



Recent IRS and DOL Guidance: Impacts and Considerations

June 4, 2020

Q: Has the DOL released an updated COBRA Notice to use that discloses the new required verbiage? If yes, how can we receive a copy?

A: NAHU has requested that they update the model COBRA Notice to reflect the new regulation, but to-date unfortunately there is no update available.

Q: Can you explain how the IRS extended grace period and rollover plays with the mandatory suspended claims for FSAs?

A: The grace period relief outlined in [Notice 2020-29](#) can overlap with the "outbreak period" relief in the emergency regulation, "[Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak](#)." Now group plan sponsors have to allow participants their typical length of time to file claims (including Health FSA reimbursement claims), plus the whole "outbreak period."

The outbreak period claims relief is automatic—it applies to virtually all employee benefit plans. The Notice 2020-29 relief additional optional Health FSA claims submission relief for 2019 plan year. The Notice 2020-29 provisions can overlay with the "outbreak period" relief, but only if the employer plan chooses to extend their Health FSA claims period for 2019.

Here are examples of how this could work:

Situation One: An employer offers a Health FSA, but does not adopt the new extended claims period allowed by Notice 2020-29.

An employer offers a calendar-year health FSA with a 90-day claim filing grace period. A person typically would have until March 30, 2020, to file a 2019 claim for reimbursement. Now, assuming the "outbreak period" ends on August 1, 2020, the person has until August 30, 2020, to file any outstanding 2019 claims. This accounts for the 60 days of the claims grace period before the "outbreak period," and 30 days after it ends.

Situation Two: An employer offers a Health FSA with a \$500 carry-over period. In addition to the automatic "outbreak period" relief, the plan sponsor opts for the new claims period relief allowed by Notice 2020-29.

An employer with a July 1 renewal date offers employees a health FSA with a \$500 carry-over limit. Typically, the employees would have until June 30, 2020, to submit qualified medical expenses from July 1, 2019-June 30, 2020, for reimbursement. However, due to workplace complications caused by COVID-19, this employer plan decides to use the IRS Notice 2020-29 relief to extend the claims period for the 2020 plan year by six additional months. The participants in this plan also get claims submission relief during the "outbreak period" due to the new regulation. The "outbreak period" ends on August 1, 2020. The employees in this plan have until December 31, 2020, to incur and submit 2019-2020 plan year claims for their health FSA, since the "outbreak period" must be disregarded for claims submission purposes and the employer opted to extend their claims period using the Notice 2020-29 relief until December 31, 2020.



Situation Three: An employer offers a Health FSA with a 90-day claims processing grace period. In addition to the automatic "outbreak period" relief, the plan sponsor opts for the new claims period relief allowed by Notice 2020-29.

An employer with a January 1 renewal date offers employees a health FSA with a 90-day claims processing grace period. Typically, the employees would have until March 31, 2020, to submit qualified medical expenses from January 1, 2019-December 31, 2020, for reimbursement. However, due to workplace complications caused by COVID-19, this employer plan decides to use the IRS Notice 2020-29 relief to extend the claims period for the 2020 plan year by six additional months. The participants in this plan also get claims submission relief during the "outbreak period" due to the new regulation. The "outbreak period" ends on August 1, 2020. The employees in this plan have until May 31, 2020, to incur and submit 2019-2020 plan year claims for their health FSA. Additionally, since the "outbreak period" must be disregarded for claims submission purposes, the employees in this plan have until October 30, 2020 to submit claims incurred between January 1, 2019- May 31, 2020 for reimbursement.

Q: For the HRA and FSA, is the extension only to submit the claims, or to incur and to submit the claims?

A: The extension of time to submit all medical care claims, including Health FSA and HRA claims toll until 60 days after the conclusion of the National Emergency Period, aka "the outbreak period," is mandatory and only applies to claims submissions. This requirement comes from the emergency regulation, "[Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak.](#)"

The Section 125 plan relief outlined in IRS Notice 2020-29 applies just to Health FSAs and DCAPs, not HRAs. It is voluntary and applies to incurring and submitting claims. The relevant section of the Notice 2020-29 text is below – emphasis added.

