

**TITLE 26 - INTERNAL REVENUE CODE****Subtitle J - Coal Industry Health Benefits****CHAPTER 99 - COAL INDUSTRY HEALTH BENEFITS****Subchapter C - Health Benefits of Certain Miners****PART II - 1992 UMWA BENEFIT PLAN****§ 9712. Establishment and coverage of 1992 UMWA Benefit Plan****(a) Creation of plan****(1) In general**

As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501 (a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereafter be the number set by the settlors.

**(2) Treatment of plan**

The 1992 UMWA Benefit Plan shall be—

**(A)** a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186 (c)(5)),

**(B)** an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002 (1)), and

**(C)** a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002 (37)).

**(3) Transfers under other Federal statutes****(A) In general**

The 1992 UMWA Benefit Plan shall include any amount transferred to the plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

**(B) Use of funds**

Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in subsection (c) with respect to any beneficiary for whom no monthly per beneficiary premium is paid pursuant to paragraph (1)(A) or (3) of subsection (d).

**(4) Special rule for 1993 plan****(A) In general**

The plan described in section 402(h)(2)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232 (h)(2)(C)) shall include any amount transferred to the plan under subsections (h) and (i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

**(B) Use of funds**

Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in section 402(h)(2)(C)(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232 (h)(2)(C)(i)) to individuals described in section 402(h)(2)(C) of such Act (30 U.S.C. 1232 (h)(2)(C)).

**(b) Coverage requirement****(1) In general**

The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

**(2) Eligible beneficiary**

For purposes of this section, the term “eligible beneficiary” means an individual who—

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

**(c) Health benefits**

**(1) In general**

The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

**(2) Managed care**

The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

**(3) Major elements of rules**

Elements described in this paragraph are—

(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

(D) utilizing, in the claims payment function “appropriateness of service” protocols under title XVIII of the Social Security Act if more stringent,

(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

**(4) Last signatory operators**

The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

**(5) Standards of quality**

Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

(A) by the settlors, or

(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

**(d) Guarantee of benefits**

**(1) In general**

All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be applied uniformly to each 1988 last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

(A) the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

(B) the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan, and

(C) the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

**(2) Adjustments**

The 1992 UMWA Benefit Plan shall provide for—

(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

**(3) Additional liability**

Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

**(4) Joint and several liability**

A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section. The provisions of section 9711 (c)(2) shall apply to any last signatory operator described in such section (without regard to whether

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

security is provided under such section, a payment is made under section 9704 (j), or both) and if security meeting the requirements of section 9711 (c)(3) is provided, the common parent described in section 9711 (c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.

#### **(5) Deductibility**

Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

#### **(6) 1988 last signatory operator**

For purposes of this section, the term “1988 last signatory operator” means a last signatory operator which is a 1988 agreement operator.

(Added Pub. L. 102–486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3053; amended Pub. L. 109–432, div. C, title II, §§ 211(c), 212 (b)(1)–(2)(B), Dec. 20, 2006, 120 Stat. 3023, 3025, 3026.)

### **Amendment of Subsection (d)**

Pub. L. 109–432, div. C, title II, § 212(b)(2), Dec. 20, 2006, 120 Stat. 3026, provided that, applicable to fiscal years beginning on or after Oct. 1, 2010, subsection (d) of this section is amended as follows:

(1) by amending paragraph (1) to read as follows:

“(1) In general

“All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c) by meeting the following requirements in accordance with the contribution requirements established in the 1992 UMWA Benefit Plan:

“(A) The payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan.

“(B) The provision of a security (in the form of a bond, letter of credit, or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator.

“(C) If the amounts transferred under subsection (a)(3) are less than the amounts required to be transferred to the 1992 UMWA Benefit Plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232), the payment of an additional backstop premium by each 1988 last signatory operator which is equal to such operator’s share of the amounts required to be so transferred but which were not so transferred, determined on the basis of the number of eligible and potentially eligible beneficiaries attributable to the operator.”;

(2) in paragraph (2)(B), by substituting “backstop” for “prefunding”; and

(3) in paragraph (3), by substituting “paragraph (1)(A)” for “paragraph (1)(B)”.

### **References in Text**

The Social Security Act, referred to in subsec. (c)(3)(C), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

### **Amendments**

2006—Subsec. (a)(3), (4). Pub. L. 109–432, § 212(b)(1), added pars. (3) and (4).

Subsec. (d)(4). Pub. L. 109–432, § 211(c), inserted at end “The provisions of section 9711 (c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704 (j), or both) and if security meeting the requirements of section 9711 (c)(3) is provided, the common parent described in section 9711 (c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.”

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### **Effective Date of 2006 Amendment**

Pub. L. 109-432, div. C, title II, § 212(b)(2)(C), Dec. 20, 2006, 120 Stat. 3026, provided that: “The amendments made by this paragraph [amending this section] shall apply to fiscal years beginning on or after October 1, 2010.”