

## COVID-19 Guidance Under Section 125 Cafeteria Plans and Related to High Deductible Health Plans

On May 12, the Internal Revenue Service released [Notice 2020-29](#) providing guidance to address:

- Midyear changes for section 125 cafeteria plans
- Grace periods for health Flexible Spending Accounts (FSAs)
- The impact of COVID-19 testing and treatment
- Telehealth services on HSA-eligible high deductible health plans (HDHPs)

Below, NueSynergy has provided a summary of the guidance.

### Section 125 Cafeteria Plan Midyear Election Changes

Cafeteria plans can be amended to permit eligible employees to make the following prospective election changes during calendar year 2020:

- revoke an election,
- make a new election, or
- increase or decrease an election to a Health or Dependent Care Assistance (DCA) FSA.

**Important to Note:** Employers are not required to provide these election changes and can determine which changes they will permit. The relief provided by this notice will apply retroactively to mid-year changes made on or after January 1, 2020, if they are consistent with the requirements of this notice.

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### Extended Grace Period

Currently, Health and DCA FSA plans may provide a grace period whereby unused amounts at the end of the year can be used to reimburse expenses incurred in the 2 ½ month period following the end of the year.

Employers with Health and DCA FSA plans ending as of December 31, 2019 may amend their plans retroactively to allow for an extended grace period until December 31, 2020 for employees with unused funds – thereby extending the grace period for a full year. The grace period extension is available for plans that offer either a grace period or a carryover. However, for plans with a carryover, the extended grace period would be limited to the dependent care FSA only per [Notice 2013-71](#), which otherwise continues in effect, provides that health FSAs can either adopt a grace period or provide for a carryover amount but cannot have both.

**Important to Note:** Employers are not required to provide these election changes and can determine which changes they will permit. The relief provided by this notice will apply retroactively to mid-year changes made on or after January 1, 2020, if they are consistent with the requirements of this notice.

Employers that also offer an HSA plan should be aware that this extension may be problematic to any employee who had a positive balance in their Health FSA as of December 31, 2019, and are currently making contributions to an HSA in 2020; the grace period extension will result in those individuals becoming ineligible from making HSA contributions for 2020.

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### **Deadline for Plan Amendments**

Employers who choose to apply the extended grace period or the midyear election changes amend their plan on or before December 31, 2021. If this decision is made, amendment can be effective retroactively to January 1, 2020, provided the employer operates the plan in accordance with the guidance.

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### **COVID-19 Testing and Treatment for HSA-Compatible HDHPs**

Earlier this year the IRS issued [Notice 2020-15](#) which provided that an otherwise compliant HSA compatible HDHP can cover the treatment of COVID-19 before the plan deductible has been satisfied without jeopardizing a plan's HSA eligibility.

The newly released Notice clarifies that the relief allowing HDHPs to provide benefits for COVID-19 testing and treatment on a no- or low-deductible basis applies to reimbursements of expenses incurred on or after January 1, 2020. The Notice also confirms 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 per the CARES Act are to be treated as COVID-19 testing and treatment.

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### **Telemedicine and HSA-Compatible HDHPs**

The Notice clarifies that the CARES Act relief regarding telehealth and other remote care services can now be covered before the plan deductible has been satisfied, and it will not disqualify a participant's eligibility to make contributions to an HSA.

This provision is effective immediately and will last until December 31, 2021. The Notice provides that these services provided after January 1, 2020 will also be permitted in an HSA-compatible HDHP.

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### **Health FSA Carryover Limit**

The Notice further defines an increase in the allowable health FSA carryover amount. The \$500 carryover amount from the following plan year will be indexed for inflation and increased to \$550. The increase of \$550 can also be retroactively implemented to the 2020 plan year but must be adopted on or before December 31, 2021.

### **Individual Coverage HRAs**

An individual coverage HRA (ICHRA) is designed to provide a means for employees to be reimbursed for premiums for health insurance coverage incurred after the beginning of the ICHRA's plan year. Expenses for health insurance premiums may be treated as incurred on:

- The first day of each month of coverage,
- The first day of the period of coverage, or
- The date the premium is paid.

With this guidance, payment of the premium for coverage made before the beginning of the plan year can be reimbursed if the insurance coverage starts during the plan year.