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**Correspondence Memorandum**

**Date:** April 20, 2021  
**To:** Group Insurance Board  
**From:** Xiong Vang, HSA & ERA Accounts Program Manager  
 Office of Strategic Health Policy  
**Subject:** Pre-Tax Savings Account Changes

The Department of Employee Trust Funds (ETF) requests the Group Insurance Board (Board) approve the following changes related to Flexible Spending Account (FSA) programs and Dependent Day Care Account Program (DCAP) for the 2021 plan year:

1. Increase the Health Care FSA and Limited Purpose FSA annual carryover limit to \$1,000.
2. Approve a DCAP annual carryover limit of \$2,500 retroactively from plan year 2020 into 2021.
3. Adopt a provision allowing dependents under the age of 14 to be covered for eligible dependent care expenses.
4. Increase the DCAP contribution limit from \$5,250 to \$10,500 for individuals or married couples filing jointly and from \$2,500 to \$5,250 for married individuals filing separately for plan year 2021.
5. Allow a one-time mid-year election to increase only for current DCAP elections between June 1, 2021, and June 30, 2021.
6. Approve Personal Protective Equipment (PPE), such as masks, hand sanitizer, and sanitizing wipes, as eligible expenses for the Health Care FSA and the Health Savings Account (HSA) under Section 213(d).

**Background**

Since the beginning of the COVID-19 pandemic in 2019, the federal government has taken several steps to increase the flexibility of FSA and DCAP accounts provided by employers. This memo reviews each federal law, discusses the evaluation of the changes for the Board's consideration, and provides recommendations to the Board to allow maximum flexibility for employees.

ETF has reviewed the proposed changes for possible adoption by the Board to ensure that an implementation plan for the changes can be done smoothly with a communication strategy in place. Evaluation of the program changes included feedback from ETF Office of Legal Service (OLS), ETF Division of Trust-Finance (DTF), Third-

Reviewed and approved by Eileen K Mallow, Director, Office of Strategic Health Policy  
 Electronically Signed 5/3/21

Board	Mtg Date	Item #
GIB	5.12.21	12C

Party Administrator with ConnectYourCare (CYC), stakeholder leaders, employers, and members.

### **Consolidated Appropriations Act (CCA) of 2021**

The CAA, signed into law on December 27, 2020, includes several temporary provisions to provide relief and flexibility for FSA and DCAP accounts. This act allows an employer to voluntarily adopt any of the following provisions:

- Expanded Carryovers: Unused funds from FSA and DCAP plan years ending in 2020 and 2021 may be carried over into the next plan year.
- Spend-Down for Terminated Participants: Allow FSA participants who cease participation in a 2020 or 2021 plan to receive reimbursements from unused contributions through the end of the plan year that the participation ceased including any applicable grace period.
- DCAP Age Extension: For a DCAP plan year that had an election period ending on or before January 31, 2020, participants may claim expenses for dependents who turned 13 during the applicable plan year and any extension to that plan year.
- Extended Grace Periods: For FSA plan years ending in 2020 or 2021, the grace period may be extended up to 12 months after the end of plan year.
- Temporary Change in Election Amount: For FSA and DCAP plans ending in 2021, participants may change their election amount for any reason.

### **American Rescue Plan (ARP) Act of 2021**

On March 11, 2021, the latest COVID-19 relief bill, the ARP Act of 2021, was signed. This act includes provisions for an increase to the DCAP contribution limit and a COBRA subsidy for involuntary terminations. This act allows an employer to voluntarily adopt the following provision:

- DCAP Contribution Limit: For 2021 only, the DCAP contribution limit for qualifying dependent care expenses is increased from \$5,250 to \$10,500 for individuals or married couples filing jointly and from \$2,500 to \$5,250 for married individuals filing separately.

### **Internal Revenue Services (IRS) Announcement 2021-7**

On March 26, 2021, the IRS released [Announcement 2021-7](#), which identified new medical expenses to be covered using an HSA or a Health Care FSA. This allows an employer to voluntarily adopt the provision as follows:

- Personal Protective Equipment (PPE): Items such as masks, hand sanitizer, and sanitizing wipes that are purchased for the primary purpose of preventing the spread of COVID-19 are eligible medical expenses under Section 213(d).

