

The IRS recently issued two notices on FSAs: one relating to carryover (available [here](#)) and a second providing some relief for health and dependent care (available [here](#)). Below is a summary of the various provisions of the two notices provided by Groom Law Group.

#### Cafeteria plan election changes (effective 1/1/20)

- An employer, in its discretion, may amend its cafeteria plan (including limiting the period during which election changes may be made) to employees to make prospective election changes (including an initial election) during calendar year 2020 regarding employer-sponsored health coverage, a health FSA, or a dependent care assistance program, regardless of whether the basis for the election change satisfies the criteria set forth in Treas. Reg. § 1.125-4. In particular, an employer may allow employees to:
  - make a new election for employer-sponsored health coverage on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
  - revoke an existing election for employer-sponsored health coverage and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis (including changing enrollment from self-only coverage to family coverage);
  - 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;
  - revoke an election, make a new election, or decrease or increase an existing election regarding a health FSA on a prospective basis; and
  - revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis.
- To accept an employee's revocation of an existing election for employer-sponsored health coverage, the employer must receive from the employee an attestation in writing that the employee is enrolled, or immediately will enroll, in other comprehensive health coverage not sponsored by the employer. The employer may rely on the written attestation provided by the employee, unless the employer has actual knowledge that the employee is not, or will not be, enrolled in other comprehensive health coverage not sponsored by the employer. The Notice gives an example of an acceptable written attestation.
- With respect to health FSAs and dependent care assistance programs, employers are permitted to limit mid-year elections to amounts no less than amounts already reimbursed.

#### Extended claims period for health and dependent care FSAs (applies on or after 1/1/20 and on or before 12/31/20)

- An employer, in its discretion, may amend its cafeteria plan to permit employees to apply unused FSA amounts remaining as of the end of a grace period ending in 2020 or a plan year ending in 2020 to pay or reimburse expenses incurred for the same qualified benefit through December 31, 2020.
- The extension of time for incurring claims is available both to § 125 cafeteria plans that have a grace period, and plans that provide for a carryover, notwithstanding Notice 2013-71, which otherwise continues in effect and provides that health FSAs can either adopt a grace period or provide for a carryover amount but cannot have both.
- The extension of the period for incurring claims that may be reimbursed by the health will impact a participant's HSA eligibility will not be eligible to contribute to an HSA

#### Plan Amendments

- An employer that decides to adopt the above must amend its cafeteria plan and, if applicable, health FSA plan.

- An amendment for the 2020 plan year must be adopted on or before 12/31/21 and may be effective retroactively 1/1/20, provided that the employer informs all employees eligible to participate in the cafeteria plan of the changes to the plan.
- Any amendment adopted pursuant to this notice must apply only to mid-year elections made during calendar year 2020, or to an extended period to apply unused health FSA amounts or dependent care assistance program amounts for the payment or reimbursement of medical care expenses or dependent care expenses incurred through December 31, 2020.

#### HDHPs and Application of Notice 2020-15

- Notice 2020-15 provides that a health plan that otherwise satisfies the requirements to be an HDHP under § 223(c)(2)(A) will not fail to be an HDHP merely because the health plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.
- The new Notice clarifies that the relief provided in Notice 2020-15 regarding HDHPs and expenses related to testing for and treatment of COVID-19 applies with respect to reimbursements of expenses incurred on or after 1/1/20.
- This notice further clarifies that the panel of diagnostic testing for influenza A & B, norovirus and other coronaviruses, and respiratory syncytial virus (RSV) and any items or services required to be covered with zero cost sharing under the FFCRA and the CARES Act are part of testing and treatment for COVID-19 for purposes of Notice 2020-15.

#### HDHPs and CARES Act telehealth provision

- The CARES Act provide a temporary safe harbor for providing coverage for telehealth and other remote care services without a deductible or with a deductible below the minimum annual deductible otherwise required by the HSA rules. This was effective 3/27/20, and apply to plan years beginning on or before 12/31/21.
- This notice provides that treatment of such telehealth and other remote care services provided on or after 1/1/20, with respect to plan years beginning on or before 12/31/20.

#### Health FSA Carryovers

- The maximum carryover amount is increased from \$500 to an amount equal to 20% of the maximum salary reduction contribution under § 125(i) for that plan year. Because, by statute, the increase to the § 125(i) limit is rounded to the next lowest multiple of \$50, increases to the maximum carryover amount, as the result of that indexing, will be in multiples of \$10 (20 percent of any \$50 increase to the § 125(i) limit).
- The maximum unused amount from a plan year starting in 2020 allowed to be carried over to the immediately following plan year beginning in 2021 is \$550.
- An employer may amend the cafeteria plan to adopt the increased carryover amount for a plan year that begins in 2021 at any time on or before the last day of the plan year that begins in 2021 (for the 2020 plan year, the employer must adopt the amendment on or before 12/31/21, as described above).

#### Date Premium Considered Incurred for HRAs

- A plan may treat an expense for a premium for health insurance coverage as incurred on (1) the first day of each month of coverage on a pro rata basis, (2) the first day of the period of coverage, or (3) the date the premium is paid. Thus, for example, an individual coverage HRA with a calendar year plan year may immediately reimburse a substantiated premium for health insurance coverage that begins on January 1 of that plan year, even if the covered individual paid the premium for the coverage prior to the first day of the plan year.