

## **Cafeteria Plan Amendment For Over-The-Counter Drugs Due June 30, 2011 Under IRS Transition Rule**

June 20, 2011

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The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("Affordable Care Act") requires that medicine or drugs (other than insulin) be prescribed to qualify for reimbursement under employer provided accident and health plans including a health flexible spending account, health reimbursement arrangement, and health savings accounts. Effective January 1, 2011, over-the-counter (OTC) drugs are no longer reimbursable without a prescription.

Many plan sponsors amended their cafeteria plan documents at the end of 2010 to exclude OTC drugs without a prescription from their plan's definition of reimbursable expenses. However, those plan sponsors who have not yet amended their cafeteria plans have until June 30, 2011 to amend the plan to satisfy the new OTC drug requirements retroactive to January 1, 2011 under a special IRS transition rule. [See IRS Notice 2010-59](#).

If you have not amended your plan documents to comply with the OTC drug requirements and need assistance, please contact one of the attorneys in the Dinsmore & Shohl Compensation and Benefits Practice Group.