



For Your Benefit.

Over-the-Counter Drugs for Flexible Spending Accounts and Health Reimbursement Accounts (HRAs) – NEW GUIDANCE

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The IRS recently issued new guidance regarding the use of Flexible Spending Accounts (FSAs) and HRAs to pay for over-the-counter medicines and drugs.

The Patient Protection and Affordable Care Act (PPACA), enacted in March, established a new uniform standard that applies to FSAs and Health Reimbursement Accounts (HRAs) effective January 1, 2011 (regardless of plan year). Under the new standard, the cost of an over-the-counter medicine or drug cannot be reimbursed from the account unless a “*prescription*” is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles. The new standard applies only to purchases made on or after January 1, 2011, so claims for medicines or drugs purchased without a prescription in 2010 can still be reimbursed in 2011, if allowed by the employer’s plan through run-off or grace periods.

What is a “Prescription”?

The most important information in this guidance was the definition of what will constitute a “prescription”. The IRS has defined a “prescription” as “a written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and that is issued by an individual who is legally authorized to issue a prescription in that state.”

This change takes effect on January 1, 2011 regardless of the plan year of the plan(s). This is *imperative* 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 ineligible without a prescription (though the definition has changed). 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 open enrollment, with enrollment materials, and into 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 the IIAS inventory control mechanism (which was virtually all retail outlets where prescription and over-the-counter drugs were available) and pre-submitted their inventories to the IRS for pre-approval were able to auto-adjudicate purchases of those approved items, including over-the-counter drugs. The ability for participants to purchase over-the-counter drugs with their debit card will be removed entirely by the new rules to maintain compliance.

Plan Documents

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 representative soon about the timely amendments to your Plan(s) to ensure compliance for you and your participants.

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