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Leading Quarterly News

Benefits Leader

COVID-19 SPECIAL EDITION

Medcom BENEFIT SOLUTIONS

Your Guide to Health & Welfare Compliance

Inside This Issue . . .	Page

A Letter from Our President

To our Extended Medcom Family

In over forty (40) years in business, I have never experienced such a devastating event as the COVID-19 pandemic. Like most of you, Medcom Benefit Solutions transitioned our business to a 100% virtual work environment starting in the middle of March. We are incredibly grateful that our team of professional associates were able to continually serve our clients and partners with care throughout the process. We seem to have weather the storm at most levels as we communicate at a different level with one another. We are hopeful that you, your family's and business associates are all enjoying the same level of health at this challenging time.

Going forward, we are hopeful that many of us will have used this unique opportunity to take a fresh, new look at our lives, our community and our world. We encourage our extended family to envision a bigger and extended universe where each of us has an incredible opportunity to recognize that we are more connected than ever to one another at a much deeper level.

Thank you for your partnership and friendship and let us know how we may serve you better as the world of business begins to return from our slumber! Stay safe and stay healthy.

Michael J. Bracken

CARES Act, FSAs, HRAs, & HSAs

Passed March 27, 2020

In 2011, Flexible Spending Accounts (FSA) Health Reimbursement Arrangements (HRA) and Health Savings Accounts (HSA) were no longer allowed to consider over-the-counter drugs on a tax-free basis. With the declaration of the National Emergency for COVID-19, and the passing of the CARES Act, this has changed. As of January 1, 2020, employers are allowed to consider both over-the-counter drugs and menstrual products as eligible expenses for their tax advantages plans. This is a **permanent change** to the tax code and section 213(d), but it is optional. Employers can decide whether they want to consider allowing over-the-counter drugs, menstrual products, or both.

Employers who wish to make the change should check the wording in their Plan Documents and Summary Plan Descriptions (SPD). Any document that specifically excludes over-the-counter drugs should be amended if the employer wants to make the change. Plan Documents and SPDs that include wording that all allowable expenses under IRS section 213(d) are covered, would not have to make any adjustments if they support the change. However, if the employer wishes to exclude over-the-counter drugs or menstrual products, they must make the appropriate document changes to exclude, if the plan allows all medical expenses under IRS Code Section 213(d).

Families First Coronavirus Response Act

The Diagnosis of COVID-19 and the Effect on HSAs

Section 6001(a) of the Families First Coronavirus Response Act as amended by section 3201 of the CARES Act, requires plans and issuers to provide items and services furnished to an individual during healthcare provider office visits (which includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of a diagnostic test for Covid-19. Plans and Insurers may not impose any cost-sharing requirements. In short, these services must be covered at 100%.

IRS Notice 2020-15 advised that to "facilitate the nation's response to the 2019 Novel Coronavirus (COVID-19), this notice provides that, until further guidance is issued, a health plan that otherwise satisfies the requirements to be a high deductible health plan (HDHP) under section 223(c)(2)(A) of the Internal Revenue Code (Code) will not fail to be an HDHP under section 223(c)(2)(A) merely because the

health plan provides health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (self only or family) for an HDHP. Therefore, an individual covered by the HDHP will not be disqualified from being an eligible individual under section 223(c)(1) who may make tax-favored contributions to a health savings account (HSA)."

https://www.irs.gov/pub/irs-drop/n-20-15.pdf

IRS Notice 2020-29

Section 125 Relief Plan

Since President Trump declared the National Emergency on March 13, 2020 due to the highly contagious Coronavirus, Governors throughout the United States have issued "stay at home" orders. Elective surgeries, dental, vision, and doctor appointments were cancelled. Employees with Flexible Spending Accounts were afraid that their contributions would be lost under the "use it or lose it" provisions. The standard IRS rules are stringent and unless an employee had a change in family status or employment status such as termination, they could not change their FSA election that they agreed to at the beginning or the plan year. There were some consultants that were advising that changes could be made due to 'cost changes' or decrease in hours, but this was never supported by IRS guidance. Dependent Care Assistant Programs were always a little more flexible and did allow for changes due to change in provider costs. With daycare closings, this was a way out.

On top of this, insurance carriers in March 2020, started to offer "special enrollment periods" even those this was also not supported by IRS rules under section 125. Although it was generally held that the Department of Labor and the IRS would be looking the other way in 2020 due to COVID-19 and that they would exercise "discretionary enforcement", employers who made any changes outside the rules were facing a risk no matter how small.

