

JUNE 30, 2011 DEADLINE FOR CAFETERIA PLAN AMENDMENTS

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The Patient Protection and Affordable Care Act, enacted March 23, 2010, revises the definition of medical expenses as it relates to over-the-counter drugs for employer-provided accident and health plans, including health flexible spending arrangements (FSAs) and health reimbursement arrangements (HRAs), as well as the definition of qualified medical expenses for Health Savings Accounts (HSAs) and Archer Medical Savings Accounts (Archer MSAs).

In particular, such plans may no longer reimburse participants or directly pay for over-the-counter drugs (other than insulin), unless specifically prescribed by a medical professional. This change has been in effect since January 1, 2011, however, the IRS has indicated that it will permit plan sponsors to adopt amendments to their cafeteria plans retroactive to the beginning of the year, as long as such amendments are adopted no later than June 30, 2011 (regardless of the plan year of the cafeteria plan).

For most cafeteria plans, this amendment will be relatively straightforward. However, it is vital that the sponsor formally adopt the amendment on or before the June 30 deadline to prevent the possibility of adverse tax consequences to the sponsor and plan participants. Additionally, plan sponsors should note that the amendment may require modification of other materials, including summary plan descriptions and other employee communications.

If you have any questions on the information presented in this alert, please contact Stephen Bowers at 215.665.7283 or sbowers@cozen.com, Jay A. Dorsch at 215.665.4685 or jdorsch@cozen.com, Kathleen A. Drapeau at 212.908.1286 or kdrapeau@cozen.com.