On October 31, 2013 the IRS issued **Notice 2013-71** to allow plans to modify the “Use it or Lose It” rule for Health Flexible Spending Accounts to allow a carryover into the following plan year. This document outlines the required steps if you would like to allow your plan to have the carryover. See page 2 for the next steps to modify the plan.

**Health FSAs WITHOUT a carryover operate by the below rules:**

* Health FSA funds must be claimed for expenses with a date of service during that same plan year
* The claim date of service must be between the plan year enrollment date and the plan year end date
* For terminated participants, the date of service must be between the plan year enrollment date and the termination date
* Grace period – some plans have a grace period which allows the person to have dates of service until 75 days following the plan year end. **Only some plans have a grace period.**
* Runout period – the claims filing deadline is the earlier of 90 days after termination or 90 days after plan year end. **All plans have a runout period.**
* Unused funds after the end of the runout period do not rollover and are forfeited
* Forfeitures can be used to offset plan losses when participants claim more money than they have had payroll deducted

Under the carryover rules, plans have the **option** to allow up to a $640 carryover of unused Health FSA funds into the following year. **The below summarizes key features of the optional carryover:**

* The carryover applies to Health FSA only. It does not apply to Dependent Care FSA.
* The plan cannot offer both a carryover and a grace period on the Health FSA. The Dependent Care FSA can have the grace period since carryovers do not apply to Dependent Care FSA.
* The IRS best practice is to apply current year dates of service against current year deductions. This means that the carryover amount would be determined as of the runout date. For example, if the plan year runs from Jan 1, 2024 - Dec 31, 2024 and the runout date (claims filing deadline) is March 31, 2025, the amount of the carryover would be determined in April after March 31, 2025 after all claims for the prior year have been processed.
* The carryover is only available to people with an active Health FSA account as of the last day of the plan year. For example, if a person in the above example terminated on Dec 1, 2024, a carryover would not apply because he or she was not active on Dec 31, 2024.
* A person is not required to have a new election in the new year in order to carryover the amount. For example, if the person maintained the Health FSA through 2024 there can be a carryover to 2025 even though there may not be a new election for 2025. Also as long as the person is an active employee on Dec 31, 2025 they could carryover any unused balance up to $640 to 2026 and so on to future years.
* Upon termination of employment a person has the usual runout date to file claims
* The carryover must apply to all employees equally and includes both employer and employee contributions
* If a plan adopts a carryover and then wishes to end the carryover provision the plan must give adequate notice so that employees have time to use the funds
* A person with a carryover balance who wishes to contribute to a Health Savings Account will have the carryover amount added to a **Limited Purpose Health FSA** (dental, vision, preventive care) to maintain eligibility to contribute to an HSA
* Plans that wish to add the carryover must amend the plan before the end of the plan year to which the carryover applies and remove the grace period for the Health FSA if applicable. It is recommended that plans with a grace period for 2023 (i.e. 75 days into 2024) not adopt the carryover until the 2024 plan year since employees may be counting on using the 2023 grace period.
* While carryovers may reduce the amount forfeited by employees it will also reduce the amount of forfeitures that are used to offset situations where an employee has left early and claimed more in Health FSA funds than has been payroll deducted

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**YOUR NEXT STEPS:**

->If you have already notified us to add the carryover there is no need to notify us again since it is a plan wide decision that applies for years going forward

->If you do not have the carryover and would like BenefitsAssist, inc. to make the necessary plan changes to allow the carryover, please e-mail confirmation to Shawn\_Adams@BenefitsAssist.net along with the year when you wish the carryover to begin. The cost for making all necessary plan document changes is $100.00 to be invoiced after we send you the updated documents. The employer will then be required to sign those documents to implement the changes.

Please also note the below **billing** changes should you add the carryover:

* In the past, BenefitsAssist, inc. has stopped monthly billing as of a person’s termination date. This was true even if the person had a balance and was able to file claims during the runout period. If an employer opts for the carryover, BenefitsAssist, inc. will keep anyone with a balance as of the plan year end date active until the end of the plan year. This includes people who have not signed up for a new plan year election.
* The carryover will be applied within a few weeks of the plan year’s runout date. For calendar year plans with a runout date of March 31 the carryover would be applied in April so that we have been able to process all prior year claims before applying the carryover. **There will be no yearly fee to apply the carryover.**
* **To be eligible for the carryover, participants must be active in the plan on the last day of the plan year**