



the Adminute™

Reimbursement Eligibility of Over-The-Counter (OTC) Medicines Through Health Care Flexible Spending Arrangements (FSAs) and Health Reimbursement Arrangements (HRAs)

General Principle: Since 2003, the federal government has administratively permitted FSAs and HRAs to reimburse plan participants for out-of-pocket costs incurred in purchasing over-the-counter medicines.¹

The Issue: The recently enacted federal Patient Protection and Affordable Care Act (PPACA)² statutorily overruled the U.S. Treasury Department's prior administrative rule and mandated that effective January 1, 2011, **FSAs and HRAs may no longer reimburse participants for over-the-counter medicines purchased without a doctor's prescription.** This rule goes into effect on January 1, 2011 regardless of an FSA or HRA's administrative Plan Year.

What This Means:

1. The rule applies only to drugs, medicines and other biologicals such as vitamins and minerals. The rule does not apply to insulin or medical supplies.
2. Plans may reimburse participants for expenses incurred prior to January 1, 2011 even if the claim for reimbursement is filed after that date.
3. The new law creates an exception for over-the-counter medications that are purchased with a prescription. The requirements for purchase pursuant to a prescription are determined by the laws of the state in which the purchase is made. Only purchases that fully comply with those requirements will be considered to fall within the exception. A general note from a health care provider will not qualify the expense for reimbursement.³
4. Participants in non-calendar year Health FSAs may not modify their elections based on this change in the law.

¹ Revenue Ruling 2003-102, 2003-38 Internal Revenue Bulletin 559 (September 3, 2003).

² Pub. L. No. 111-148 (2010)

³ IRS Notice 2010-59 (September 3, 2010). Available online at <http://www.irs.gov/pub/irs-drop/rr-10-23.pdf>.

Admin America's Recommendations:

Employers that offer FSAs or HRAs that currently allow participants to be reimbursed for the out-of-pocket expenses related to OTC medicines should begin educating their participants as to the change and how it will affect participants. While Admin America will also endeavor to make Plan Participants aware of these changes, we strongly believe that this message needs to be delivered through several channels to prevent any Participants from being needlessly unaware of the change.

Participants should be advised as soon as practical:

1. of the deadline to purchase OTC medicines under their plan;
2. that claims for OTC medicines may be submitted subsequent to December 31, 2010 so long as the expense was incurred prior to the end of the year;
3. OTC medicine expenses incurred during 2011 will not be reimbursed even if the participant is within a plan's grace period for the 2010 Plan Year.
4. that the exception for purchases made pursuant to a prescription has been rigorously defined by the IRS and excludes general authorizations or recommendations made by health care providers; and
5. mid-year changes to FSA elections are not legally available based on this change in the law.

Additional Suggestions:

Admin America suggests that Plan Sponsors forward this communication to all FSA and affected HRA plan participants. Alternatively, Plan Sponsors can e-mail affected employees with a link to the copy of this document posted on Admin America's website.

Admin America will continue to monitor any federal guidance related to reimbursement of OTC medicines and will update our clients and affiliated health insurance professionals as developments warrant. Future notifications will be made via e-mail and through Admin America's website at www.adminamerica.com. Admin America also posts periodic updates to our Facebook group. Any Facebook user wishing to join the group in order to receive our updates is welcome.