**Forfeiture and Carryover Statistics**

ETF uses forfeitures to offset any negative balances of members whose contributions are less than their reimbursed claims when they terminate employment. The forfeiture balance is also factored into the annual employer administrative rate calculation and works to put downward pressure on the rates. At the end of each year, ETF sets the rate for the employers in the coming new year to pay based on the number of Group Health Insurance contracts they have each month. For 2021, there was no increase in the Employee Reimbursement Account rate, which includes FSA and DCAP, since it was projected that forfeitures will increase.

During plan years 2016 to 2019, members who had funds remaining in an FSA were allowed to carry over up to \$500. The current FSA carryover limit is \$550, which was made available to participants no later than April 15, 2021.

DCAP does not have any carryover provision. Any funds that are not used by the end of the runout period for DCAP are forfeited. Table 1 shows the forfeitures and carryover balances for between 2016-2019.

*Table 1. FSA/DCAP Forfeiture and Carryover*

	2016	2017	2018	2019
<b>FSA</b>				
# Participants	17,562	19,102	20,097	21,479
Forfeiture	\$235,481	\$281,232	\$511,974	\$600,183
Carryover	\$1,621,500	\$1,870,045	\$2,248,754	\$2,345,268
<b>DCAP</b>				
# Participants	3,284	3,343	3,648	3,890
Forfeiture	\$228,154	\$234,842	\$340,198	\$353,609

On March 9, 2021, the Division of Trust Finance estimated the projected forfeiture and carryover balance for 2020 plan year. Table 2 shows the estimated forfeiture and carryover balance in relation to various carryover limits. ETF can offer the various carryover limits as it will not deplete the forfeiture balances or have any effect on the administrative rates.

*Table 2. 2020 FSA/DCAP Estimated Forfeiture and Carryover*

	Up to \$550	Up to \$1,000	Up to \$1,500	Up to \$2,500
<b>FSA</b>				
Forfeiture	\$1,398,077.96	\$897,889.87	\$663,301.46	N/A *
Carryover	\$3,168,728.01	\$3,668,916.10	\$3,903,504.51	N/A *
<b>DCAP</b>				
Forfeiture	\$1,488,370.44	\$1,233,281.70	\$1,007,025.94	\$678,978.33
Carryover	\$453,797.65	\$708,886.39	\$935,142.15	\$1,263,189.76

\* Did not estimate since contribution limit was \$2,750 for the plan year

### **Proposed FSA and DCAP Changes**

The recent federal law changes provide temporary and optional relief for the Board to consider during the ongoing pandemic. ETF is recommending the following six changes related to the FSA and DCAP for Board approval:

1. Expanded Carryovers (FSA): Increase the Health Care FSA and Limited Purpose FSA annual carryover limit \$550 to \$1,000 from plan years 2020 to 2021.

Evaluation: The Board approved a \$50 carryover limit increase for plan year 2020. Members feedback for this modest increase was positive, but they were not able to spend their funds on medical expenses because of the pandemic restrictions in 2020.

FSA carryover balances were made available to members by April 15, 2021. CYC confirmed that additional funds greater than the current contribution limit up to \$550 can be made retroactively available to members.

2. Expanded Carryovers (DCAP): Approve an annual carryover limit of \$2,500 for the DCAP retroactively from plan year 2020 into 2021.

Evaluation: Members in the DCAP have asked to be able to carry over their 2020 funds into 2021. Employers have also contacted ETF about whether it will allow carryover balances, due to the 2020 pandemic and not being able to use funds. DCAP is considered a “use it or lose it” account. If approved, the carryover allowance for this program will be the first time ever for the program.

3. DCAP Age Extension: Adopt the provision allowing dependents under the age of 14 to be covered for dependent care expenses (i.e., turning age 13 during the 2020-2021 plan year would qualify as dependent day care expenses).

Evaluation: ETF supports this change, especially as it does not require any employer system changes. Members have said they would like to be able to use the DCAP for dependents turning age 13. This would allow members to continue using funds to pay out on dependent care expenses. The previous rule allowed dependents under age 13.

4. DCAP Contribution Limit: Increase the DCAP contribution limit up to \$10,500 for 2021 plan year. Married individuals filing separately can contribute up to \$5,250.

