



HAYS COMPANIES

DCAP and FSA Relief Checklist

On December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 which includes important changes to the rules governing DCAP and health FSA accounts, with changes affecting plan years 2020, 2021, and 2022. Below is a summary of these important changes which will provide significant relief for DCAP and health FSA participants. The relief provisions are **optional** and employers/plan sponsors can choose which to adopt, if any. There are several factors that should be considered.

Option	Change	Consideration
ELECTION CHANGES		
<p>Will you permit midyear election changes without a status change for the plan year ending in 2021?</p> <ul style="list-style-type: none">▪ DCAP▪ Health FSA▪ Both	<p>Participants (and eligible employees) can make eligible election changes – prospective.</p>	<ul style="list-style-type: none">▪ Plan sponsors could permit:<ul style="list-style-type: none">▪ New elections to be made (or restrict to current participants only)▪ Increases of existing elections▪ Decreases of existing elections▪ Revocation of existing elections▪ Permitting these changes would provide the maximum flexibility for participants and eligible employees.▪ Creates an increase in administrative burden and risk to plan sponsors. A defined limited enrollment period vs. open ended period could help mitigate the burden.▪ Plan sponsors looking to minimize risk (i.e., DCAP non-discrimination testing impact, risk of loss due to the uniform coverage rule) may not want to permit participants to decrease or revoke existing elections without a status change and/or to permit a decrease of an election below the amount of previous reimbursements.

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Option	Change	Consideration
CARRYOVER <i>Plans may not have both a grace period and a carryover</i>		
<p>Will you allow unused funds from the plan year ending in 2020 to carry over to the plan year ending in 2021?</p> <ul style="list-style-type: none"> ▪ DCAP ▪ Health FSA <p>Will you allow unused funds from the plan year ending in 2021 to carry over to the plan year ending in 2022?</p> <ul style="list-style-type: none"> ▪ DCAP ▪ Health FSA 	<p>Participants will have access to all remaining funds in the new plan years.</p>	<ul style="list-style-type: none"> ▪ Carryover options provide the maximum availability of funds for participants. ▪ If offering a Health Savings Account (HSA), it will be important that your plan allows for remaining FSA funds to roll into a Limited FSA for HSA eligible employees or allows employees to waive the carryover. ▪ With more funds carrying over, forfeitures are likely to be lower than previous years.
<i>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).</i>		
GRACE PERIOD <i>Plans may not have both a grace period and a carryover</i>		
<p>Will you extend the grace period to 12-months after the end of the plan year ending in:</p> <ul style="list-style-type: none"> ▪ 2020 <ul style="list-style-type: none"> ▪ DCAP ▪ Health FSA ▪ 2021 <ul style="list-style-type: none"> ▪ DCAP ▪ Health FSA 	<p>Participants will have additional time (up to 12-months) to utilize remaining funds.</p>	<ul style="list-style-type: none"> ▪ Grace periods provide an extended period of time to incur eligible expenses and use FSA funds. They are different from claim run-out periods. ▪ If offering an HSA, a grace period can become problematic and jeopardize eligibility if even one health FSA dollar is accessible during a new plan year when a grace period is also running. Unlike the carryover rule, which permits participants to elect to convert available dollars to a limited-purpose health FSA, any conversion of general-purpose health FSA funds to limited purpose during the grace period must be uniformly applied to all participants' account balances (employees may not individually elect to change). Also, there is no authority to allow participants to waive coverage during a grace period.
<i>Previously, grace periods, which allow participants to use remaining contributions after the end of a plan year, were limited to 2-and-a-half months after the end of the plan year.</i>		
<p>Note: It is unclear at this time whether a plan sponsor without a grace period may implement one for the 2020 or 2021 plan years, or if this extension is limited to plans that already have a grace period.</p>		



Option	Change	Consideration
TERMINATED EMPLOYEES		
<p>Will you allow participants who cease participation in the health FSA with remaining benefits or contributions in their health FSA accounts during the calendar year to receive reimbursements for qualifying expenses incurred through the end of the plan year in which they terminated?</p> <ul style="list-style-type: none"> ▪ Participants who cease participation during the 2020 calendar year ▪ Participants who cease participation during the 2021 calendar year <p>Note: This is already permitted for DCAP, although not all plans include this spend-down provision.</p>	<p>Termed participants would have access to the “unused benefits or contributions” in their health FSA for services provided following their termination date through the end of the plan year in which they terminated (including any applicable grace period).</p>	<ul style="list-style-type: none"> ▪ Employers will be allowing terminated participants to receive reimbursements for eligible expenses with dates of service after they terminated employment (or otherwise ceased participation). ▪ It appears the employer can choose to limit the benefit available to contributions less reimbursements (like dependent care) rather than apply the uniform coverage rule. At this time, more guidance is needed. ▪ This would reduce the unused health FSA funds that are typically returned to the employer as forfeited funds when a participant terminates participation and will likely eliminate the need to offer COBRA coverage while this provision is in effect.
INCREASE OF MAXIMUM AGE OF ELIGIBLE DEPENDENTS		
<p>Will you permit reimbursement of eligible DCAP expenses for children up to age 14 (rather than age 13) during the plan year 2020*?</p> <p>Will you permit the use of unused funds from 2020 plan year to reimburse eligible expenses incurred with respect to children up to age 14 during 2021 plan year?</p> <p><small>*This relief applies only to the last plan year with respect to which the end of the regular enrollment period for such plan year was on or before January 31, 2020, which includes all 2020 calendar year plans and potentially some fiscal year plans.</small></p>	<p>Participants will be able to get eligible DCAP expenses reimbursed for their children if they turn 14 in 2020 or 2021.</p>	<ul style="list-style-type: none"> ▪ Employers will be allowing participants to get reimbursed from their unused dollars for their children up to age 14.



Option	Change	Consideration
PLAN AMENDMENT TIMING		
Do plan sponsors need to amend plans to take advantage of these new relief options?	Plan sponsors will have until the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective to adopt a plan amendment. Example: Plans ending on 12/31/20 will have until 12/31/2021 to adopt changes for the 2020 plan year.	<ul style="list-style-type: none">▪ The legislative text allows for plan updates to be made retroactively but also provides that the plan must be operated consistent with the terms of such amendment during the period beginning on the effective date of the amendment and ending on the date the amendment is adopted.▪ This means plan sponsors have time to weigh their options and potentially wait for additional guidance prior to making changes to their plans, so long as changes are fully implemented back to the effective date of the amendment.▪ For practical purposes, plan sponsors may want to communicate their intent to adopt changes prior to the end of their existing run-out period.

NEXT STEPS

Plan sponsors who are considering these changes should reach out to their health FSA and DCAP administrator(s) and benefit administration vendor(s) to discuss the administrative implications. Plan sponsors will want to plan to communicate their changes to applicable employees, in addition to the required plan amendments.

The above considerations are based on guidance and interpretations as of 12/29/2020. Subsequent guidance may impact future considerations.

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