



June 13, 2011

Cafeteria Plan Amendments for OTC Drug Reimbursement

The Patient Protection and Affordable Care Act (PPACA) established a new uniform standard for certain medical expenses. Effective January 1, 2011, distributions from health care flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs) are allowed to reimburse the cost of over-the-counter (OTC) medicines or drugs only if they are purchased with a prescription. This new rule does not apply to reimbursements for the cost of insulin, which will continue to be permitted, even if purchased without a prescription. Accordingly, expenses incurred for medicines or drugs are reimbursable under FSAs and HRAs only if the medicine or drug requires a prescription, is insulin, or is available without a prescription (OTC) and the reimbursement request is accompanied by a prescription.

In order to comply with this new requirement, health FSAs and HRAs must be amended to reflect this new requirement. A special rule gives cafeteria plan sponsors until June 30, 2011 to amend their plans to conform to the requirement, provided that the amendment is effective retroactively for expenses incurred after December 31, 2010 and the plan is administered in accordance with the requirement beginning January 1, 2011. Cafeteria plan sponsors could use the following language to amend their plans: "Notwithstanding anything herein to the contrary, expenses incurred for drugs or medicine (other than insulin) on or after January 1, 2011 are eligible for reimbursement only if accompanied by a prescription."

The OTC prescription requirement must also be communicated to employees. Plan sponsors should be sure that summary plan descriptions, claim and enrollment forms, and explanatory materials given to participants in HSAs and HRAs are revised to reflect the new rule. Many employers communicate these material changes to a group health plan for the coming year in open enrollment materials and include language to notify participants that the open enrollment materials also constitute a summary of material modification (SMM). This can be a timely and cost-effective way of communicating changes being implemented in the coming year.

If you have any questions about this topic, please contact your Conner Strong & Buckelew account representative toll-free at 1-877-861-3220.



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