



# What COVID-19 legislation has expired, and what is here to stay?

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Presented by:

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# Agenda

- Legislation that came and went
- Legislation that's here to stay
- Legislation that's ending soon



# Health & Welfare Legislative Recap

Legislation passed in 2020 and 2021

Name of Legislation	What did it do (to Health & Welfare plans)?	Temporary or Permanent?
Consolidated Appropriations Act (plus IRS Notice 2021-15)	Allowed full FSA carryovers, Grace Period Extensions, post-term Health FSA spend-down, special DCAP rule, mid-year changes	Temporary (ended 1/2023)
American Rescue Plan Act	Allows an increase to DCAP amounts, provides a COBRA subsidy	Temporary (ended 10/2021)
The CARES Act/IRS Announcement 2021-7	Brought back OTCs as FSA- /HSA-eligible, added menstrual & PPE products	Permanent
IRS Notice 2020-33	Allowed the Health/LP FSA carryover to be increased to \$550 and potentially indexed annually	Permanent
Joint Notice (plus EBSA Disaster Relief Notices 2020-01, 2021-01)	Extended timelines for COBRA election/payments, claims filing	Temporary (ending soon...action required!)



# Legislation that came and went

## CAA

### Consolidated Appropriations Act (CAA)

- 1. Full carryover of Health and DCAP FSA funds.** For the Health FSA, Limited Purpose FSA, and the Dependent Care FSA, a plan may allow carryovers of the full unused balance from plan years ending in 2020 and 2021 into the subsequent plan years ending in 2021 and 2022, respectively.
- 2. Grace Period Extension.** For both the Health FSA and the Dependent Care FSA, the plan may have a 12-month grace period after the plan years ending in 2020 or 2021.
- 3. Post-termination Health FSA spend-down.** A plan may permit employees who are enrolled in a Health FSA and who terminate participation mid-year during calendar year 2020 or 2021 to continue to incur reimbursable claims for the remainder of the plan year in which participation ceased.
- 4. Special carry forward rule for Dependent Care FSAs.** Employees whose children reached age 13 during the last Dependent Care FSA plan year for which the enrollment period was on or before January 31, 2020 may continue to treat the child as eligible up to age 14 for such plan year.
- 5. Mid-year election changes without a Qualifying Event.** Allows individuals covered under Section 125 to make mid-year elections for a Health FSA, Limited Purpose FSA, and/or the Dependent Care FSA for a plan year ending in 2021 without a true qualifying event.

**Action required?** None, as none of these provisions are still in effect.



# Legislation that came and went

## ARPA

### American Rescue Plan Act (ARPA)

- 1. Temporary Dependent Care FSA maximum increase.** ARPA provided a temporary increase to the Dependent Care FSA maximum to \$10,500 for the 2021 calendar year.
- 2. COBRA subsidies.** A 100% subsidy was offered to COBRA-eligible individuals from April 1, 2021 through September 30, 2021.

**Action required?** None, as none of these provisions are still in effect.



# Legislation that's here to stay

## Cares Act

### Cares Act & IRS Announcement 2021-7

- 1. Over-the-counter medicines and drugs are once again FSA-eligible.** The CARES Act brought back over-the-counter medicines and drugs as eligible expenses under an FSA and HSA. This includes products such as pain relievers, allergy medicine, and cold medicine. These products had been removed from the list of eligible expenses with the introduction of the Affordable Care Act in 2011 up until the CARES Act made them eligible once again.
- 2. PPE is FSA-eligible.** IRS Announcement 2021-7, released on Friday, March 26, 2021, announced that amounts paid for personal protective equipment, for the primary purpose of preventing the spread of the Coronavirus Disease 2019 (COVID-19 PPE), are treated as amounts paid for medical care under § 213(d) of the Internal Revenue Code (Code). This included masks, hand sanitizer, and sanitizing wipes.

