



Health Care Reform News

Health Care Reform effects on Health FSAs and HRAs

June 28, 2010 — This article will provide information on how the changes to Health Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangements (HRAs) may affect health account programs and plan participants.

The Patient Protection and Affordable Care Act (PPACA), as modified by the Health Care and Education Reconciliation Act (HCERA), places restrictions on FSAs and HRAs:

- **Beginning January 1, 2011** — changes in the eligibility of over-the-counter (OTC) items under FSAs and HRAs; and
- **Beginning January 1, 2013** — limits on FSA contributions.

OTC ITEMS WILL BE ELIGIBLE ONLY WITH A PRESCRIPTION BEGINNING 2011

PPACA will limit the types of medicines for which FSAs and HRAs can reimburse participants to only **prescribed drugs and insulin**.

This change takes effect for **tax years** beginning January 1, 2011, or later.

What this means for health account plans and participants

Many FSA and HRA programs allow reimbursement for OTC medications. These items will no longer be eligible expenses under the new rule. However, the Act does not define “prescribed drug.” So some OTC medicines *may* be eligible if the participant has a *doctor’s prescription* for them.

Employers will need to amend their FSA and HRA documents to remove non-prescribed items from covered expenses.

It’s important to note that this change takes effect on January 1, 2011, *regardless of whether your FSA or HRA plan runs on a fiscal year or calendar year*. This means that participants cannot use FSA or HRA funds for “non-prescribed” drugs after December 31, 2010, even if your plan:

- allows participants to use 2010 contributions for expenses incurred during a grace period that extends into 2011; or
- runs on a period other than the calendar year, such as April 1 through March 31 or July 1 through June 30.

“Use it or lose it” still applies. Therefore, it’s important that you begin telling your plan participants about this change well before December 31 so they can plan how to use their FSA contributions.

If the health account program includes a health FSA debit card

If the health account program includes a debit card, the plan sponsor can select which types of eligible health care providers and merchants that participants can pay with the debit card. Merchants can include drug stores, supermarkets, discount stores, and wholesale clubs. However, these merchants must use the Inventory Information Approval System (IIAS) in order to accept health account debit cards.

Beginning January 1, 2011, merchants will update their IIAS to *exclude OTC items from health account debit card payment*. Participants will need to use another form of payment when they buy these items.

If the participant has a doctor's prescription for an OTC item, he or she can submit a request for reimbursement along with the prescription and the receipt that documents the purchase and cost. We will send the participant reimbursement for eligible, documented OTC purchases, based on the funds remaining in the account.

FSA CONTRIBUTION LIMIT BEGINS IN 2013

Currently employers can decide how much participants can contribute to their FSAs each year. Beginning with tax years that start January 1, 2013, or later, employers must limit employee contributions to no more than \$2,500 per year.

Because this change applies to the participant's tax year (calendar year), employers who have FSA plans that run on a cycle other than the calendar year and allow contributions of more than \$2,500 will need to determine how they will make the transition for the plan year that begins in 2013.

SUGGESTED ACTION STEPS

Questions remain about how these changes will be administered. Therefore, we continue to follow these changes closely. As more information becomes available, we'll take the steps needed to administer our clients' plans in accordance with these changes.

In the meantime, here are some steps that you may wish to take so your plan will be ready for these changes:

- Update your plan documents as needed to comply with the change regarding OTC medicines by December 31, 2010.
- Begin to notify your FSA and HRA participants of the upcoming changes so they can plan accordingly.
- Update your FSA plan documents to comply with the \$2,500 contribution limit by December 31, 2012.

This communication is not intended to provide either legal or tax advice. Please consult with your legal counsel or professional advisors to determine the effects of the statutes and regulations regarding health care reform on you and your plan members.

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