

## IRS Releases New COVID-19 Related Guidance for Cafeteria Plans, FSAs, DCAPs, & High Deductible Health Plans (HDHPs)

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The IRS has recently issued [new guidance](#) that allows for new Cafeteria Plan amendments as a result of COVID-19. The guidance also clarifies previous COVID-19 legislation related to High Deductible Health Plans (HDHPs).

### Cafeteria Plan Mid-Year Elections During 2020

The IRS has decided to provide employers with the option of offering mid-year election changes to employees who may have different medical needs and/or expenses as a result of the COVID-19 pandemic.

The IRS will allow Cafeteria Plans to be amended to allow for the following mid-year election changes **during the 2020 calendar year**:

#### **(1) Employer Sponsored Health Coverage**

- (a) make a new election, if the employee initially declined to elect employer-sponsored health coverage;
- (b) revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer; and
- (c) revoke an existing election (if the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer).

#### **(2) Health Flexible Spending Account (FSA)**

- (a) revoke an election, make a new election, or decrease or increase an existing election.

#### **(3) Dependent Care Assistance Program (DCAP)**

- (a) revoke an election, make a new election, or decrease or increase an existing election.

Employers who choose to amend their plans to allow for these mid-year election changes **are not required** to allow an unlimited amount of elections. Employers may use their discretion to “*determine the extent to which such election changes are permitted and applied.*” Plan amendments must also comply with traditional non-discrimination rules.

### Unused Flexible Spending Account (FSA) & Dependent Care Assistance Program (DCAP) Funds

In addition to mid-year election changes, the IRS will also allow employers to amend FSA and/or DCAP plans to allow employees to use any **unused funds** through **December 31, 2020**.

So, rather than forfeiting unused funds according to the rules of the plan, employers may allow employees to use FSA or DCAP funds for eligible expenses through December 31, 2020.

## **Employer Next Steps: Amending Summary Plan Description (SPD) Documents**

Employers with Cafeteria Plans that decide to allow employees to take advantage of the mid-year election changes and/or allow employees to use unused FSA/DCAP funds through December 31, 2020, **MUST** update their summary plan description (SPD) documents accordingly.

### **PLEASE NOTE:**

- If you are interested in adopting any of these changes, please contact your Advisor.
- If BRSi provides your Wrap SPD documents for you, we will update your documents to reflect any changes you decide to adopt.
- If BRSi does not provide your Wrap SPD documents, we strongly recommend consulting with an attorney to update your documents if you decide to implement any of these changes.

## **High Deductible Health Plans (HDHPs)**

The IRS and the CARES Act previously provided exemptions for HDHPs to allow coverage for **(1)** telehealth services and **(2)** COVID-19 related services and treatments (without a deductible), without disqualifying the plan as a HDHP.

The most recent IRS guidance clarified that these exemptions may be applied retroactively to **January 1, 2020**.

If you have any additional questions or concerns, please contact me at: [adillingham@benefitreview.com](mailto:adillingham@benefitreview.com)

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