

Over-the-Counter (OTC) Medicines & Drugs through Flexible Spending Accounts (FSAs) & Health Reimbursement Accounts (HRAs)

Health care reform requires that expenses for OTC medicines and drugs (other than insulin) purchased on or after Jan. 1, 2011 will only be considered medical care if they are "prescribed". The guidance clarifies that the "new" rule does **NOT** apply to items that are not medicines or drugs, including equipment such as crutches, supplies such as bandages and diagnostic devices such as blood sugar test kits. These items **WILL** continue to qualify as medical care if they otherwise meet the definition.

Example: On Jan 2, 2011 Carol goes to her physician who recommends that she take two aspirin and call him in the morning. Carol goes out and purchases a bottle of aspirin for \$5.76. On Jan 3, 2011, she submits the receipt for aspirin to her flex administrator Benefit Extras. Benefit Extras must deny the claim because Carol did not obtain a prescription for the aspirin. A general physician recommendation (oral or otherwise) does not satisfy the definition of a prescription and will not qualify. (Refer to the Q&A as to what constitutes as a valid prescription.)

Eligible OTC Items Reimbursable 1/1/2011 without Prescription

- *first aid supplies
- *reading glasses
- *insoles
- *test strips
- *crutches
- *pregnancy tests
- *contact lens solution/case
- *wrist/ankle braces/supports
- *blood pressure monitors
- *catheters

Eligible OTC Drugs or Medications Reimbursable 1/1/2011 with Prescription

- *acid controllers
- *antibiotic products
- *anti-gas products
- *aspirin (pain relievers)
- *cold sores remedies
- *digestive aids
- *hemorrhoidal preps
- *allergy & sinus
- *anti-diarrhea/laxatives
- *sleep aids
- *medicated ointment/creams
- *cough, cold & flu
- *anti-fungal/anti-itch
- *vitamins/supplements

Ineligible Items (No Change)

- *mouthwash
- *oral anesthetics
- *shaving cream/razors
- *soap/shampoo
- *teeth whitening kits
- *toothpaste
- *vitamins for general health
- *Q-tips
- *chap-stick
- *cosmetics
- *cotton balls
- *deodorant
- *feminine hygiene products
- *lotions, anti-aging creams

Questions & Answers on Over-the-Counter (OTC) Medicines and Drugs after the Health Care Reform Rule Change

When does the new rule take affect? Effective January 1, 2011 health care reform requires that OTC medicines and drugs (other than insulin) must be “prescribed” in order to qualify as medical care for purposes of Health FSAs, HRAs and HSAs (the “OTC” rule).

What types of OTC items are not affected by the new OTC rule? The new rule does not apply to OTC medical supplies and equipment, such as contact lens solution, bandages, crutches or durable medical equipment or diagnostic devices such as blood sugar test kits. These items may continue to be purchased and reimbursed out of your FSA account without a prescription.

What types of OTC medicines and drugs are affected by the new OTC rule? Existing guidance provides that a “medicine or drug” includes any item that is “generally accepted as falling within the category of medicine and drugs”. Examples of OTC medicine and drugs affected by the new rule include allergy & sinus medications, cough, cold & flu medicines, laxatives and aspirin.

What substantiation is required when I purchase my OTC medicine or drug after January 1, 2011? A participant is able to provide either of the following: (1) a receipt from the pharmacy that identifies the individual to whom the prescription is being issued, the cost and the RX number; OR (2) any other manual substantiation without an RX number (for example a cash register receipt that identifies the medicine or drug, amount and date purchased), provided a prescription from an authorized issuer is ALSO provided.

If my receipt does not include an RX number what other type of substantiation may I provide to assure my OTC medicine/drug is reimbursed from my FSA account? In addition to a sales receipt that identifies the medicine or drug, cost and date purchased, you must also provide a valid prescription. A valid prescription is required to meet the legal requirements of the state in which the medical expense is incurred. Benefit Extras will require the following information be included on the prescription in order for it to be valid:

- (A) The name(s) and address of the patient(s)
- (B) The name and quantity of the drug or device prescribed and the directions for use
- (C) The date of issue

Will my physician write me a valid prescription for an OTC medicine or drug if it is available over-the-counter? The new rule may cause a great deal of confusion for participants as well as physicians and pharmacists. It is recommended that you consult with your physician as to their willingness to assist you in complying with the new OTC rule.

What if my plan runs off-calendar year? For plans that run on a fiscal plan year rather than a calendar plan year, the new rule is applicable for any OTC medicines and drugs purchased on or after January 1, 2011. Informal remarks from Treasury officials suggest that current participants cannot change their election solely as a result of this new rule.

What if my current plan runs calendar year but includes a 2 ½ month grace period? Expenses for OTC medicines and drugs purchased during the two-and-a-half month period following the end of a plan year must be accompanied by a valid prescription if the item is purchased on or after Jan 1, 2011.