"This notice also provides flexibility for a § 125 cafeteria plan to provide an extended period to apply unused amounts remaining in a health FSA or dependent care assistance program **to pay or reimburse medical care expenses or dependent care expenses**. Specifically, an employer, in its discretion, may amend one or more of its § 125 cafeteria plans to permit employees to apply unused amounts remaining in a health FSA or a dependent care assistance program as of the end of a grace period ending in 2020 or a plan year ending in 2020 to pay or reimburse expenses incurred for the same qualified benefit through December 31, 2020."

Q: Can you please clarify: for an FSA if the plan year ended 12/31/19 and the plan does not have a 'grace period', does this relief apply to their plan? I just want to make sure that I'm clear on the difference between a 'grace period' and a 'runout period' on an FSA plan.

A: The optional grace period is allowed for FSAs with either a carry-over or a runout period. Notice 2020-29 provides "flexibility for a § 125 cafeteria plan to provide an extended period to apply unused amounts remaining in a health FSA or dependent care assistance program to pay or reimburse medical care expenses or dependent care expenses. Specifically, an employer, in its discretion, may amend one or more of its § 125 cafeteria plans to permit employees to apply unused amounts remaining in a health FSA or a dependent care assistance program as of the end of a grace period ending in 2020 or a plan year ending in 2020 to pay or reimburse expenses incurred for the



same qualified benefit through December 31, 2020... The extension of time for incurring claims is available both to § 125 cafeteria plans that have a grace period, and plans that provide for a carryover”

Q: Does an employer need to elect the increased rollover amount, or is it automatic with TPAs?

A: The employer should have a choice and should consult with their TPA.

Q: Have you heard if "virtual camps" will be eligible expenses for the DCAP?

A: We have not heard that.

Q: You mentioned that the HIPAA regulations only apply to Medical as it relates to the additional time allowed to notify the plan administrator of a qualifying event and does not necessarily have to be applied to standalone Dental or Vision. Is this true for the additional time on COBRA? Is this only for Medical or does it apply for all COBRA eligible coverage?

A: The COBRA changes apply to all COBRA eligible coverage. The HIPAA special enrollment changes only must apply to coverage subject to HIPAA. Standalone dental and vision are considered “HIPAA excepted benefits” so even though plans often loop excepted benefits into their HIPAA qualifying event procedures, the outbreak period rule doesn’t officially apply to them.

Q: When are employers allowed to make these prospective changes, only during the Employer Outbreak period? Say it ends 8/1; can the employer on 9/1 decide to make the prospective changes?

A: The prospective changes only apply to the Section 125 plan relief. For example, if an employer plan allows employees to reduce or terminate DCAP contributions, they can only do so moving forward. They cannot get money back that they contributed to the DCA earlier in the year. An employer can elect/or not elect to allow these prospective election changes between now and the end of 2020.

The outbreak period requirements are mandatory and they apply for the entire duration of the national emergency period plus 60 days, otherwise known as the “outbreak period.”

Q: Do you know of any states that where there is state continuation rather than COBRA, and if they are following these timeframes?

A: We do not, but HHS asked states to consider it. NAHU recently wrote to the NAIC, asking them to track state actions and for state insurance commissioners to announce any planned changes in this area.s

Q: If a group, which is a school, has their employees contribute to the DCA for summer camp, yet no camps are open, will the employees lose this money or can it be backed out?

A: You cannot back out any money already contributed to a DCAP. Employers may only let employees end or reduce existing contributions for the remainder of the year.



Compliance Corner Webinar:

Recent IRS and DOL Guidance: Impacts and Considerations

June 4, 2020

Q: Have you heard anything about the IRS allowing employers to refund employees on the commuter benefit?

A: No