

Flex Plan News

Benefits News for Administrators

November 2010

Details Regarding New OTC Drug Rule for 2011

By now you are aware of the new OTC drug rule for 2011 established by the Health Care Reform law and impacting Health FSAs, HRAs, and HSAs. As your plan service provider, we have been working diligently to ensure compliance with the rule and effective communication with participants. This is an update on what we are doing as well as the details of the rule heading toward the 1/1 effective date.

What we have done and are doing regarding the new OTC drug rule:

- (1) Enrollment Update insert added to all Enrollment Guides distributed since Spring to renewing plans;
- (2) News and updates posted on ProBenefits.com for participants and administrators;
- (3) Email sent to all active participants in late October with full details (*copy included on next page*);
- (4) Notice added to all FSA Wake-Up Notices (sent 60-90 days prior to end of plan year);
- (5) New Reimbursable Expenses page for 2011 Enrollment Guides and ProBenefits.com (*linked from participant email on next page & also attached as page 4*);
- (6) Continued customer service with participants, including info and advice regarding the new rule; and
- (7) On December 9th, we will host a webinar for company administrators who would like to learn more about the OTC drug rule and how it will impact participants after January 1. You will receive an invitation soon with more details.

We are aware that the OTC rule will be a significant change for participants, and we are prepared to deal with questions and confusion in the new year. We will do our best to communicate effectively with participants and be as helpful as possible. If we can help you as you work with your employees, let us know. Our December 9th webinar will be a short session on the specifics of the rule and everything you as the administrator need to know.

We acknowledge that the new rule is not ideal. We and others lobbied against this rule, but in the end it was a “pay for” to offset significant Health Reform expenditures. We as FSA participants enjoy the convenience of having OTC drugs reimbursed through our FSAs. We also enjoy the comfort of knowing OTC drugs are eligible in case we need to spend our balances at year end to avoid the IRS “Use-or-Lose” rule. However, the good news is that the impact of the new rule should be less than it appears. *First, the new rule only applies to OTC drugs or medicines; it does not apply to regular OTC items.* Any OTC item that is not a drug or medicine is still fully reimbursable without a prescription by Flex Card auto-adjudication or by paper claim with documentation. Reimbursable OTC items include contact lens solution, band aids, blood pressure monitors, sunscreen with qualifying SPF, etc. *Second, statistics show that our FSA dollars are not spent on OTC drugs.* Our research shows that only about 3-4% of all FSA expenditures are for OTC drugs. In reality, we spend FSA funds on doctor’s visits, prescriptions, deductible expenses, vision expenses, and dental expenses, and nearly all of us will continue to quickly and easily spend our FSA dollars without OTC drugs. As a result, the new rule should not affect the value and tax savings of FSA plans for participants or employers. *Finally, OTC drugs will remain eligible for reimbursement with a prescription.* A formal prescription from a physician will be required (good for up to one year), and the prescription must indicate that the OTC drug is being recommended for

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treatment of a specific medical condition. For additional details, here is a copy of the email sent to all active participants:

[Copy of October Email Sent To Active Participants \(with full explanation of rule\):](#)

Important change for Flexible Spending Accounts, Health Reimbursement Arrangements, and Health Savings Accounts: OTC Medications No Longer Reimbursable Without a Prescription after 12/31/2010

What has changed?

In March 2010, Congress passed the health care reform law known as the Patient Protection and Affordable Care Act (“PPACA”). The new law requires a prescription for FSA reimbursement of over-the-counter medications and drugs (including Tylenol, Advil, Claritin, and cough medicines). The change takes effect on January 1, 2011 for all plans, regardless of when your particular plan may renew. This change also affects all Health Savings Accounts (HSAs), Medical Savings Accounts (MSAs), and Health Reimbursement Arrangements (HRAs). Please be mindful of this change as your current plan year ends and you make your election choices for the new plan year.

Note: The new rule does not affect non-drug over-the-counter items or insulin, all of which are still fully reimbursable without a prescription. The non-drug over-the-counter items still reimbursable without a prescription include bandages, contact lens solution, diagnostic devices, and many others.

How do I submit my over-the-counter medicines or drugs with a prescription so that I can get reimbursed from my Health FSA after 1/1/11?

You should provide (1) a copy of the prescription, (2) receipt or valid documentation for the over-the-counter item(s) purchased, and (3) a properly completed Claim Form.

