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IRS NOTICE PROVIDES ADDITIONAL COVID-19 RELIEF FOR SECTION 125 PLANS

The Internal Revenue Service (IRS) recently issued [Notice 2021-15](#), creating additional COVID-19 relief options for employers under Section 125 plans. The notice gives employers the option to allow mid-year health plan elections during 2021 without a qualifying event. The notice also expands on the relief provisions regarding health and dependent care flexible spending arrangements (FSA) previously announced under the Consolidated Appropriations Act of 2021 (CAA) and offers practical information about how that relief will work.

Mid-Year Health Plan Elections for the 2021 Plan Year

Notice 2021-15 permits employers to allow employees to make prospective health, dental, or vision plan changes during the 2021 plan year without experiencing a qualifying life event. According to the guidance, an employer may amend its Section 125 plan to allow employees to:

1. Make a new election for employer-sponsored health, dental, or vision coverage on a prospective basis if the employee initially declined to elect employer-sponsored health coverage;
2. Revoke an existing election and enroll in a different plan sponsored by the same employer on a prospective basis (including changing enrollment from self-only coverage to family coverage); or
3. Revoke an existing election for employer-sponsored health coverage on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer.

This relief is very similar to what the IRS allowed employers to do in May of 2020 ([Notice 2020-29](#)) concerning employee health plan elections during the 2020 plan year. The relief applies to any group health insurance plan sponsor that offers pre-tax benefits through a Section 125 plan, including fully-insured and self-funded group plans. Employers can take advantage of this relief right away, and groups have until the end of 2022 to make retroactive cafeteria plan amendments.

Health FSA and DCAP Relief

The CAA gives all employers that sponsor Health FSAs and dependent care assistance programs (DCAPs) the option of allowing employees to carry over unused funds to the next plan year. It also permits extending a spending grace period for up to 12 months for plan years ending in 2020 or 2021. Plan sponsors may also permit prospective Health FSA and DCAP election changes without a corresponding status change. The new



law also permits raising the age limit for qualified dependent care beneficiaries to under age 14, rather than under age 13, for both the 2020 plan year and for any unused funds that might be “carried over” or subject to an extended grace period. This option only applies if the regular enrollment period was before January 31, 2020.

While the relief granted under the CAA was welcome news, it left plan administrators with many questions. Notice 2021-15 addresses those questions and clarifies that employers have flexibility if they choose to make any of the newly allowable changes to their Health FSA and/or DCAP plans.

Some of the important points that Notice 2021-15 addresses include:

- Employers that opt to use the Health FSA and/or DCAP relief may allow carryovers of full account balances from the 2020 and/or 2021 plan years or extend spending grace periods for up to 12 months. However, they do not have to allow all remaining funds to carryover or extend a grace period for a full 12 months. Instead, carryovers can be capped at any amount the plan sponsor chooses. Grace periods can be between the typical 2.5 months and the new maximum of 12 months.
- Employers are also permitted to make different choices for Health FSAs than they do for DCAP plans or elect relief for just one of their flexible spending arrangements.
- Employers can limit Health FSA and DCAP mid-year election changes to amounts no less than amounts already reimbursed and/or to certain types of mid-year election changes, such as decreases only.
- If an employer allows an expanded carryover, they can require employees to enroll in the Health FSA or DCAP with a minimum election amount to access the unused amounts from the prior plan year.
- For HSA contribution purposes, the carryover of unused Health FSA amounts to the 2021 plan year or the 2022 plan year will be considered non-HSA qualified coverage. Therefore, an individual accessing those funds would NOT generally be eligible to make HSA contributions. An employer may allow employees on an individual basis to opt-out of a carryover to preserve their HSA eligibility.
- COBRA eligibility or an election is not necessary to qualify for a limited extension of Health FSA coverage incurred after the termination of participation and through the end of the plan year (including any grace period) if an employer elects that option for former participants.

It is important to note that Notice 2021-15 aims to provide employers with maximum flexibility for flexible spending arrangements and mid-year election changes. No employer has to allow for any of these plan changes. Also, employers have the flexibility to let employees access all or any combination of the election change options. Group plan sponsors may also limit any or all election change time-frames to specific dates.

Reimbursement of Newly Qualified Medical Expenses

The final section of Notice 2021-15 addresses a 2020 CARES Act provision that allows employers to treat expenses for menstrual care products and over-the-counter drugs without prescriptions as reimbursable medical expenses through a Health FSA or HRA. Typically, a plan cannot reimburse medical expenses unless



the plan covered the item or service on the date incurred. This notice allows health FSAs and HRAs to amend their plans and back-date the reimbursable period for these items to on or after January 1, 2020. This relief includes new plan amendments regarding CARES Act reimbursable expenses and any amendments made before the IRS issued Notice 2021-15.

Plan Amendments

Opting for any or all of this relief is entirely at the discretion of the employer sponsoring the Section 125 plan. However, any changes an employer elects due to the CAA and Notice 2021-15 will require appropriate Section 125 plan amendments. A plan sponsor has until the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective to make all necessary plan document changes. For example, if a plan renewing on March 1, 2021, decides to make changes that affect the 2021 plan year, they would have until December 31, 2022, to make the appropriate amendments to their Section 125 plan document.

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