

Health Care Reform Bill Created Changes to Over-The-Counter (OTC) Drug Eligibility Rules for Reimbursement through FSAs and HRAs.

On March 23, 2010, President Barack Obama signed into law a massive piece of legislation aimed at reforming the nation's health care system. The new law, called the Patient Protection and Affordable Care Act (PPACA), contains numerous provisions, many of which will not go into effect for several years. However, an important provision that will go into effect on January 1, 2011 impacts how health flexible spending account (FSA) and health reimbursement account (HRA) participants are reimbursed for certain types of over-the-counter (OTC) health care expenses.

Summary of the new OTC law:

PPACA mandates that expenses incurred for OTC medicines and drugs (with the exception of insulin) will not be eligible for reimbursement under a health FSA or HRA unless you have a prescription. This legislation affects the eligibility and reimbursement of OTC Medications or Drugs only. It does not affect medications that legally require a prescription to be dispensed (including co-pay prescriptions or over-the-counter items that do not fall in the medicines or drug category, such as bandages, crutches, etc).

Effective Date:

The new OTC law will apply to all purchases made on or after January 1, 2011. The new law will apply to the tax year, not the plan year, regardless of plan start-date or plan grace-period extensions.

What is considered an OTC "medicine or drug"?

The IRS did not provide specific guidance regarding what is to be considered a medicine or drug under this new law. Nevertheless, at this time we can be reasonably certain that certain categories of items will be considered medicines/drugs and therefore will require a prescription effective January 1, 2011 in order to receive reimbursement from an FSA or HRA. These include: allergy and sinus medications; cough, cold and flu medications; digestive aids; pain relievers; sleep aids; and stomach remedies.

New Claims Reimbursement Procedures:

In the latest statement released by the IRS, a Letter of Medical Necessity will no longer be an acceptable form of substantiation for over-the-counter medications or drugs, such as aspirin or cough syrup, that are used to treat a medical condition. The IRS notice states that "a 'prescription' means a written or electronic order for a medicine or drug that meets the legal requirements of a prescription....and that is issued by a an individual who is legally authorized to issue a prescription..." Therefore, until further guidance is provided, we interpret this notice to mean that a claim for reimbursement for over-the-counter medicines or drugs MUST be accompanied by a physician's prescription to be approved for reimbursement under an FSA, HRA or HSA.

New OTC Reimbursement Guidelines will impact ability to use Debit Cards:

Beginning January 1, 2011 you will no longer be able to use an FSA/HRA debit card to pay for over-the-counter medicines and drugs. Additionally, you will need to obtain a prescription from your physician in order to receive a reimbursement from your FSA/HRA for these items. That means that you will have to pay for these items out-of-pocket, and then file a manual claim along with a copy of the prescription in order to be reimbursed from your FSA or HRA.

When can I use my FSA/HRA debit card?

These new rules do not apply to OTC items that are not considered medicines or drugs. Plan members may still purchase a wide range of other medical expenses with their debit card after January, 1, 2011, including:

- Medical Supplies, such as bandages, thermometers, crutches, and wrist supports
- Diabetic Testing supplies and aids including Insulin
- Vision Exams, Eye Glasses, Contact Lenses and Supplies
- Doctor and Dentist Co-pays
- Health Insurance Deductibles
- X-rays
- Routine Physicals

These new rules do not apply for medications that legally require a prescription, so you will be able to use your Debit Card to pay for regular prescriptions just as you have in the past. You will also be able to use your debit card to pay for doctor visits, hospital visits, and dental and vision care, provided such items are covered under your plan.