

Bootcamp I Permitted Election Changes – Change in Status Q&A – the following questions were asked during the two webinar sessions in (April, 2017)

Please note that although we do not provide any continuing education credits for our webinars, we can provide a statement of your attendance if you independently submit for credit.

Q: Can employees change plans with a change in status. For example, when a baby is born can the employee switch his coverage from HMO to PPO or vice versa? Or a dependent child ages out and the employer switches from PPO to HMO or vice versa.

A: Yes, this is typically allowed under tag along rules. The term “tag along” itself is not found in the IRS regulations, however there are examples of what the law intended to provide in Treas. Reg §1.125-4(c)(4), Example 7.

Q: [When a] child ages off can the employee decrease [his] election?

A: Assuming the question is meaning to decrease election of FSA, this is not allowed. The expenses of the aged off child are still eligible for reimbursements up to the end of the calendar year, and the child aging off the health insurance is a loss of eligibility under a plan, so therefore the election may only be increased to make up for this loss of eligibility under the health insurance plan.

Q: Do children age off at the end of the year when they turn 13 for a dependent care FSA?

A: Dependent care expenses are only eligible for children under the age of 13. The day that the dependent “ages out” is the day they turn 13.

Q: Does a child have to be a dependent of the parent to have health care costs eligible from the health care FSA?

A: Due to Health Care Reform, a child does not have to be a tax dependent of the parent for the child’s expenses to be eligible under the parent’s health care FSA. The child also does not have to be covered under the parent’s health insurance plans. An Eligible Child is defined in IRC §105(b) as someone who:

- Is a son, daughter, stepson or stepdaughter of the taxpayer; or
- Is an eligible foster child of the taxpayer; or
- Is a legally adopted child of the taxpayer; and
- Will not attain age 27 during the current tax year (generally January through December).

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Q: For the example of Grace changing residence and changing from a HMO to a PPO, couldn't she be eligible to increase the FSA due to the increased cost with the PPO deductible and coinsurance?

A: Unfortunately, there has not been any gain or loss of eligibility for health insurance. Therefore, this is not a Change in Status event for the health care FSA. Grace was eligible for health insurance prior to the residence change and she continues to be eligible for health insurance. The increase or decrease of out of pocket expenses are never a consideration for Permitted Election Changes and do not allow for an increase of the health care FSA.

Q: How does the IRS limit of \$2600 come into play with the example of Jim claiming \$3,600 of expenses in the calendar year?

A: The IRS limit of \$2600 is a limit on how much may be deducted pre-tax from Jim's paycheck during the plan year. Jim will not have more than \$2600 deducted pre-tax from his paycheck during the plan year. The fact that he may be reimbursed up to \$3600 under the Blended Approach does not violate this limit as it is currently written. Further IRS guidance would be welcome.

Q: If an employee does not elect the health care FSA and then has a baby, is it permitted for them to then enroll? If an employee does not have an FSA account, can the employee elect an FSA mid-year due to the birth of a child?

A: Yes, adding a child, whether by birth or adoption, allows the employee to elect and/or increase the health care FSA. It also allows them to add dependent care FSA. For the health care FSA election, it is recommended that the employee complete the change form prior to the birth or adoption. For the dependent care FSA, it is recommended that the employee wait to complete the change form prior to placing the child in daycare.

Q: What about if an employee just added their spouse? Could they then elect an FSA mid-year?

A: As to the addition of the spouse, this election must be due to a Permitted Election Change, such as marriage or loss of spouse' job. This change in eligibility for health coverage would allow the employee to elect a health care FSA mid-year.

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1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

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Q: If an over-age dependent was covered under the parent's HSA, when they age off the parent's plan, can claims be reimbursed from the parent HSA for claims incurred after they age off?

A: HSAs are unlike FSAs in that to be reimbursed or receive a claim distribution the individual for whom the claim is being made must be a tax dependent. HSAs are not health plans. HSAs are therefore not subject to the ACA age 26 provision which allows children to stay on their parent's health plan until age 26. If a child is not a tax dependent they are not considered a qualifying child. No contributions or distributions are allowable for the individual, and any made will be subject to income tax and excise tax. The child may remain covered to age 26 under the high deductible health plan.

Q: In the example of Celia and Ralph getting married, Celia and/or Ralph could also leave their FSA alone, couldn't they? If Celia increased hers, Ralph wouldn't have to decrease his?

