

**September 10, 2010**

**ALERT: Guidelines for flexible spending plans change in 2011**

As you know, the Patient Protection and Affordable Care Act (PPACA), which was passed into law in March, will impact the reimbursement of over-the-counter (OTC) drugs and medicines from Health Care Flexible Spending Accounts.

Many of the ramifications of the PPACA are still under review and we expect that the IRS and the US Department of Labor will issue further guidance. As of now, the following outlines our understanding of how the PPACA changes OTC reimbursement.

1. No reimbursement may be made for OTC drugs and medicines (except for insulin) without a prescription.
2. The change is effective for taxable years beginning after January 1, 2011 and applies to expenses that are incurred **after** December 31, 2010.
3. Examples\* of OTC items that ARE drugs and medicines include:
  - allergy and sinus medicines and nasal sprays
  - antacids
  - cough, cold and flu remedies
  - eye drops
  - laxatives
  - pain relievers such as ibuprofen and aspirin.
4. Examples\* of OTC items that ARE NOT drugs and medicines include:
  - bandages, band aids, gauze pads
  - blood pressure monitors
  - carpal tunnel wrist supports
  - contact lens solution
  - reading glasses

*\*Please note that these items are examples only. We anticipate further guidance from the IRS on the definition/delineation of OTC drugs and medicines.*

5. Additional clarification is needed from the IRS to fully understand the meaning of the prescription requirement. A strict interpretation of this requirement is that a *written prescription* from a physician (including MD, DO, dentist, optometrist, podiatrist, chiropractor) may be necessary. A more liberal interpretation is that a physician's *written recommendation* that a drug or medicine is needed to treat a specific condition may suffice.
6. No mid-year change to a Health Care FSA election can be made as a result of this new ruling.
7. If a January 2010 plan has a grace period, a prescription will be required for OTCs purchased during the grace period between January 1 and March 15, 2011. However, expenses for OTC drugs and medicines that are incurred through December 31, 2010 may be reimbursed without a prescription.

If you have any questions about this alert, please contact Beverly Lighty, AGH operations manager for employee benefits/flex services, at (316) 291-4164 or [beverly.lighty@aghlc.com](mailto:beverly.lighty@aghlc.com).

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