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New Health Care Reform FAQs, Part I

The DOL, HHS, and IRS (the “Departments”) recently released new Health Care Reform Frequently Asked Questions (“FAQs”). The FAQs provide guidance on updated DOL model notices, Health FSA carryovers, and summary of benefits and coverage.

Updated COBRA and CHIPRA Model Notices. The DOL posted updated model [COBRA notices](#) that provide additional information on the now-available Exchanges. The DOL also issued a revised [Children’s Health Insurance Program Reauthorization Act of 2009 \(“CHIPRA”\) notice](#) with similar updates related to Exchange coverage.

Health FSA Carryover. Health FSAs may be considered excepted benefits that are generally exempt from HIPAA and Health Care Reform if:

- the employer makes available group health plan coverage that is not limited to excepted benefits; and
- the maximum benefit payable to any employee participant does not exceed the greater of (i) two times the employee’s salary reduction election for the FSA for the year, or (ii) the amount of the employee’s salary reduction election plus \$500.

In 2013, the IRS modified the “use-or-lose” rule and allowed up to \$500 of unused amounts in an FSA to be carried over to the following year (as long as the plan did not also incorporate a grace period). The FAQs explain that such unused carry over amounts in an FSA remaining at the end of a plan year should not be taken into account in determining whether the FSA, under the maximum benefit payable limit prong, is an excepted benefit.

Summary of Benefits and Coverage. Plans are required to provide a summary of benefits and coverage (“SBC”) that accurately describes the benefits and coverage under the plan. Updated SBC templates were made available in April 2013. Until further guidance is issued, plans may continue to use those templates. The FAQs also clarify that certain previously-issued enforcement and transition relief related to SBCs will be extended.

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