LEGAL BRIEFS

What You Need to Know About Health

FSA and HRA Rule Changes

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Much has been written about the effect of the federal health-care reform laws passed in March 2010 on employer-provided health insurance. In the July 2010 "Legal Briefs" column, I wrote about some of the effects on health insurance. I now want to bring your attention to some impacts of health care reform on (a) health flexible spending arrangements (FSAs) funded by employee salary-reduction contributions under Section 125 cafeteria plans and (b) health reimbursement arrangements (HRAs) funded by employer contributions. Many veterinary medicine practices maintain health FSAs and HRAs to cover employee medical expenses that are not paid by insurance. This article summarizes the principal changes to the rules regarding health FSAs and HRAs.

1. **ADULT CHILDREN'S MEDICAL EXPENSES CAN BE REIMBURSED:** Effective March 30, 2010, health FSAs and HRAs may reimburse an employee for medical expenses incurred by his or her adult child through the end of the calendar year of the child's 26th birthday. The IRS has announced that, although employees normally cannot change their Section 125 cafeteria plan elections in the middle of a year, employers may let employees increase their health FSA elections and begin salary-reduction contributions to a health FSA to pay the qualifying expenses of such adult children during 2010, as long as the plan is amended by December 31, 2010 (retroactive to March 30, 2010). Employers should consider promptly amending their health FSAs and HRAs to permit reimbursement of qualifying expenses incurred by adult children. Caveat: Because Wisconsin tax law is not yet consistent with federal tax law regarding tax-free reimbursements of medical expenses incurred by adult children who are not dependents for tax purposes, the reimbursement amounts will have to be reported on Form W-2 (box 16) as taxable wages for Wisconsin purposes.

2. **OVER-THE-COUNTER DRUGS CANNOT BE REIMBURSED:** Effective January 1, 2011, health FSAs and HRAs can reimburse for a medicine or a drug only if it is (a) prescribed by a physician or (b) insulin. Therefore, over-the-counter drugs such as aspirin will no longer be reimbursable without a prescription.

3. **EMPLOYEES MUST BE NOTIFIED OF GRANDFATHERED-PLAN STATUS:** Most employers will want their HRAs (as employer-funded health plans) to be "grandfathered" and thus avoid being subject to additional rules, such as a rule that non-grandfathered self-insured health plans must contract with at least three independent review organizations to resolve (on a rotating basis) employee appeals of reimbursement-claim denials. If an HRA is grandfathered, then materials informing employees about the plan (such as the "summary plan description") are required to notify employees that the plan is grandfathered. The federal government has provided model language for the notice.

4. **REIMBURSEMENT CANNOT EXCEED $2,500:** Currently, employers can permit employees to make unlimited amounts of salary-reduction contributions to health FSAs (and thereby obtain unlimited amounts of reimbursements). Effective January 1, 2013, health FSAs cannot reimburse an employee more than $2,500 per calendar year. After 2013, the $2,500 will be indexed for inflation.

5. **FORMS W-2 MUST INCLUDE MORE INFORMATION:** Beginning with Forms W-2 for 2012 (issued in January 2013), employers must report the aggregate amounts of employer contributions to health FSAs or HRAs, excluding employee salary-reduction contributions.