



COVID-19 Webinar Series: IRS Notices 2020-29 & 2020-33 and How They Impact Savings & Spending Accounts

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Regulatory Source



IRS Notice 2020-33

Section 125 Cafeteria Plans – Modifications of Permissive Carryover Rule for Health Flexible Spending Arrangements and Clarification Regarding Reimbursements of Premiums by Individual Coverage Health Reimbursement Arrangements, IRS Notice 2020-33.

<https://www.irs.gov/pub/irs-drop/n-20-33.pdf>

IRS Notice 2020-29

COVID-19 Guidance Under § 125 Cafeteria Plans and Related to High Deductible Health Plans, IRS Notice 2020-29.

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



Agenda

- Cafeteria Plan: Temporary Extension Irrevocable Election Exceptions
- Extended Claims Periods for Health FSAs and Dependent Care Assistance Programs
- Extended Certain Timeframes: Outbreak Period
[discussing other than COBRA]



Irrevocable Election Temporary Exceptions

- Normally, elections under a cafeteria plan are irrevocable.
 - Limited exceptions
 - Most are permissive
- In recognition of COVID-19 unanticipated impact on employee needs not considered when plan year elections made.
- Special **temporary** exceptions allow election changes during the 2020 calendar year.



Irrevocable Election Temporary Exceptions

- Five special temporary irrevocable election exceptions
 - Related to employer-sponsored health coverage
 - Related to spending accounts

Employer-Sponsored Health Coverage



- Make a new election for employer-sponsored health coverage, if employee initially declined to elect employer-sponsored health coverage.
 - Prospective
- Revoke existing election for employer-sponsored health coverage and make a new election to enroll in different health coverage sponsored by the same employer.
 - Prospective
 - Includes changing from self-only to family coverage
- Revoke existing election for employer-sponsored health coverage.
 - Prospective basis
 - Requires written attestation employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer; valid unless employer has actual knowledge otherwise



Irrevocable Election Temporary Exceptions

- Spending accounts
 - Revoke election, make a new election, or decrease or increase an existing election under health FSA.
 - Prospective
 - Decrease/increase with respect to remainder of plan year
 - No refunds!
 - Revoke election, make a new election, or decrease or increase an existing election under dependent care assistance program.
 - Prospective
 - Decrease/increase with respect to remainder of plan year



Irrevocable Election Temporary Exceptions

- Like exceptions to the irrevocable election in general, special temporary exceptions are **permissive**.
 - Employer may add all of them, some of them, or none of them.
- In addition to deciding whether or/which special temporary exceptions to adopt, employer may further limit:
 - To situations where coverage is increased.
 - Only from self coverage to family coverage (not allowing the drop of family members).
 - Low option to high option.
- Health FSAs and dependent care FSAs, may limit to no less than amounts already reimbursed.

Extended Claims Periods



- **NOT A GRACE PERIOD EXTENSION**
- Extended period of time in which to apply unused amounts in health FSA or dependent care assistance program.
 - Avoids Use or Lose Rule
- Available for health FSAs with grace periods
- Available for non-calendar year health FSAs with carryover
- Available for health FSA with no grace period or carryover



Extended Claims Periods

- **Health FSA with grace period**
- Normally, if dollars left at end of Plan Year, grace period of up to 2.5 months to use those dollars for expenses incurred during the grace period that occurs in the second Plan Year.
 - Softens impact of Use or Lose Rule.
 - If added, the exception(s) requires a plan amendment, good communication, uniform and consistent application.
 - Grace period delays HSA contribution eligibility.
 - Normally, dollars in grace period as of its normal end are forfeited.
 - Eligibility to make HSA contributions begins on the first of the next month following grace period end (e.g., April 1 for a calendar year plan with a standard 2.5 month grace period).
 - Regardless of when grace period dollars exhausted.



Extended Claims Periods



- With extended claims period following grace period end, dollars remaining at grace period end continue to be available through December 31, 2020.
 - But then ineligible for HSA contributions for entire 2020 tax year.
 - Regardless of when dollars exhausted.
- Because it is permissive, an employer should be able to extend the claims period for less than the period ending December 31, 2020.
 - Ineligible for HSA contributions until first of the month following the end of the extended claims period.

Extended Claims Periods

- **Not just for health FSAs with grace periods**
- “as of the close of the grace period ending in 2020/**or plan year ending in 2020** to all payment/reimbursement of expenses incurred through December 31, 2020.”
- Calendar plan year with no grace period or carryover can take advantage of the extended claims period.
 - Impacts HSA eligibility.
- Non-calendar plan year ending in 2020 with a carryover can take advantage of the extended claims period.
- Extended claims period operates separately from the carryover. It is not considered a grace period. *See Example 1 from Notice 2020-29.*



Extended Claims Periods

- **Example**, non-calendar year plan, employee has \$2000 left at plan year end because procedure postponed. Normally, could only carryover \$500.
- Extended claims period allows employee access to entire \$2000 for use in portion of second non-calendar plan year that occurs in 2020 (i.e., through December 31, 2020).
- Can undergo procedure any time in 2020 portion of second non-calendar plan year and use \$2000 from non-calendar plan year beginning in 2019/ending in 2020 to pay for it.
- The entire amount left at end of non-calendar plan year beginning in 2019/ending in 2020 is available through December 31, 2020 instead of the carryover amount (max. \$500).