**Action required?** Ensure that your FSA Plan Document references the updated version of the eligible expenses.



# Legislation that's here to stay

## IRS Notice 2020-33

### IRS Notice 2020-33

**Increase Health FSA carryover maximum.** IRS Notice 2020-33 increased the amount that can be carried forward in a Health and/or Limited Purpose FSA to \$550, if this option is offered by the Plan. The previous maximum was \$500. In addition to increasing the amount, the Notice stated that the amount can be indexed for cost-of-living. The carryover maximum for 2023 is \$610.

**Action required?** If your FSA plan does not allow for a carryover, amend your plan to adopt it!



# Legislation that's ending soon

## EBSA Disaster Relief Notices 2020-01 and 2021-01

- Released on April 29, 2020, EBSA Disaster Relief Notice 2020-01 altered and extended the timelines tied to certain benefit plans.
- The scope of the rule covers:
  - HIPAA Special enrollment
  - COBRA
  - Claim filing and appeals deadlines
- The initial guidance referenced a one year limit on the extensions, which led to confusion about how the extensions were to be applied one year after the National Emergency went into effect.
- EBSA Disaster Relief Notice 2021-01 clarified that each deadline can be suspended for no more than **12 months**. The stipulation was that the deadline would be extended out to either 12 months following the original deadline date, or to the end of the Outbreak Period...whichever date comes first.

The rule defines March 1, 2020 as the first day of what the Agencies are calling the “National Emergency” period. The Agencies are then defining what they call the “Outbreak Period” as the period of time from the first day of the National Emergency until 60 days following the date that is announced as the last day of the National Emergency period.



# EBSA Disaster Relief Notices 2020-01/2021-01

## What plans are included?

### INCLUDED

- HIPAA Special Enrollment
- COBRA 60-day election period
- COBRA 45-day initial payment period
- COBRA 30-day subsequent payment period
- Claim filing deadlines (Health FSA & HRA)\*
- Claim appeals deadlines

### NOT INCLUDED

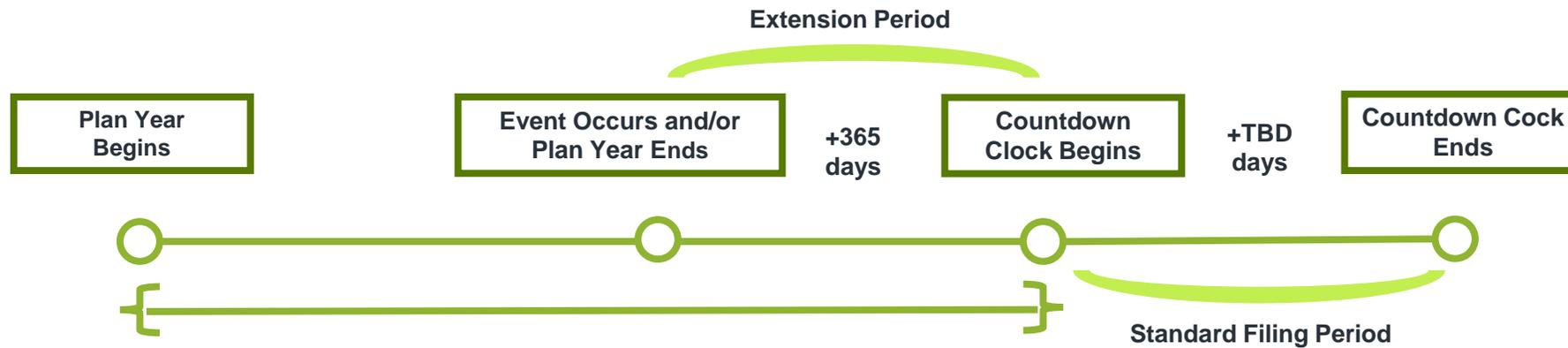
- Initial/annual enrollment periods
- PCORI Fee
- Form 5500 (due after 7/15)
- DCAP FSA run-out
- Other Cafeteria Plan elections
- FSA Grace Period

\*Note! Claims filing deadline refers to the plan year plus any applicable run-out period. A run-out period is the time after the plan year where claims incurred during the plan year can still be submitted. The run-out period does **not** extend the timeframe where a participant can continue to incur expenses.



