

June 2011

IMPORTANT DEADLINE APPROACHING FOR AMENDMENT OF FSAs TO COMPLY WITH RESTRICTIONS ON REIMBURSEMENT OF OVER-THE-COUNTER MEDICINES

This is a reminder that a cafeteria plan that contains an FSA which provides for reimbursement of over-the-counter medicines or drugs MUST be amended to restrict such reimbursement to prescribed drugs or insulin by June 30, 2011.

As discussed in a previous Client Alert, which can be read [here](#), the Patient Protection and Affordable Care Act has revised the definition of medical expenses which may be reimbursed on a tax-favored basis under an employer-provided health plan, including a health flexible spending account (“FSA”) and health reimbursement arrangement (“HRA”), as well as a Health Savings Account (“HSA”) and Archer Medical Savings Account (“MSA”). Effective January 1, 2011, the cost of an over-the-counter medicine or drug cannot be reimbursed from such tax-favored accounts unless a prescription is obtained (or the drug is insulin).

Although the new law applies to drugs purchased after December 31, 2010, an employer may amend its cafeteria plan to conform to the new law no later than June 30, 2011. The amendment must be retroactive to January 1, 2011. See IRS Notice 2010-59.

Additional Information

If you have any questions regarding this client alert, please contact [Diane Fuchs](#) or [Elisa Cawood](#). You may also contact the Womble Carlyle attorney with whom you usually work or one of our Employee Benefits attorneys listed on the following webpage:

[Womble Carlyle Sandridge & Rice Employee Benefits Lawyers](#)

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