

[Drug Reimbursement Amendment Required Soon](#)

6-1-2011 by April A. Goff

If you sponsor a cafeteria plan with a health care flexible spending account (FSA) or a health reimbursement arrangement (HRA), you must amend your plans by June 30, 2011 to provide that over-the-counter drugs, medications and biologicals purchased without a doctor's prescription are no longer reimbursable under the plan.

This requirement went into effect on January 1, 2011, as part of Health Care Reform, and you or your third-party administrator are probably already administering your plan in accordance with this rule. However many employers still have not formally amended their plans to reflect the change in the law. Although retroactive amendments are not generally permitted for cafeteria plans, the IRS has provided an exception for this change, but the amendment must be adopted no later than June 30, 2011.

The new law also impacts Health Savings Accounts (HSAs) and Archer Medical Savings Accounts (MSAs), which now require prescriptions in order for over-the-counter drugs, medications and biologicals to qualify as tax-free qualified medical expenses. Without a doctor's prescription, they will be nonqualified medical expenses that participants must include in their gross income and will be subject to a 20 percent excise tax. Employers who provide information to employees about HSAs and Archer MSAs should check the language of their communications to ensure that this information has been updated.

The Next Step

If you haven't formally amended your cafeteria or wrap plan document to reflect the changes in over-the-counter drug requirements, you should review your plan documents and adopt any necessary amendment by June 30, 2011. If you have questions about the required amendment, please contact April Goff (agoff@wnj.com or 616.752.2154) or any other member of Warner Norcross & Judd LLP's Employee Benefits Group.