

Congress of the United States
House of Representatives
Washington, DC 20515

April 24, 2020

Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Mnuchin and Chief Counsel Desmond:

We are asking the Department of Treasury to urgently provide temporary flexibility for Flexible Spending Arrangements (FSAs) and Dependent Care Flexible Spending Arrangements (DCFSA) that would deliver needed relief and certainty to Americans amidst the COVID-19 public health emergency.

Many eligible employers offer their employees access to an FSA to cover out-of-pocket medical expenses, including deductibles, copayments, qualified drugs, durable medical equipment, and other health care items. Employers and employees can contribute up to \$2,750 in pre-tax funds to an employee's FSA account annually. These FSA contributions must be used within the employee's plan year or the employee loses the money, though employers can allow for additional flexibility through a grace period of two and a half months or permit \$500 to be carried over into the next plan year. Additionally, many employers offer DCFSA as a tax-advantaged benefit to pay for eligible services, such as child or adult daycare, preschool, summer day camp, and before or after school programs. Individuals can contribute up to \$5,000 a year towards their DCFSA.

In response to the ongoing COVID-19 public health emergency, on March 18, 2020, the Centers for Medicare and Medicaid Services (CMS) released recommendations to limit all non-essential planned surgeries and procedures. Following this guidance, hospitals, physician practices, and outpatient surgery centers halted elective procedures. On April 19, 2020, CMS released recommendations for facilities to start providing non-emergent, non-COVID-19 care. But the new CMS recommendations are dependent on states meeting specific gating criteria, and it remains unclear when elective procedures across the United States can be fully resumed. In addition, since the beginning of the public health emergency, governors and local officials across the country have closed schools, preschools, and daycare programs. Many states have closed these schools for the remainder of the academic year, and some remain closed indefinitely. With millions of Americans abiding by these restrictions, their health care and childcare needs have significantly changed in ways that they could not have predicted.

We ask that you issue guidance to allow beneficiaries with FSAs and DCFSA the ability to carry over all unused funds into the 2021 plan year and allow all employees the ability to make a mid-year election change to alter their contribution amounts to their FSAs and DCFSA for this plan year. At a time when many Americans cannot access non-emergent health care or childcare to spend the funds they have saved through these arrangements, the ability to reduce their contributions would provide more immediate take home pay for American workers. This temporary flexibility for FSAs and DCFSA would deliver needed relief to Americans during this public health emergency.

We look forward to continuing to work with the Department as you provide Americans with the tools and flexibility needed to respond to COVID-19.

Sincerely,



Brad Wenstrup, D.P.M.
Member of Congress



Thomas R. Suozzi
Member of Congress



Darin LaHood
Member of Congress



Bradley S. Schneider
Member of Congress



Mike Kelly
Member of Congress



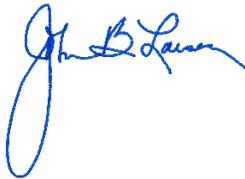
Kenny Marchant
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A. Drew Ferguson IV, DMD
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