On May 12, 2020, the IRS put out Notice 2020-29 that finally made some much needed changes for employees facing a use it or lose it situation, and for employers that potentially want or did in March allow special enrollment periods. The intent of the Notice was to provide employers with flexibility when it comes to their section 125 plans and COVID-19. In short, 2020, will be a year of flexibility. The employer has the option of making changes to their plans, although these changes are optional. What can the employer do?

They can do any of the following:

Regarding health plans and employer may allow employees:

- Make a new election if the employee initially declined to elect employer sponsored health coverage.
- Revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer (including changing from self-only to family coverage).
- Revoke an existing election, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other "comprehensive" health coverage not sponsored by the employer. The notice explains the employer must receive a written attestation from the employee and may rely on the attestation unless the employer has actual knowledge the employee is not, or will not be, enrolled in other comprehensive coverage. The notice provides optional model language that can be used for the attestation.

Regarding an FSA, the employer can:

- With respect to a health FSA, an employer may allow an employee to revoke an election, make a new election, or decrease or increase an existing election.
- With respect to a dependent care FSA, an employer may allow an employee to revoke an election, make a new election, or decrease or increase an existing election.
- Employers who have a grace period (maximum 2.5 months) that end sometime in 2020, can extend the grace period to December 31, 2020.
- Plans that have a carryover amount that have a limit of $500 in 2020, can now carry over the full amount to December 31, 2020.

However the Notice did say that an individual who had unused amounts remaining at the end of a plan year or grace period ending in 2020, and who is allowed an extended period to incur expenses under a health FSA per the notice, will not be eligible to contribute to an HSA during that extended period, except in the case of an HAS compatible health FSA.

The IRS also said that while the changes are to be made on a prospective basis moving forward, any employer that made changes consistent with Notice 2020-29 prior to the rule being released, would also be safe.

Employers now will have to review their plans and decide what they want to amend. At least the option is now available. If the employer does now want to allow special enrollment rights, they should always check with their insurance carrier or if self-funded their reinsurance carrier, in order to avoid surprise denials when claims start to hit.

https://www.irs.gov/pub/irs-drop/n-20-29.pdf

The Outbreak Period

An Extension of Certain Timeframes for Employee Benefit Plans, Participants, & Beneficiaries

The Department and Labor and the IRS have determined that as the "result of the National Emergency, participants and beneficiaries covered by group health plans, disability or other employee welfare benefit plans, and employee pension benefit plans may encounter problems in exercising their health coverage portability and continuation coverage rights, or in filing or perfecting their benefit claims. Recognizing the numerous challenges participants and beneficiaries already face as a result of the National Emergency, it is important that the Employee Benefits Security Administration, Department of Labor, Internal Revenue Service, and Department of the Treasury (the Agencies) take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established timeframes. Similarly, the Agencies recognize that affected group health plans may have difficulty in complying with certain notice obligations."

Therefore, they have introduced a Mandatory Outbreak Period for all ERISA plans. The Department of Health and Human Services who administers the Public Safety Act (PHS) has also recognized the need for this "outbreak period" and has asked plan sponsors and states of non-federal health plans to adopt the outbreak period and has indicated if they take such an approach they will be in compliance with Title XXVII of the PHS Act.

The Outbreak Period is from March 1, 2020 throughout 60 days from the end of the National Emergency. This period is not calculated in timeframes for COBRA elections and premium payments, run-out periods for FSA or HSA plans, time frames to submit claims or disability appeals. In short, this time frame is carved out. The following table provides an outline:

Event	Deadline	Example
Electing COBRA Coverage: When qualifying beneficiary loses coverage under the group health plan	At least 60 days to elect COBRA continuation coverage	Toni experiences a qualifying event due to a reduction of hours because of COVID-19 on March 17. Assuming the announced end of the National Emergency is April 30, the Outbreak Period ends on June 29, and therefore the deadline for Toni to elect COBRA coverage is August 28, (60 days after June 29, or 120 days after the National Emergency ends).
Payment of Premiums	Monthly installments, due no sooner than 30 days after the first day of the period for which payment is being made.	Toni began receiving COBRA coverage on January 1st. Premium payments are due monthly, on the first of each month with a 30-day grace period for making payments. Toni paid for her January and

