



**BURNING
BENEFITS
NEWS**

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A S S O C I A T E S**

December 17, 2010

**IN THIS ISSUE: 2010 HEALTH CARE REFORM AMENDMENTS FOR
CAFETERIA PLANS and HEALTH CARE PLANS BY 12-31-10**

‘Twas the week before Christmas, and many employers ask, what do we REALLY need to do by year-end to comply with Health Care Reform?

- **Do we need to amend our health care plan by December 31, 2010?**
- **Do we need to amend our cafeteria plan by December 31, 2010?**
- **What notices are required to be sent out by December 31, 2010?**

If you maintain your health care plan and/or cafeteria plan on a calendar year basis, the answer is “YES” to the first two questions above, except for the amendment prohibiting reimbursement of Over-the-Counter Drugs for cafeteria plans, which may be deferred until June 30, 2011. As for notices, if you are a grandfathered plan you need to notify employees of such status, and if you had any children under age 26 who were denied or dropped from coverage, or if you had any employees dropped from coverage due to lifetime limits, then you need to provide notice to those employees of special enrollment opportunities.

This does not mean that the entire health care plan or cafeteria plan has to be amended and restated by December 31, 2010. A standalone amendment will suffice, and restatement of the plan document can take place at a later date.

Title I of ERISA does not generally permit the retroactive amendment of covered plans. So, health care plans with calendar year ends that are governed by ERISA do require amendment by December 31, 2010 for the Health Care Reform changes that become effective January 1, 2011. At some point, Health Care Reform also requires that employees be notified of material changes at least 60 days prior to the effective date. We think that this 60-day notice period will become effective in connection with the new 4-page uniform summary that is mandated by Health Care Reform — which is some time in 2012 or 2013.

Cafeteria plans are not technically ERISA plans, but are subject to tax rules. IRS regulations generally prohibit retroactive amendment as well. However, the IRS has announced that cafeteria plan changes prohibiting the reimbursement of over-the-counter drugs can be adopted, retroactive to January 1, 2011, as long as the amendment is made by June 30, 2011.

You will want to have an adopting resolution evidencing execution of the amendment by December 31, 2010. You may also want to prepare a Summary of Material Modifications (SMM) if you maintain a Summary Plan Description (SPD) for your cafeteria plan. (Cafeteria plan documents are required by the Internal Revenue Code, and are not generally considered to be ERISA plans, which require SPDs and SMMs. However, many employers maintain similar documents for their cafeteria plans to help communicate the terms of the cafeteria plan to its employees.)

Please let us know if you would like SKA to assist in any last minute needs for your health care and cafeteria plans, or if you have any questions or would like further information on these issues.

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