

# Legislative Endings & Beginnings

WHAT WILL BENEFITS LOOK LIKE IN 2022



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# Welcome

## Today's Agenda

1. The end is near – A look at legislative relief expiring
2. Changes that are moving forward
3. Legislative predictions



# The End is Near:

*A look a legislative relief that is ending*

# FSA Relief

Temporary relief provisions for Health FSAs and Dependent Care FSAs.

- Election changes without a qualifying event
- Extending access to funds for terminated employees
- Temporarily changing the definition of an eligible dependent
- Provisions to carryover all remaining funds or extend grace periods up to 12 months



**Time is  
running out!**

- Employers need to amend plans by 12/31/2021.
- Amending your plan may allow funds to roll from 2021 to 2022.

# Dependent Care FSA Limits



For Plan Years beginning in 2021, Dependent Care FSA annual limits were eligible to increase to \$10,500 (up from \$5,000).

## Key Considerations

- This was a temporary increase allowed for 2021 through ARPA.
- Non-discrimination testing still applies.
- This is an optional increase that Plan Sponsors must have adopted to take advantage of it.

Note: The \$10,500 limit is calculated based on the calendar year of 2021. If you have a mid-year plan year, you may need to adjust elections taken in 2022 so that the limit is not exceeded.

# Plan Document Deadlines

- The rules of your plan should be documented in Plan Document, Plan Highlights and/or supporting amendments or resolutions.
- Plan documents must be adopted by 12/31/21.
- Like changes affecting documents:
  - **FSA Relief provisions**
  - **Temporary increase of DCA limit**
  - **Expanded OTC definitions (if applicable)**
  - **Adoption of \$550 (or indexed rollover amount)\***



# Temporary Benefits Considerations



**COVID-19 testing and vaccines** must be offered without regard to cost-sharing during the applicable emergency period.



**Telehealth and remote care services** can be covered prior to deductible without affecting HSA eligibility – Relief set to expire 12/31/21



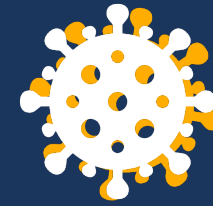
# Pandemic Relief Periods

## Affecting FSA and HRA

**Pandemic Relief Periods extended time to submit claims for reimbursement from FSA or HRA**

**Relief periods expire the lessor of:**

- 12 months from the original effective date
- 60 days following the end of the Outbreak Period



**How does Pandemic Relief Period Apply to Pre-tax Plans?**

Original Deadline	Pandemic Relief Deadline
Run-out deadline of 6/1/2020	New deadline of 6/1/2021
Run-out deadline of 10/1/2021	Lessor of: 10/1/2022 (12 months from original deadline) OR 60-days following the end of the Outbreak Period as announced by the Federal Government

October 18, 2021 U.S. Department of Health & Human Services renewed the order regarding the public health emergency.

The renewal is effective for 90 days.

# Pandemic Relief Periods

## COBRA Election and Payment Extensions

**Pandemic Relief Periods allow for an extended period to elect and pay for COBRA**

**Relief periods expire the lessor of:**

- 12 months from the original effective date
- 60 days following the end of the Outbreak Period

*Note: Pandemic is still considered ongoing.*

### **Transitional relief (Notice 2021-58 released 10/6/21)**

- Latest guidance confirms the timelines for expiring relief periods, but due to potential confusion of deadlines is permitting individuals with earlier deadlines to make payments by 11/1 and still receive coverage for the COBRA coverage period.

# COBRA after ARPA

The current COBRA subsidy period expired on 9/30/2021

- Subsidy ends and we return to pre-subsidy rules
  - Participants who were receiving a subsidy received notices in September regarding the end of the subsidy period, including:
    - Options to remain on COBRA
    - Cost of premiums without the subsidy
    - How to make future premium payments
  - Participants are responsible for paying premiums due October 1, 2021 or later. Standard payment grace periods require payment by October 30, 2021

What to expect for  
2022?

# Newly eligible items



COVID-19 PPE items  
such as masks, hand  
sanitizer, and sanitizing  
wipes



At home  
COVID-19  
testing



Menstrual  
Care Items  
*CARES Act of 2020*



Over-the-Counter  
Drugs and Medicines  
*CARES Act of 2020*

Items purchased on 1/1/2020 or later are eligible for reimbursement from FSAs and HSAs.  
Reimbursement is permitted for HRAs that currently allow over-the-counter medical  
supplies as eligible expenses.