Extended Claims Periods

- Requires a plan amendment.
- Employer must decide what to do, communicate it, operate it, and ultimately reflect in plan amendment & SPD/SMM.
- Adopted on or before December 31, 2021.
- Stacking possibility: Combined with ability to change health FSA election under irrevocable election temporary exceptions, could increase salary reduction to health FSA in non-calendar plan year ending in 2020 and then because of extended claims period have increased amount available through December 31, 2020.



Determination of Carryover

- **Up until now**, a carryover has been allowed in an amount of \$500 set by Notice 2013-17.
- The amount that can be carried over to the following plan year is the lesser of (1) the health FSA account balance, or (2) \$500 (or lower amount specified in the plan).
- Notice 2020-33 changes this formula.
- **Now**, \$500 indexed for inflation.
- The maximum carryover is now defined as 20% of the maximum salary reduction for the year allowed under Section 125(i) of the Code.
- The amount that can be carried over to the following plan year is the lesser of (1) the health FSA account balance, or (2) \$500, **as indexed** (or lower amount specified in the plan).





Determination of Carryover

- Maximum amount from 2020 that can be carried over to 2021 is \$550.
- Employer may have a lower maximum; needs to be specified in the plan.
- Other rules remain unchanged including no grace period if have carryover.
- Need to review plan document, SPD, communication materials, etc..
 - Most cases, will require an amendment.
- Change in carryover determination does not permit a change in the health FSA election for 2020.
 - However, if employer is using the other special temporary exceptions to the irrevocable election rule, that would reach the same result.

Temporary Timeframe Extensions



- **Not all time frames.**
- Focused on HIPAA Special Enrollment, COBRA, Claims Procedures, External Review.
 - EBSA Notice 2020-01 addresses other time frames (e.g., SPD, SMM, adverse claim determination)
- Concerns for participants and beneficiaries – may have difficulty exercising their rights or filing or perfecting benefit claims.
- Concerns for group health plans – may have difficulty complying with notice requirements.

Temporary Timeframe Extensions

- New term – “Outbreak Period”
- Begins March 1, 2020; ends 60 days after the announcement that the National Emergency has ended, or other date announced by the Agencies.
 - Issued under ERISA § 518 so cannot last longer than one year.
- In general, the Outbreak Period suspends running of timeframes.
- **Example:** The Health FSA has no grace period and no carryover and does not choose to extend. A claim must be submitted by the end of the run out period stated in the plan — 30 days after the close of the plan year in which the expense is incurred. Under this scenario, the running of the 30 days is suspended until the end of the Outbreak Period.

Temporary Timeframe Extensions



- Issues are many, including:
 - Uncertainty of when the Outbreak Period is going to end.
 - National Emergency end
 - Could be shorter time frames based on regional decisions or because the Agencies decide
 - Could go as long as one year from issuance
 - Don't know what happens between what would have been the normal end of the timeframe and the end of the timeframe as extended by the Outbreak Period.
 - Disconnect between payment and coverage that relates to payment
 - Although appears to impact the plan to covered person relationship, actually goes much deeper.
 - Lots of “players” impacted

HIPAA Special Enrollment



- Impacts group health plans not HIPAA excepted and cafeteria plans with exception to irrevocable election for HIPAA special enrollment.
- Normally at least 30 days or at least 60 days.
 - Look at plan language to determine actual timeframe.
- Now runs from end of Outbreak Period.
 - Coverage provided retroactively to date that would have applied under the normal timeframe.
 - Could be really long time before HIPAA Special Enrollment period ends.
 - If elect, do have to pay.



HIPAA Special Enrollment

- Could stretch over multiple plan years of cafeteria plan so would not be able to pay it all pre-tax.
- **If insured**, usually have a period of time after which carrier will not adjust eligibility. That will have to change.
- What if change insurance carrier in interim. Not getting coverage would have gotten if normal election period applied.
- **If self-insured**, disrupts cash flow, uncertainty into projections; look at stop loss contract carefully, claims made policy,
- **Both** -- recalculation of deductibles (point at which reached) and out of pocket maximums, impact on integrated HRA, health FSA, ability to pay pre-tax, etc.
- Longer the Outbreak Period, more likely stacking occurs -- COBRA, married/divorced; change from fully insured to self-insured.

Claims Procedure Timeframes



- **Not** limited to medical claims under group health plan
 - Example 6 is disability plan; Example 7 is pension plan
- Date by which must file a claim
 - Refer to claims procedure under the plan; submitted within 365 days (Example 6)
 - Health FSA -- look at plan language (claims run out period)
 - Now runs from end of Outbreak Period
- Date by which must file an appeal of an adverse determination
 - Refer to claims procedure under the plan; 180 days for group health
 - Now runs from end of Outbreak Period



Claims Procedure Timeframes

- Lots of problems, including:
 - Tracking
 - Systems adjustments
 - Providers not getting paid timely
 - Recalculation of deductibles, out of pocket maximums, etc.
- If self-insured:
 - Stop loss contract
 - Claims made
 - Change in stop loss carriers



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Questions

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any additional questions.