

## EBIA Weekly Archives

### Can Our Company Adopt a Health FSA Without Also Sponsoring a Major Medical Plan?

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**QUESTION:** Our company has only 20 employees and does not sponsor a major medical plan. Can we adopt a health FSA to help our employees pay for unreimbursed medical expenses with pre-tax salary reductions?

**ANSWER:** Not unless the health FSA reimburses only limited-scope dental or vision expenses and otherwise qualifies as an excepted benefit. Under agency guidance issued in 2013 (see our [article](#)), health FSAs generally must qualify as excepted benefits in order to comply with health care reform. A health FSA that is not an excepted benefit will fail to satisfy health care reform's preventive services mandate, which requires group health plans to cover certain preventive services without cost-sharing. The preventive services mandate does not apply to excepted benefits. Agency regulations establish different categories of excepted benefits and requirements for each category. One category excepts health FSAs, but only if other nonexcepted group health plan coverage (e.g., major medical coverage) is made available for the year to the health FSA's participants by reason of their employment. (Other requirements must also be met.) However, under another category, a group health plan (including a health FSA) that provides only limited-scope dental or vision benefits could qualify as excepted, even if the employer does not sponsor a major medical plan.

A health FSA's failure to qualify as an excepted benefit could result in an employer's liability for excise taxes of \$100 per participant per day or other penalties under health care reform. Because your company does not sponsor a major medical plan, it should not adopt a health FSA unless the health FSA qualifies for the limited-scope dental or vision exception.

For more information, see EBIA's [Cafeteria Plans](#) manual at Sections XXII.K ("Which Health FSAs Are 'Excepted Benefits'?"), XIX.H ("Who Can Participate in a Health FSA?"), and XXII.E ("Health Care Reform and Health FSAs"). See also EBIA's [Health Care Reform](#) manual at Sections V.F.1 ("Health Flexible Spending Arrangements Meeting Certain Conditions") and VII ("PHSA Mandates: Consequences of Noncompliance"), and EBIA's [HIPAA Portability, Privacy & Security](#) manual at Section VI.F ("Excepted Benefits: Certain Health FSAs, Dental, Vision, and Others").

Contributing Editors: EBIA Staff.

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