# COVID Vaccine / Testing Requirements



Vaccine and testing requirements are on the rise. The specific requirements and timelines for compliance vary by industry, state and/or affiliations.

Segment	Status
Federal Government and Contractors	Executive Order Signed
Health Care Workers	CMS taking action to require COVID-19 vaccinations
All Employers with 100 or more employees	Oct. 13 plan submitted to White House -- Anticipated to require workforce to be vaccinated or weekly testing

# COVID-19 Vaccine Incentive Programs

## Equal Employment Opportunity Commission Guidance regarding COVID-19 incentive programs

Acceptable Actions	Unacceptable / Questionable Actions
✓ Require employees entering workplace to be vaccinated (subject to reasonable accommodations)	✗ Providing incentives for COVID-19 vaccination where vaccine is administered by employer or its agents ➤ Any incentives must be of minimal value
✓ Require documentation confirming vaccination status	✗ A large incentive (such as premium differences) could force an employee to disclose protected health information and therefore are not permitted.
✓✓ <b>Best practice</b> -- Provide incentive for COVID-19 as an option in a broader wellness incentive.	

# Surprise billing requirements



Starting in 2022, the No Surprises Act imposes a variety of new requirements designed to keep patients from receiving “surprise” medical bills.

- **Requirements related to Surprise Billing released July 13, 2021:**
  - **Protect participants, beneficiaries, and enrollees** in group health plans and group and individual health insurance coverage from surprise medical bills
  - Covers: **Emergency** services, **non-emergency** services from nonparticipating providers at participating facilities, and **air ambulance** services from nonparticipating providers of air ambulance services, under certain circumstances.
- **Interim Final Rule released Sept 30, 2021 sets forth:**
  - **Dispute resolutions** processes between providers and health plans | provider and patient
  - Requirements to the provision of a “**good faith estimate**” of expected charges to uninsured and self-pay patients;
  - Regulations for an **external review process** for adverse determinations



# Legislative Predictions

# New Limits for 2022

## HSA Limits for 2022 (Released May 2022)

	Individual	Family
Contribution Limit	\$3,650 (up from \$3,600)	\$7,300 (up from \$7,000)
HDHP Minimum Deductible	\$1,400	\$2,800
HDHP Maximum OOP	\$7,300 (up from \$7,000)	\$14,100 (up from \$14,000)

## Projected Limits (Anticipated to be released by early November)

- Health FSA anticipated to increase to \$2,850 (from \$2,750); rollover \$570 (up from \$550)
- Commuter to increase to \$280 / mo. (from \$270 / mo.)

What will be required to take advantage of the limits once official?

- FSA limits must be adopted by the plan sponsor/employer
- HSA and CBP limits are automatically applied

# Potential Reconciliation Bill Inclusions

## What are we likely to see?

- Permanent increase to DCA limits to \$10,500
- Potential to restore bicycle commute
- Other benefits-related items for inclusion
  - Potential to increase credits for individual exchange
  - Paid leave and child tax credits
  - Addition of dental, vision, hearing in Medicare

## Challenges

- Cost of bill will likely need to come down
- Senate Democrats must be 100% aligned



# Could there be another COBRA Subsidy?

## Considerations



Pandemic is ongoing



Unemployment rates currently 4.8%  
(peaked at 14.8% in April 2020)



Legislative action would be required



# Common Sense HSA changes

Advocacy efforts to remove technical barrier to eligibility

- Allow **Medicare beneficiaries** to participate in an HSA
- Allow people who are eligible to receive healthcare benefits from the **Indian Health Service** to participate in HSAs
- Allow individuals who are enrolled in **Tricare** to participate in an HSA
- Allow individuals who are eligible to receive **medical care from the VA** to participate in an HSA.



## Status

Bi-partisan support for these ideas,  
but will it be prioritized into a Bill that moves forward?

# Legislative Checklist

- ✓ Make sure your plan documentation is up-to-date.
- ✓ Watch for limit changes and vaccine rules clarifications very soon.
- ✓ Stay tuned to ongoing legislative developments from BRI



Thank You!

ANY QUESTIONS?