
**FLEXIBLE BENEFITS PLAN
HEALTH CARE FSA CLAIMS RUN-OUT EXTENSION
AND APPEAL DEADLINE AMENDMENT**

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to _____ Flexible Benefits Plan (the "Plan"). The sponsor intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the date the Employer elects in Section 2.1 below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section, or other numbering designations.

**ARTICLE II
ELECTIONS**

- 2.1 **Effective Date.** The provisions of this Amendment, unless otherwise indicated are effective as of April 29, 2020 (the "Effective date").
- 2.2 **Health Care FSA Claims Run-Out Extensions.**

The employer hereby amends the Plan as follows:

On April 29, 2020, the Department of Labor, Revenue, and Treasury (the "Departments") issued guidance extending certain timeframes for group health plans during the COVID-19 National Emergency.

As background, on March 13, 2020, President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak and by separate letter declared a national emergency under the Stafford Act effective March 1, 2020.

As a result of the National Emergency, the Departments recognized that participants may find it difficult to meet or comply with certain pre-established timeframes, specifically the health care FSA claims run out and the FSA appeals timeline. Please note, these extensions do not apply to the Day Care FSA.

The guidance announced that plans, "must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the Agencies [Departments] in a future notice (the "Outbreak Period") for all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located in determining the following periods and dates— "

Pursuant to this guidance the Employer amends the plan to extend the following timeframes that apply to Employer's Health Care FSA. Specifically, any claims run-out or appeals timeframes that fall within the outbreak period shall be tolled (paused or suspended) and added onto the end of the outbreak period to create the new applicable deadline. The following examples are illustrative.

- 1) **The Health FSA Claims Timeframes.** The date within which individuals must file a claim under the plan's claims procedures.

The following examples illustrate the application of the guidance to the claims run-out deadline.

January 1st – December 31st Plan Year.

Employer’s plan runs January through December with a ninety-day claims run-out period ending March 31, 2020. The national emergency is effective March 1, 2020. Assume the end of the national emergency is May 31, 2020, thus the end of the outbreak period is 60 days after May 31, 2020, or July 30, 2020. Since the time is tolled during the outbreak period beginning March 1, 2020, until March 31, 2020 (the end of the original claims filing period), those days are added to the end of the outbreak period. The new claims runout deadline is **August 29, 2020**.

February 1st – January 31st Plan Year.

Employer’s plan runs February 1st through January 31st with a ninety-day claims run-out period ending April 30, 2020. The national emergency is effective March 1, 2020. Assume the end of the national emergency is May 31, 2020, thus the end of the outbreak period is 60 days after May 31, 2020, or July 30, 2020. Since the time is tolled during the outbreak period beginning March 1, 2020, until April 30, 2020 (the end of the original claims filing period), those days are added to the end of the outbreak period. The new claims runout deadline is **September 28, 2020**.

March 1st – February 29th Plan Year.

Employer’s plan runs March 1st through February 29th with a ninety-day claims run-out period ending May 29, 2020. The national emergency is effective March 1, 2020. Assume the end of the national emergency is May 31, 2020, thus the end of the outbreak period is 60 days after May 31, 2020, or July 30, 2020. Since the time is tolled during the outbreak period beginning March 1, 2020, until May 29, 2020 (the end of the original claims filing period), those days are added to the end of the outbreak period. The new claims runout deadline is **October 27, 2020**.

- 2) **Appeal Deadlines.** The date within which claimants may file an appeal of an adverse benefit determination under the plan’s claims procedure. Participants typically have 180 days to appeal a Health FSA denial.

The following example illustrates the application of the guidance to the appeals deadline.

Assume the end of the outbreak period is July 30, 2020. FSA participant receives a denial of her FSA claim on March 15, 2020. She normally has 180 days from March 15, 2020, to file an appeal. Since the timeframe beginning March 15, 2020, (the date of the denial) through the end of the Outbreak period (July 30, 2020) is disregarded, she now has until June 12, 2021, to file her appeal. In this example we add the 137 days tolled from March 15, 2020, through July 30, 2020, to the end of the outbreak period plus the 180 days to appeal.

This amendment has been executed this _____ day of _____, 2020.
(day) (month)

Company Name: _____

Signature

Print Name and Title

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of _____ hereby certifies that the following resolutions were duly adopted and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the Plan (the Amendment) is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Adopted Date: _____

Signature

Print Name and Title

SUMMARY OF MATERIAL MODIFICATIONS for the

Flexible Benefits Plan

I INTRODUCTION

This is a Summary of Material Modifications regarding the _____ Flexible Benefits Plan (the “Plan”). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description (“SPD”) previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

II SUMMARY OF CHANGES

Health Care FSA Claims Run-Out Extensions.

The employer hereby amends the Plan as follows:

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As a result of the National Emergency, the Departments recognized that participants may find it difficult to meet or comply with certain pre-established timeframes, specifically the health care FSA claims run out and the FSA appeals timeline. Please note, these extensions do not apply to the Day Care FSA.

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