

# Legislative Update: Over-the-Counter Products October 2010



As a participant in a FSA, HRA, or HSA plan, we wanted to remind you of the new IRS ruling taking effect on January 1, 2011 that will impact your over-the-counter (OTC) product purchases. Specifically, the new ruling states that any OTC item that is considered a drug or medicine will require a prescription written by your doctor in order to be reimbursed from your FSA, HRA or HSA plan.

The following **Frequently Asked Questions** (FAQs) will help you to understand the new ruling regarding OTC items.

## The OTC Ruling – What does it mean to me?

### What is the new rule for over-the-counter (OTC) expenses beginning January 1, 2011?

Effective January 1, 2011, OTC drug and medicine purchases will require that you obtain a prescription from your doctor if you would like to submit the expense towards your FSA, HRA or HSA plan. This new rule does not apply to reimbursements for insulin which will continue to be permitted without a prescription.

### Who made this new rule regarding OTC drugs and medicines?

The OTC provision is part of the Healthcare Reform legislation passed by Congress. PayFlex and your employer are required by the federal government to follow this new rule.

### When does this take effect and how does this affect my run-out and/or grace period (if applicable to your plan)?

The new ruling will go into effect on January 1, 2011. This means that *ANY* OTC drug or medicine purchased *on or after* January 1, 2011 will require a prescription to be considered as an eligible expense under your FSA, HRA, or HSA Plan.

OTC drugs and medicines purchased *before* January 1, 2011 can still be submitted for reimbursement without a prescription during your plan's run out period. The run out period is the period of time in which you can submit expenses after your plan year ends.

If your plan includes a grace period for the 2010 plan year, a prescription would be required for any OTC drug or medicine purchased *on or after* January 1, 2011, in order to be reimbursed.



## OTC Expenses – What will require a prescription?

### What items will require a prescription in order for the expense to be eligible?

The following categories of OTC drugs and medicines will require a prescription in order to be considered an eligible expense under a healthcare FSA, HRA or HSA beginning January 1, 2011.

Acid Controllers	Cough, Cold & Flu
Allergy & Sinus	Digestive Aids
Antibiotic Products	Feminine Anti-Fungal/Anti-Itch
Anti-Diarrheals	Hemorrhoid Preps
Anti-Gas	Laxatives
Anti-Itch & Insect Bite	Motion Sickness
Anti-Parasitic Treatments	Pain Relief
Baby Rash Ointments/Creams	Respiratory Treatments
Cold Sore Remedies	Sleep Aids & Sedatives
Stomach Remedies	

### What OTC items can I continue to buy without needing to obtain a prescription?

The following categories of OTC items will continue to be eligible without a prescription under a healthcare FSA, HRA, and HSA. In fact, over 47,500 items are OTC eligible but approximately 16,000 will require a prescription.

Band-Aid®	Elastic Bandages & Wraps
Birth Control	First Aid Supplies
Braces & Supports	Insulin & Diabetic Supplies
Catheters	Ostomy Products
Contact Lens Solution/Supplies	Reading Glasses
Denture Adhesive	Wheelchairs, Walkers, & Canes
Diagnostic Tests & Monitors	

The updated eligible expense listing will be available on the participant portal on January 1, 2011.



## What do I need to do if I want to submit expenses for items such as Tylenol® and Claritin®?

### What should I tell my doctor?

You should ask your doctor for a prescription for the OTC drug or medicine you wish to purchase. Explain that the prescription is required to get reimbursed with your healthcare FSA dollars.

### Do I need to schedule a doctor's appointment to get a prescription for the OTC?

You will need to call your doctor to determine if an appointment is necessary to obtain a prescription for an OTC drug or medicine. If you see your doctor, you may be charged an office visit co-payment.

### What documentation should I submit to get reimbursed for the OTC drug or medicine?

If the pharmacist fills the prescription through the pharmacy system (the pharmacist takes the prescription), you will need the prescription label detailing the prescription number and dispensed drug. If you purchase the item at any pharmacy cash register (you keep the prescription) you will need a copy of the prescription along with a sales receipt detailing the purchased drug. Attach your documentation to a completed claim form and submit them online to PayFlex for reimbursement.

### Can I have my doctor fill out a letter of medical necessity instead of a prescription?

No. The IRS released Notice 2010-59, which indicates that a prescription is required for the OTC drugs or medicines in order to get reimbursed. The IRS has stated that a letter of medical necessity cannot be used in place of a prescription.

### My doctor will not provide me a prescription, what should I do now?

PayFlex must follow the IRS guidelines for administering healthcare FSA, HRA or HSA plans. If a prescription is not obtained for the desired OTC drug or medicine, PayFlex will not be able to reimburse you for the expense. This would mean that the purchase would be treated as an ineligible OTC expense and would be denied.

### How long will my OTC prescription last?

The prescription should follow normal dispensing guidelines as prescribed by your doctor according to state law. PayFlex will require an updated prescription based on the dispensing instructions as well as a copy of each OTC prescription that is submitted for reimbursement.

### If I am purchasing an OTC drug or medicine monthly, do I need to submit my prescription with each claim?

Yes. You will need to submit a copy of your prescription each time you submit the expense for reimbursement.

### What if my prescription is not legible?

PayFlex must be able to read the date of the prescription, the prescription drug or medicine specific name, the quantity, and the patient's name on the prescription. If any of these items are not readable, PayFlex will deny the expense.

### My doctor says that it's illegal to write prescriptions for an OTC item, what can I do now?

PayFlex must follow the IRS guidelines to keep the plan in compliance. If your doctor will not write a prescription for the OTC drug or medicine, it will be considered ineligible and you cannot submit the expense for reimbursement.



## OTC Ruling and how it affects the use of a Healthcare Card.

### **If I have a doctor's prescription, can I use my healthcare card to purchase the OTC drug or medicine?**

Generally, no. The healthcare card is to be used at merchants who have an IRS-approved system in place recognizing expenses that can be purchased with your card. These merchants are required by regulation to remove the OTC drugs and medicines from their inventory listings starting January 1, 2011 which will cause denials at the point of sale if the card is used.

There may be instances where you could use a healthcare card at specialized pharmacies that meet IRS exceptions. These merchants do not have an IRS-approved system in place but 90% of their items for purchase are considered eligible healthcare expenses. If the healthcare card is used at a 90% merchant, you will be required to submit a copy of the prescription along with the sales receipt for the purchase in order for PayFlex to verify the purchase.

### **Can I use my healthcare card to buy OTC items such as Band-Aid®, saline solution, insulin, orthotics, etc?**

Yes, if the pharmacy has an IRS-approved system and has coded the OTC item as reimbursable without a prescription.

### **My doctor wrote me a prescription for my OTC medicine, why can't I use my healthcare card?**

If you purchase an OTC drug or medicine and pay for it at the cash register with your healthcare card, the expense may be denied because the product will have been removed from the listing of eligible expenses that do not require a prescription. By legislation and starting January 1, 2011, OTC drugs and medicines will no longer be approved at the point-of-sale. You will want to pay for the expense with another form of payment and then submit the receipt along with a copy of your prescription and completed claim form to PayFlex for reimbursement.

### **Can I still use my healthcare card for controlled prescriptions written by my doctor, such as antibiotics, blood pressure or cholesterol medications, etc?**

Yes, your healthcare card can be used to purchase these prescriptions. The IRS ruling only affects OTC drugs and medicines.

