The IRS issued 2 notices on Tuesday, May 12 that give employers the option of allowing their employees to make midyear changes to their elections made during calendar year 2020 for health insurance, Flexible Spending Accounts (FSAs) and Dependent Care Assistant Programs (DCAPs).

Significantly, employees can make these changes without experiencing one of the qualifying events normally required under the §125 regulations. Any change an employee makes to the above-referenced plans can only be made on a prospective basis.

If an employer modifies their §125 cafeteria plan for the options provided in these notices, their employees could do the following:

**For Group Medical Health Plans**

- Make a new election if the employee initially declined to elect health coverage;
- Revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer
- Revoke an existing election 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 (the IRS included an example of an acceptable written attestation – click [HERE](#) to view it)

**Oswald Observations:**

1. Several carriers selling fully insured plans offered their clients a 2nd open enrollment period earlier this year, recognizing the extraordinary circumstances and understanding employees would want to reconsider their 2020 plan year elections. The carriers did this prior to the government’s acquiescence to relax the §125 regulations. Employers that allowed their employees to make changes to their medical plan elections must amend their §125 cafeteria plans. The IRS is allowing plan amendments to be made retroactive to January 1, 2020.

2. Employers choosing to adopt this change for group medical plans should consider the additional exposure to adverse selection. It is probable employees will want to add additional dependents or elect to enroll in another plan offering that has lower deductibles/out-of-pocket maximums.

3. Employers using fully insured plans should confirm with their carriers that they will allow the midyear plan changes provided by these new IRS guidelines. Employers using self-funded plans should confirm with their stop-loss carriers that they will cover claims for members enrolled via these new guidelines. Note that Oswald’s employee benefits team has contacted the fully insured...
and stop loss carriers to determine their approach to these new regulations. We will supply their responses after they reply.

**For FSAs and DCAPs**

- Revoke an election, make a new election, or decrease or increase an existing election
  - These actions apply to both general purpose and limited-purpose health FSAs
  - Employers can choose to limit a mid-year health FSA or DCAP election revocation or decrease to amounts no less than amounts already reimbursed to the employee by the health FSA or DCAP in the plan year (this avoids potential employer losses from overspent accounts)
- For unused amounts remaining in a health FSA or DCAP 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 medical expenses incurred through December 31, 2020.
  - Example: Employer with a calendar year plan having a normal grace period ending on March 15, 2020 can apply unused amounts remaining in an employee’s health FSA or DCAP as of March 15, 2020 to reimburse the employee for medical care expenses incurred through December 31, 2020.

**Oswald Observations:**

1. A calendar year health FSA with the carryover provision will not benefit from this extended period because its plan ends December 31, 2020.
2. Employer groups wanting to adopt these changes should confirm with their third-party administrators their ability to adjudicate claims pursuant to these new guidelines.

Employers may amend their §125 cafeteria plans on or before December 31, 2021 to adopt these new IRS relaxed mid-year change rules retroactively to January 1, 2020. Employers adopting any of the above changes must inform all employees eligible to participate of those changes prior to adopting plan amendments.

**Other Changes from the Notices**

**FSA Carryovers**

§125 cafeteria plans can have one of two options to help employees, so they do not lose unused FSA funds. The first option is a carryover provision that allows employees to submit claims incurred within the first 2 ½ months of the new plan year to use unused funds from the previous year.

The second provision allows employees to carry over up to $500 in unused funds from one plan year to the next. One of the notices issued last week addresses this $500 carryover. Specifically, the carryover amount will now be indexed for inflation. Groups using this option can now allow a carryover equal to 20% of the maximum annual FSA deferral. Effective immediately, that means the allowable carryover for this year is $550.

Groups sponsoring a calendar year health FSA with this carryover provision will need to adopt an amendment incorporating the indexed carryover limit no later than December 31, 2020.
High Deductible Health Plans and COVID-19 Expenses

Earlier this year, the IRS issued notices allowing COVID-19 expenses, telehealth and other remote care services to qualify as reimbursable by HDHP’s without members enrolled in these plans losing their eligibility to contribute to an HSA. One of the IRS notices issued last week states that these reimbursements may be applied retroactively to January 1, 2020.

Individual Coverage Health Reimbursement Arrangements (ICHRAs)

The IRS addressed a technical issue dealing with ICHRAs, the new option employers have for offering health coverage to their employees which became effective January 1 of this year. Specifically, one of the notices issued last week contains a provision that allows groups to reimburse individual policy premiums incurred at the end of one plan year for coverage that will be provided during the next plan year. For example, a company with a calendar year plan could reimburse an employee for the company’s share of an employee’s January 2021 premium in December 2020 and deduct that premium on their 2020 corporate income tax return.

Please contact your Oswald client team representative for further information.