



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. Based on the current relevant mid-Plan Year change of election rules, Participants who have made elections for Plan Year's that stretch into 2011 in anticipation of using funds for the purchase of over-the-counter medications during 2011 may not change their elections based on this statutory change.

There are several unanswered questions about the application of this statutory change that are expected to be addressed through the regulation process or through some other administrative rule making. Among these unresolved issues are:

1. the ability of plans to reimburse expenses incurred during 2010 for which claims are not filed until 2011;
2. the exact requirements of the "prescription" that will enable OTC medications to be eligible for reimbursement;
3. who qualifies as a "Doctor" for the purposes of issuing a sufficient prescription; and
4. will the Treasury Department modify the mid-year Change of Election Rules to allow individuals who made elections affected by the statutory change to modify their elections.

Admin America expects the majority of these questions to be resolved during the fall of 2010.

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

² Pub. L. No. 111-148 (2010)

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 all OTC medicine purchases should be submitted prior to December 31, 2010 unless further information is provided;
3. at this time, mid year changes to their FSA elections are not legally available based on this change in the law.

As any of the above mentioned unanswered questions are resolved, Plan Sponsors should make their affected employees of the latest clarifications. Admin America will provide our clients and our insurance professional partners with resources to notify the appropriate individuals.

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.