

Some Cafeteria Plans Must Be Amended by June 30

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The Patient Protection and Affordable Care Act amended the Internal Revenue Code to prohibit health care flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs) from reimbursing expenses incurred after December 31, 2010 for non-insulin over-the-counter drugs or medicines purchased without a prescription. Accordingly, expenses incurred for medicines or drugs are reimbursable under such accounts only if the medicine or drug (1) requires a prescription, (2) is insulin, or (3) is available without a prescription and the reimbursement request is accompanied by a prescription.

In order to comply with this new requirement, health FSAs must be amended no later than June 30, retroactive to January 1, 2011, if they are offered under cafeteria plans that – by their written terms – permit reimbursement of over the counter drugs or medicines without a prescription.

Cafeteria plans that have not yet been amended could be amended by adopting the following amendment:

Notwithstanding anything to the contrary contained herein, expenses incurred after December 31, 2010 for drugs or medicine (other than insulin) are eligible for reimbursement only if accompanied by a prescription.

Of course, the plan administrator should promptly notify participants of this change and amend ancillary documents, such as summary plan descriptions.

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