If my plan offers the Flex Card, can I use the Flex Card to purchase over-the-counter drugs after 12/31/10?

No. The IRS has issued guidance stating plans must ensure that the Flex Card and related systems are reprogrammed so that the card can no longer be used to purchase over-the-counter medicines or drugs beginning 1/1/11. The Flex Card will remain available for use at eligible healthcare providers and IIAS merchants for other eligible items (including prescription drugs and non-drug over-the-counter items).

How does this change affect over-the-counter medical devices and supplies?

As noted above, the new rule does not apply to items for medical care that are not medicines or drugs. Medical items, supplies, and equipment that are available over-the-counter and are not drugs will continue to qualify for reimbursement without a prescription. These items include, but are not limited to, crutches, bandages, contact lens, diagnostic devices, and many others.

I currently use my Health FSA for reimbursement of co-pays, deductibles, prescription drugs, and dental and vision expenses. Will I still be able to be reimbursed for those expenses from my Health FSA after 12/31/10?

Absolutely. The change to over-the-counter drugs is the only change affecting Health FSAs on 1/1/11. All other eligible Health FSA expenses continue to be fully reimbursable. There is no change affecting prescription drugs, co-pays, deductibles, or dental or vision expenses. Even with this change, the Health FSA remains a significant and effective tool for you to save valuable tax dollars on your out-of-pocket medical expenses.

For a printable PDF listing of eligible expenses, [click here](#).

If you have any questions about what expenses are eligible for reimbursement by the Health FSA or how this change affects you, you may contact us at any time.

Again, we continue to work diligently on issues related to the new OTC drug rule. If you have any questions or we can assist you in any way, let us know.

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Update on ProBenefits COBRA Administration

ProBenefits COBRA administration is now two years old and growing rapidly. We are currently administering COBRA for over 50 employers ranging in size from 20 to 700. This service is in addition to our FSA, HRA, and POP administration and is designed to provide another level of plan compliance and support for employers.

ProBenefits COBRA features an automated web product, mailing of all applicable notices to qualified beneficiaries, premium billing and collection, and dedicated client service and compliance assistance. Our fees are very competitive and represent a cost-effective solution for employers. Our goal is to provide a compliant solution for employers seeking to fulfill the strict COBRA requirements for all sponsored group health plans. To achieve that goal, we have paired an advanced COBRA administrative product with the ProBenefits model of client service and compliance support.

For more info or a quote for COBRA administration, contact us or discuss with your benefits advisor.

New Participant Web Videos Available

We have two new web videos available for participants. These include: *“How does the Flex Card work?”* (runtime: 2 minutes), and *“Why do I need to submit documentation for my Flex Card purchase?”* (runtime: 30 seconds). Both are linked on our website and are also available on our YouTube channel at www.YouTube.com/ProBenefits. If your plan utilizes the Flex Card, these will be helpful to your participants, so we want you to be aware of them. If your plan does not utilize the Flex Card, let us know if you would like more info. There is no additional monthly or annual fee for the Flex Card, and the card has significant impact on plan participation and tax savings.

We will soon release our third video – a full explanation of FSAs for participants (approximately 10 minutes runtime). We are excited about this new tool as a way to reach remote participants and provide our clients with an additional way to easily and effectively share the benefits of the FSA program. We will have more news on this FSA video soon.

***Your Question Answered:* “Other than the OTC drug rule, are there any other Health Reform changes that will affect our benefit plans in 2011?”**

The OTC drug rule is the primary change affecting benefit plans in 2011. The only other changes of note are:

- (1) New age 26 health coverage rule, including tax-favored treatment of expenses for adult children via pre-tax premiums, FSAs, and HRAs (not HSAs); and
- (2) New cafeteria plan discrimination testing safe harbor for qualifying plans. Practically this will not help many employers, but it is available to certain small plans. More IRS guidance is expected on this topic and we will share more information in 2011.

The new W2 reporting rule for group health coverage was originally scheduled to be effective for 2011, but that has been delayed until 2012. The only other Health Reform changes for 2011 are insurance coverage changes.

If you have any questions on these or any compliance topics, contact Jason Cogdill, ProBenefits attorney. Jason advises employers and plan advisors on a range of benefits topics and is available to you as a resource.

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