

## OTC Drugs and Medicines Eligible with a Doctor's Prescription

In March, President Obama signed the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively "the Act"). The Act includes a number of modifications to employee benefit programs. This is the first in a series of compliance alerts Flexible Benefits Systems, Inc. will provide focusing on changes required by the Act.

One provision that will affect employee participants beginning January 1, 2011 is the requirement for over-the-counter (OTC) drugs, medicines and biologicals to be accompanied by a physician's prescription in order to be reimbursed under health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs) and health savings accounts (HSAs). Below is a summary of this change and how it will impact plans and the participants' experience.

### **CHANGES TO OVER-THE-COUNTER ELIGIBILITY FOR REIMBURSEMENT**

Under the Act, OTC drugs, medicines and biologicals will continue to be eligible for reimbursement as long as the request is accompanied by a doctor's prescription. This means items such as cough medicines, pain relievers, acid controllers, and diaper rash ointment will now require a doctor's prescription to be submitted along with the reimbursement request. Insulin and other OTC items, such as band-aids, will continue to be eligible without a prescription.

Since this change applies to all expenses incurred on or after January 1, 2011 it will affect all plans and participants at the same time, regardless of the plan year.

OTC drug expenses incurred on or after January 1, 2011 will require a doctor's prescription in order to be reimbursed under a health FSA, HRA or HSA. Expenses incurred prior to January 1, 2011 will not. For example, for a calendar year plan with a claim-it-by date of March 31, 2011, an OTC drug purchased on December 31, 2010, could be submitted before a plan's claim-it-by date of March 31, 2011, and still be reimbursed without a prescription.

For FSAs, HRAs or HSAs currently offering debit cards, this provision will also impact the use of all health care debit cards. Beginning January 1, 2011, merchants who are IIAS certified will need to modify the list of items eligible for payment. This is because of the doctor's prescription requirement. Purchases of OTC drugs, medicines and biologicals will require another form of payment. This change affects only OTC drugs, medicines and biologicals - bandages, home health-aids and other OTC items will still be eligible and can be purchased using the card without further documentation.

Though the specific list of items affected has not been completely assessed, the following categories of items will require a doctor's prescription and thus, cannot be purchased using a health care debit card:

- Acid Controllers
- Allergy & Sinus
- Antibiotic Products
- Anti-Diarrheals
- Digestive Aids
- Feminine Anti-Fungal/Anti-Itch
- Hemorrhoidal Preps
- Laxatives

- Anti-Gas
- Anti-Itch & Insect Bite
- Anti-parasitic Treatments
- Baby Rash Ointments/Creams
- Cold Sore Remedies
- Cough, Cold & Flu
- Motion Sickness
- Pain Relief
- Respiratory Treatments
- Sleep Aids & Sedatives
- Stomach Remedies

The following are examples of some of the items that will remain available without a doctor's prescription:

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

Flexible Benefits Systems, Inc. is in the process of updating its communication materials to incorporate this change and will be posting information to its web site as it becomes available. It is important that Flexible Benefits Systems, Inc. clients incorporate this information into their education and enrollment materials so participants understand the pertinent provisions of the health care reform when determining their elections for the new plan year.