



HAYS COMPANIES

COVID-19 Relief Bill: Temporary Changes to DCAP and FSA Rules

On December 27, 2020, President Trump signed Congress' \$900 billion relief package designed to address the economic fallout from the COVID-19 crisis. The bill contains several important benefits-related relief provisions, including important changes to the rules governing dependent care assistance plans (DCAP) and health flexible spending accounts (FSA), with possible changes affecting plan years 2020, 2021 and 2022. Below is a summary of these important changes that will provide significant relief for DCAP and health FSA participants if adopted by plan sponsors.

Temporary Relaxed Carryover Rules for DCAP and Health FSAs:

The relief bill allows employers to permit participants to carryover all unused funds from 2020 DCAP and health FSA plan year accounts to 2021 plan year accounts.

The bill also allows employers to permit participants to carryover all unused funds from 2021 DCAP and health FSA plan year accounts to 2022 plan year accounts.

- Prior to these new temporary rules, no carryover of funds was allowed for DCAP accounts and the carryover of health FSA funds was limited to \$550 (as indexed for 2020).
- Plans may not have both a grace period and a carryover.

Temporary Extension of Grace Periods for DCAP and Health FSAs:

The new bill allows employers to extend their DCAP and health FSA account grace periods to 12 months after the end of the plan year for both 2020 and 2021 plan years.

- Previously, grace periods, which allow participants to use remaining contributions after the end of a plan year, were limited to two and a half months after the end of the plan year, with a special COVID-19-related rule allowing for plan years and grace periods ending in 2020 to be extended until December 31, 2020.
- Plans may not have both a grace period and a carryover.

Temporary Relief for Post-Termination Reimbursements from Health FSAs:

The relief bill allows employers to permit terminated employees with remaining contributions in their health FSAs during calendar year 2020 or 2021 to receive reimbursements for qualifying expenses incurred through the end of the plan year in which they were terminated, including any applicable grace period (such as an extended grace period adopted by the employer as outlined above).

Temporary Rule Increasing the Maximum Age of Eligible Dependents for Use of DCAP Funds:

The new bill allows employer-sponsored DCAPs to permit reimbursement of otherwise eligible dependent care expenses for children who attain age 14 (rather than age 13) during the 2020 plan year. They may also permit reimbursement of expenses for children who attain age 14 during the 2021 plan year, but only regarding unused funds from the 2020 plan year.

- Prior to this temporary rule, DCAP funds could not generally be used for expenses for children age 13 or older.

Temporary Flexibility Regarding Mid-Year Election Changes to DCAP and Health FSA Elections:

Supplementing the IRS' earlier issued rules regarding flexibility for DCAP and health FSA mid-year election changes during calendar year 2020, the new relief bill allows employers to permit DCAP and health FSA participants to make **prospective** changes to their elections for plan years ending in 2021, without regard to any change in status.

- Prior to the increased flexibility granted here and in IRS Notice 2020-29, employers were permitted to allow health FSA and DCAP participants to make mid-year election changes only in certain circumstances, including when they experienced one of the enumerated status-change events.

Deadline for Making Plan Amendments:

Employers wishing to adopt one or more of these temporary rules on a retroactive basis must amend their plans to reflect the change. The amendment must be adopted no later than the last day of the first calendar year beginning after the end of the plan year for which the amendment is effective. This means that for employers wishing to adopt some or all of the temporary rules for the 2020 plan year, the amendment(s) must be adopted by the last day of the 2021 plan year.

Hays' Research and Compliance Department will continue to provide updates on these relief provisions as additional information and official guidance is made available.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal or medical advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.

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