Evaluation: Members frequently request a higher contribution for the DCAP account, as annual dependent care expenses can be substantially higher than the current \$5,000 limit. CYC confirmed it will not be an issue to increase the contribution limit if approved by the Board. Employers will be ready to make the system change that allows for the contribution limit increase.

5. Temporary Change in Election Amount: Allow a one-time mid-year election increase to current 2021 DCAP elections, without a qualifying event, between June 1, 2021, and June 30, 2021. This provision is only recommended if the DCAP contribution limit increase is adopted by the Board.

Evaluation: Employers indicate that a change in election amount without a qualifying life event for the FSA and DCAP can create an administrative burden. Change in election amount may need further review when participants wish to decrease their election (claims paid out vs. contributed). Furthermore, UW System will be going through a pay period change for their monthly employees in July 2021, and the provision may overwhelm their internal staff.

The one-time, mid-year election increase in the DCAP would give those who have already been enrolled an opportunity to increase their election. This would allow the DCAP to be non-discriminatory for members who have already been enrolled. Employers believe this change has minimum impact due to the low participant enrollment and that it would be beneficial to adopt this change in alignment with the DCAP contribution limit increase.

6. Personal Protective Equipment: Adopt masks, hand sanitizer, and sanitizing wipes as newly eligible expenses for the Health Care FSA and HSA in accordance with Section 213(d).

Evaluation: ETF supports the addition of PPE as qualified eligible expenses. According to CYC, merchants are in the process of updating their point-of-sale systems to recognize PPE as a qualified eligible expense. Participants should expect some inconsistency in point-of-sale purchases when using their payment card. In the case that a merchant has not configured their system, participants can submit a manual claim through the CYC portal or mobile app.

### **Next Steps**

All provision changes are at the discretion of the Board and will be effective for the 2021 plan year if approved. CYC is prepared to communicate with employers on the strategy plan in preparation for internal outreach and system changes. The employers will be ready to make necessary system changes, if needed.

A notification of any and all approved changes is ready to be sent by CYC directly to affected participants following the Board meeting.

Staff will be available at the Board meeting to answer any questions.