# EBSA Disaster Relief Notices 2020-01/2021-01

## A Visual Representation



# EBSA Disaster Relief Notices 2020-01/2021-01

## Coming to an End

- On January 30, 2023, the White House released a statement indicating that the National Emergency will end on **May 11, 2023**. This, in turn, means that the Outbreak Period will end as of **July 10, 2023**.
- This guidance means that the deadlines that were extended as part of the Notices will return to their normal timeframes as of that date.
- Further, any deadline that was suspended/extended will resume as of July 11<sup>th</sup>. This includes:
  - The amount of time and deadline that a participant has to file a claim for Health FSAs, Limited Purpose FSAs, and HRAs.
  - The 60-day deadline for individuals to elect COBRA.
  - The 30-day deadline for individuals to make COBRA premium payments.



# EBSA Disaster Relief Notices 2020-01/2021-01

## Examples

**FSA Claim Submission Example:** A Health FSA plan year runs from 1/1/2022 through 12/31/2022 with a 90-day claims run-out period. Normally, all claims that were incurred during 2022 would have to be filed by March 31, 2023; however, because of this legislation the submission deadline was suspended to either the end of the Outbreak Period or one year following the original end date. Since the end of the Outbreak Period occurs before the one-year mark, the claims run-out period will resume on July 11, 2023. The run-out period will run 90 days from this date, allowing claims incurred during 2022 to be submitted through October 9, 2023.

**COBRA Election Example (Event Date Prior to May 11):** Individual A works for Employer X and participates in Employer X's group health plan. Individual A experiences a qualifying event for COBRA purposes and loses coverage on April 1, 2023. Individual A is eligible to elect COBRA coverage under Employer X's plan and is provided a COBRA election notice on May 1, 2023.

### **What is the deadline for Individual A to elect COBRA?**

The last day of Individual A's COBRA election period is 60 days after July 10, 2023 (the end of the Outbreak Period), which is September 8, 2023.

**COBRA Election Example (Event Date After May 11):** Same facts as the example above, except the qualifying event and loss of coverage occur on July 12, 2023, and Individual A is eligible to elect COBRA coverage under Employer X's plan and is provided a COBRA election notice on July 15, 2023.

### **What is the deadline for Individual A to elect COBRA?**

Because the qualifying event occurred on July 12, 2023, after the end of both the COVID-19 National Emergency and the Outbreak Period, the extensions under the emergency relief notices do not apply. The last day of Individual A's COBRA election period is 60 days after July 15, 2023, which is September 13, 2023.



# EBSA Disaster Relief Notices 2020-01/2021-01

## In Summary

- After more than three years, the deadlines that were extended will return to normal timelines.
- Updates to communications
- Further, any deadline that was suspended/extended will resume as of July 11<sup>th</sup>. This includes:
  - The amount of time and deadline that a participant has to file a claim for Health FSAs, Limited Purpose FSAs, and HRAs.
  - The 60-day deadline for individuals to elect COBRA.
  - The 30-day deadline for individuals to make COBRA premium payments.



# EBSA Disaster Relief Notices 2020-01/2021-01

## Suggested Action Steps

1. Communicate the updated deadlines to Health FSA and HRA plan participants.
2. Ensure that COBRA members understand the updated timeframes.
3. Update COBRA materials to ensure that the normal deadlines are referenced once the National Emergency comes to an end.



# Let's stay in touch!



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# Next webinar coming up...

May 12<sup>th</sup> @ 12pm EST

## Best practices for Plan Fiduciary Committees

Medical & health plans are subject a number of different rules: from ERISA to the same rigorous standards as qualified retirement plans. Plan Sponsors also have a lot to keep track of, as they are subject to the fiduciary standards.

The complexities of these plans brings a need for a Plan Fiduciary Committee, and there are a number of best practices you should know.

THANK YOU to SHRM Long Island for partnering with us on this series!

