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IRS Expands When HFSA's & HRAS May Allow Over-The-Counter Drug Purchases With Drug Cards

Recent Internal Revenue Service (IRS) guidance loosens the conditions under which health flexible spending account (HFSA) and health reimbursement accounts may permit participants to use debit cards to purchase over-the-counter medicines or drugs after January 15, 2011. Under Internal Revenue Code rules amended by the Affordable Care Act, drug card and other over-the-counter prescription drug purchases must meet new requirements to qualify for reimbursement by a HFSA or HRA. HFSA and HRA sponsors and administrators wishing to allow participants to use debt cards to purchase over-the-counter drugs must ensure that their arrangements comply with this updated guidance. Sponsors and administrators that are unable or unwilling to meet the conditions established under the updated rules for allowing debt card reimbursement of over-the-counter drugs should act quickly to confirm that all relevant plan documents, procedures and communications clearly forbid reimbursement of over-the-counter medicines and drugs to the extent required by the updated rules.

IRS Notice 2011-5 modifies IRS guidance providing that HFSA and HRA debit cards generally could not be used after January 15, 2011 to purchase over-the-counter medicines or drugs after January 15, 2011, except with respect to "90 percent pharmacies." previously announced in Notice 2010-59

Under the new rules announced in Notice 2011-5, after January 15, 2011, the IRS has expanded the circumstances under which HFSA and HRA debit cards may continue to be used to purchase over-the-counter medicines or drugs depends on where and how they are purchased. Different conditions must be met if the over-the-counter drug is purchased with a drug card from a vendor that under IRS rules:

- Is a "90-percent pharmacy;"
 - Has a "health care related Merchant Code;
 - Is a non-health care merchant that has a pharmacy, or that sells prescription drugs via mail order or the web.
- Where the applicable requirements established for each of these types of vendors is met, Notice 2011-5 permits HFSA's and HRAS to continue to allow participants to purchase over-the-counter drugs using debit cards after January 15, 2011. In contrast, if the vendor is not one of these types of vendors or is a listed vendor but the applicable requirements for allowing a debit card purchase of an over-the-counter medicine for that type of vendor are not met, HFSA and HRA debit cards may not be used to purchase over-the-counter medicines or drugs after January 15, 2011.

For More Information Or Assistance

If you need assistance in responding to these new rules or auditing or assessing, updating or defending other labor and employment, employee benefit or compensation practices, please contact the author of this update, attorney Cynthia Marcotte Stamer [here](#) or at (469)767-8872.

Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, management attorney and consultant Ms. Stamer is nationally and internationally recognized for more than 23 years of work helping employers; employee benefit plans and their sponsors, administrators, fiduciaries; employee leasing, recruiting, staffing and other professional employment organizations; and others design, administer and defend innovative workforce, compensation, employee benefit and management policies and practices. The Chair of the American Bar Association (ABA) RPTE Employee Benefits & Other Compensation Committee, a Council Representative on the ABA Joint Committee on Employee Benefits, Government Affairs Committee Legislative Chair for the Dallas Human Resources Management Association, and past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer works, publishes and speaks extensively on wage and hour, worker classification and other human resources and workforce, employee benefits, compensation, internal controls and related matters. She also is recognized for her publications, industry leadership, workshops and presentations on these and other human resources concerns and regularly speaks and conducts training on these matters. Her insights on these and other matters appear in the Bureau of National Affairs, Spencer Publications, the Wall Street Journal, the Dallas Business Journal, the Houston Business Journal, and many other national and local publications. For

additional information about Ms. Stamer and her experience or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly.

Other Helpful Resources & Information

If you found this article of interest, you also may be interested in reviewing other Breaking News, articles and other resources available [here](#) including:

- [Attorney Cynthia Stamer Shares Best Practices for Protecting Plan Participant & Other Employee Information At SBWA/IRS Plan Administrator Skills Workshops](#)
- [Supreme Court Medical Resident Stipend Ruling Highlights Advisability of Worker Classification & Payroll Practice Review Advisable For Health Care, Other Employers](#)
- [IRS Expands When HFSAs & HRAS May Allow Over-The-Counter Drug Purchases With Drug Cards](#)
- [Holiday Season Celebration Reminder To Manage Intoxication Risks](#)
- [Avoiding Post-Holiday Season HR Liability Hangover](#)
- [2011 Standard Mileage Rates Announced](#)
- [Proposed New DOL Defined Benefit Plan Annual Funding Notice Rule](#)
- [Affordable Care Act Grandfathered Plan Rules Loosened To Allow Insured Plans Making Some Insurance Changes To Qualify](#)
- [Managed Care Executive Quotes Stamer On Implications Of Affordable Care Act Claims & Appeals Rules](#)
- [DOL Proposes To Expand Investment Related Services Giving Rise to ERISA](#)
- [EEOC Charges Employers With Violating ADA By Denying Medical Leave](#)
- [Annual Benefit Limitation Waiver & Anticipated HHS Medical Loss Ratio Guidance Offer Quick Acting Employers, Insurers New Mini-Med, Health Plan Design Options](#)
- [New Insured Group Health Plan Non-Discrimination Rules Create Significant Liability For Employers & Insurers; Prompt IRS Also To Review Self-Insured Group Health Plan Rules](#)
- [Tighten & Update of Health & Other Plan Claims & Appeals Procedures & Documentation In Response To New Regulations, Tightening Court Review](#)
- [Small Employers Sponsoring Health Coverage May Qualify For New Tax Credit, Must Act Quickly To Comply With Other New Federal Health Plan Mandates](#)
- [Rite Aid Agrees to Pay \\$1 Million to Settle HIPAA Privacy Case As Office of Civil Rights Proposes Tighter HIPAA Privacy & Security Regulations](#)
- [New Affordable Care Act Mandated High Risk Pre-Existing Condition Insurance Pool Program Regulations Prohibit Plan Dumping of High Risk Members, Set Other Rules](#)
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- [Businesses Employing Children Should Review & Tighten Practices in Light of Tightened Rules & Increased Penalties](#)
- [Labor Department FMLA Guidance Adopts Broad Interpretation, Employer Care Needed Determining Who Qualifies As Child](#)
- [Agencies Release Regulations Implementing Affordable Care Act Health Plan Preventative Care Mandates](#)
- [Office of Civil Rights Proposes Changes To HIPAA Privacy, Security & Civil Sanctions Rules](#)

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