

Over-the-Counter Drugs No Longer Reimbursable by FSAs or HRAs Starting in 2011

Legal Alert
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Garvey Schubert Barer Legal Update, November 30, 2010.

Starting January 1, 2011, employer-provided health plans, including health flexible spending arrangements (FSAs) and health reimbursement arrangements (HRAs), will no longer be allowed to reimburse an employee for over-the-counter (OTC) medicines and *drugs unless the employee has a prescription for those OTC medicines or drugs*. This new rule came in as part of the Health Care Reform legislation that was enacted earlier this year. (Although the focus of this Alert is on FSAs and HRAs, this new rule also affects HSAs and Archer MSAs.)

This new rule does not apply to OTC medical supplies and equipment (such as bandages, crutches or blood sugar test kits) or to insulin. These items can still be reimbursed even if they are purchased without a prescription.

The new rule applies to OTC medicines and drugs that are purchased on or after January 1, 2011. This means:

There is no relief for FSAs or HRAs that are not on a calendar plan year. These plans will have to implement this change mid-plan year.

OTC medicines and drugs purchased after December 31, 2010, without a prescription cannot be reimbursed using FSA balances that are left over from 2010, even if the purchase is made during the FSA's grace period for the 2010 plan year.

OTC medicines and drugs that are purchased in 2010 without a prescription can still be reimbursed even if the reimbursement is not paid until after December 31, 2010, (as long as the claim is submitted before the end of the plan's claims run-out period for the 2010 plan year).

Contact

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Plan documents, employee communications materials and administrative forms and procedures will all need to be revised to reflect the new rules for reimbursing OTC medicines and drugs. Amendments to the plan document must be adopted no later than June 30, 2011, with an effective date retroactive to January 1, 2011. However, employee communications materials and administrative forms and procedures will obviously need to be modified right away in order to be ready for the open enrollment season for the 2011 plan year.

Questions?

For additional information, please contact Vince Cacciottoli in our Portland office.