

Can a DCAP Reimburse Payments for Care Provided by a Participant's Child?

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QUESTION: A DCAP participant is considering hiring an adult son to provide after-school care for a 10-year-old daughter and has asked whether our DCAP can reimburse payments to the son. Is this permitted?

ANSWER: Maybe. But payments to certain relatives or dependents do not qualify for reimbursement under the Code's DCAP requirements. A DCAP cannot reimburse payments to an employee's child who is under age 19 at the end of the year or to someone whom the employee (or the employee's spouse) could claim as a dependent. Thus, whether your DCAP can reimburse the participant for care provided by the son will depend on the son's age and whether the participant (or the participant's spouse, if the participant is married) can claim him as a dependent for federal income tax purposes.

In addition, DCAPs cannot reimburse payments to an employee's spouse or to the parent of an under-age-13 qualifying child (e.g., an employee's former spouse who is also the child's parent). We recommend that you include information in your DCAP summary or open enrollment materials about the providers whose care can and cannot be reimbursed under a DCAP.

A DCAP's informational materials should also explain that participants may not claim an exclusion for reimbursement of dependent care expenses unless they include with their tax returns (on Form 2441) the name, address, and taxpayer identification number (TIN) of the care provider. If the care provider is an individual, the TIN is the individual's Social Security number. No TIN is necessary for exempt organizations—only the provider's name and address are needed.

For more information, see EBIA's Cafeteria Plans manual at Sections XXIV.F.11 ("Care Provided by Certain Related Individuals Does Not Qualify") and XXV.H ("Form 2441—Employees Must File It With Their Form 1040").

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