

LEGAL UPDATE

IRS Expands Section 125 Mid-year Election Change Rules

On Oct. 11, 2022, the IRS released [Notice 2022-41](#), expanding the situations in which individuals can change their health coverage elections mid-year under a Section 125 cafeteria plan. The guidance in the notice is for elections effective on or after **Jan. 1, 2023**.

Specifically, the notice addresses the situation in which a cafeteria plan participant may wish to revoke their election for family coverage in order to allow one or more family members to enroll in a Qualified Health Plan (QHP) through a Health Insurance Exchange (Exchange) in the individual market. Existing rules do not allow the revocation of coverage when only related individuals, not the employee, become eligible to enroll in a QHP. Thus, a related individual enrolled in a non-calendar year cafeteria plan might not be able to synchronize the change in coverage to avoid either an overlapping period of coverage or a gap in coverage.

New Permitted Election Changes

Non-calendar year cafeteria plans may allow employees to **prospectively revoke** an election of family coverage under a group health plan (that is not a health FSA), provided the following conditions are satisfied:

- One or more related individuals are eligible for a special enrollment period to enroll in a QHP, or one or more already-covered related individuals seek to enroll in a QHP during the Exchange's annual open enrollment period; and
- The revocation corresponds to the intended enrollment of the related individual(s) in a QHP for new coverage that is effective no later than the day immediately following the last day of the original revoked coverage. If the employee does not enroll in a QHP, the employee must elect self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

Provided to you by [Towne Benefits](#)

Plan Amendments

Employers that want to allow the new election changes must amend their cafeteria plans. Amendments must be:

- ☑ Adopted on or before the last day of the plan year in which the elections are allowed (changes for plan years beginning in 2023 may be adopted at any time on or before the last day of the plan year that begins in 2024); and
- ☑ Effective retroactively to the first day of that plan year, provided the cafeteria plan operates accordingly and participants are informed.

Employees will be able to elect out of family coverage and into self-only coverage prospectively, provided certain conditions are met.