

EMPLOYEE BENEFITS ALERT

DEADLINE LOOMING FOR WELFARE/CAFETERIA PLAN AMENDMENTS

Welfare / cafeteria plan sponsors should amend their plan documents, where necessary, to reflect the following changes made by the Patient Protection and Affordable Care Act of 2010 (“Affordable Care Act”).

Health FSAs & HRAs May Not Reimburse For Non-Prescribed Medicines and Drugs

Beginning January 1, 2011, health FSAs and HRAs may not reimburse participants for over-the-counter medicines and drugs (except insulin) unless the medicines or drugs are prescribed by a physician. Although this rule is effective beginning January 1, 2011, cafeteria plan health FSA provisions must be amended for this rule by June 30, 2011.

Coordination of Health FSA, HRA, and HSA Provisions with Age 26 Mandate

The Affordable Care Act requires group health plans to provide coverage for adult children of participants until the children reach age 26. Although this requirement may not directly require a plan amendment (e.g., many health FSAs are not subject to the Affordable Care Act), plan sponsors should review their plan documents to ensure that there are no unintended gaps in coverage and that their plan documents are being administered in accordance with their terms.

HSAs May Not Provide Tax-Free Reimbursement for Expenses Relating to Adult Children

Although the Affordable Care Act requires group health plans to provide coverage for adult children of participants until the children reach age 26, the Affordable Care Act does not provide a similar rule permitting tax-free HSA reimbursements for medical care expenses of such adult children. This means that although an adult child may be covered by a participant’s high deductible health plan until the child reaches age 26, the participant may not use HSA funds to pay deductible expenses for coverage provided to a child who is not considered a tax dependent (i.e., the old rules continue to apply).

Internal Claims and Appeals Process

The Affordable Care Act requires non-grandfathered group health plans to revise their internal claims and appeals process and adopt a new external appeals procedure. While the DOL and IRS have indicated that they will not enforce most of these requirements before July 1, 2011, the effective date for these changes is January 1, 2011 (for calendar year plans). Plan sponsors should ascertain whether those responsible for claims review have implemented, or are prepared to implement, these changes.

Action Items

- Review plan documents to determine whether any changes are required
- Amend documents, where necessary (cafeteria plans should be amended no later than June 30, 2011).
- Make sure those responsible for non-grandfathered group health plan claims are compliant with the new rules.

*The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact **Kathryn English** at 412.566.1226, **Michael Herzog** at 412.566.6130, **Sandra Mihok** at 412.566.1903, **Brandon Richards** at 412.566.1263, or **Paul Yenerall** at 412.566.1944.*