	Cannot require payment of premiums before 45 days after the day of initial COBRA election	February coverage, but stopped making payments beginning on March 1. Assuming the announced end of National Emergency is April 30, the Outbreak Period ends on June 29. The deadline for Toni to pay premiums in full for March, April, May, and June is July 29 (30 days after the Outbreak Period, which is 90 days after the end of the National Emergency). Because the July payment is not due during the Outbreak Period, the deadline for that payment is not extended.
Filing of Initial Benefit Claims	Plan generally sets the deadline for filing an initial claim. In this example, assume the plan requires claims to be submitted within 365 days of the medical treatment	Toni received medical treatment covered under the plan on January 1, 2020. Assuming the announced end of National Emergency is April 30, the Outbreak Period ends on June 29 (and therefore is 121 days long). The deadline for submission of the claim is May 1, 2021 (59 days before the Outbreak Period plus 306 days after the Outbreak Period).
Group Health Plans & Disability Plans Provide claimants reasonable opportunity to appeal adverse benefit determination	Plan's claims procedures set the deadline for filing an initial claim, which cannot be less than 180 days following receipt of an adverse benefit determination	Toni received an adverse benefit determination from the company's disability plan on January 28, 2020. Assuming the announced end of National Emergency is April 30, the Outbreak Period ends on June 29 (and therefore is 121 days long). The deadline for Toni to submit her appeal is November 24, (240 days after April 30, minus the 32-day period that elapsed before the beginning of the Outbreak Period (January 28 through February 29)).
Pension Plans & Other Welfare Plans Provide claimants reasonable opportunity to appeal adverse benefit determination to fiduciary	Plan's claims procedures set the deadline for filing appeal of an initial claim, which cannot be less than 60 days following receipt of an adverse benefit determination	Toni received a notice of adverse benefit determination from her 401(k) plan on April 15. Assuming the announced end of National Emergency is April 30, the deadline for Toni to submit an appeal is August 28, (60 days after the Outbreak Period, which is 120 days after the National Emergency ends).

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Section 139: Disaster Relief Payments

Offering Employers a Unique Tax Advantage

The COVID-19 pandemic dramatically impacted American businesses in recent weeks and many employers find themselves looking for new ways to support valued employees as they navigate through an unprecedented crisis. Some employees faced layoffs or furloughs, while others had to reduce hours or shift to a remote-work scenario. A number of thoughtful employers elected to provide an extra monetary boost to help cover additional medical costs, reimburse expenses incurred from setting up a home office, offset lost wages, or aid those struggling due to a spouse's loss of income or benefits.

Under normal circumstances, any financial "gift" given by an employer would be treated as taxable compensation (in essence, a bonus that is subject to the customary payroll taxes). However, Section 139 of the Tax Code, which was enacted in 2002 as a part of the federal government's response to the 9/11 attacks, provides a significant exception to this rule. It states that "qualified disaster relief payments" are not included in gross income. In other words, from a tax perspective, payments that qualify under Section 139 are not treated as taxable income for the employee. In addition, these payments are fully tax-deductible for the employer.

To qualify, these payments must be made during a federally declared disaster "to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster." This statutory language leaves a tantalizingly wide range of possibilities.

While the COVID-19 crisis opened an unusually wide window of opportunity for Section 139 payments, other federally declared disasters also allow for this tax-advantaged relief—typically on a more local or regional scale—from time to time. Watchful employers can find useful applications beyond the present situation.

One important caveat worth noting: disaster relief payments are not excludable from gross income if they are used to cover expenses that are "otherwise compensated for by an insurance policy or otherwise." This makes sense as the IRS tends to frown upon any "double dipping" regarding tax savings.

From a regulatory perspective, Section 139 programs are remarkably free of "red tape." A plan

document, while generally recommended, is not required. There are no nondiscrimination rules and there is no limit on the amount of relief that may be provided. Employees do not need to substantiate their purchases unless they are audited by the IRS. The sheer simplicity of this program adds to its attractiveness.

Beyond the obvious tax advantages, employers making use of this *thankfully rare* opportunity are finding an added silver lining in the form of employee engagement, loyalty, and appreciation. In times such as these, those kinds of returns are especially needed, doubly beneficial, and worth the investment.

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We hope this information is helpful to you. Please give us a call if we can be of assistance to you with Consumer Driven Health Plans Administration, Health & Welfare Compliance, Actuarial Services, Healthcare Reform, HIPAA Security, and COBRA/Retiree Billing Administration.

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