

Health Care Reform Update

Most Over-the-Counter Medical Expenses No Longer Eligible for Reimbursement

Effective January 1, 2011 (regardless of an employer's plan year and regardless of a plan's grandfathered status), *over-the-counter ("OTC") drugs and medicines will not be eligible for reimbursement from health FSAs, HSAs, Archer MSAs or HRAs, unless prescribed by a doctor.* For example, items such as Advil, Tylenol, Benadryl and Claritin will not be reimbursed through a health FSA, HRA, HSA or Archer MSA unless the participant has a prescription from a doctor.

There is an exception for insulin; it will remain eligible as a tax-free reimbursement without a prescription.

This change will impact all plans beginning January 1, 2011. Thus, employers with a plan year that begins after January 1, 2010 (e.g. May 1, 2010 – April 30, 2011) will want to communicate this change to its employees, whether in a separate communication or during open enrollment, because the change will impact participants mid-year.

It appears that the effective date focuses on when the expense was incurred. Expenses other than those for insulin incurred on and after January 1, 2011 will require a doctor's prescription. Expenses incurred prior to January 1, 2011 will not. For example, a participant could incur an OTC drug expense on December 31, 2010 and submit the expense in March 2011 under the plan's run-out rule. It appears this expense could still be reimbursed without a prescription, as it was incurred prior to January 1, 2011. However, more guidance is needed to further clarify these timing issues.

It is expected that any OTC expenses will not be eligible for reimbursement using a medical expense reimbursement card (i.e. "debit card") after January 1, 2011 because of the prescription requirement. Participants likely will need to purchase OTC drugs using another form of payment and then submit a reimbursement request along with the prescription for the OTC item.

ACTION ITEMS

While further guidance is needed, it is expected that employers will need to:

- **Communicate the change to affected participants prior to January 1, 2011 (for example, include this information in open enrollment materials or provide a separate memo discussing the change);**
- **Update plan documents and summary plan descriptions to reflect changes in the treatment of OTC products;**
- **Discuss this new limitation with any third-party administrator, including how these changes will impact debit card utilization (if applicable); and**
- **Continue to monitor guidance as it develops.**



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