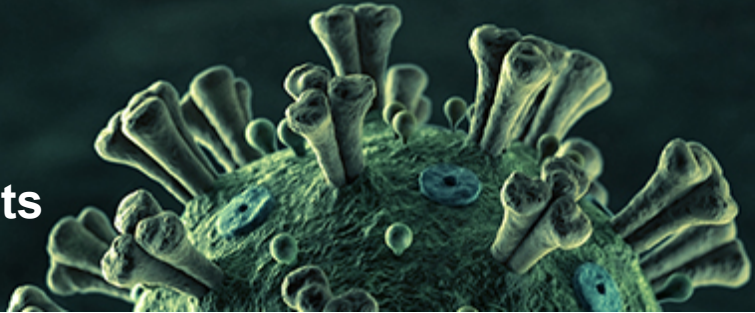




COVID-19 Latest Insights



IRS Announces New COVID-19-Related Guidance for Section 125 Cafeteria Plans and Related High Deductible Health Plans, and ICHRAs

On May 12, 2020, the IRS issued Notices 2020-29 and 2020-33, which provides guidance for Section 125 plans for calendar year 2020 and related HDHPs, as well as ICHRAs. Together, the two notices relax the rules relating to election changes for health plans offered under a section 125 plan, including health and dependent care FSAs.

Notice 2020-29 provides guidance for HDHPs and increased flexibility for mid-year elections made in calendar year 2020, as well as grace periods for applying unused amounts in health FSAs to medical care expenses incurred through December 31, 2020, and unused amounts in dependent care assistance programs to dependent care expenses incurred through December 31, 2020. Specifically:

Mid-Year Elections

For mid-year elections made during calendar year 2020, a § 125 cafeteria plan may permit employees who are eligible to make salary reduction contributions under the plan to:

1. With respect to employer-sponsored health coverage:
 - a. Make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage
 - b. Revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis
 - c. Revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer
2. Revoke an election, make a new election, or decrease or increase an existing election applicable to a health FSA on a prospective basis
3. Revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis

Health FSAs and DCAPs

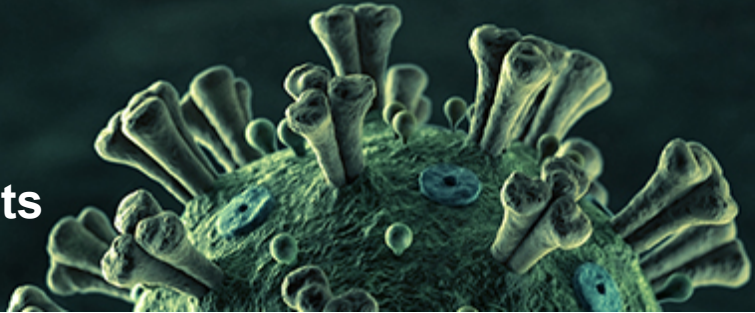
For unused amounts remaining in a health FSA or a dependent care assistance program under the § 125 cafeteria plan as of the end of a grace period or plan year ending in 2020, a § 125 cafeteria plan may permit employees to apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020.

HDHPs

The relief provided in Notice 2020-15, 2020-14 IRB 559 regarding HDHPs and expenses related to COVID-19, and in section 3701 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136, 134 Stat. 281 (March 27, 2020)) regarding an exemption for telehealth services, may be applied retroactively to January 1, 2020.



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This guidance may be applied on or after January 1, 2020, and on or before December 31, 2020, provided that any elections made in accordance with it apply only on a prospective basis. The cafeteria plan will need to be amended in order to accommodate these elections. An amendment for the 2020 plan year must be adopted on or before December 31, 2021, and may be effective retroactively to January 1, 2020, provided the employer informs all employees eligible to participate in the § 125 cafeteria plan of the changes to the plan and otherwise complies with this notice and Notice 2020-33. Any amendment adopted pursuant to this notice must apply only to mid-year elections made during calendar year 2020.

Notice 2020-33 modifies the permissive carryover rule for health FSAs and clarifies how health plans reimburse premiums by ICHRAs, specifically:

Health FSAs

Notices 2013-71 and 2013-47 IRB 532 are modified to increase the carryover limit (currently \$500) of unused amounts remaining as of the end of a plan year in a health FSA under a § 125 cafeteria plan that may be carried over to pay or reimburse a participant for medical care expenses incurred during the following plan year. The increase in the amount that can be carried over from one plan year to the next reflects indexing for inflation, and this indexing parallels the indexing applicable to the limit on salary reduction contributions under § 125(i) of the Internal Revenue Code. The FSA rollover amount for the 2020 plan year is increased from \$500 to \$550.

ICHRAs

The notice clarifies that only payments or reimbursement made by a health plan, including a premium reimbursement plan in a § 125 cafeteria plan or an ICHRA, for medical care expenses incurred by an employee during the plan year may be excluded from income and wages under §§ 105 and 106. Medical care expenses are treated as incurred when the covered individual is provided the medical care that gives rise to the expense, and not when the amount is billed or paid. This notice provides that a plan is permitted to treat an expense for a premium for health insurance coverage as incurred on 1) the first day of each month of coverage on a pro rata basis, 2) the first day of the period of coverage, or 3) the date the premium is paid. Thus, for example, an ICHRA with a calendar year plan year may immediately reimburse a substantiated premium for health insurance coverage that begins on January 1 of that plan year, even if the covered individual paid the premium for the coverage prior to the first day of the plan year.

The IRS intends to revise Prop. Treas. Reg. §§ 1.125-1(o) and 1.125-5(c) to reflect the guidance in this Notice 2020-33. Until then, the IRS states that taxpayers may rely upon the guidance provided in the notice.

IRS Notice 2020-29

<https://www.irs.gov/pub/irs-drop/n-20-29.pdf>

IRS Notice 2020-33

<https://www.irs.gov/pub/irs-drop/n-20-33.pdf>

This information has been provided as an informational resource for PPI clients and business partners. It is intended to provide general guidance, and is not intended to address specific risk scenarios. Regarding insurance coverage questions, each specific policy must be reviewed in its entirety to determine the extent, if any, of coverage available for the impact of the Coronavirus.