A: Ralph would not have to decrease his, but this event allows him to do so. Celia and Ralph may stay on single coverage, not make any changes to their benefits if they so wish. The Permitted Election Change is simply allowing for certain life events to make mid-year changes to plans which without the Permitted Election Change would not be permitted to be changed until open enrollment.

Q: In the first question where a person had a baby and was able to add/increase FSA, could that person have also decreased her FSA?

A: The election must mirror the event. Therefore because this is an event which increases the number of people, the only direction the health care FSA can go is either to be newly elected or increased. Please stay tuned to Bootcamp 3 on Permitted Election Changes as unpaid FMLA leaves may impact this answer.

Q: Is a dental plan considered a non-health plan?

A: Good catch. Perhaps the correct term to have used would have been non-medical as opposed to non-health plan. Technically speaking this refers to any non-expected plan that did not have to comply with the coverage to age 26 mandate - dental included.

Q: So Bill's father cannot decrease his FSA? And does this mean that Bill is enrolled in two FSAs?

A: Technically, Bill would not be enrolled in two FSAs. Bill's father would have an FSA that could reimburse Bill's father for Bill's unreimbursed out-of-pocket expenses and Bill could (provided he was

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eligible at his employer and enrolls) have an FSA that could reimburse Bill for Bill's unreimbursed out-of-pocket expenses. There is no "enrollment" for non-employees under a health care FSA.

Bill's father may not decrease his FSA. This is because Bill's expenses are still eligible for reimbursements up to the end of the calendar year, and the child aging off the health insurance is a loss of eligibility under a plan, so therefore the election may only be increased to make up for this loss of eligibility under the health insurance plan.**Q: To be clear, I know people can't decrease their election but did you say an employee can increase their health care FSA during the year?**

A: All FSAs, unless an event occurs which causes a Permitted Election Change, are irrevocable, therefore also not allowed to be either increased or decreased. The Permitted Election Change allows for a mid-year change. The change must be on account of and consistent with the event. Sometimes that means decreasing and sometimes that allows for increasing - all dependent on the event.

Q: Due to a birth can the employee elect coverage for his spouse who had coverage through their employer and change plans with the event?

A: The employee may enroll or increase coverage for the newly eligible dependent and also under the tag-along rule, any other dependents that were not previously covered may also be enrolled. Coverage options (e.g., HMO to PPO) may be changed at this time as well.

Q: Re example 5, if Mary is dropping her family coverage, to get onto Joe's, isn't her dropping coverage a qualifying event to change the FSA?

A: A voluntary drop of coverage is not considered a Change in Status as eligibility for health coverage was neither gained nor lost. In the example to which you are referring, on page 70, open enrollment allows Mary to make a change to her health insurance plan by enrolling in Joe's plan. However, because this is not a Change in Status, Mary cannot change her health care FSA election until her open enrollment. Please stay tuned to Bootcamp 2 Permitted Election Changes where we will discuss this in more detail.

Q: Is there a limit to the number of times someone can have a status change? For example, we have staff that goes from part to full, full to part, part back to full numerous times in a year.

A: No. You could reduce the number of times this may occur by altering eligibility language to "must work x number of hours per year" or use the term "regularly scheduled to work x number of hours per week" to account for variable hour employees.

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Q: Can anyone call/email compliance questions?

A: Of course, we answer any questions from clients that come our way. We do prefer that the first resource you use is your client service consultant. This person knows the answer to most things compliance and floats them to the Compliance Department for confirmation or clarification.

Q: What happens if an employee makes an FSA election for the year and they leave that employer before the end of the year?

A: If they make the election and receive reimbursement for that amount (overspent account), which they may do under Uniform Coverage, they do not pay back the employer. If they make the election and have money left over (underspent account) and do not take COBRA, they lose this underspent amount under the forfeiture rule.

Q: What is the employer to inform employee about. Do we refer them to EBC for details when any qualifying event happens?

A: It falls to the employee to understand they need to submit the form within 30 days and they should have a copy of this rule as it is stated within the Summary Plan Description. It is recommended that the employer expends the effort to educate their employees regarding the rules of all benefits on an annual basis. If an employee tells an employer of an upcoming change, it then falls to the employer to make certain the employee understands what their next steps need to be.

Q: When you say check your plan document - are you talking about the Section 125 [cafeteria plan] document or health insurance document?

A: When talking about dependent eligibility criteria, please reference your insurance Plan Document. For all others, we were mostly speaking about your health care FSA Plan Document. Check your FSA Plan Document for

- 1) which permitted election changes
- 2) whether or not the form needs to be completed in 30 days and
- 3) which process is used for determining the two periods (Separate or Blended).

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