

OTC Medicines and Drugs: Changes Effective January 1, 2011

What Changed?

In March, 2010, Congress passed H.R. 3590, the Patient Protection and Affordable Care Act. Section 9003 of that legislation amended previous legislated definitions of which over-the-counter (OTC) healthcare expenses are eligible for tax-advantaged benefits plans like FSAs, HRAs, and HSAs. The language made the current definition very clear:

“...reimbursement for expenses incurred for a medicine or drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”

What Does This Mean to Me?

Interpreted literally and as it pertains to your Medical FSA elections, this legislation is clarified as follows:

- OTC medicines and drugs (except insulin) are FSA ineligible as of January 1, 2011, unless prescribed by a doctor.
- Documentation required for reimbursement will include a prescription from your physician.
- OTC health-related supplies continue to be FSA eligible after December 31, 2010.

If you require a medicine or drug for a medical condition you will need to obtain a prescription for such from your healthcare provider. This physician authorization will then render the expense(s) eligible under your Medical FSA Plan. This change for OTCs will likely affect only a small percentage of your medical FSA reimbursements.



How is “Prescription” Defined?

IRS Notice 2010-59 defines “prescription” as (a) a written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and (b) that is issued by an individual who is legally authorized to issue a prescription in that state.

To clarify, the prescription must:

- Meet the legal requirements for a prescription within the state the expense is purchased.
- Have been issued by an individual legally authorized to prescribe the medication.

Important Points

- Over-the-counter (OTC) medicines and drugs purchased after December 31, 2010, will not be reimbursed through a Medical FSA without a valid prescription.
- OTC medical supplies continue as eligible after December 31, 2010.
- Only a small percentage of your total FSA election amount should be affected.

SEE PAGE 2 FOR EXAMPLES

What Should I Do During My FSA Reenrollment?

This change for OTC medicines is expected to affect only a small percentage of your medical FSA reimbursements. During your open enrollment period, you may change your election. Review your costs for OTC medicines in prior years and make your new election accordingly.

What Should I Do For the Remainder of This Plan Year?

The new rules go into affect December 31, 2010. Therefore, if you expect to make OTC medicine or drug purchases, we encourage you to make those purchases before December 31, 2010. If you incur OTC expenses after December 31, 2010, you may need to obtain a prescription from your physician.

How Does This Change Affect Debit Card Purchases?

If you use your Debit Card be especially aware of this change after December 31, 2010. At that time, some previously approved medicines and drugs will no longer be able to be purchased with the card. While inconvenient at the point-of-purchase, the expense may be considered eligible under your Medical FSA account if you have retained a prescription from your physician for the item(s). Therefore, you may use a different method to request reimbursement for the expense after point-of-purchase. You may submit these expenses, utilizing the Acclaim Benefits Reimbursement Request Form, via fax or mail.

REMEMBER! This change applies only to items defined as medicines or drugs (except insulin). Medical supplies that fall under the IAS auto-substantiation guidelines will remain eligible after December 31, 2010. You may continue to pay for these items at point-of-purchase using your Debit Card or by using a Reimbursement Request Form.

Examples of Expense Types

Items that will require a prescription AFTER December 31, 2010 include the following:

Acid Controllers	Anti-Fungal/Anti-Itch	Cough, Cold and Flu
Anti-Itch and Insect Bite	Respiratory Treatments	Laxatives
Digestive Aids	Antibiotic Products	Stomach Remedies
Pain Relief	Rash Ointments/Creams	Hemorrhoidal Medications
Allergy and Sinus	Sleep Aids and Sedatives	
Antiparasitic Treatments	Anti-Gas and Diarrheals	

Items that will remain eligible and need no physician authorization include the following:

Bandages & First Aid	Denture Products	Incontinence Products
Contact Lens Solution	Hot, Cold & Steam Packs	Splints, Supports & Braces
Heating Pads	Pregnancy & Fertility Kits	Canes & Walkers
Orthopedic Aids	Blood Pressure Kits	Durable Medical Equipment
Birth Control Products	Diabetes Testing Supplies	Insulin



Thermometers
Contact Lenses

Hearing Aid Batteries
Nebulizers

Wheelchair & Accessories