



FLEX FLASH

HEALTH CARE REFORM UPDATE

(CHANGES THAT HAVE TAKEN PLACE IN THE LAST FEW WEEKS)

Over-The-Counter Drugs and Debit Cards

Beginning January 1, 2011 participants must obtain a prescription from their physician in order to pay for over-the-counter (OTC) drugs or medicines through their flex plans. The prescription may be filed through the pharmacy, or the participant may turn in a manual claim with a detailed receipt for the item and a copy of their prescription attached to the form. This element of the law has not changed.

It was reported that participants could not use their health care debit cards to purchase OTC drugs or medicines. This part of the law has changed with IRS Notice 2011-5 which allows the continued use of Health Flexible Spending Account (FSA), Health Reimbursement Arrangement (HRA) and Health Savings Account (HAS) debit cards for the purchase of OTC drugs and medicines if:

- Prior to the purchase, the prescription for the OTC medicine is presented (in any format, i.e. electronic or paper) to the pharmacist.
- the OTC medicine is dispensed by the pharmacist in accordance with applicable law;
- an Rx number is assigned;
- the pharmacy retains a record of the Rx number, the name of the purchaser (or name of the person for whom the prescription applies) and the date and amount of the purchase;
- all of these records are available to the employer or its agent upon request;
- the debit card system will not accept a charge for an OTC medicine unless an Rx number has been assigned; and
- all the requirements of this guidance is met.

Get a prescription for Claritan? Yes, that's what "The Act" requires. And, in order for the card to work, you must present the prescription to the pharmacist who will fill and dispense the OTC drug just like they do for drugs that are only available by prescription, such as an antibiotic.

How does the debit card know the difference between an OTC Rx and an Rx for an antibiotic? The answer is—it doesn't have to. Both are prescriptions, delivered through the pharmacy and will automatically be coded as an Rx.

Want more information? Go to <http://www.irs.gov/pub/irs-drop/n-11-05.pdf> to review the entire Notice.



Non-Discrimination Rules for Fully-Insured Group Health Plans

Another requirement embedded in “The Act” requires non-grandfathered, fully-insured group health plans to apply the non-discrimination rules under Internal Revenue Code (IRC Section 105(h) for plans starting on or after January 1, 2011. Historically, these non-discrimination rules applied to self-insured group health plans. It is not within the scope of this article to outline these non-discrimination rules, but suffice it to say the testing is onerous, and the regulatory guidance is thin.

In addition, “The Act” was very serious about compliance. Generally, up to \$100 per day per individual could be assessed to the employer for the non-compliance period. Because regulatory guidance is essential to the operation of these provisions, compliance with these rules will not be required until after regulations or other administrative guidance has been given.

Compliance with “The Act” will not apply until plan years beginning a specified period after guidance has been issued. The delay was announced through Notice 2011-1. Read the entire Notice at:

<http://www.irs.gov/pub/irs-drop/n-11.pdf>

Tax Breaks Extended Through 2011

Congress was busy prior to their holiday break. The transit and vanpooling monthly limit that was increased to \$230 in 2009 was set to expire at the end of 2010. As a part of the extension of the Bush Tax cuts, the \$230 monthly limit was extended to December 31, 2011.

Expect more changes and clarifications as the year progresses, we'll keep you updated.

Breast Pumps and Supplies

Just released guidance from the IRS provides new and expectant mothers with some welcome financial relief. The guidance (IRS announcement 2011-14), which was released February 10, 2011, adds breast pumps and supplies and lactation aids to the list of items eligible for reimbursement from a medical account (such as a Flexible Spending Account (FSA), Health Reimbursement Arrangement (HRA) or Health Savings Account (HAS)). With the ruling, which takes effect immediately, breast feeding mothers can use their medical accounts to purchase or be reimbursed for eligible lactation-related expenses.

Notice 2010-38 provided guidance on the tax treatment of health coverage for children up to age 27 under health care reform.

1. The Notice requires group health plans and health insurance issuers that provide coverage of children to continue to make such coverage available for an adult child until age 25. (COVERAGE)
2. The Notice also provided guidance on the health care reform's amendment of IRC Section 105(b). This amendment allows for the exclusion from gross income for reimbursements for medical care under an employer-provided accident or health plan to any employee's child who has not attained age 27 as of the end of the taxable year. (EXCLUSION FROM INCOME)

A participant can pay for qualified medical care including health coverage premiums and COBRA premiums, for an adult child who has not attained age 27 as of the end of the taxable year (December 31st).

Paying for an adult child's health coverage can be done through a Premium Only Plan; however the plan document would have to allow for individually-owned policy premiums if the participant is paying for coverage outside of the employer's plan.

One last directive, the adult child rule applies to Health Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangement (HRAs). These rules do not apply to Health Savings Accounts (HSAs).