

WEBINAR Q&A: MID-YEAR ELECTION CHANGES

On July 24, 2025, we held a webinar reviewing mid-year election changes. Because we received so many questions, we are publishing this Q&A on the topic. Please keep in mind that Accretive is an insurance consulting and brokerage firm. We are not a law firm and cannot offer legal advice. If you have questions about a specific situation with an employee at your workplace, we encourage you to discuss this matter with your own counsel.

Q1: You noted that Section 125 regulations allow a plan to allow a mid-year election change if there is a change in a dependent's student status? I thought the ACA provided that a dependent can stay on the group health plan until age 26 regardless of student status.

You are correct regarding the ACA. However, the Section 125 regulations impact mid-year election changes for any benefit under a Section 125 plan (accident and health, dental, vision, group term life, dependent care and health FSAs, and adoption assistance programs). The ACA only requires dependent coverage to extend to age 26 for group health plans that provide dependent benefits.

Q2: Can you please elaborate on "change in residence" for an eligible status change for 125 plans? Are you saying that if someone moves, they can reduce or increase their FSA?

That election change would be subject to the consistency rule, which provides that the election change must be on account of and correspond with a change in status that affects eligibility for coverage under an employer's plan. If the change in status is a change in residence, that change in residence likely does not affect the employee's eligibility for the FSA.

Q3: What if an employee's reduction in hours results in an increase in cost but no loss of coverage? Is that a HIPAA qualifying event?

It is not a qualifying event for a HIPAA special enrollment right. It is not a loss of eligibility for other coverage or a covered life event (marriage, birth, placement for adoption). If the reduction in hours corresponds to a significant increase in the cost charged to the employee for a benefit package option, then the employee could be eligible to make a corresponding change under Section 125.

Q4: If an employee accidentally signed up for the dependent care FSA during open enrollment and discovered the mistake mid-year, can they make a change? The employee now wants to transfer all the money from the dependent care FSA to a medical FSA. Would this be possible?

If the employee wishes to stop contributing to the DCAP, and the employee is not eligible for a DCAP, you can probably stop deducting the DCAP contributions from their pay.

By eligible, we mean that the employee meets the eligibility requirements of IRC 129. That is, are both the employee and their spouse gainfully employed or actively searching for gainful employment? Do they live with a dependent who is under the age of 13 or who is physically or mentally incapable of taking care of themselves? There is, however, no provision that allows the refunding of funds already contributed or the rollover of funds in a DCAP to a health FSA.

Q5: Related to qualifying events for coverage changes, would that apply to the change in roll out for the CA infertility coverage? If someone has coverage with Anthem (which is not offering the coverage yet) and wants to change their election to a plan with Kaiser (who is), would that be considered?

The state of California recently passed a law that mandated coverage under fully-insured group health plans for infertility services. That law was slated to become effective for plan years beginning on or after July 1, 2025. However, at the last minute the Governor and the Legislature agreed to delay the effective date of the law until January 1, 2026. Some carriers went forward with the original effective date for their plans and other carriers declined to offer the coverage until the law mandates it. As a result, some employers who offer employees plans with two different carriers (like HMO coverage with Kaiser and PPO coverage with Anthem) will be effectively offering one plan that provides infertility coverage for the remainder of 2026 and one that does not.

In answer to the question, offering this new benefit could be seen as a significant coverage improvement that enables an employee to change their election to the plan with infertility coverage.

Q6: Can we allow mid-year election changes for income changes, like an increased salary because of a promotion?

An increase in salary because of a promotion is not a permitted election change reason under either Section 125 or HIPAA.

Q7: For Dependent Care FSAs, if the person providing the care is a relative but they have a Tax ID and report the amount they are being paid as income, can an employee use a dependent care FSA to pay the care provider?

An employee may use a DCAP to pay a care provider that is a relative, provided that the relative is not a tax dependent of the employee, the employee's child under the age of 19, the employee's spouse, or the child's other parent. Under the change of election rules, you cannot increase your DCAP election amount due to an increase in the cost of care if the care provider is a relative.

Q8: If an employee's spouse lives outside the U.S. but moves to the U.S. in the middle of a plan year, is that considered a QLE, moving into coverage area?

