



Clarity Client Webinar

IRS and DOL Guidance Impacting COBRA, FSAs and HRAs

May 21, 2020

Focus: Four Pieces of Recent Regulatory Action

1. Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak, 26 CFR Part 54

www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected

2. EBSA Disaster Relief Notice 2020-01

www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01

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

www.irs.gov/pub/irs-drop/n-20-29.pdf

4. 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

www.irs.gov/pub/irs-drop/n-20-33.pdf

Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak, 26 CFR Part 54

Extension of Certain Timeframes

- Not all the time frames – focused on HIPAA Special Enrollment, COBRA, Claims Procedures, External Review; but see EBSA 2020-01
- Extension tied to “Outbreak Period”
- Began March 1, 2020; ends **60 days after** the announced end date of the National Emergency or other date announced by the Agencies
- In general, the Outbreak Period is disregarded (*i.e., running of time period is tolled or suspended during the Outbreak Period*)
- Issues include:
 - Don’t know when the Outbreak Period is going to end
 - Outbreak Period could differ based on regional decisions or because the Agencies decide

Extension of Certain Timeframes

- HIPAA Special Enrollment – right to enroll upon loss of other coverage, addition of new dependent, and reasons related to Medicaid and CHIP coverage
 - Normally 30-day or 60-day period to request enrollment
- Appeals of denied claims
 - Standard time frame depends on type of benefit (*180-days for health plans*)
- Request for external review (*major medical plans*)
- Timeframe to perfect an external review

Extension of Certain Timeframes

Claims Submission

- Deadline under plan for submitting claims is extended
- Generally impacts plans covered by ERISA (*private sector*) and certain governmental plans
- Will impact health FSA and HRA run-out periods to the extent they overlap with Outbreak Period

Example – Calendar year plan with 90-day run-out period. Run-out period suspended on March 1, 2020. Participants will have 30-days (amount of run-out remaining) following end of Outbreak Period to submit claims for expenses incurred during 2019 plan year.

- Claims denied because they were filed after the end of a run-out period that ended during Outbreak Period should be reprocessed

Extension of Certain Timeframes

Certain COBRA Timeframes

- Deadline for Qualified Beneficiaries' (QB's) notification to plan of a qualifying event (*e.g., divorce*)
- Deadline to provide COBRA election notice by plan administrator
- COBRA election period (*typically 60-days*)
- Deadline for payment of first premium (*typically 45-days from election*)
- Grace period for subsequent monthly premium payments (*typically 30-days*)
- Deadline for QB's notification to plan of second qualifying events or SSA disability determination (*for purposes of obtaining extension of COBRA coverage*)

Extension of Certain Timeframes

Examples of COBRA Extensions

Employee's employment terminated March 30th and COBRA election notice was sent on April 7th; employee and covered dependents will have 60-days following end of Outbreak Period to elect COBRA coverage.

QB submitted COBRA election on April 15th without the initial premium. QB will have 45 days following end of Outbreak Period to pay initial COBRA premium.

QB's COBRA coverage started in 2019. QB's COBRA premiums paid current through March 31st. COBRA premiums for April, May, and any other months falling within the Outbreak Period will generally be due 30-days following end of Outbreak Period.

Extension of Certain Timeframes

Issues Created by COBRA Extensions

- Notice obligations – update notices sent out after rule published? Notify current COBRA participants and QBs who received election notices prior to publication of new rule?
- QBs that wait to pay premiums could owe significant amount of premiums after Outbreak Period ends. Can people really afford it?
- How should coverage be handled during suspension of election period and premium grace periods? Maintain coverage (*with retroactive termination*) or suspend coverage (*with retroactive reinstatement*)?
- If insured, carriers typically have a period of time after which they will not retroactively change coverage. That will have to change; but carrier response unknown at this time.
- Applies to all plans subject to COBRA, including health FSAs and HRAs. Some unique issues with those plans.

EBSA Disaster Relief Notice 2020-01

EBSA Notice 2020-01

- Supplements Joint Rule
- Extends deadline for furnishing other notices and disclosures to participants and beneficiaries as required under ERISA

Example – Summary Plan Descriptions, Summaries of Material Modification, notices of adverse benefit determinations, etc.

