

IRS Provides Temporary Flexibility for Cafeteria Plans, Health FSAs, and DCAPs

May 13, 2020

As part of the Internal Revenue Service's (IRS) continued response to the COVID-19 public health emergency, it released Notice 2020-29 on **May 12, 2020**. This Notice provides employer-sponsors with temporary flexibility with respect to certain aspects of Section 125 Cafeteria Plans, Health Flexible Spending Arrangements (FSAs), and Dependent Care Assistance Programs (DCAPs). Additionally, the Notice contains some important clarifications regarding high-deductible health plans (HDHPs).

Cafeteria Plan Elections

For calendar year 2020, an employer-sponsor of a Section 125 Cafeteria Plan **may offer** expanded opportunities for eligible employees to make mid-year election changes. Specifically, an employer may permit the following types of election changes on a **prospective basis**:

- Group Health Plans.
 - Where an employee initially declined to enroll, the employee may elect coverage mid-year;
 - An employee may revoke an existing election and choose to enroll in different health coverage sponsored by the employer; and
 - An employee may revoke an existing election and choose to waive participation in the plan so long as the employee attests (in writing) that he/she is enrolled, or immediately will enroll, in other health coverage.
- Health FSAs and DCAPs.
 - Where an employee initially declined to participate, the employee may newly elect to enroll mid-year;
 - An employee may revoke an election for coverage; and
 - An employee may elect to increase or decrease an existing election.

Claims Period for Health FSAs and DCAPs

To minimize the risk of loss to employees, sponsors of Health FSAs and DCAPs **may provide** an extended period in which to incur eligible expenses. This extension applies to unused amounts as of the end of a grace period or plan year ending in 2020, which participants can apply to claims incurred through December 31, 2020.

Note that this extended claims period **will affect** an individual's eligibility to contribute to a Health Savings Account (HSA). Therefore, if an employee has unused amounts in a Health FSA, he/she should opt out of the extended claims period in order to preserve HSA eligibility.

No-Cost Coverage and HDHPs

As noted in prior guidance, a health plan will not fail to be an HDHP merely because the plan provides pre-deductible coverage for services related to the testing and treatment of COVID-19. This Notice clarifies that these expenses can be incurred on or after January 1, 2020, and that the panel of diagnostic testing for **influenza A and B, norovirus, and other viruses** is considered part of the testing and treatment of COVID-19.

Finally, the Notice explains that an individual enrolled in HDHP coverage may also receive pre-deductible coverage for **telehealth or other remote care services** without jeopardizing HSA eligibility. This temporary relief applies for plan years beginning on or before December 31, 2021.

Employer Action

These relaxed rules are optional, **not mandatory**; employers can choose the extent to which they are adopted – if at all. An employer-sponsor who wishes to incorporate the mid-year election change rules or the extended claims period for Health FSAs and DCAPs must execute a **plan amendment**.

An amendment for the 2020 plan year must be adopted on or before December 31, 2021 and may be effective retroactively to January 1, 2020. Importantly, an amendment will necessitate timely notice to eligible employees, such as through the distribution of a **Summary of Material Modification (SMM)**.

However, prior to adopting any plan amendment, an employer should **first coordinate with insurance carriers** (including stop-loss insurance carriers) and third-party administrators to confirm that the intended plan changes will be honored.

Additional Resources

IRS Notice 2020-29

<https://www.irs.gov/pub/irs-drop/n-20-29.pdf>

IRS Notice 2020-15

<https://www.irs.gov/pub/irs-drop/n-20-15.pdf>