

2020-2021 Temporary Special Rules for Health FSAs and DCAPs

Quick Reference Matrix

On December 27, 2020, the Consolidated Appropriations Act of 2021 (the CAA) was signed into law. The CAA provides temporary special rules for health flexible spending accounts (FSAs) and dependent care assistance program (DCAPs).

This Matrix summarizes the relaxed mid-year election changes, extension to incur claims and increased carryover.

Key Points:

- The list of **changes** is **optional**.
- **Employers** need to **decide what changes** will be incorporated in their plan design.
- **Amendments** to the plan must be adopted by the **last day of the first calendar year following** the end of the plan year in which the change took effect. (i.e. Amendments with an effective date of January 1, 2020, have until December 31, 2021, to fully execute.) In the meantime, the **Employer must inform all eligible employees** of the Plan **the changes it will adopt**.

Type	Current	Temporary Options	Administration
Health FSA & DCAP Mid-Year Election Changes	An election is irrevocable for the plan year unless a qualifying life event has occurred. A mid-year election change is only permitted within a specific duration of time after the qualifying life event (as stipulated in the Plan document) and the change must correspond with the event.	For plan years ending in 2021 , an employee may: Increase, decrease, make a new election, or revoke an existing election for a health FSA or DCAP	Election changes must be prospective. Employers can include the provision that elections cannot be reduced below the amount previously reimbursed. Any eligible employee can request a change.
Extended Grace Period	Employee must incur an expense within the Plan Year or Grace Period, if included in the Plan.	This applies to plan years that end in 2020 or 2021 . Permits a 12-month grace period for unused benefits or contributions in health FSAs and DCAP accounts.	An employer that adopts this extension may cause an employee to be H.S.A. ineligible for an entire subsequent plan year. A health FSA and DCAP can have either the extended Grace Period or the Carryover. No cash-outs of unused balances but may be carried over to the next plan year, if included in the Plan.
Carryover	Only applies to Health FSAs. Effective with the 2020 Plan Year (if adopted in the plan), the carryover amount can be indexed based on inflation. It is equal to 20% of the Section 125 allowable health FSA maximum annual election for that Plan Year. This number is rounded to the next multiple of \$10.	Permitted for Health FSAs and DCAPS. For plan years ending in 2020 and 2021 , ALL unused balances can carry over to the next year.	Surely, this will be appreciated by many employees.



Type	Current	Temporary Options	Administration
Health FSA Spend Down	Participation ceases unless FSA COBRA is elected.	Without electing COBRA, allow health FSA participants who terminate during the 2021 plan year to spend down any unused balance through the end of the plan year in which the termination occurred; this includes the Grace Period.	The health FSA uniform coverage rule does not apply to this spend-down feature, and HCFSA reimbursements are limited to a participant's remaining unused balance (including available employer contributions or reimbursements).
DCAP Eligible Child Status <ul style="list-style-type: none"> Please review IRS Additional Guidance Needed 	A participant's child ceases to be a qualifying child under a DCAP upon the child's 13th birthday.	Applies to plans with an open enrollment period on or before January 31, 2020. Permits DCAP participants whose qualifying child turned age 13 during the plan year (described above) to continue to receive reimbursements for the child's dependent care expenses for (1) the remainder of the plan year and, (2) to the extent a balance remains at the end of the plan year, the following plan year until the child turns age 14 (but only with respect to the unused amount). If the child is already 13 years old before the next plan year begins, the increase in dependent age limit does not apply to the new year election.	May require separate tracking for the unused balance and current plan year amount depending on the child's birthday.

IRS Additional Guidance Needed

It would be most helpful if the IRS would address the following:

- Whether an employee must actually elect DCAP coverage for the following plan year in order to have access to the unused funds under the second age limit modification, or if the unused balance is treated as a carryover;
- Whether the unused balance is available for reimbursements for any eligible child during the following plan year;
- Whether the following plan year also includes that plan year's grace period, if any; and
- It appears the CAA may not change the maximum amount that can be excluded from an employee's income (generally \$5,000 per year, but \$2,500 for married employees filing separately) as reimbursement of expenses for qualified dependent care assistance services provided during a tax year or modify the nondiscrimination testing rules that apply to DCAPs.

