New Options for FSAs under the CAA

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Dawne McKenna Parrish

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The Consolidated Appropriations Act (CAA), signed December 27, 2020, will bring significant changes to group health plans in 2022, including new limits on surprise medical billing, reporting and disclosures. We will cover those topics in future client alerts. This alert covers CAA provisions that apply in 2021.

Due to the pandemic, some employees were not able to use all of the funds credited to their health and dependent care FSAs in 2020. The CAA permits (but does not require) an employer to amend its FSAs to give employees more flexibility to use FSA funds that might otherwise have to be forfeited.

FSA carryovers – 2020 to 2021 CAA: An employer may (but is not required to) permit participants to carry over their entire unused health FSA (or limited purpose FSA) and/or dependent care FSA balances from 2020 to 2021. Pre-CAA: Health FSA (and limited purpose FSA) carryovers from 2020 to 2021 would have been limited to $550 and dependent care FSA carryovers would not have been permitted.

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FSA grace period – 2020 to 2021 CAA: An employer may (but is not required to) extend a grace period through December 31, 2021 for the use of unused 2020 health FSA (or limited purpose FSA) and/or dependent care FSA balances. Pre-CAA: The FSA grace period would have been limited to 2 ½ months (to March 15, 2021).

Remember that an FSA can have either a carryover or a grace period but not both.

FSA grace period - 2021 to 2022 CAA: An employer may (but is not required to) extend a grace period through December 31, 2022 for the use of unused 2021 health FSA (or limited purpose FSA) and/or dependent care FSA balances. Pre-CAA: The FSA grace period would have been limited to 2 ½ months (to March 15, 2022).

Dependent care FSA reimbursement of care of 13 year old child CAA:

An employer may (but is not required to) permit employees to use their dependent care FSAs for the care of a child under the age of 14 in 2020 and 2021. This would be available to an employee who:
- Was enrolled in a dependent care FSA in 2020;

- Has a child who attained age 13 in 2020; and

- Had an unused 2020 dependent care FSA balance.

Note this option may have limited utility in that a 13 year old child may not be in child care. Pre-CAA: Reimbursement from a dependent care FSA would have been limited to children under the age of 13.

Health FSA spend down CAA:

An employer may (but is not required to) permit employees who terminate employment in 2021 to spend down the balance of a health FSA (or limited purpose FSA) through the end of the year, without needing to elect COBRA or pay COBRA premiums. Apparently, the uniform coverage rule would not apply (meaning a former employee would be limited to accessing his or her year-to-date contributions minus year-to-date reimbursements).

The IRS already permits this type of spend down of a dependent care FSA. Pre-CAA: A spend down feature on a health FSA (or limited purpose FSA) would have been subject to the uniform coverage rule.

2021 FSA election changes CAA: An employer may (but is not required to) permit employees to change health FSA (or limited purpose FSA) and/or dependent care FSA elections without regard to a change in status or life event in plan years ending in 2021 (i.e., 1/1/2021 through 12/31/2021 for calendar year plans). Pre-CAA: FSA election changes would otherwise have been limited to specified changes in status and life events.

Cafeteria plan document updates

If you want to allow one or more of these options, near term tasks include coordinating with your FSA claims administrator and communicating the changes to employees. There is, however, one task you can put off: your cafeteria plan document doesn't need to be amended until the year following the year in which the option becomes available. For example, if you decide to allow unlimited FSA carryovers from 2020 to 2021, the deadline for amending your cafeteria plan document is the last day of the 2021 plan year.

Proof of mental health parity compliance

The Mental Health Parity and Addiction Equity Act (MHPAEA) requires that the application of non-quantitative treatment limitations (NQTLs) to the treatment of mental health and substance abuse disorders be no more stringent than the application of NQTLs to medical and surgical conditions. The CAA requires that a group health plan "perform and document" an analysis of its application of NQTLs within 45 days of enactment of the CAA (i.e., by 2/10/2021). The analysis must be provided to the DOL upon request.

If your company has a self-insured group health plan, you may want to check with your claims administrator to see if the claims administrator has already done this type of analysis and, if not, how quickly the analysis can be done.