A guide to pandemic regulatory and legislative updates
Navigating through our new normal

The coronavirus disease 2019 (COVID-19) pandemic and resulting global responses drastically altered our lives and businesses. Employers must now navigate fears of illness, economic uncertainty, and radically changed norms in the workplace.

In response to these recent events, many relief measures have been passed, including the 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act, as well as additional legislative and regulatory changes which impact healthcare benefits. While these changes were designed to help millions of people, they also created new questions, especially for those working with employee benefits.

However, even in this time of change, employers may want to hold steady. This guide walks you through these legislative changes that impact consumer-directed healthcare (CDH), so you can make the right healthcare benefits decisions for your employees. We’ll also share suggestions on how to decrease stress for employees by offering strong healthcare benefit offerings and increasing communication.

Many changes in a short amount of time

The CARES Act

The CARES Act is the federal effort that provides relief for those impacted by COVID-19. It includes stimulus checks to many across the U.S., the Paycheck Protection Program (which provided disaster relief loans to small businesses), and important impacts to CDH.

Over-the-counter medicines that previously required a prescription and menstrual care products became eligible expenses for Health Savings Accounts (HSAs), Flexible Spending Accounts (FSAs), and Health Reimbursement Arrangements (HRAs). This permanent change is retroactive to Jan. 1, 2020.

Additionally, HSA-qualified high-deductible health plans (HDHPs) may now cover telehealth services before reaching the deductible. Or an individual can choose to purchase and use telehealth services outside of their HDHP, without impacting their eligibility for an HSA. This exemption is valid until Dec. 31, 2021. HSAs can also be used to pay for IRS-qualified medical expenses accrued during telehealth services. This is valid for all telehealth visits, not only COVID-19-related treatment.
Other regulatory and legislative changes

The IRS, Department of Labor (DOL), and Treasury Department announced other notices in response to the pandemic. These are important to understand for administration of healthcare benefit plans.

**IRS Notice 2020-15**
The IRS will now allow HDHPs to pay for all COVID-19-related testing and treatment prior to the deductible, without jeopardizing the ability to contribute to an HSA.

**IRS Notice 2020-18**
The IRS extended the federal tax deadline to July 15, 2020. This extension also allows 2019 HSA contributions until July 15, 2020. State income tax deadlines may not have been extended, so check with your state agency or tax advisor regarding this deadline.

**IRS Notice 2020-29**
Mid-year Dependent Care Flexible Spending Account (DC-FSA) and Healthcare Flexible Spending Account (HC-FSA) election changes are now allowed for 2020. This extends the claim eligibility period to Dec. 31, 2020, for any FSA plan or grace period that ends in 2020. Expenses outlined in IRS 2020-25 and CARES Act telehealth expenses are allowed as retroactive to Jan. 1, 2020.

**IRS Notice 2020-33**
The $500 FSA rollover limit will now be indexed at 20% of the preceding annual FSA contribution limit, rounded to the nearest $10. For example, since the 2020 FSA contribution limit is $2,750, the rollover limit will be $550 for 2021 plans. IRS 2020-33 also included several points of clarification related to mid-year FSA changes and claim timing for premium reimbursement HRAs.
“Employees may need reminders on how to address unspent dollars in FSAs, deadlines on when they must be spent by, or how to change elections midyear.”
The Employee Benefits Security Administration’s Disaster Relief Notice 2020-1
This joint ruling from the IRS and the DOL provides guidance by extending deadlines related to health plan claims and COBRA. This joint rule is applicable to plans with start dates in 2019. These deadline extensions are retroactive to March 1, 2020, and will end 60 days after the end of the outbreak period, or when the national emergency is declared over.

The COBRA extensions included are:

1. The 60-day deadline for individuals to elect COBRA

2. The 60-day deadline for individuals to notify the plan of a determination of disability

3. The 30- or 60-day deadline for employers or individuals to notify the plan of a qualifying event

4. The 45-day deadline in which to make a first premium payment and the 30-day deadline for subsequent premium payments

This notice also extends several HC-FSA and HRA deadlines including a use-or-lose extension, extension of runout period, and extension of appeals period. The IRS offers the following additional guidance on the HC-FSA use-or-lose it extension. For a plan with a grace period ending within the pandemic period, the grace period is extended for the length of the pandemic. For a plan ending April 30, 2020, without a grace period, participants have until July 15, 2020, to incur eligible expenses reimbursed from 2019 FSA balance. A plan would need an amendment reflecting this change. Employers should consult with their benefits attorney.
Keep benefits steady while guiding employees through change

With so many changes in place, it can be complicated for benefits administrators. Additionally, your employees may be busy caring for ill loved ones or resuming their own postponed medical appointments. Reminding your employees of how their benefits could best be used can be reassuring. If you do decide to make adjustments to your benefits offerings, we recommend not reducing them. And be clear in your communications on how these benefits enhancements will assist your employees.

Recommendations to assist employees:

- Leave your benefits structure intact for as long as possible.
- Empathize with your employees and really listen to their concerns.
- Consider increasing HSA contributions, or accelerating HSA contributions to assist with increased medical expenses.

Enhancing health plan offerings
Employers may want to add to their health plan by offering telehealth, Section 138 plans, or increasing HSA contributions.

Increasing HSA contributions
Be sure to consider comparability and nondiscrimination requirements if you decide to increase HSA contributions. Employer contributions to employees HSAs outside of a cafeteria plan are subject to IRS comparability requirements.¹

Employer HSA contributions made through a cafeteria plan are not subject to comparability testing, but are subject to nondiscrimination testing under Code § 125 and the regulations thereunder.²

HC-FSA or HRA plan changes
You can make changes to HC-FSA or HRA plans on the grace period, rollover, and runout to allow employees more opportunity to use already contributed funds. As a reminder, you can offer your HC-FSA plan with a grace period or rollover option, but not both. It’s a plan-level determination you make, and would be available to all employees participating in the FSA. Before making changes, discuss with your benefits attorney and update your Plan Document.
COVID-19 and the subsequent regulatory and legislative actions have greatly impacted businesses, employees, and how health benefits are administered. As an employer, it’s important that you stay up-to-date on these developments and listen to your employees’ concerns. This may require increased communication reminding employees how they can access or make changes to their benefits.

Visit hsabank.com/specialcommunications for current insights on COVID-19 and regulatory and legislative changes.

For additional information on HSA Bank products and services, visit hsabank.com. Email: salessupport@hsabank.com

1 Guidance can be found in Treas. Reg. §§54.4980G-1 through 54.4980G-5.
2 Additional guidance can be found in Prop. Treas. Reg. §1.125-7(n).
About HSA Bank

HSA Bank is a trusted leader in consumer-directed healthcare (CDH), focusing on Health Savings Accounts (HSAs) for over two decades and serving as both the bank and administrator. Discover how we can support your benefits strategy with our comprehensive account-based health benefit solutions that include HSAs, Flexible Spending Accounts (FSAs), Health Reimbursement Arrangements (HRAs), Commuter Benefits, COBRA Administration, and HSA investment solutions such as HSAvisor+.

With a reputation for outstanding service and thought leadership in the CDH space, we offer one platform and one portal for all of our members. HSA Bank inspires 3 million members and more than 35,000 employer groups to “own your health” by making it easy to access, understand, and afford healthcare. As of March 31, 2020, HSA Bank has $8.6 billion in total footings (assets) comprising $6.7 billion in deposit balances and $1.9 billion in assets under administration through linked investment accounts, and is a division of Webster Bank, N.A., Member FDIC.