

# LEGAL UPDATE

## New COVID-19 Guidance for Section 125 Mid-year Election Change Rules

On May 12, 2020, the IRS released [Notice 2020-29](#), which provides temporary flexibility for mid-year election changes under a Section 125 cafeteria plan during calendar year 2020. The changes are designed to allow employers to respond to changes in employee needs as a result of the COVID-19 pandemic.

This guidance relates to mid-year elections for self-insured and fully insured employer-sponsored health coverage, health flexible spending arrangements (health FSAs) and dependent care assistance programs (DCAPs).

### Permitted Election Changes

For employer-sponsored health coverage, a Section 125 cafeteria plan may permit an employee to prospectively:

- Make a new election if the employee previously declined coverage;
- Revoke an existing election and enroll in different health coverage sponsored by the employer; or
- Revoke an existing election, if the employee is or will be enrolled in other health coverage.

Employees may also prospectively revoke an election, make a new election or decrease or increase an existing election for a health FSA or DCAP. A plan may permit any of the election changes described in the notice, regardless of whether they satisfy existing mid-year election change rules.

### Employer Requirements

An employer using this relief may determine the extent to which such changes are permitted and applied. If these changes are permitted, the employer must adopt a plan amendment by Dec. 31, 2021, and inform employees of the change. The amendment may be retroactive to Jan. 1, 2020. Changes to the plan may also implicate other applicable laws, such as participant notification requirements under ERISA.

### Highlights

#### Affected Plans

The new IRS mid-year election change guidance applies to:

- Employer-sponsored health care coverage
- Health FSAs
- DCAPS

#### Required Plan Amendments

Employers that wish to allow additional mid-year election changes must adopt a plan amendment by Dec. 31, 2021.

*In general, the relief may be applied retroactively, to periods on or after Jan. 1, 2020.*

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