If the dependent spouse is moving from a place where there is no coverage to a place where there is coverage, then the Section 125 rules would permit an employer to allow an employee to change their election mid-year to add the spouse to the plan.

Q9: Our benefit plan runs July-June (with open enrollment in June). One of our unions is advising us that they may have rate changes in October. Under that situation, would there need to be a Special OE for the entire eligible population?

You are not required to hold a second open enrollment, but you may wish to allow the union members that participate in that plan to change elections mid-year if the rate change is significant enough to constitute a significant cost increase.

Q10: If an employee is enrolled in dependent care FSA, but their spouse also signed up for FSA through their own employer, would this allow our employee to stop contributions? What if the employee was contributing less than \$5,000 for the year?

It would not. The allowed reasons for an election change for a DCAP are: change in status events, FMLA leave, cost changes (with a non-family provider), or a change in provider or hours. This scenario does not fit into any of those categories. The employee and their spouse are limited to \$5,000/year total (\$7,500 in 2026) in salary deferral. If they have deferred more than the limit, then the amount over the limit will be taxable income. In this example, it is not even clear that the spouses would meet the \$5,000 limit.

Q11: What happens when an employee goes on a leave mid-year? Does the employee stop contributions to their FSA and pick it up when they return? Do they pay the premiums for what would have been deducted when they return?

An employee can continue to make contributions to a health or dependent care FSA while they are out on FMLA leave. An employer is allowed to handle contributions a number of ways:

- Pre-pay—Before their leave begins, the employee can pay the contributions that will be due during their absence.
- Pay as you go—An employees on a paid leave will continue to have payroll deductions as scheduled. If the leave is unpaid, the employee can submit contributions to the employer on the same schedule as active employees.
- Catch up—Under this option, the employer agrees to advance payments for the FSA, with the understanding that the employee will be responsible for making special catch-up contributions to repay the advance upon their return from FMLA leave.

Q12: We recently had an employee request to terminate a pre-tax voluntary plan mid-year. Can they do that without a qualifying status change simply because it's a voluntary plan, or does Section 125 still apply due to its pre-tax designation?

If you offered the voluntary plan pre-tax, then it was through the Section 125 plan. Therefore, the employee would be allowed to terminate the plan if it was allowed under the Section 125 mid-year election rules.

Q13: When an employee returns from FMLA, can they enroll in DCAP?

An employee can enroll in DCAP mid-year if they have had a change of status event (change in legal marital status, number of dependents or employment status) that is the reason for and corresponds with the enrollment.

Q14: If an employee is in an HDHP and thought they signed up for HSA but mistakenly signed up for FSA, can the monies be moved?

Under the IRS doctrine of mistake, an employer is permitted to allow an employee to change an election made by mistake under limited circumstances if (1) there is clear and convincing evidence that the error was the employer's and not the employee's; (2) if the employee could not benefit from the election (for example, a person with no dependents electing a DCAP); or, (3) if the employer can ascertain, under all the facts and circumstances, that a mistake has occurred. An employer would be well-advised to establish a policy for this determination in advance.

Q15: Can spouses working for different employers both contribute the maximum to a medical FSA for the same plan year?

Yes.

Q16: Can an FSA be converted to a limited purpose FSA mid-year?

If your administrator can administer it, then yes.

Q17: If an employee is covered under their spouse's plan, and the spouse experiences a reduction of hours but not a loss of coverage, can the increased cost be considered a qualifying event for electing the employer's coverage mid-year?

Under the scenario you've described, there is no loss of employment, no loss of eligibility, and it isn't clear that any costs have increased. A reduction in hours (that results in less pay but the same coverage at the same cost) is not a permitted reason for an election change under Section 125 or HIPAA.

Q18: In the presentation, you gave an example of Mark, who moves out of the service area for the HMO plan in which he is enrolled. He would be allowed under Section 125 rules to elect a different group health plan mid-year or drop coverage altogether. What if Mark's new coverage on the PPO has a significantly higher out of pocket cost? Can he then change his FSA election?

No, because cost changes are not a permitted reason for a mid-year election change in a health FSA under Section 125.

Q19: If an employee's dependent was medically diagnosed with a lifelong disability that will require additional medical expenses, does that qualify for a midyear activation for a flexible spending account?

As noted above in A18, cost changes are not a permitted reason for a mid-year election change in a health FSA under Section 125.

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