



Optional Plan Changes Permitted under Newly Issued IRS Guidance

On May 12, 2020, the IRS issued new guidance in Notices 2020-29 and 2020-33¹, which allow sponsors of Medical Care Reimbursement Account (MCRA), Dependent Care Reimbursement Account (DCRA) and health benefit plans to make certain changes to those plans.

The changes are being permitted because the reasonable expectations of employees about their needs for dependent care and health care when they made their elections may have significantly changed with the onset and continuing nature of the global pandemic. With day care centers closed and with the cancellation of many elective medical and dental procedures, these expenses may be much less than expected. At the same time, some employees may be incurring higher than anticipated expenses due to unexpected issues such as the need for child care in the face of school closures or COVID-19 infection.

This *Bulletin* focuses on the topics below, and includes Q&As in each section to help plan sponsors become familiar with the new rules.

- Overview of Allowed Changes
- Specifics of Allowed Changes
- Moving Ahead – What Should Plan Sponsors Do Next?

Overview of Allowed Changes

The new changes allowed fall into two basic categories:

1. MCRA/DCRA changes, including new participant elections regarding coverage, extended claim periods, and carryover increase under MCRA plans with carryover provisions
2. New participant elections regarding coverage under medical and/or dental plans

More detail about these changes begins under *Specifics of Allowed Changes*, below. Here are answers to some threshold questions plan sponsors may have.

Are plan sponsors required to add these new provisions to their plans?

No. All changes are voluntary. Plan sponsors may adopt all, some or none of the new provisions.

Do the changes apply only to employees affected by COVID-19?

No. If adopted under any of the plans, they would apply to all eligible employees including COBRA participants.

How do plan sponsors communicate the changes to incorporate to HPI?

HPI developed an *Optional Plan Changes Checklist* for our clients to complete and submit to the HPI Account Service Team if they are making changes. The *Checklist* was included in the email sent with this *Bulletin*. If no changes are being adopted, no action is required.

If some or all changes are adopted, does the plan have to be formally amended?

Yes. HPI will draft plan amendments that reflect the choices made on the *Optional Plan Changes Checklist* submitted by our clients.

¹Notice 2020-29 is titled *COVID-19 Guidance under §125 Cafeteria Plans and Related to High Deductible Health Plans*. Notice 2020-33 is titled *Section 125 Cafeteria Plans – Modification of Permissive Carryover Rule for Health Flexible Spending Arrangements and Clarification Regarding Reimbursements of Premiums by Individual Coverage Health Reimbursement Arrangements*



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Specifics of Allowed Changes

1. Optional changes to MCRA/DCRA plans

The new rule allows the following MCRA/DCRA plan changes:

A. Eligible employees may:

- Enroll in the plan(s)
- Increase elective contributions to the plan(s)
- Reduce or cancel elective contributions to the plan(s), provided the total elective contribution for the year equals or exceeds the amounts already reimbursed

B. Plans may extend period during which claims may be reimbursed in 2020:

MCRA and/or DCRA account balances that were forfeited after the end of the Grace Period or Plan Year (or runout period) ending after January 1, 2020, but before December 31, 2020, could be available to reimburse eligible expenses incurred through December 31, 2020. The extended period is allowed only during 2020.

C. Plans may increase the maximum carryover amount under an MCRA with a carryover provision:

The MCRA can be amended to increase the maximum carryover to \$550, which is an increase of \$50 over the current maximum of \$500. Any increase to the carryover limit would be a permanent change.

When can these new MCRA/DCRA elections be made?

Plan sponsors may either allow new elections at any time until December 31, 2020, or set an earlier election deadline by which employees must file new elections.

Can an MCRA or DCRA participant stop contributions if the reimbursements paid under the applicable plan so far are more than the amount the employee has contributed so far?

No. The plan can require that the employee continue contributions until they at least equal the amount that has already been reimbursed.

Can a participant reduce an annual contribution amount such that the participant receives a refund of previous contributions?

No. Changes to contribution amounts are prospective only.

What if the plan sponsor allowed some of these election changes before the IRS Notices were issued?

The IRS indicated that any of the election changes listed above that were permitted in 2020 before the Notice was issued will also be allowed.

Are there any increases allowed in relation to maximum DCRA contribution limits?

No. The maximum DCRA contribution limits have not changed.



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2. Optional new participant elections regarding coverage under medical and/or dental plans

Under Notice 2020-29, employees participating, or eligible to participate in medical and/or dental plans may make new elections regarding coverage during 2020 without requiring a Section 125 change in status. Plan sponsors may choose which, if any, of the available coverage options to include in their plans.

The new rule would allow eligible employees and plan participants to do the following:

- Add coverage under health benefit plan(s) for the employee and/or eligible dependents
- Change to other medical plan options (if multiple plan options are currently offered)
- Drop existing medical coverage

When can these new medical or dental plan elections be made?

Plan sponsors may either allow new elections at any time until December 31, 2020, or set an earlier election deadline by which employees must file new elections.

Will employees be able to make election changes without Section 125 change in status after December 31, 2020?

No. The IRS is allowing mid-year election changes without changes in status only in 2020.

When do new elections take effect?

All new elections take effect prospectively. For example, there would be no coverage under a medical plan before the new election was filed for an eligible employee enrolling or adding an eligible dependent.

Note: Because the changes permitted under the new rules are optional and are not mandated by federal law, your stop loss carrier may reserve the right to revise your stop loss rates if you want to allow new elections regarding medical coverage.

Attestation Required to Drop Medical Coverage

If employees are permitted to drop medical coverage, they must submit an attestation that they have or will immediately enroll in other comprehensive medical coverage. A blank template provided by the IRS is included in the email sent with this *Bulletin* which plan sponsors may use to obtain these attestations.



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Moving Ahead – What Should Plan Sponsors Do Next?

To recap the information in this *Bulletin*:

- Plan sponsors may, but are not required to adopt the changes allowed in IRS Notices 2020-29 and 2020-33. They may adopt all, some or none of the new provisions. Stop loss carriers may reserve the right to revise rates if new elections for enrolling in or dropping medical coverage are adopted.
- Plan sponsors should follow these steps to make decisions regarding changes to be adopted and to communicate those changes:
 - **Review this *Compliance Bulletin* to:**
 - Become familiar with the available changes and how they work
 - Determine whether to adopt any new provisions
 - **If adopting new provisions, complete the Optional Plan Changes Checklist** provided in the email sent with this *Bulletin* and submit it to your HPI Account Service Team. HPI will administer the plans accordingly and draft applicable plan amendments.
 - **If allowing employees to drop medical coverage**, use the Sample Attestation template included in the mailing with this *Bulletin* to create required attestations for your employees to sign.
 - **Notify your eligible employees** about the changes being made. While there is no prescribed content or format for the notice, like open enrollment materials, any notice should clearly identify the new options available and the steps employees must take to make new elections.
 - **Execute any required plan amendments** provided by your HPI Account Service Team.

Action is required only if:

- HPI administers a medical, dental, MCRA or DCRA plan on your behalf, and
- You want to apply any of the optional changes described in this *Bulletin* to the plan(s).

If you have questions as you review this information, please contact the HPI Account Service Team.

Going forward, the coronavirus pandemic may continue to have new impact on the design and administration of employee benefits as additional guidance is issued and new legislation enacted. HPI will continue to keep you informed of the evolving regulatory landscape and will work with you to incorporate all applicable changes into your plans.

The information contained in this Bulletin is based on our current understanding of how significant developments may affect group benefit plans. It should not be construed as specific legal advice or legal opinion. The contents are for general information purposes only and are not a substitute for the advice of legal counsel.