

Reimbursement Account Compliance

Navigating plan rules & regulations.



Today's Agenda

- COVID Update
- Plan Documents & Operational Failures
- Plan Eligibility Rules
- FSA Elections & Qualifying Life Events
- Eligible Expenses & Claim Adjudication
- Terminated Employees
- Annual Compliance Activities



COVID Update

➤ CARES Act

- OTC medicines eligible without prescription
- Menstrual care products eligible

➤ IRS Announcement 2021-7

- PPE now eligible medical expense

➤ IRS Notice 2020-33

- Increased carryover limit to \$550 and indexed to Medical FSA election limit.
- Carryover limit currently \$570 for 2022.

➤ Joint Notice/Final Rule

- Extended claim filing deadlines for Medical FSA, Limited Purpose and HRA up to 1 year.
- Tolling period ends 60 days following end of National Emergency

➤ Consolidated Appropriations Act (CAA)

- Grace period extension or full carryover for PYE 2021



Cafeteria Plan Documents

- **Section 125 requires written plan document**
 - Must be adopted prior to start of the first plan year
 - Plan must be administered according to the document
 - In most cases, plan cannot be amended retroactively

- **Summary Plan Description (SPD) distribution**
 - Within 120 days of plan adoption
 - Within 90 days after becoming a participant
 - Updated SPD every 5 years if plan is amended
 - Updated SPD every 10 years if not amended

- **Summary of material modification (SMM)**
 - Within 210 days after end of plan year in which amendment occurs





Document Contents

Plan document must contain the following:

- description of available benefits
- participation rules
- election and election change procedures
- manner of contributions
- maximum amount of contributions
- the plan year
- if the plan includes flexible spending arrangements (FSAs), the plan's provisions complying with any additional requirements for those FSAs

Operational Failure

- **Plan operation must follow:**
 - Requirements of Code Section 125 and underlying regulations
 - Provisions outlined in plan document
- **Failure could result in loss of nontaxable benefit for all participants.**
- **Examples of operational failure:**
 - Reimbursing expenses incurred outside of the coverage period.
 - Failure to comply with the uniform coverage rule.
 - Failure to comply with the use-or-lose rule.
 - Failure to comply with grace period rules.
 - Allowing election changes without a qualifying event.
 - Failing to comply with claim substantiation requirements.
 - Reimbursing ineligible expenses.
 - Allocating forfeitures other than as permitted in the regulations.



FSA Eligibility



- **Specific eligibility rules must be outlined in the plan document.**

Ineligible individuals include:

- Self-employed individuals
- Partners in a partnership
- More than 2% shareholders in an S-corporation
- Outside directors
- Members of LLCs and partners in LLPs

- **Health FSA may cover medical/dental/vision expenses incurred by:**

- Employee
- Spouse (legally married)
- Children through age 26 (includes children, stepchildren and adopted/foster children)
- Other qualifying relatives that meet certain income, residency and support requirements

- **Dependent Care FSA may cover day care expenses for:**

- Children under the age of 13
- Spouse/dependent who is physically or mentally incapable of self-care



HRA Eligibility



- **HRAs may make benefits available to:**
 - Employees
 - Former Employees
 - Retired Employees

- **HRAs may reimburse expenses for the covered individual and their:**
 - Spouse (legally married)
 - Children through age 26 (includes children, stepchildren and adopted/foster children)
 - Tax dependents

- **Eligibility depends on plan design**
 - Typically tied to medical plan enrollment

- **May reimburse health care expenses under Section 213(d)**
 - Dependent on plan design



HSA Eligibility



- Enrolled in HDHP
- Not claimed as dependent on someone else's federal tax return
- No other non-HDHP coverage (*including Health FSA, HRA and MediCare*)
 - Enrollment in non-HDHP makes individual ineligible for HSA contributions
 - Spouses enrollment in Health FSA makes individual ineligible for HSA contributions
 - Grace period and health FSA rollover may impact eligibility
 - Limited Purpose FSA coverage does not impact HSA eligibility
 - Enrollment in any part of MediCare at age 65 makes an individual ineligible
- HSA may cover medical/dental/vision expenses incurred by:
 - Accountholder
 - Spouse (legally married)
 - Tax dependents



FSA Benefit Elections



- Elections allowed when hired, during OE or qualifying event
- Must be prospective
- Must be irrevocable except upon qualifying event
- **Annual Maximums:**
 - Health FSA \$2,850 (2022) per individual
 - Dependent Care \$5,000 (2022) per household (\$2,500 if married filing separately)
- Health FSA Uniform Coverage Rule – full election amount available
- **Use-or-Lose – unused funds forfeited with two exceptions:**
 - Health FSA Carryover up to \$570 (2022)
 - Grace Period of 2.5 months following plan year end

Qualifying Events & Election Changes



➤ Qualifying events include:

- Change in number of dependents (birth/adoption)
- Change in marital status (marriage/divorce)
- Change in employment status (hiring/termination of employee/spouse/dependent, must affect eligibility)
- Change in dependent status affecting eligibility (e.g., attains a certain age)
- Entitlement to Medicare/Medicaid (health FSA only)
- Judgment, decree, court order relating to child's medical coverage (e.g., QMCSO)
- Death of a spouse/dependent
- Change in cost (DCAP only – i.e. change providers, rate change, change in need for care due to spouse's work schedule, child eligible for kindergarten early, etc.)

