



BENEFIT NEWS BRIEFS

Requirement That OTC Medicines Must Be Prescribed To Be Reimbursable "Medical Expenses" Applies to GHPs

Section 9003 of the *Affordable Care Act (ACA)* revised the definition of "medical expenses" **effective January 1, 2011** by adding *Code Section 106(f)* and amending Code Sections 223(d)(2)(A) and 220(d)(2)(A). These sections provide that a medicine or a drug shall be treated as tax-free medical expense only if: (1) the medicine or drug requires a prescription, (2) is available without a prescription (an over-the-counter medicine (OTC) or drug) and the individual obtains a prescription, or (3) the medicine or drug is insulin. This was a change in prior law.

Originally most industry publications focused on the application of the prescription requirement for OTC drugs as applicable to only FSAs, HRAs, HSAs and Archer MSAs since the initial IRS guidance on the changes were *less than models of clarity*.

After further reading, it emerges that employer sponsored group health plans (GHPs) are also subject to the requirement that covered OTC medication expenses must be prescribed before being subject to coverage or reimbursement. **GHPs that did not require prescriptions for covered OTC drugs should do so** or such reimbursements are taxable income to the employee and may create other tax problems. Thus, these ACA changes apply to:

- *employer-provided accident and health plans – including (GHPs) – Both Grandfathered and Non-Grandfathered Plans;*
- *health flexible spending arrangements (health FSAs);*
- *health reimbursement arrangements (HRAs);*
- *Health Savings Accounts (HSAs); and*
- *Archer Medical Savings Accounts (Archer MSAs).*

The IRS guidance is below:

- **Rev. Rul. 2010-23:** <http://www.irs.gov/pub/irs-drop/rr-10-23.pdf>
- **Q&As:** <http://www.irs.gov/newsroom/article/0,,id=227308,00.html>
- **Notice 2010-59:** <http://www.irs.gov/pub/irs-drop/n-10-59.pdf>

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