



**Affordable Care Act: Questions and Answers on
Over-the-Counter (OTC) Medicines and Drugs
Important Changes Effective January 1, 2011**



Q. How are the rules changing for reimbursing the cost of over-the-counter (OTC) medicines and drugs from General-Purpose Medical Flexible Spending Accounts (FSAs), Health Reimbursement Arrangements (HRAs), and Health Savings Accounts (HSA)?

A. Section 9003 of the Affordable Care Act established a new uniform standard for medical expenses. Effective **January 1, 2011**, distributions from General-Purpose Medical FSAs, HRAs, and HSAs will be allowed to reimburse the cost of OTC medicines, drugs, and vitamins **only if they are purchased with a prescription**. This new rule does not apply to reimbursements for the cost of insulin, which will continue to be permitted, even if purchased without a prescription. **IRS Notice 2010-59** (the “OTC Notice”), issued on September 3, 2010, provided some clarification regarding the limitation imposed by the Patient Protection and Affordable Care Act (PPACA).

Q. When will the changes become effective?

A. The changes are effective for purchases of over-the-counter medicines and drugs without a prescription after **December 31, 2010**. **The changes do not affect purchases of OTC medicines and drugs in 2010**, even if they are reimbursed after December 31, 2010. **Remember:** Stockpiling is still prohibited and any purchases in excess of five of one particular item on one receipt will be denied.

Q. How do I prove that I have purchased an over-the-counter medicine or drug with a prescription so that I can get reimbursed from my employer's General-Purpose Medical FSA or an HRA?

A. If your employer’s General-Purpose Medical FSA or HRA reimburses these expenses, you would provide the prescription (or a copy of the prescription or another item showing that a prescription for the item has been issued) and the customer receipt (or similar third-party documentation showing the date of the sale and the amount of the charge). For example, documentation could consist of a customer receipt from the pharmacy 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**.

Q. What types of OTC items will be impacted by the new rule?

A. A **partial listing** of types/examples of expenses that **will now require a prescription** for reimbursement below:

Acid Controllers (i.e. Prilosec)	Baby Rash Ointments/Creams (i.e. Desitin)	Motion Sickness (i.e. Dramamine)
Allergy and Sinus (i.e. Claritin)	Cold Sore Remedies (i.e. Abreva)	Pain Relief (i.e. Tylenol/Motrin)
Antibiotic Products (i.e. Neosporin)	Cough, Cold & Flu (i.e. Nyquil)	Respiratory Treatments (i.e. Mucinex)
Anti-Diarrheals (i.e. Imodium)	Digestive Aids (i.e. Lactaid)	Sleep Aids (i.e. Unisom)
Anti-Gas (i.e. Gas-Ex)	Feminine Anti-fungal (i.e. Vagisil)	Stomach Remedies (i.e. Pepto Bismal)
Anti-itch/Insect Bite (i.e. Cortaid, Calamine Lotion)	Hemorrhoidal Medications (i.e. Preparation H)	Laxatives (i.e. Metamucil)

Q. Will I need a prescription to use my General-Purpose Medical FSA, HRA, or HSA for insulin purchases after December 31, 2010?

A. No. You can continue to use your General-Purpose Medical FSA, HRA, or HSA to purchase insulin without a prescription after December 31, 2010.

Q. How does this change affect over-the-counter medical devices and supplies?

A. The new rule does not apply to items for medical care that are not medicines or drugs. Thus, items such as crutches, supplies such as bandages, and diagnostic devices such as blood sugar test kits will still qualify for reimbursement by a General-Purpose Medical FSA or HRA if purchased after December 31, 2010, regardless of whether the items are purchased using a prescription. You may still receive reimbursement for these items by submitting the cash register receipt containing a description of the item, the date purchased, and the name of the dependent the item was purchased for along with your FSA or HRA Claim Form.

A **partial listing** of types/examples of expenses that **will not require a prescription** for reimbursement below:

Ankle/Knee/Wrist braces	Durable Medical Equipment (i.e. Hospital beds, wheelchairs, crutches, etc.)	Reading glasses
Bandages	Heating Pads	Thermometers
Band-aids	Contact Lens Solutions	Ice Packs
Diabetic Test Strips	Blood Pressure Cuffs	Compression Stockings

Q. My company gives me sixty (60) days beyond the end of the plan year to submit claims for FSA expenses incurred during the plan year. What happens if I purchase OTC medicines or drugs without a prescription in 2010 but do not submit the claim for those expenses until January 2011? Will they qualify for reimbursement from my General-Purpose Medical FSA?

A. Yes. The new restriction on plan reimbursements for the cost of OTC medicines or drugs without a prescription applies only to purchases that are made after 2010.

Q. My company's flex plan includes a provision for a 2 ½ month grace period, so that if I don't spend all of the money in my General-Purpose Medical FSA by December 31 in a given year, I can still incur expenses during the first 2 ½ months of the following plan year to exhaust the funds in my old plan year. If I buy OTC medicines or drugs without a prescription during the 2 ½ month grace period of 2011, can I still use the amount left in my General-Purpose Medical FSA at the end of 2010 to reimburse those expenses?

A. No. **The change applies to all OTC purchases made on or after January 1, 2011.** Even if your employer's plan includes the 2 ½ month grace period, the cost of OTC medicines and drugs purchased without a prescription during the first 2 ½ months of 2011 **will not** be eligible to be reimbursed by a General-Purpose Medical FSA.

Q. My plan year does not run on a calendar year, when do the new OTC rules apply to me?

A. The prescription requirement for OTC medications **will apply to non-calendar year plans on January 1, 2011**, meaning those with plan years that have already started will have the new rule apply mid- plan year.

Example: ABC sponsors a General-Purpose Medical FSA with a plan year that runs October 1 through September 30. Sally purchases Prevacid on December 1, 2010, without a prescription. She submits her reimbursement request and is subsequently reimbursed. Sally again purchases Prevacid on January 2, 2011 (same plan year) without a prescription. She submits the OTC expense for General-Purpose Medical FSA reimbursement, but this time, it is denied because she did not obtain the OTC medicine with a prescription.

Q. Can an employee change their General-Purpose Medical FSA election as a result of the new rule?

A. Although the IRS Notice **2010-59** on OTC does not specifically address election changes, a literal interpretation of the existing change rules and recent, informal remarks from Treasury officials would suggest **changes cannot be made solely as a result of the rule change.**