

IRS Clarification for Over-the-Counter Drug Reimbursement

The IRS recently released Notice 2010-59 which clarifies new rules regarding the reimbursement of over-the-counter (OTC) medicines and drugs that were introduced in Section 9003 of the Patient Protection and Affordable Care Act of 2010 (PPACA).

Beginning January 1, 2011, expenses incurred for medicines and drugs may be paid or reimbursed by an employer-sponsored accident and health plan, including health flexible spending accounts (FSA) and health reimbursement arrangements (HRA), only if the medicine or drug is prescribed by a physician (determined without regard to whether such drug is available without a prescription), or is insulin. (Note: These same rules apply to health savings accounts and Archer medical savings accounts, even though they are not employer-sponsored accident and health plans.)

For the purpose of OTC expenses, the IRS defines 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."

These rules do not apply to OTC health care-related items that are not medicines or drugs, including but not limited to equipment (e.g., crutches and other durable medical equipment), supplies (e.g., bandages and first aid kits), and diagnostic devices (e.g., blood sugar test kits and thermometers). These items may qualify for reimbursement under a health FSA or HRA if they otherwise meet the definition of medical care in Code Section 213(d).

Substantiating an Expense

Notice 2010-59 clarifies that an OTC expense can be substantiated by submitting the prescription (or a copy of the prescription or other documentation that a prescription has been issued) for the OTC medicine or drug, and other information from an independent third party that satisfies the requirements under Prop. Treas. Reg. § 1.125-6(b)(3)(i). Acceptable documentation includes a pharmacy-issued customer receipt that identifies the name of the purchaser (or the name of the person for whom the prescription applies), the date and amount of the purchase, and an Rx number. Receipts without an Rx number but accompanied by a copy of the related prescription are also acceptable.

Effective Date

The prescription requirement applies to OTC medicines and drugs purchased on or after January 1, 2011. This effective date applies to all plans, regardless of the plan year dates. This means that the rules will change in the middle of the plan year for all plans that are not calendar year plans

RGEB Employee Benefits
www.rgeb4u.com

Helping you take care of your employees, so they can take care of your business!

OTC drugs purchased in 2010 but submitted for reimbursement in 2011 (to the extent permitted) do not require a prescription. For health FSAs that offer a 2.5-month grace period feature, OTC drugs incurred in 2011 can be reimbursed from 2010 account balances only if the participant obtains a prescription as detailed above.

Plan Amendments

Notice 2010-59 has a special provision for plan amendments. Plan sponsors have until June 30, 2011 to make any plan document amendments required by these new rules. These amendments may be effective retroactively for expenses incurred after December 31, 2010 (or, with respect to debit cards, expenses incurred after January 15, 2011).

Additional Information

Find more information at the IRS Web site, including OTC medicine and drug [FAQs](#) and [Notice 2010-59](#).