

CHANGES TO OTC Rules

Frequently Asked Questions | QUICK REFERENCE GUIDE



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Background:

On March 23, 2010, President Barack Obama signed into law a massive piece of legislation aimed at reforming the nation's health care system. The new law, called the Patient Protection and Affordable Care Act (PPACA), contains numerous provisions, many of which will not go into effect for several years.

An important part of the law, however, will go into effect on January 1, 2011. This particular provision changes how health flexible spending account (FSA), health savings account (HSA), and health reimbursement account (HRA) participants are reimbursed for certain types of over-the-counter (OTC) health care expenses. The following FAQ outlines the details of this new provision based upon the guidance that has already been provided by the Internal Revenue Service. **Click here** <http://www.flex125.com/af_site/company_info/forms/OTC2011.pdf> for a one-page summary of the new OTC rule.

Questions & Answers:

Q/What is the new OTC law?

A/PPACA mandates that expenses incurred for OTC medicines and drugs (with the exception of insulin) will not be eligible for reimbursement under a health FSA or HRA unless you have a prescription.

On September 3, 2010, the Internal Revenue Service issued **Notice 2010-59** and **Revenue Ruling 2010-23**, which explained in some detail how this new rule will work. Some of the information that follows is based on this new guidance.

Q/How is this different from before?

A/Up until now, you could use your FSA or HRA debit card to purchase OTC medications (like Tylenol or Claritin) at the pharmacy or drug store, without a prescription. After the new rules go into effect, this will no longer be the case. In order to get reimbursed from your health spending account for the purchase of OTC medicines or drugs, you will be required to obtain a doctor's prescription and will not be able to use a health FSA/HRA debit card for the transaction.

This means you will need to file a manual claim to be reimbursed for these expenses.

There are two bits of good news: **First**, OTC medicines and drugs will still be eligible for reimbursement and you will still be able to

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Q & A *continued*

save money by using your FSA or HRA funds. Only the substantiation requirements have changed, since there must be a prescription for these items. **Second**, the IRS has allowed for a two-week “non-enforcement period” with regard to debit card use for OTC medicine and drug purchases. This period will last from January 1, 2011 through January 15, 2011. Please note that this non-enforcement period only applies to the use of debit cards for OTC medicines or drugs, meaning that you will be able to use your FSA/HRA debit card to purchase these items, but a prescription will still be required.

Q/When does this new law go into effect?

A/January 1, 2011.

Q/What if my health plan year starts in November? Will the rule still apply to me on January 1?

A/Yes. The new law goes into effect on January 1, 2011 and will apply to the tax year, not the plan year. Regardless of when your plan year starts, the rule will apply to you (and everyone else) for all purchases made on or after January 1.

Q/What about expenses incurred during the grace period (January 1, 2011 – March 15, 2011)?

A/The new law goes into effect for everyone on January 1, 2011. Regardless of whether you are using 2010 funds or 2011 funds, the rule will still apply for all expenses incurred after January 1, and you will still be required to follow the new procedure for reimbursement of OTC medicines and drugs.

Q/What if I incur the expense before January 1 but do not request reimbursement until after January 1? Will I be required to submit a prescription?

A/Any expenses for OTC medicines or drugs incurred before January 1, 2011 will NOT require a prescription for reimbursement even if the claim is made on or after that date.

Q/Will I need a prescription to purchase OTC medicines or drugs as of January 1, 2011?

A/No. You can still purchase the items without a prescription, and pay for them out-of-pocket. You will need to file a claim along with a prescription in order to be *reimbursed* for these items from your FSA or HRA.

Q/Will this new rule affect how I pay for my regular prescriptions?

A/No. You will still be able to use your FSA or HRA funds to pay for regular prescription medications with your FSA/HRA debit card (the AmeriFlex Convenience Card®), just as you have in the past. You may also continue to use your AmeriFlex Convenience Sleeve to pay for standard prescription items.

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Q & A *continued*

Q/Does this new law apply to HSAs?

A/Yes, but because HSAs operate differently than health FSAs or HRAs, the effect on accountholders will be different. Debit cards tied to HSAs will still work for OTC medicines and drugs, but it will be the sole responsibility of the accountholder to have a record of prescriptions for those items. If the accountholder does not have a prescription for OTC medicines or drugs purchased with HSA dollars on or after January 1, 2011, the accountholder must pay the 20% HSA excise tax on ineligible items.

Q/What exactly is considered an OTC “medicine or drug”?

