

To offer a health benefits plan means to make participation in a health benefits plan available to eligible employees, or to eligible employees and their eligible dependents regardless of whether the employing entity makes a financial contribution to the plan on behalf of these employees, directly or indirectly, for example, through payments on any basis into a health and welfare trust fund.

[45 FR 72517, Oct. 31, 1980, as amended at 47 FR 19341, May 5, 1982. Redesignated at 52 FR 36746, Sept. 30, 1987, as amended at 58 FR 38077, July 15, 1993; 59 FR 49837, 49843, Sept. 30, 1994]

#### § 417.151 Applicability.

(a) *Basic rule.* Effective October 24, 1995,<sup>1</sup> this subpart applies to any employing entity that offers a health benefits plan to its employees, meets the conditions specified in paragraphs (b) through (e) of this section, and elects to include one or more qualified HMOs in the health plan alternatives it offers its employees.

(b) *Number of employees.* During any calendar quarter of the preceding calendar year, the employer or public entity employed an average of not less than 25 employees.

(c) *Minimum wage.* During any calendar quarter of the preceding calendar year, the employer was required to pay the minimum wage specified in section 6 of the Fair Labor Standards Act of 1938, or would have been required to pay that wage but for section 13(a) of that Act.

(d) *Federal assistance under section 317 of the PHS Act.* The public entity has a pending application for, or is receiving, assistance under section 317 of the PHS Act.

(e) *Employees in HMO's service area.* At least 25 of the employing entity's

employees reside within the HMO's service area.

[59 FR 49838, Sept. 30, 1994, as amended at 61 FR 27287, May 31, 1996]

#### § 417.153 Offer of HMO alternative.

(a) *Basic rule.* An employing entity that is subject to this subpart and that elects to include one or more qualified HMOs must offer the HMO alternative in accordance with this section.

(b) *Employees to whom the HMO option must be offered.* Each employing entity must offer the option of enrollment in a qualified HMO to each eligible employee and his or her eligible dependents who reside in the HMO's service area.

(c) *Manner of offering the HMO option.*

(1) For employees who are represented by a bargaining representative, the option of enrollment in a qualified HMO—

(i) Must first be presented to the bargaining representative; and

(ii) If the representative accepts the option, must then be offered to each represented employee.

(2) For employees not represented by a bargaining representative, the option must be offered directly to those employees.

[59 FR 49839, Sept. 30, 1994, as amended at 61 FR 27287, May 31, 1996]

#### § 417.155 How the HMO option must be included in the health benefits plan.

(a) *HMO access to employees—(1) Purpose and timing—(i) Purpose.* The employing entity must provide each HMO included in its health benefits plan fair and reasonable access to all employees specified in § 417.153(b), so that the HMO can explain its program in accordance with § 417.124(b).

(ii) *Timing.* The employing entity must provide access beginning at least 30 days before, and continuing during, the group enrollment period.

(2) *Nature of access.* (i) Access must include, at a minimum, opportunity to distribute educational literature, brochures, announcements of meetings, and other relevant printed materials that meet the requirements of § 417.124(b).

(ii) Access may not be more restrictive or less favorable than the access the employing entity provides to other

<sup>1</sup> Before October 24, 1995, an employing entity that met the conditions specified in § 417.151 was required to include one or more qualified HMOs, if it received from at least one qualified HMO a written request for inclusion and that request met the timing, content, and procedural requirements specified in § 417.152.