

June 30, 2011 Deadline for Cafeteria Plan (FSA) Amendments

The health care reform law passed last year provides that certain employer health plans, including health flexible spending arrangements (FSAs) and health reimbursement arrangements (HRAs) cannot reimburse expenses incurred for over-the-counter drugs unless they are prescribed by a physician or are insulin.¹ See our prior Alert (in the section on 2011 changes) at <http://jaeckle.com/importantDatesHCR>. **Employers who sponsor FSAs may need to amend their plans by June 30, 2011 to comply with this new restriction.** (Whether an amendment is needed will depend on how the plan defines reimbursable expenses)

The restriction on reimbursement of over-the-counter drugs took effect as of January 1, 2011, or January 15, 2011 for medications purchased with debit cards. Normally, cafeteria plan amendments (including amendments to FSAs) may only be effective prospectively - that is, the amendment must be adopted before it takes effect. However, the IRS - in Notice 2010-59 - gave sponsors of FSAs an additional six months to adopt the necessary plan amendments to comply with this restriction. The six month extension expires on June 30, 2011. Specifically, cafeteria plan amendments to conform with the new restriction on reimbursement of over-the-counter drug expenses that are adopted by June 30, 2011, may be retroactively effective for expenses incurred after December 31, 2010, or after January 15, 2011 for debit card purchases.

A similar restriction applies to the reimbursement of expenses for over-the-counter medications under health savings accounts (HSAs) and Archer Medical Savings Accounts (MSAs).

If you have any questions about the new restriction or any other aspect of health care reform, please contact Robert W. Patterson at 716.843.3910 or rpatterson@jaeckle.com, or Michele O. Heffernan at 716.843.3850 or mheffernan@jaeckle.com.

Jaeckle Fleischmann & Mugel has posted a number of Alerts on the health care reform law in a special section of its website: <http://jaeckle.com/HealthCareReform>.

IRS Notice 2010-59 can be found here: <http://www.irs.gov/pub/irs-drop/n-10-59.pdf>.

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¹ Section 9003 of the Patient Protection and Affordable Care Act, which adds new Section 106(f) to the Internal Revenue Code.