- Applies to notices and disclosures that must be furnished during the Outbreak Period
- Plan administrator must act in good faith and furnish the document as soon as administratively practicable under the circumstances
- Use of electronic alternative means of communication

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

COVID-19 Guidance Under S 125 Cafeteria Plans – Exceptions to Irrevocable Election Rule

- Normally, elections under a cafeteria plan are irrevocable during plan year with limited exceptions
- Special temporary exceptions allow election changes during the 2020 calendar year
- Optional change – employer may add all of them, some of them, or none of them
- If added, the exception(s) requires a plan amendment, good communication, uniform and consistent application

COVID-19 Guidance Under S 125 Cafeteria Plans – Exceptions to Irrevocable Election Rule

Five New Exceptions:

- Eligible employees may make a new election, effective prospectively, to pay for employer-sponsored health coverage on a pre-tax basis
- Participants may revoke an existing pre-tax premium election and make a new election, effective prospectively, to pay for a different type or level of employer-sponsored health coverage on a pre-tax basis
- Participants may revoke an existing pre-tax premium election to correspond to the cancellation of employer-sponsored health coverage, provided the employee attests that he/she is enrolled, or will immediately enroll, in other comprehensive health coverage
- Eligible employees and participants may make any type of election change (*e.g., make a new election, revoke an existing election, or increase or decrease an existing election*), effective prospectively, under a health FSA or limited purpose health FSA for any reason
- Eligible employees and participants may make any type of election change (*e.g., make a new election, revoke an existing election, or increase or decrease an existing election*), effective prospectively, under a dependent care FSA for any reason

COVID-19 Guidance Under S 125 Cafeteria Plans – Exceptions to Irrevocable Election Rule

- For exceptions involving the employer sponsored group health coverage, might be limited to group medical coverage based on requirements for third exception
- Flexibility - in addition to deciding whether or/which special temporary exceptions to adopt, employer may further limit to situations where:
 - Health FSA or dependent care FSA election is increased
 - Employee goes from self coverage to family coverage
(not allowing employee to drop family members)
- Health FSAs and dependent care FSAs may limit reductions to no less than amounts already reimbursed
- May be adopted retroactively to January 1, 2020 *(but typically prospective)*
- Watch for people who requested and were denied. How to handle them?

Claims Period – Health FSA and DCAP

COVID-19 Guidance Under S 125 Cafeteria Plans – Extended Grace Periods

- Available with respect to plans with an existing grace period ending in 2020 and plans with a plan year ending in 2020 *(i.e., not available to calendar year plans that did not have a grace period following 2019 plan year)*
- Extends period of time in which expenses may be incurred until December 31, 2020. Because it is permissive, an employer should be able to extend it for less than the period ending December 31, 2020
- Available to health FSAs, limited purpose health FSAs, and dependent care FSAs

Claims Period – Health FSA and DCAP

COVID-19 Guidance Under S 125 Cafeteria Plans – Extended Grace Periods

- Plan with non-calendar year plans ending in 2020 can have a carryover ***and*** choose to adopt the grace period; exception to general rule
- If the extension is adopted through December 31, 2020, then the participant of a full purpose health FSA will not be eligible to make HSA contributions for the rest of the 2020 calendar year
- If person has no dollars in grace period as of its normal end, should be okay to make HSA contributions beginning with the first of the next month following (*example - April 1 for a calendar year plan with a standard 2½ month grace period*)

Claims Period – Health FSA and DCAP

COVID-19 Guidance Under S 125 Cafeteria Plans – Extended Grace Periods

- Changes to election rules and grace period require a plan amendment
- Must be adopted on or before December 31, 2021
- Changes must be administered uniformly and communicated to eligible employees now

Notice 2020-15 allows HDHPs to cover testing for and treatment of COVID-19 prior to satisfaction of the deductible

- *Notice 2020-29 clarifies that this change reaches back to expenses incurred on or after January 1, 2020, and that the scope of the services includes the panel of diagnostic testing for influenza A & B, norovirus and other coronaviruses, and RSV*

