BENEFITS BUZZ

MARCH 2021

Temporary COVID-19 Relief for Section 125 Plans

On Feb. 18, 2021, the IRS released Notice 2021-15 to clarify special rules for Section 125 plans, health flexible spending arrangements (FSAs) and dependent care assistance programs (DCAPs).

Special Rules for Health FSAs and DCAPs
The Notice is intended to clarify the application of special rules for health FSAs and DCAPs under the Consolidated Appropriations Act, 2021 (CAA). The CAA provides flexibility for carryovers of unused amounts, extends the time period for incurring claims, allows post-termination reimbursements from health FSAs and provides special rules for dependents who "age out" of DCAP coverage during the COVID-19 public health emergency. The Notice provides details and examples regarding these rules.

Section 125 Mid-year Election Changes
The Notice's relief for mid-year Section 125 plan elections for plan years ending in 2021 is similar to prior guidance for 2020. Section 125 plans may allow employees to make or revoke election changes in certain circumstances.

The Notice clarifies that employers can decide how long to allow mid-year election changes with no change in status during the plan year and can limit the number of election changes during the plan year that are not associated with a change in status.

Over-the-Counter Drugs
The Notice also provides relief with respect to plan amendments expanding reimbursable expenses for health FSAs and HRAs to include over-the-counter drugs and menstrual care products. Amendments to these plans must normally be made on a prospective basis, but these amendments may allow these reimbursements beginning on or after Jan. 1, 2020.

Wellness Incentive Proposed Regulations Withdrawn

On Feb. 12, 2021, the Equal Employment Opportunity Commission (EEOC) withdrew two proposed rules it previously issued in January 2021 on wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Non-Discrimination Act (GINA).

Overview of the Proposed Rules
The proposed rules were issued in response to a federal court decision vacating part of prior EEOC rules describing the incentives an employer could offer as part of a wellness program in certain circumstances. The proposed rules would have generally allowed only *de minimis* incentives to be offered for wellness program participation. Exceptions allowing larger incentives would have applied to health-contingent wellness programs that are part of, or qualify as, group health plans under the ADA rules.

Withdrawal
These proposed rules were withdrawn because they were not published by Jan. 20, 2021, the time of President Joe Biden's inauguration. Upon inauguration, the President issued a memorandum requiring all agencies to immediately withdraw any proposed rules that had not yet been published. As a result, the next steps for these proposed rules are currently under consideration.

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