

## COMPLIANCE ALERT

### SPECIAL RULES REGARDING FSA AND DCAP IMPLEMENTATION

The COVID-19 relief bill (the Taxpayer Certainty and Disaster Tax Relief Act of 2020), signed on December 27, 2020 has provisions affecting how Flexible Spending Accounts (FSA) and Dependent Care Flexible Spending Accounts (DCAP) can be administered. The bill will affect plans years for 2020, 2021 and 2022.

Several years ago, changes were made to these accounts allowing plan sponsors to put provisions in the plan(s) that gave employees either 1) 2 ½ month grace period after the end of the plan year to spend any funds remaining in their account, or 2) allowed the employee to carry over \$500 (indexed each year, \$550 in 2020) for FSA accounts. No carryover of funds was allowed for a DCAP account in the past, prior to when the grace period rule was allowed. Currently, a plan sponsor can use either the grace period or the carry over option, but not both. The COVID-19 relief bill did not change this rule, as only one option can be elected for the plan. The bill removes the dollar limit of the carry-over of funds and extends the grace period to 12 months.

Typically, changes to FSA and DCAP accounts can only be made outside of open enrollment periods if the employee experiences a qualifying event. For now, under the new law, an employee can make prospective changes to their FSA or DCAP at any time during the year.

In the past, an employee who contributed to a DCAP could only use funds for expenses of children up to age 13. Now, however, funds can be used for dependent-care for

children up to age 14. Reimbursement of dependent care expenses will be allowed for children who reach age 14 during the 2020 plan year. If the child turns 14 during the 2021 plan year, reimbursements will only be allowed for those funds that were unused from the 2020 plan year.

If an employee terminates employment, the bill will allow for reimbursement of qualifying medical expenses that the terminated employee incurred through the end of the plan year in which the employee terminated employment. The timeframe allowed does include the applicable grace period. The employee does not have to elect COBRA to be able to use the funds contributed in 2020 or 2021, should they terminate employment.

Plan sponsors are not required to make the changes allowed under the COVID-19 relief bill. Changes that are made will need to be reflected in the plan documents. 2020 plans can be amended up until December 31, 2021 and for 2021 plans, plan sponsors can amend plan documents to reflect any changes adopted through December 31, 2021.