

eNewsFlash: Important update regarding FSA, HRA, and HSA eligibility of Over-the-Counter (OTC) Medicines and Drugs

On September 3, 2010, the IRS issued additional clarification on how over-the-counter (OTC) **medications and drugs** will be reimbursed through Flexible Spending Accounts (FSAs), Health Reimbursement Arrangements (HRAs), and Health Savings Accounts (HSAs) as a result of the new health care reform legislation.

The IRS notice states that *“beginning after December 31, 2010, expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such a medicine or drug is a prescribed drug (determined without regard to whether such a drug is available without a prescription) or is insulin.”*

What Does it Mean?

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.

Below is a summary of these important changes and how they will affect FSAs, HRAs, and HSAs starting January 1, 2011 (**regardless of plan start-date or plan grace-period extensions**).

Doctor’s Prescription Required for Reimbursement of OTC Medicines or Drugs

In the latest statement released by the IRS, a Letter of Medical Necessity is no longer 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, eflex interprets this notice to mean that OTC **medicines or drugs** MUST be accompanied by a physician’s prescription to be eligible for reimbursement under an FSA, HRA or HSA.

Debit Cards Can No Longer Be Used for OTC Medicines or Drugs starting January 1, 2011

The IIAS* system will not be able to recognize which OTC medications have been prescribed and which have not. Therefore, participants will be required by the IRS to submit manual claims and supporting documentation either online, by fax or mail for all prescribed OTC medicines or drugs.

**IIAS is a point-of-sale technology and inventory system approved by the IRS to track the eligibility of purchases made by debit cards that are issued in conjunction with Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs) and Health Reimbursement Accounts (HRAs).*

Debit Cards Can Still Be Used for Pharmacy Prescriptions and other Medical Expenses

The good news is: **These rules do not apply to medications that legally require a prescription to be dispensed (e.g., antibiotics or pain medications) or OTC items that are not medicines or drugs.** Participants may still purchase a wide range of medical expenses with their debit card after January 1, 2011, including:

- Medical Supplies, such as bandages, crutches, and wrist supports.
- Vision Exams, Eye Glasses, Contact Lenses and Supplies
- Doctor and Dentist Co-pays
- Health Insurance Deductibles
- X-rays
- Routine Physicals

- Laser Eye Surgery
- Orthodontia
- Diabetic Supplies (*note: Insulin does not require a prescription to remain an eligible expense*)

IRS Will Accept Only Two Forms of Substantiation

The IRS indicates that there are only two acceptable forms of documentation that will qualify a “prescribed” OTC item as an eligible expense under an FSA, HRA or HSA:

- 1) A customer receipt indicating the name of the purchaser (or the name of the person for which the prescription applies) the date, the amount of the purchase and an **Rx number**.
- 2) If the customer receipt does not indicate an Rx number, then a copy of the doctor’s prescription must accompany the customer receipt when submitting the claim.

Please note: Because OTC medications can be purchased “off-the-shelf”, participants may choose to have their OTC medications dispensed through the pharmacy (thereby receiving an Rx number). Or, according to the latest IRS release, participants may purchase their medicines over the counter and submit a manual claim with their receipt and a copy of their prescription. In either case, the prescription should include the name of the prescribed OTC item, the date the prescription begins and the number of refills allowed, if applicable.

Grace Period through January 15, 2011

To alleviate some of the confusion surrounding the new rules, the IRS has granted a two-week extension **through January 15, 2011**, that prevents them from challenging the purchase of an OTC item using a debit card. Please be aware that on and after January 16, 2011, debit card purchases **for prescribed OTC medicines or drugs** can no longer be reimbursed, according to the IRS. Instead, these claims must be submitted manually.

At eflex, we understand that the new Health Care Reform laws can be confusing. We are committed to providing you with timely updates as they become available and we will continue to assist you with this transition as we enter the New Year.

If you have any questions or concerns, please do not hesitate to contact your eflex Sales Representative at efgsales@eflexgroup.com or you may contact a Customer Care Representative at customercare@eflexgroup.com. You may also reach us at anytime by calling our toll free number: **877-933-3539**.