



DID YOU KNOW?

Over-the-Counter (OTC) Drugs and Medicines

On Friday, September 3, 2010, the IRS issued its initial guidance with respect to the new rule included in the Affordable Care Act that requires a doctor's prescription for the reimbursement of over-the-counter (OTC) drug and medicines from a tax-advantaged health care account. While the guidance offers little in the way of new information, it does confirm the generally accepted interpretation of how the change will be applied.

In summary, the guidance confirms the following:

- Participants will still be able to use their tax-advantaged health care accounts for purchases of **ALL** OTC drugs and medicines, as long as they have a doctor's prescription.
- The rule applies to all tax-advantaged health care accounts, including Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), Health Reimbursement Arrangements (HRAs) and Archer Medical Savings Accounts (Archer MSAs).
- The rule takes effect January 1, 2011 and only applies to purchases on or after January 1, 2011, regardless of plan year.
- The only acceptable forms of documentation for reimbursement for OTC drugs and medicines is a doctor's prescription, as regulated by state law along with an acceptable receipt, or a receipt indicating the Rx number in addition to date purchased, purchaser, and amount.
- Insulin, medical devices (crutches, blood sugar monitors, etc.) and items such as bandages, contact lens solution, denture bond, etc. will not require a prescription.
- Generally, health care debit cards cannot be used to purchase OTC drugs and medicines. The Special Interest Group for IIAS Standards (SIGIS) is working with Treasury to allow the use of a debit card for prescribed OTC drugs and medicines when filled as a prescription at the pharmacy counter. We will keep you posted on that progress.

Now that the IRS has issued its guidance, we recommend that you communicate this change to all employers and their participants. When communicating the information, it is important to stress to participants that they will still be able to use their accounts for OTC drugs and medicines and that the rule does not take effect until January 1, 2011. The IRS has posted additional details, including a helpful FAQ, about the OTC rule change on its Affordable Care Act website at: <http://www.irs.gov/newsroom/article/0,,id=227308,00.html>.

Text of IR-2010-95: <http://www.irs.gov/irs/article/0,,id=227301,00.html>.

Text of Rev. Rul. 2010-23: <http://www.irs.gov/pub/irs-drop/rr-10-23.pdf>.

Text of Notice 2010-59: <http://www.irs.gov/pub/irs-drop/n-10-59.pdf>.



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