

MEMORANDUM OF LAW

DATE: January 19, 1990

TO: Valerie VanDeweghe, Benefits Administrator,
via D. Cruz Gonzalez, Risk Management
Director

FROM: City Attorney

SUBJECT: Open Enrollment Period for Aetna Choice
Enrollees

It has come to your attention that Aetna Choice, one of the health plan providers in the City's cafeteria plan (Flexible Benefit Plan and Management Benefit Plan), has lost a significant number of treating physicians from its physician network. For example, the XIMED Medical Group which provides services to many City employees left the Aetna Choice physician network on January 1, 1990. You have previously asked this office if it were appropriate to hold a special open enrollment period to allow Aetna Choice enrollees the opportunity to change plans during the plan year. This memorandum confirms our previous advice to you that a special open enrollment period is authorized under the proposed Department of the Treasury, Internal Revenue Service Regulations found in the 54 Fed. Reg. 9460 (1989).

Although much of the proposed regulations deal with the affect of the now repealed Internal Revenue Code section 89, the proposed regulations do indicate that when coverage under a health plan provided by an independent third party provider is significantly curtailed during a period of coverage that the plan may permit all affected participants to revoke their elections to that particular health plan and to receive similar coverage under the plan. We believe that a major change in the physician network offered by the health plan provider is a significant change in coverage offered by the plan. Therefore, employees who have previously enrolled in Aetna Choice who are adversely affected by the change in coverage by Aetna Choice may change

health plan providers within the plan without violating the intent of the proposed Internal Revenue Service Regulations.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

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