Revenue Code, which governs cafeteria plans, has been a significant focus of legal concern. OGB plan participants not enrolled in the OGB consumer driven health plan, generally once per plan year, are allowed to elect to pay their share of the cost of coverage on a pre-tax basis through the Section 125 cafeteria plan offered by OGB. Under the Code

Section 125 cafeteria plan, participants can make pre-tax contributions to accounts such as health care flexible spending accounts to pay for unreimbursed medical expenses like co-pays and deductibles. Under Section 125, however, the plan year of a cafeteria plan must be 12 consecutive months. Because OGB's plan year is the calendar year, we could not postpone annual enrollment to the next calendar year without creating negative consequences to members' cafeteria plan

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elections. Doing so would cause the plan to fail the requirements of Section 125 to have a maximum 12-month plan year. As a result, the cafeteria plan could lose its status under Section 125 and the pre-tax benefits of premium payments and contributions to these accounts could be lost. While the cafeteria rules do allow for mid-year changes due to changes to benefit package options, delaying open enrollment, rather than extending it, would create two open enrollment periods in a short time frame and create additional confusion. While we have agreed to postpone implementation of plan changes to March 1 to the extent legally permitted and feasible without adverse consequences to the plan or members, the best legal and practical way to accomplish the goals of giving more time to educate members about their plan choices is to hold a single two month open enrollment period ending in November. The result of this action will be that (1) most members will remain enrolled in their current plans for January and February, and (2) the members will make active elections for their new plan options taking effect March 1.

Medicare enrollments and the Medicare EGWP subsidy were also of concern. Medicare Advantage enrollment must be conducted prior to the start of the calendar year and the state plan year must be on a calendar year to retain eligibility for the EGWP subsidy. In addition, employer mandate provisions of the Affordable Care Act will become effective January 1, 2015 for the state's health plan. Under that law, variable hour employees who are determined to be "FTEs" under the ACA must be allowed to enroll in health coverage effective January 1, 2015 or the state will be subject to tax penalties. Finally, the fully insured HMO (Vantage) and supplemental coverage for fully insured products for vision and dental supplemental plans operate on the Jan. 1 calendar year enrollment.

Ultimately, OGB determined that, as long as it had a fall enrollment period, it could allow participants to make their cafeteria plan elections for 2015, make elections related to Medicare Advantage participation and supplemental coverage, remain enrolled in their current OGB plans for January and February (unless switching into the fully insured Vantage HMO plan option), and choose their new OGB group plan benefit option through one extended open enrollment period prior to Jan. 1.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Murrill". The signature is fluid and cursive, with a small mark above the "i" in "Murrill".

Elizabeth B. Murrill
Executive Counsel