

OTC “Drugs and Medicine” Purchases and Flex Cards

The Patient Protection and Affordable Care Act of 2010 changed the rules for purchase of over-the-counter (OTC) drugs and medicines using funds from FSA and HRA Plans. According to the new rules, items classified as drugs and medicine are permitted only if the participant has a valid prescription from a doctor for the item(s). It should be noted that the initial ruling stated that properly prescribed OTC drugs and medicines could not be paid for with a Flex Card. However, in December 2010, the IRS issued new guidance that **allows** the use of Flex Cards for properly prescribed OTC drugs and medicines.

Effective January 15, 2011, Flex Cards payments may continue for these items provided all five of the following requirements are met:

1. Prior to the purchase, the participant provides the pharmacist a copy of the prescription, and the pharmacist distributes the OTC drug or medicine and assigns an Rx number;
2. The pharmacy (or other vendor) retains a record of the Rx number, the name of the purchaser (or person for whom the prescription applies), and the date and amount of the purchase;
3. The pharmacy (or other vendor) retains all records for review by the employer or its agent upon request;
4. All other standard requirements governing FSA/HRA purchases are in accordance with applicable law and regulations;



5. The Flex Card system does not accept a charge for an OTC drug or medicine unless an Rx number has been assigned.



In order to accept Flex Cards for OTC drugs and medicines, these requirements must be met by drug stores and pharmacies, non-healthcare merchants with pharmacies, and mail order/web-based vendors that sell prescription drugs.

If all requirements are met, the purchase will be considered fully substantiated at the point of sale and no RFI (Request for Information) Letter will be sent.

Flex Cards may be used at 90% pharmacies, but RFI Letters will be sent to obtain required substantiation. Substantiation must include either 1) a receipt that identifies the purchaser along with an Rx number; or 2) a receipt showing the item purchased along with a copy of the prescription.

The most important thing to remember about the new regulations is that the acceptance of a Flex Card is dependent on the programming efforts of the merchant. In other words, complying with the new rules requires merchants to reprogram their Inventory Information Approval Systems. Participants should know that if the Flex Card is not accepted at some merchants, it is because the merchant's technology has not been updated to meet the new standards.

If the Flex Card is not accepted for a valid OTC drug and medicine purchase, the participant should pay out-of-pocket and submit a claim form for reimbursement.

Flexible Spending Account Maximum



Effective January 1, 2013, each employee will be limited to a \$2,500 maximum pre-tax health care FSA election (or less if the employer specified maximum is less than \$2,500). This maximum also applies to Plan years that begin in 2012 and end in 2013 (e.g., July 1 – June 30). This amount may be indexed in future years.

Age 26

Adult children of participants in an FSA Health Care Account or an HRA Account may be covered through the December 31st of the year they turn age 26.



Please note that these rules are subject to interpretation and changes to the rules may occur between now and the effective date. To regularly monitor updates to Health Care Reform, please click here: <http://www.ebsrmsco.com/Reform/health-care-reform.aspx>