

Important Alert Regarding FSA Plans!

A Health FSA Plan Must Meet the Definition of an Excepted Benefit

To remain compliant under new health care regulations, health FSA plans renewing January 1, 2014 or after must meet the requirements of an excepted benefit.* The term "excepted benefit" refers to benefits that have been excepted from the portability rules under HIPAA.

What Could Cause a Health FSA to Fail Excepted Benefit Status?

- A health FSA plan will fail if it includes certain employer contributions.
- A health FSA plan will fail if it is not offered in conjunction with other non-excepted group health coverage.

Two conditions must be met for a health FSA to be an excepted benefit:

Condition 1: The health FSA can't exceed certain maximum benefit allowances. The "maximum benefit" under the health FSA is defined as the total of employer plus employee contributions for the plan year. The maximum benefit cannot exceed the greater of: (a) two times the employee's annual health FSA election, or (b) the employee's annual health FSA election plus \$500.

There are limitations to the amount an employer can contribute to a health FSA. This says the employer's contribution can be a dollar-for-dollar match of a participant's election, or up to \$500.

Condition 2: The employer must offer other group health coverage that is classified as a "non-excepted benefit." Other non-excepted group health plan coverage, such as major medical coverage, must be made available for the plan year to the class of participants by reason of their employment.

Of primary concern to most employers will be Condition 2. It says only employees eligible for employer-provided group health coverage can be offered a health FSA. Employers who don't offer a qualifying group health plan should understand that this will prevent them from being able to offer a health FSA plan.

It's not required that employees elect the group health plan in order to be eligible for a health FSA plan, but they must have the option to do so. Individual employee-owned health plans – even if the employer pays all or part of the premium – do not meet the definition of a group health plan for the purposes of this requirement.

In summary, a health FSA is an excepted benefit if:

- The employer does not make any contributions to the FSA, *or*
- The employer makes a dollar-for-dollar match to the FSA, *or*
- The employer contributes no more than \$500 to the FSA, *and*
- The employer offers other non-excepted benefits (such as group health coverage) to the class of employees who are eligible for the FSA.

Please let Savers Admin know if any of these Conditions appear to be impacting your health FSA plan. Contact us if you have questions or need further assistance.

* [IRS Notice 2013-54](#)