



September 17, 2010

New Guidance Issued for Over-the-Counter Drug and Medicine Reimbursements



The Internal Revenue Service and the Department of Health and Human Services (HHS) released updated guidance on a provision of the Patient Protection and Affordable Care Act (PPACA) pertaining to over-the-counter (OTC) drug and medicine reimbursements for FSAs and HRAs.

The Internal Revenue Service issued [Notice 2010-59](#) and [Revenue Ruling 2010-23](#), which provide guidance reflecting the PPACA's statutory changes effective January 1, 2011 with respect to medicine and drug reimbursements under FSAs and HRAs. Under the new standard, the cost of an over-the-counter medicine or drug cannot be reimbursed from the account unless a prescription is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eyeglasses, contact lenses, co-pays and deductibles. The new standard applies only to purchases made on or after January 1, 2011. Therefore, claims for medicines or drugs purchased without a prescription in 2010 can still be reimbursed in 2011, if allowed by the employer's plan.

A similar rule goes into effect on January 1, 2011 for Health Savings Accounts (HSAs), and Archer Medical Savings Accounts (Archer MSAs).

The IRS developed a [questions and answers section](#) on their website concerning these provisions. Attached is a copy of the Q&A for your convenience.

If you have specific questions about how this will impact your employees and their reimbursement plans, please contact your Unison Benefit Consultant.

Q & A from www.IRS.gov

Questions and Answers on Over-the-Counter Medicines and Drugs

Q. How are the rules changing for reimbursing the cost of over-the-counter medicines and drugs from health flexible spending arrangements (health FSAs) and health reimbursement arrangements (HRAs)?

A. Section 9003 of the Affordable Care Act established a new uniform standard for medical expenses. Effective Jan. 1, 2011, distributions from health FSAs and HRAs will be allowed to reimburse the cost of over-the-counter medicines or drugs only if they are purchased with a prescription. This new rule does not apply to reimbursements for the cost of insulin, which will continue to be permitted, even if purchased without a prescription.

Q. How are the rules changing for distributions from health savings accounts (HSAs) and Archer Medical Savings Accounts (Archer MSAs) that are used to reimburse the cost of over-the-counter medicines and drugs?

A. In accordance with Section 9003 of the Affordable Care Act, only prescribed medicines or drugs (including over-the-counter medicines and drugs that are prescribed) and insulin (even if purchased without a prescription) will be considered qualifying medical expenses and subject to preferred tax treatment.

Q. When will the changes become effective?

A. The changes are effective for purchases of over-the-counter medicines and drugs without a prescription after Dec. 31, 2010. The changes do not affect purchases of over-the-counter medicines and drugs in 2010, even if they are reimbursed after Dec. 31, 2010.

Q. How do I prove that I have purchased an over-the-counter medicine or drug with a prescription so that I can get reimbursed from my employer's health FSA or an HRA?

A. If your employer's health FSA or HRA reimburses these expenses, you would provide the prescription (or a copy of the prescription or another item showing that a prescription for the item has been issued) and the customer receipt (or similar third-party documentation showing the date of the sale and the amount of the charge). For example, documentation could consist of a customer receipt issued by a pharmacy that reflects the date of sale and the amount of the charge, along with a copy of the prescription; or it could consist of a customer receipt that identifies the name of the purchaser (or the name of the person for whom the prescription applies), the date and amount of the purchase and an Rx number.

Q. How does this change affect over-the-counter medical devices and supplies?

A. The new rule does not apply to items for medical care that are not medicines or drugs. Thus, equipment such as crutches, supplies such as bandages, and diagnostic devices such as blood sugar test kits will still qualify for reimbursement by a health FSA or HRA if purchased after Dec. 31, 2010, and a distribution from an HSA or Archer MSA for the cost of such items will still be tax-free, regardless of whether the items are purchased using a prescription.

Q. Will I need a prescription to use my health FSA, HRA, HSA or Archer MSA funds for insulin purchases after Dec. 31, 2010?

A. No. You can continue to use your health FSA, HRA, HSA or Archer MSA funds to purchase insulin without a prescription after Dec. 31, 2010.

Q. I use health FSA funds for my co-pays and deductibles. Will I still be able to reimburse those expenses with health FSA funds after Dec. 31, 2010?

A. Yes. Co-pays and deductibles continue to be reimbursable from a health FSA after Dec. 31, 2010. Similarly, funds from an HRA can continue to be used for these expenses and a distribution from an HSA or Archer MSA for these purposes will be tax-free.

Q. My company gives me two extra months beyond the end of the year to submit claims for health FSA expenses incurred during the year. What happens if I purchase over-the-counter medicines or drugs without a prescription in 2010 but do not submit the claim for those expenses until January 2011? Will they qualify for reimbursement?

A. Yes. The new restriction on plan reimbursements for the cost of over-the-counter medicines or drugs without a prescription applies only to purchases that are made after 2010.

Q. My company's health FSA includes a provision for a grace period, so that if I don't spend all of the money in my health FSA by Dec. 31 in a given year, I can still use the amount left in my health FSA at the end of the year to reimburse expenses I incur during the first 2 ½ months of the following year. If I buy over-the-counter medicines or drugs without a prescription during the 2 ½ month grace period of 2011, can I still use the amount left in my health FSA at the end of 2010 to reimburse those expenses?

A. No. The change applies to purchases made on or after Jan. 1, 2011. Thus, even if your employer's plan includes the 2 ½ month grace period provision, the cost of over-the-counter medicines and drugs purchased without a prescription during the first 2 ½ months of 2011 will not be eligible to be reimbursed by a health FSA.

Q. If my plan issues a debit or credit card that I use to pay for over-the-counter medicines or drugs, will I still be able to use the card to purchase over the counter medicines or drugs after Dec. 31, 2010?

A. Generally, no. The plan must ensure that the card is reprogrammed no later than Jan. 15, 2011, so that the card can no longer be used to purchase over-the-counter medicines or drugs. For further information, see IRS [Notice 2010-59](#). If your employer's plan reimburses expenses for over-the-counter medicines and drugs, you can seek reimbursement for these expenses by presenting the information described above in the answer to the question "How do I prove that I have purchased an over-the-counter medicine or drug with a prescription so that I can get reimbursed from my employer's health FSA or an HRA?"

Q. If I use HSA or Archer MSA funds to reimburse the cost of over-the-counter medicines or drugs purchased after Dec. 31, 2010 without a prescription, what taxes will I incur?

A. If you have an HSA or Archer MSA, the amount of the distribution for expenses that are not qualifying medical expenses will be includable in your gross income and subject to an additional tax of 20%.