

LEGISLATIVE NEWS: IRS GUIDANCE REGARDING OTC EXPENSES

On Friday, September 3, 2010, the IRS published the long-awaited guidelines defining eligible medical expenses relation to over-the-counter (OTC) drugs under Section 9003 of the Patient Protection and Affordable Care Act (PPACA).

The new definition generally applies to all OTC medication expenses incurred on or after January 1, 2011, and affects all employer-provided accident and health plans, including health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), health savings accounts (HSAs) and Archer medical savings accounts (MSAs). Following are a summary of the guidelines:

- An individual may be reimbursed for OTC medicines or drugs as long as the individual obtains a prescription for the expense.
- A “prescription” means a written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and that is issued by an individual who is legally authorized to issue a prescription in that state.
- Insulin can be reimbursed without a prescription.
- Section 9003 of PPACA does not apply to items that are not medicines or drugs, including medical equipment, supplies or diagnostic devices (i.e., eye glasses, crutches, bandages, or blood sugar testing kits). Such items may be reimbursed if they meet the definition of medical care in § 213(d)(1), which includes expenses for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.

Updated guidelines and other healthcare reform provisions can be found on the [Affordable Care Act](#) page on IRS.gov. [IRS Notice 2010-59](#) and [Revenue Ruling 2010-23](#), posted Friday, further explain the rules. The IRS has also posted [questions and answers](#) regarding the new rules.

SHPS has been anticipating these changes and is currently working with our compliance team to confirm our spending account administrative practices based on the final guidelines. We will be ready to implement the OTC prescription requirements by January 1, 2011 effective date. SHPS will provide you and your participants with [updated guidance on OTC expense reimbursement](#) in the very near future.