A/The IRS did not provide specific guidance regarding what is to be considered a medicine or drug under this new law. Nevertheless, at this time we can be reasonably certain that the following categories of items are considered medicines/drugs and therefore will require a prescription effective January 1, 2011 in order to receive reimbursement from an FSA or HRA:

- Antacids
- Allergy and sinus medications
- Anti-diarrheals
- Anti-gas
- Anti itch and insect bites
- Baby rash ointments and creams
- Cold sore remedies

- Cough, cold and flu medications
- Digestive aids
- Feminine anti-fungal/anti-itch
- Laxatives
- Motion sickness medications
- Pain relievers
- Respiratory treatments
- Sleep aids and sedatives
- Stomach remedies

As further guidance is provided, we will share additional details and information with you.

Q/What is not considered an OTC “medicine or drug”?

A/At this time, we are reasonably certain that the following categories of items are not considered “medicines or drugs” under this new rule and therefore will not require a prescription in order to receive reimbursement from an FSA or HRA. You will be able to use your FSA/HRA debit card to pay for these items at a pharmacy or drug store, just as you have in the past:

- Acne creams
- Anti-fungal foot medication
- Antiseptics and wound cleaners
- Band Aids
- Condoms
- Braces and supports
- Catheters

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Q & A *continued*

- Denture adhesives
- Diabetic testing and aids
- Diagnostic tests and monitors
- Elastic bandages and wraps
- Eye care and contact lens supplies
- Family planning kits
- Fiber laxatives
- First aid supplies
- Hearing aid batteries
- Infant electrolytes and dehydration solutions
- Infant teething pain supplies
- Insulin and diabetic supplies
- Nebulizers
- Orthopedic aids
- Ostomy products
- Reading glasses
- Smoking deterrents
- Syringes
- Thermometers
- Wheelchairs, walkers, and canes

As further guidance is provided, we will share additional details and information with you.

Q/What is the new procedure for reimbursement of these expenses? What do I need to do?

A/Beginning January 1, 2011, pharmacy systems will be modified to comply with the new law and your FSA/HRA

debit card will no longer work for the purchase of OTC medicines or drugs (refer to the first list above for examples of what constitutes an OTC “medicine or drug” under the new law). This is because the debit card cannot “know” whether there is a valid prescription for the item.

In order to get reimbursed from your FSA or HRA for the purchase of these items, you will need to file a manual claim and send it to AmeriFlex along with a copy of a prescription. This will enable us to approve the claim and reimburse you for the amount you spent on the eligible OTC purchase.

Remember, all eligible expenses that do not fall under the definition of an OTC medicine or drug will not require any additional paperwork. You will still be able to use your FSA/HRA debit card to pay for these expenses, just as you have in the past.

For example, you will still be able to use your FSA debit card to buy Band Aids and contact lens solution because these items are not medicines or drugs, and you will not need to obtain a prescription or file a claim after the fact.

Q/There is an OTC medication that I use on a regular basis. Will I have to submit a new prescription each time I purchase it?

A/Unfortunately, the most recent guidance released by the IRS does not directly address this issue. As soon as we receive further clarification from the IRS, we will communicate it to you.

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Plan Ahead, Save Money

Whether you have an FSA, HSA, or HRA, don't forget that many of the expenses for which most participants currently use their accounts will not be impacted by this law. Regular prescriptions, along with many other OTC items that are not considered medicines or drugs, will not be subject to this rule, and you will therefore still be able to pay for these other expenses with your AmeriFlex Convenience Card® and without the need to submit a prescription. Additionally, you can still use your AmeriFlex Convenience Card® for all other health care-related expenses such as doctor or hospital visits, provided such items are covered under your plan(s). Of course, whether or not you are required to submit paperwork for your health care expenditures, bear in mind that it is always a good idea to save your receipts as proof that your FSA, HSA, or HRA funds were used to pay for an eligible expense under your plan.

Although the new law does add another step to the process of getting reimbursed for certain OTC medicines and drugs, planning ahead to obtain a doctor's prescription and submitting the extra paperwork that is now required can still save you quite a bit of money in the long run—and is therefore still worth the extra effort required under the new law.

We Are Here to Help

AmeriFlex is here to help you understand and comply with the new rules that will be introduced as part of the health care reform law. As additional guidance is provided by the federal agencies, we will continue to share information with you. In the meantime, please do not hesitate to contact us with any questions that you may have.

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Do you want to voice your opinion about the new OTC provision?

We understand that the new law is not a welcome change for many of our clients and participants. While we at AmeriFlex intend to do everything within our power to minimize any inconvenience that may result from the new OTC provision, we recognize that you may wish to voice your concerns about how the new law will affect you and your family.

Click here: <http://www.congress.org/congressorg/issues/basics/?style=comm> for information on how to share your thoughts with elected officials from your home state.