➤ Election change must be consistent with the qualifying event.

➤ Correcting technical and administrative errors.



Eligible Expenses

➤ Health FSA & HSA

- Amounts paid for diagnosis, cure, mitigation, treatment, or prevention of disease, and for treatments affecting any part or function of the body. Includes over-the-counter (OTC) drugs and medications.
- Expenses incurred for general health (e.g. vitamins) or cosmetic reasons generally not eligible.

➤ Limited Purpose FSA

- Dental and vision expenses only.

➤ Dependent Care

- Expenses incurred so that participant and spouse may work, look for work or go to school.
- Day care and pre-school through pre-K eligible.
- After school care and day camps eligible for school age children (Kindergarten through age 12)
- Care can be provided by a business or individual (EIN or SSN required for claims)
- Education expenses and overnight camps not eligible.

FSA Claim Adjudication

Manual Claims

- Signed claim form or online submission required.
- Documentation must include:
 - Name of service provider
 - Name of individual that received service
 - Date of service
 - Description of service
 - Amount charged for service
- Tax ID # of service provider for Dependent Care claims

Debit Card Claims

- Auto-substantiated with no receipt based on:
 - Point-of-Sale substantiation through credit card processing terminal
 - Co-pay matching
- Receipt must be requested if auto-substantiation not satisfied.
- If claim is found to be ineligible, repayment is required.



Terminated Employees

➤ Health FSA

- Services must be incurred while actively employed
- Participant cannot be asked to return reimbursements in excess of contributions.
- COBRA-eligible

➤ Dependent FSA

- Services may be incurred after termination
- Claims only reimbursed up to contribution amount
- Not COBRA-eligible

➤ HSA

- Participant retains full account balance
- Services may continue after termination
- Transfer to new employer or another custodian

➤ HRA

- COBRA-eligible
- Bundle with medical plan COBRA coverage or offer as a separate election



Plan Forfeitures



Employers have four alternatives that comply with IRS rules relative to utilization of Health FSA plan forfeitures:

- 1 defray reasonable administrative expenses of the plan
- 2 reduce required premiums for the following year
- 3 increase the annual coverage amount in the following year
- 4 return to participants in the form of cash

Options 2-4 must all be on a uniform per capita or weighted average basis

Nondiscrimination Testing



- Required annually for the prior plan year
- The plan may not discriminate in favor of highly compensated or key employees.
- The following tests must be performed to ensure the plan is not discriminatory:
 - Contributions and Benefits Tests (All benefits)
 - Eligibility Test (All benefits)
 - Eligibility to participate
 - Benefits offered (types of expenses reimbursed)
 - 25% Key Employee Test (Includes all benefits under the Section 125 Plan such as health and Dependent Care FSA)
 - 55% Average Benefits Test (Dependent Care Only)
 - 25% Owners Test (Dependent Care Only)
- Plan must pass nondiscrimination tests as of the last day of the plan year.
- No filing of results
- If plan is discriminatory, HCEs and key employees lose tax-favored status.
- HRAs subject to Eligibility and Benefits tests and generally pass if:
 - Available to majority of employees
 - Benefit amount uniform or based on coverage level (not salary, years of service, age, etc.)

Form 5500



- Health FSA and HRA are welfare benefit plans and must file a Form 5500 under ERISA if:
 - 100 participants or more at the beginning of the plan year; and/or
 - Plan is a funded plan

- Use Form 5500 version that represents the calendar year in which the plan year begins.

- Due by the last day of the seventh month following the last day of the plan year.

PCORI Fee



- Currently effective through 2029
- Applies to self-insured plans (includes HRA)
 - Separate HRA fee not required if your medical plan is self-insured.
- Due by July 31st for plan year that ended in prior calendar year
- Fee based on average number of covered lives and varies annually.
 - \$2.66 per participant for PYE January 2021 - September 2021
 - \$2.79 per participant for PYE October 2021 – December 2021
- Sentinel provides HRA covered lives report annually.
- Fee filed on Form 720. Sentinel does not provide filing services.



Questions?

After the webinar:

- Contact your Sentinel Account Manager
- Consult Sentinel's Online Employer Help Center:
employerhelp.sentinelgroup.com