## Attachment: 2021 Proposed Federal Law Changes

Consolidated Appropriations Act (CAA) of 2021					
Signed into law on December 27, 2020					
Provision Areas of Changes	Description of Provision	Review Evaluation	ETF Recommendation	Additional Comments	Effective Date
<b>Expanded Carryovers</b>					
Carryover Extension	Unused funds from health care FSA and dependent day care account program (DCAP) plan years ending in 2020 and 2021 may be carried over into the next plan year.	<p><b>Members:</b> Participants in the DCAP have expressed since 2021 Open Enrollment on what they can do with their remaining contributions. Members and employers have also reached out to ETF whether it will allow any additional carryover balances due to the 2020 pandemic and not being able to use funds.</p> <p><b>ConnectYourCare:</b> Will not be a challenge if carryovers are made after the runout period ends for FSA. Increasing carryover would not be a problem and can be accomplished.</p> <p><b>Division of Trust-Finance:</b> May not be able to do entry on liabilities financial statement with LAB until after the carryover balances have been made since forfeitures are part of that review process. Potential additional administrative works with reconciling and auditing carryovers between DTF and CYC.</p>	<p>1) Increase Health Care and Limited Purpose FSA carryover balance from \$550 to \$1,000 from 2020 into 2021 plan year</p> <p>2) Approve a DCAP annual carryover limit of \$2,500 retroactively from plan year 2020 into 2021</p>	<p>1) This provision change will be applicable only for the 2021 plan year</p> <p>2) This provision change will be applicable only for the 2021 plan year</p>	January 1, 2021
<b>Spend-Down for Terminated Participants</b>					
Terminated Participants	Allow health care FSA participants who cease participation in a 2020 or 2021 plan to receive reimbursements from unused contributions through the end of the plan year that the participation ceased including any applicable grace period	<p><b>Members:</b> Have not received members feedback on this</p> <p><b>ConnectYourCare:</b> Will have the development for spend down for FSA if ETF chooses to adopt. Employer cannot adopt a spend-down and carryover.</p> <p><b>Division of Trust-Finance:</b> Increase in administrative fees for terminated employees and longer period of using the FSA. This will increase the cost of claims to be paid out after termination.</p>	No Recommendation	Not Applicable	Not Applicable
<b>Dependent Day Care Account Program Age Extension</b>					
Maximum Age Increased	For a DCAP plan year that had an election period ending on or before January 31, 2020, participants may claim expenses for dependents who turned 13 during the applicable plan year and any extension to that plan year.	<p><b>OSHP Program Manager:</b> Participants in the DCAP with dependents under the age 14 can be eligible for dependent expense. Members have expressed to be able to use the DCAP for dependents turning age 13. Previous rule allowed dependents under age 13.</p>	Adopt a provision allowing dependents under the age of 14 to be covered for eligible dependent care expenses	This provision change will be applicable only for the 2021 plan year	January 1, 2021
<b>Extended Grace Periods</b>					
Grace Period Extension	For health care and dependent care FSA plan years ending in 2020 or 2021, the grace period may be extended up to 12 months after the end of plan year.	<p><b>OSHP Program Manager:</b> ETF does not offer grace period but instead a runout period that allows carryover of balances. Grace period is not permitted if the health FSA or DCAP offers a carryover.</p>	No Recommendation	Not Applicable	Not Applicable
<b>Temporary Change in Election Amount</b>					
Election Amount Changes	For health care FSA and DCAP plans ending in 2021, participants may change their election amount for any reason.	<p><b>Payroll Centers:</b> This change can be administrative burden on staffs. Change in elections may need further review when participants wishes to decrease their election (claims paid out vs. contributed). UW System going through pay period change in July 2021. Increase election for DCAP will have limited impact and align with the DCAP contribution limit increase.</p> <p><b>OSHP Program Manager:</b> This will create administrative works on updating materials, websites, and etc. FSA and DCAP require a qualifying life event to make an election change. No changes will allow rule consistency with other programs and prevent confusion.</p>	Allow a one-time mid-year election increase to current 2021 DCAP elections, without a qualifying event, between June 1, 2021, and June 30, 2021	<p>This is only recommended if the DCAP contribution limit increase up to \$10,500 is approved from the American Rescue Plan (ARP) Act of 2021.</p> <p>A window period from June 1, 2021 through June 30, 2021 allows those who participates in the DCAP to increase their annual election.</p>	January 1, 2021

American Rescue Plan (ARP) Act of 2021					
Signed into law on March 11, 2021					
Provision Areas of Changes	Description of Provision	Review Evaluation	ETF Recommendation	Additional Comments	Effective Date
<b>Dependent Day Care Account (DCAP)</b>					
Contribution Limit	For 2021 only, the DCAP contribution limit for qualifying dependent care expenses is increased from \$5,250 to \$10,500 for individuals or married couples filing jointly and from \$2,500 to \$5,250 for married individuals filing separately.	<p><b>Members:</b> Participants in the DCAP have expressed increasing contribution limit. The current contribution limit of \$5,000 is considered a low limit since dependent care expenses can be high.</p> <p><b>ConnectYourCare:</b> Will not be an issue if ETF chooses to adopt a contribution limit increase for the DCAP</p>	Increase the DCAP contribution limit up to \$10,500 for 2021 plan year. Married individuals filing separately can contribute up to \$5,250.	<p>This provision change will be applicable only for the 2021 plan year.</p> <p>Contribution limit increase will be prospective effective the 1st of the month on or following the application receipt date.</p>	January 1, 2021

IRS Announcement 2021-7					
Released on March 26, 2021					
Provision Areas of Changes	Description of Provision	Review Evaluation	ETF Recommendation	Additional Comments	Effective Date
<b>Personal Protected Equipment (PPE)</b>					
Eligible Medical Expenses under Section 213(d)	HSA and HCFA participants may use their funds to pay for masks, hand sanitizer, and sanitizing wipes on a pre-tax basis.	<p><b>OSHP Program Manager:</b> This will allow additional eligible expenses to be qualified as medical expenses under Section 213(d) of the Code.</p> <p><b>ConnectYourCare:</b> Merchants are working to get the products updated in their systems. Participants should expect some inconsistency in point-of-sale purchases when using their payment card.</p>	Adopt masks, hand sanitizer, and sanitizing wipes as newly eligible expenses under Section 213(d)	No Comments	January 1, 2021