

Important Updates and FAQs

What you need to know about the CARES ACT and IRS Changes and how they affect your flex plan

The CARES Act, formally named the Coronavirus Aid, Relief, and Economic Security Act, was signed into law on March 27, 2020. It provides emergency relief in the wake of the COVID-19 public health crisis and has inclusions that affect the Meritain Health[®] administered Flexible Spending Account (Health FSA and Dependent Care) and any applicable Health Reimbursement Arrangement (HRA) offerings.

Changes and updates

- The legislation changes now allows Health FSA and HRA plan participants to purchase over-the-counter (OTC) drugs, medicines and medical products without a prescription from a physician. Examples include, but are not limited to, pain relievers, cold medicines, bandages and more. We are awaiting updates to IRS publication 502 for the comprehensive list of what will be covered under these provisions. Please note: this is a permanent change retroactive to January 1, 2020.
- Menstrual care products, such as tampons, pads, liners, cups, sponges, and/or similar products used by individuals with respect to menstruation are now included as an eligible expense for reimbursement from Health FSA and applicable HRA plans. Please note: this is a permanent change retroactive to January 1, 2020.

You may have heard the legislation is permitting deadline extension and delays due to public health emergencies. More guidance is expected from regulatory agencies, and we will continue to monitor.

FAQs

Can Health FSA elections be changed if a member has set aside funds for a procedure that has now been postponed or cancelled due to COVID-19? Does the IRS have a position on this?

Under current guidance there is little flexibility allowing for a change in Health FSA elections due to a change in the circumstances regarding a participant's anticipated medical expenses. The failure to incur anticipated medical expenses is not a change in status or other event that permits an election change. The IRS has not announced any exceptions to this yet. We will continue to monitor for IRS guidance on this topic.

Will Health FSA coverage continue during a furlough or temporary layoff?

This depends on the plan terms and how the furlough is implemented. For example, if an FSA requires a minimum of 30 hours per week to be eligible and an employee regularly working 40 hours per week (eight hours per day) will be furloughed one day per week, the employee likely will continue to be eligible for the FSA, because the employee is still working 32 hours per week. For a Health FSA, COBRA may be available upon a loss of coverage due to a reduction in hours of service.

Are furloughed employees eligible for COBRA?

If an employee's group health plan coverage eligibility is lost as a result of a furlough, they would generally be eligible for COBRA. However, if there is no loss of coverage in connection with a furlough, such as if an employer chooses to temporarily extend eligibility during a furlough, there would be no right to elect COBRA. Please review your plan document for language for Leave of Absence, FMLA, furlough, and eligibility requirements.

Do documents need to be amended for employees who have been furloughed or have received reduced hours so they don't lose eligibility, or will Leave of Absence (LOA) or FMLA language be sufficient?

Any time workforce planning initiatives are considered, such as reduced hours, furloughs or layoffs, plan eligibility language should be reviewed to determine whether the changed work status will continue to satisfy plan requirements. We understand that many clients are seeking ways to protect their members. Please reach out if you have specific questions so that we may review your needs.

Is there any discussion related to adding greater flexibility to participants in making changes to annual Dependent Care FSA (DCAP) elections mid-year?

As an example, many participants are no longer paying daycare fees due to closures related to COVID-19. DCAP elections generally may be changed any time there is a change in the participant's dependent care expenses. For example, if a participant's daycare provider closes and the participant is no longer incurring any daycare expenses, the participant has incurred a curtailment of coverage that would permit reducing the participant's DCAP election. Based on the broad application of the cost-change events in the regulations to DCAPs, plan sponsors and administrators will likely allow dependent care election changes in most circumstances that involve changes in the cost of care (e.g., fee changes, provider changes and changes in the hours of care). Please check the plan document for specific terms and conditions.

Are we able to consider coronavirus or school closures a qualifying event that would allow DCAP participants to change their 2020 election amount?

Changing the hours of child care needed is generally a valid election change event that would allow an employee to change his or her DCAP election, including changing to an in-home child care provider. So long as the change is consistent with the event (e.g., increasing the election if paid child care is needed or reducing the election if child care is no longer needed), the participant may be permitted to change their election. Before any changes are made, you should review your cafeteria plan document to make sure the plan allows for such mid-year election changes.

Are over-the-counter (OTC) medications now considered an allowable expense for FSAs?

Yes, the CARES Act that was signed into law on March 27, 2020, allows consumers to purchase or receive reimbursement for OTC medications through an FSA or HRA without regard to whether the medications are prescribed.

Please contact your Meritain Health representative if you have any questions.

This material is being provided as an informational tool. It is recommended that plans consult with their own experts or counsel to review all applicable federal and state legal requirements that may apply to their group health plan. By providing this material and any attachments, Meritain Health is not exercising discretionary authority over the plan and is not assuming a plan fiduciary role, nor is Meritain Health providing legal advice.