

Reminder: Section 125 Plans May Need To Be Amended by July 1

May 31, 2011

As discussed more fully in our September 28, 2010 client alert ([Changes on Over-the-Counter Drug Coverage Required Under Health Care Reform in 2011](#)) and mentioned again in our May 9, 2011 client alert (Health Reform Update: Recent Changes and Challenges to the Affordable Care Act), IRS Notice 2010-59 provides that over-the-counter medicines or drugs purchased without a prescription on or after January 1, 2011 (other than insulin) may no longer be paid for or reimbursed under account-based plans, such as health FSAs, HRAs, and HSAs.

The rules governing cafeteria plans generally require plan amendments to take effect on a prospective basis. However, Notice 2010-59 provides that notwithstanding the general rule against retroactive cafeteria plan amendments, an amendment to conform a cafeteria plan to the requirements of Notice 2010-59 that is adopted no later than June 30, 2011 may be made effective retroactively for expenses incurred after December 31, 2010 (or after January 15, 2011, as may be permitted for health FSA and HRA debit card purchases).

Please contact your Proskauer attorney or any member of our Health Care Reform Task Force should you have questions regarding this or any other aspect of health care reform.