



December 2, 2012

Revised New Jersey Local Finance Notice 2011-20R and FSA Administrative Expenses

On November 23, 2011, the New Jersey Division of Local Government Services issued a revised Local Finance [Notice 2011-20R](#) and [Notice 2011-34](#). Both contain important information concerning implementation of New Jersey's Chapter 78 health benefit reform matters. Notice 2011-20R replaces the original Notice 2011-20 issued in July. Parts of the Notice have been rewritten to provide greater clarity and supplemental information based on questions and concerns that surfaced after the initial Notice release. Notice 2011-34 summarizes the substantive changes to the Notice and notes that the Appendices are not changed from the original. Officials responsible for health benefit administration should review Notice 2011-20R in its entirety to ensure full understanding of the changes.

Conner Strong & Buckelew has been advised that there is only one material update/change. The change regards charging back the cost of administration to employees participating in a flexible spending account (FSA). The law was silent on the matter and so many groups presumed they could pass along the charge. With this updated Notice, we have been advised that it now appears clear that employers are not permitted to charge an employee for FSA administrative costs. The Notice (at page 10) states, "The law does not provide authority for the employer to charge employees for the service. However, any funds in an employee's FSA not used by the end of the plan year revert to the employer and may be used to cover or assist with the administrative costs. In addition, for every dollar that employees allocate to their FSA, the employer is able to reduce its own appropriation for its FICA tax payment responsibilities, as the employer will pay reduced taxes."

We understand that some are taking the position that the Notice language does not specifically take away an employer's right to charge for the FSA administrative fee. The contention is that the revised Notice simply states that the law does not provide a right for employers to charge employees for the fee, but it does not specifically state that an employer cannot charge the fee. Notice 2011-34 provides that "the law anticipates that the employer will bear the costs of providing the plan." Presumably this is a reference to the New Jersey law and not federal law regarding FSAs, as the federal law allows administrative fees for FSA claims processing to be taken from participant's FSA accounts as long as the fees are reasonable. Employers are advised to consult with their attorney before making a decision about their policy.

Please contact your Conner Strong & Buckelew or PERMA account representative toll free at 1-877-861-3220 if you need specific assistance on the law and its implementation. For a complete

list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



connerstrong.com



877-861-3220



news@connerstrong.com



[Change My Preferences](#)



INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS



[Click here to change your email preferences or unsubscribe from all communication.](#)