



For Your Benefit.

Impact of Health Care Reform on Section 125 and Flexible Spending Accounts

by Ben Cohen, CEBS
Practice Leader—Health and Welfare Benefits

Much discussion is currently taking place regarding “health insurance” items impacted by the Patient Protection and Affordable Care Act of 2010 (PPACA) signed in March, 2010. Some items that may be seemingly more applicable (or at least more timely) to some of our clients concern those that relate to Section 125, Flexible Spending Accounts, Health Reimbursement Accounts (HRA), and Health Savings Accounts (HSA).

There are a number of changes that take effect in the near future that directly impact these plans.

Over-the-Counter Drugs (OTC)

Probably the single largest impact to Section 125 and Flexible Spending Accounts is the renewed determination that nonprescription over-the-counter drugs (OTC) are no longer eligible for reimbursement from a Flexible Spending Account, Health Reimbursement Account (HRA), or Health Savings Account (HSA) without a Note of Medical Necessity (NMN) or prescription from a doctor. This change takes effect on January 1, 2011 regardless of the plan's actual plan year. This is im-

perative to communicate to participants in non-calendar year plans as they plan for open enrollment in 2010.

For many of us, this is like going back in time. Prior to 2003, over-the-counter drugs were an ineligible expense without a Note of Medical Necessity or prescription. You may wish to begin communicating this change to participants now in preparation for upcoming open enrollments. For administration clients of Kushner & Company, there will be ongoing communications regarding this change leading up to and through open enrollment; with your enrollment materials, and into the 2011.

For clients that provide debit cards to their participants for Flexible Spending Accounts or Health Reimbursement Accounts (HRAs), there will be significant changes coming. Under the current law, merchants that participated with IIAS and who had submitted their inventories to the IRS for pre-approval were able to auto-adjudicate purchases of those approved items, including OTC drugs. The ability for participants to purchase OTC drugs (whether with or without a prescription) with their debit card will be somewhat diminished. For administration clients of Kushner & Company, more information will be forthcoming as merchants and the debit card companies decide upon their response to this change.

Coverage for Adult Children to Age 26

As part of the Patient Protection and Affordable Care Act of 2010 (PPACA), adult children under the age of 26 must be offered health coverage beginning with plan years starting on or after September 23, 2010. For example, this new requirement will be effective for a calendar year plan on January 1, 2011, while an employer-sponsored plan with a plan year of October 1st will be required to begin offering adult child coverage on October 1, 2010. Some employers (and their insurers and/or stop-loss carriers) have already begun implementing this change even before the required starting date.

The PPACA also extended both tax exclusions for coverage and benefit receipt for covering adult-children, and actually extended the exclusions for a period of time likely to be longer than the coverage itself. This will greatly simplify providing tax-free coverage for adult-children in all health plans, including health care flexible spending accounts and health reimbursement arrangements (HRAs). (Treasury Notice 2010-38)

A more [in-depth article](#) into this specific topic is available on our website.

Simple Cafeteria Plan

New, Simple cafeteria plans will be available to eligible small employers

on or after January 1, 2011. These plans provide small employers with an average of 100 or fewer employees in the previous 2 years to establish a cafeteria (Section 125) plan that will be treated as automatically meeting the nondiscrimination testing rules. Specific minimum contribution and eligibility requirements must be met in order to satisfy the safe harbor requirements. Additional information on these plan offerings will be coming from Kushner & Company in the near future.

New Health Care Flexible Spending Account (FSA) Annual Maximum

Effective January 1, 2013, the maximum employee contribution to a Health Flexible Spending Account will be \$2,500 (indexed in later years). Again, for non-calendar year plans, this change will need to be communicated well to participants starting in 2012.

Plan Documents

All of the above changes will require applicable amendment(s) to your Section 125, Flexible Spending Account, and/or Health Reimbursement Account (HRA) plan documents. If Kushner & Company maintains your plan documents, you will be hearing from your benefit specialist soon about the necessary changes.

Benefit articles are provided as a service by [Kushner & Company](#) for the exclusive use of our clients and subscribers and should not be construed as legal or tax advice. From our highly trained, knowledgeable staff to our leading edge technology systems, Kushner & Company's comprehensive HR strategy and employee benefit services guarantee our clients ease and excellence. If you would like to speak to someone about a Strategic Employee Benefit Review for your organization, please contact your Employee Benefit Specialist at info@kushnerco.com or 800-KUSHNER, ext. 217.

- *Leveraging HR Strategy for Organizational Results*
- *Strategic Benefit Reviews*
- *Health and Welfare Plan Design*
- *Plan Implementations*
- *Benefit Communication*
- *Flexible Benefit Plans*
- *FSA/HRA/HSA Plan Administration*
- *COBRA Administration*
- *Retirement Plan Design*
- *Retirement Plan Administration*
- *Signature-ready IRS Form 5500s*

©2010 Kushner & Company