

# Can an Employee Drop a DCAP Election Midyear If Free Childcare Becomes Available?

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**QUESTION:** One of our employees would like to drop his DCAP election under our calendar-year cafeteria plan because a neighbor has offered to take care of his child at no cost. Can we allow this midyear election change?

**ANSWER:** Yes, provided that your plan document has been drafted as expansively as IRS rules allow regarding midyear election changes due to changes in cost or coverage. The rules apply broadly to dependent care assistance programs (DCAPs), permitting midyear election changes in a variety of circumstances involving changes in care providers or in the cost of care. IRS officials have informally commented that a DCAP election change is permitted when a child is switched from a paid provider to free care (or no care, in the case of a “latchkey” child). Other circumstances in which IRS rules would allow a DCAP election change include changes in the hours for which care is provided and changes in the fee charged by a provider. (However, an election change is not allowed if a cost change is imposed by a care provider who is the employee’s relative as defined in IRS rules.) Note that, while the cost or coverage election change rules apply broadly to DCAPs, they do not apply to health flexible spending arrangements (health FSAs). This is one of several areas in which the rules differ for health FSAs and DCAPs.

For more information, see EBIA’s Cafeteria Plans manual at Sections XIV.E.8 (“Applying the Significant Cost Change Rules to DCAPs”), XIV.F.6 (“Significant Coverage Curtailment (With or Without Loss of Coverage): DCAP Election Changes—Broad Rules Apply”), and XIV.G.6 (“Addition or Significant Improvement of Benefit Package Option: DCAP Election Changes—Broad Rules Apply”).

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