



Health Care Reform Update

What You Need to Know Now



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Banyan Consulting LLC is pleased to present our new Health Care Reform series.

Over the next months and years, employers will be faced with numerous changes, many of which require regulatory clarification. We'll use this venue to keep you up to date, and on target with decisions that affect your plans.

HCR Bulletin - Over-the-Counter (OTC) Medicine Reimbursement

What You Need to Know Now About: Over-the-Counter (OTC) medicine reimbursement through a Flexible Spending Account (FSA), Health Reimbursement Account (HRA) or Health Savings Account (HSA)

With the passage of the Patient Protection and Affordable Care Act on March 23, 2010, effective January 1, 2011 over-the-counter (OTC) medicine will no longer be eligible for reimbursement from a Flexible Spending Account (FSA), Health Reimbursement Account (HRA) or Health Savings Account (HSA) unless accompanied by a prescription or medical necessity statement from a medical provider. The new regulation only applies to OTC medicine so many OTC supplies that are, currently, eligible for reimbursement through an FSA, HRA or HSA will not be affected.

1. When does this new law take effect?

Unlike many health care reform updates you have seen that state “effective with the first day of the next plan year after the reform updates effective date...”, this change is based on tax year and goes into effect January 1, 2011 regardless of your FSA, HRA or HSA policy year.

2. How does this affect claims submitted during the 90-day runout period in 2011?

Provided the OTC medicine was purchased prior to January 1, 2011, it could

still be eligible for reimbursement. For example, your 2010 FSA plan year is on a calendar year basis with a 90-day runout period. Provided that OTC medicine was purchased in 2010, it could be submitted during the 90-day runout period (January, 2011 – March, 2011) and be eligible for reimbursement without a prescription or medical necessity statement.

3. How does this affect claims submitted during the 2-1/2 month grace period?

Same rule as the 90-day runout period applies. If your 2010 FSA plan year ends, for example, November 1, 2010 and your 2-1/2 month grace period goes until January 15, 2011, you could still be reimbursed for OTC medicines purchased in November and December without a prescription or medical necessity statement.

4. What OTC medicines will require a doctor’s prescription or medical necessity statement effective January 1, 2011?

The items include internal and topical drugs, medicines and biological. The general list of OTC medicines affected is:

Acid Controllers	Anti-Itch & Insect Bite	Digestive Aids	Pain Relief
Allergy & Sinus	Antiparasitic Treatments	Feminine Anti-Fungal/Anti-Itch	Respiratory Treatments
Antibiotic Products	Baby Rash Ointments & Creams	Hemorrhoidal Preps	Sleep Aids & Sedatives
Anti-Diarrheals	Cold Sore Remedies	Laxatives	Stomach Remedies
Anti-Gas	Cough, Cold & Flu	Motion Sickness	

5. Will I need a doctor’s prescription or medical necessity statement in order to buy any of these OTC medicines?

No, you will not need the doctor’s prescription or medical necessity statement in order to purchase the OTC medicine, however, you will need to submit a doctor’s prescription or medical necessity statement with your receipt to your FSA, HRA, HSA administrator for reimbursement.

6. Can I still use my FSA, HRA, HSA debit card for reimbursement?

Not for these specific OTC items that require a doctor's prescription or medical necessity statement as you must submit this documentation with your receipt and manually file a claim with your FSA, HRA, HSA administrator.

This provision was changed on 12/23/2010 with the release of IRS Notice 2011-5. Effective 01/15/2011, debit cards can still be used for OTC medicines and reimbursed by an FSA and/or HRA provided:

1. The prescription or medical necessity statement is presented to the pharmacist (in any format);
2. The OTC medicine is dispensed according to applicable laws and regulations; and
3. An Rx number is assigned.

The pharmacy is then responsible for maintaining records of the transactions that meet IRS rules and regulations. Also, the records must be available for review by the employer, or agent, on request.

Your debit card can still be used at the pharmacy for any prescription drug medication, and the other OTC items that do not require documentation, just like you currently do.

7. I have an OTC medicine that I need to purchase on a regular basis. Do I have to get a doctor's prescription or medical necessity statement each time?

You will want to confirm with your FSA, HRA, HSA administrator, but, many are honoring a prescription or medical necessity statement that authorizes a purchase for a specific period of time such as, once a month for the next 6 months.

8. What OTC supplies are still eligible for reimbursement, without a prescription or doctor's medically necessary statement, after January 1, 2011?

The following is a general list of the eligible OTC supplies, however, you will need to refer to your FSA, HRA, HSA plan that the item is eligible for reimbursement under the plan.

Birth Control	External	Nebulizers	Splints, Supports
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Products	Catheters		& Braces
Blood Pressure Kits	Eye Glass & Lens Accessories	Orthopedic Aids	Syringes
Canes & Walkers	Fever Strips	Orthopedic Shoe Inserts	Thermometers
Compression Hosiery	First Aid Dressings	Ostomy Products	Wheelchair & Accessories
Denture Products	Hearing Aid Batteries	Pregnancy & Fertility Kits	
Diabetes Testing Supplies	Hot, Cold & Steam Packs	Reading/Magnifying Glasses	
Diagnostic Products	Incontinence Products	Smoking Deterrents	

9. What about the \$2,500 Cap on Health Care FSAs? When does that go into effect?

The \$2,500 cap on health care FSAs is a different component of the health care reform act and goes into effect January 1, 2013. However, for those non-calendar FSA plan years, (ex: July-to-July) the Act limits participants to a total pre-tax election of \$2,500 during 2013, regardless of what the plan's maximum election amount was for the prior plan year. If you have a non-calendar plan year, you should consider limiting the 2012 health care FSA maximum to \$2,500 to avoid accounting issues when the cap takes effect.

10. What do I need to do now?

- Contact your FSA, HRA, HSA administrator to confirm how they are going to administer the new OTC medicine regulation effective January 1, 2011.
- Communicate the change to your employees. If you are already in the middle of a plan year, communicate to them that they have until January 1, 2011 to use their FSA, HRA, HSA funds for OTC medicine reimbursement without a doctor's prescription or medical necessity statement. If you are preparing your employees for a new plan year, particularly a new FSA plan year, caution your employees about their contribution amount since they no longer might have the ability to use OTC medicines for reimbursement.

If you have any questions on this new health care reform regulation, please

consult with your Banyan Consulting representative.