

Applicability of COVID-19 Relief Legislation and Guidance to Health and Welfare Plans Chart

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A chart addressing how certain relief provisions for health and dependent care FSAs and COBRA health plan continuation coverage enacted and issued in response to the US COVID-19 pandemic apply to various kinds of health and welfare arrangements.

Federal legislation and related administrative guidance enacted and issued in response to the US COVID-19 pandemic have relaxed certain requirements that otherwise apply to some health and welfare plan arrangements. This legislation and guidance includes:

- A temporary loosening of certain requirements for health **flexible spending arrangements** (FSAs) and dependent care FSAs under the **Consolidated Appropriations Act, 2021** (CAA-21), as implemented under **Internal Revenue Service** (IRS) guidance ([Pub. L. No. 116-260](#) (Dec. 27, 2020); [IRS Notice 2021-15](#) (Feb. 18, 2021)); see [Legal Update, In CAA-21 Guidance, IRS Addresses Health FSA and DCAP Carryovers, Extended Claims Periods, COBRA Interactions, and More](#)).
- Extended deadlines for certain health plan continuation coverage requirements under the **Consolidated Omnibus Budget Reconciliation Act of 1985** (COBRA) ([FAQ Guidance](#) (Apr. 7, 2021) and [EBSA Disaster Relief Notice 2021-01](#)). (These extensions do not apply regarding COBRA premium assistance and related provisions enacted under the **American Rescue Plan Act of 2021** (ARPA-21).) For more information, see:
 - [Practice Notes, COBRA Overview, COBRA Premium Assistance Under ARPA-21](#);
 - [Practice Note, COVID-19 Compliance for Health and Welfare Plans: Extended Deadlines for Certain Health and Welfare Plan Requirements](#);
 - [Legal Updates, DOL Addresses Duration of Outbreak Period Compliance Extensions Due to COVID-19 and Agencies Extend Benefit Plan Compliance Deadlines Due to COVID-19](#); and
 - [Practice Notes, COBRA Overview and COBRA Premium Assistance Under ARPA-21](#).

This chart addresses how the health and dependent care FSA and Health Insurance Portability and Accountability Act (HIPAA) special enrollment, claims and appeals, and COBRA-related relief provisions apply to various kinds of health and welfare arrangements.

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Type of Change	Health FSA	Dependent Care FSA	Major Medical Plan	Dental/Vision
Carryover	Optional (unlimited for 2020-2021 and 2021-2022; after that \$550 as indexed for inflation)	Optional (unlimited for 2020-2021 and 2021-2022; after that, not permitted)	N/A	N/A
Grace Period	Optional (up to 12 months for 2021 and 2022; after that, 2.5 months maximum)	Optional (up to 12 months for 2021 and 2022; after that, 2.5 months maximum)	N/A	N/A
Change in Election That is Not a HIPAA Special Enrollment Event (Marriage, Birth, Adoption, Placement for Adoption, Loss of Other Coverage, CHIP Eligibility)	Optional: Permitted for any reason through 12/31/21 (see Practice Note, HIPAA Special Enrollment Rights)	Optional: Permitted for any reason through 12/31/21	Optional: Permitted for any reason through 12/31/21, but employee must certify to having/obtaining other coverage in order to drop existing coverage	Optional: Permitted for any reason through 12/31/21, but employee must certify to having/obtaining other coverage in order to drop existing coverage
FSA Spend-Down (Employee May Use Account After Ceasing Participation, Through End of Year)	Optional for 2021 and 2022	Optional: Not temporary relief	N/A	N/A
Allow Use of Dependent Care FSA for Age 13 Dependents	N/A	Optional: Only for 2020 funds and rollovers from 2020-2021	N/A	N/A
Increase Dependent Care FSA to \$10,500 for 2021	N/A	Optional	N/A	N/A
Enrollment Change in Election That Is a HIPAA Special Enrollment Event (Marriage, Birth, Adoption, Placement for Adoption, Loss of Other Coverage, CHIP Eligibility)	N/A (because health FSA is a HIPAA excepted benefit)	N/A	Mandatory to allow change and must add a year to whatever deadline would apply; birth, adoption and placement for adoption are retroactive to date of event.*	N/A (because dental/vision are generally HIPAA excepted benefits)
Extended Period to Submit Claims and Appeals (Until One Year After Deadline Would Have Run)*	Mandatory ("runout" period is considered period in which claim can be submitted)	N/A (because not subject to ERISA)	Mandatory	Mandatory
Extended Period to Elect COBRA (Until One Year After	Mandatory	N/A (because not subject to COBRA)	Mandatory	Mandatory

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Deadline Would Have Run)*				
Extended Period to Pay COBRA Premiums (Until One Year After Deadline Would Have Run)*	Mandatory	N/A (because not subject to COBRA)	Mandatory	Mandatory
COBRA Premium Assistance for Involuntary Termination of Employment or Reduction of Hours	N/A	N/A	Mandatory	Mandatory

* This will end earlier if, before the one year expires, the President declares that the Public Emergency is over. In that case, the original deadline is applied starting 60 days after the end of the Emergency Period.