§3701 of CARES Act provides temporary safe harbor allowing HDHP enrollees to receive telehealth and remote care services prior to satisfaction of deductible

- *Notice 2020-29 clarifies that safe harbor applies with respect to services provided on or after January 1, 2020 and with respect to plan years beginning on or before December 31, 2021*

Clarification Regarding Notice 2020-15 and §3701 of CARES Act

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

- Until now, a carryover has been capped at \$500 in accordance with 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 - the \$500 is now indexed for inflation

Carryover

Section 125 Cafeteria Plans – Modifications of Permissive Carryover Rule for Health Flexible Spending Arrangements

- The maximum carryover is now defined as 20% of the maximum salary reduction for the year allowed under Section 125(i) of the Code
- Being tied to 125(i), which sets the maximum salary reduction as \$2,500 indexed for inflation, means that the carryover maximum is now indexed for inflation
- Maximum carryover amount from a plan year starting in 2020 is \$550
- Change to maximum does not permit a change in the health FSA election unless employer is using the other special temporary exceptions to the irrevocable election rule
- Employer may have a lower maximum
- Need to review plan document for language. In many cases, will require an amendment
- Amendment for plan year beginning in 2020 must be adopted by 12/31/21 as long as notice is provided to eligible employees when change is implemented

Carryover

Section 125 Cafeteria Plans – Modifications of Permissive Carryover Rule for Health Flexible Spending Arrangements

ICHRA

Clarification Regarding Reimbursements of Premiums

- Primarily for ICHRAs but applicable to HRAs and Section 125 plans too
- Normally, an expense cannot be paid/reimbursed until it has been “incurred”
- “Incurred” has been defined as when the care giving rise to the expense has been received, not when expense is billed or paid
- For premiums for individual policies, this is a problem because the premium for the individual policy is typically required to be paid prior to the month in which the coverage under the policy is provided
- Definition of “incurred” is relaxed to allow the premium to be considered incurred on:
 - The first day of each month of coverage on a pro-rata basis
 - The first day of the period of coverage
 - The date the premium is paid

Clarity Has You Covered



What Does This Mean for You

The changes to these deadlines constitute a significant change to the manner in which Clarity COBRA, FSA and HRA plans operate. We are making efforts to incorporate the new deadlines and policies into our practices.

- Clients need to notify Clarity if they wish to implement optional plan changes.
Clarity will provide instructions shortly with online options on our COVID-19 page
- Clients should provide supplemental notices of COBRA continuation coverage;
Clarity will provide this service for our clients
- Clarity will be issuing further guidance relative to retroactive processing and potential payment of previously denied claims due to expiration of the run-out period

What is Clarity Doing for You

Let us help ensure your workforce is covered with best-in-class benefits technology and administration.

- We know times are uncertain right now; companies are just trying to manage their bottom-line
- This year's open enrollment process will have numerous complexities, budget constraints, employees burdened with additional health care expenses and the need to offer a personalized enrollment experience in a remote environment
- We can customize a savings package that makes sense for you

Limited Time Discounts on New Services:

- Implementation
- Data transition
- Employee Navigator
- All our TPA services (COBRA, HSA, FSA, HRA, SmartRide, Quick Claim)

Offer available through the end of June 2020.

Clarity Care Card

Show your employees you care by giving them financial assistance during a time of crisis.

More flexible than cash and gives you added protection:

- Funding flexibility
- Preserve unused funds
- Control how the dollars are spent
- Real-time expense tracking
- Intuitive experience

How It Works



DESIGNATE AN AMOUNT
Set the amount available for each employee.



DETERMINE SPENDING CATEGORIES
Set the type of expenses allowed and where employees use their cards.



PLACE YOUR ORDER
Add funds to existing Clarity Benefits Card or send a new Clarity Care Card to each employee.



ADD ADDITIONAL DOLLARS
Reload money to employee cards as needed.



KEEP TRACK OF EXPENSES
Get a real-time view into employee spending.



Clarity

BENEFIT SOLUTIONS™

Questions?



Thank You