Health Accounts and Health Reform

The new “health reform” laws, the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act (HCERA), signed by President Obama in March, will affect UnitedHealthcare customers in 2010 and beyond.*

Following are some key changes that employers will want to be aware of today and a list of questions we anticipate employers and their employees may have about health savings, health reimbursement, health care flexible spending, retiree reimbursement and funded health reimbursement accounts (HSAs, HRAs, FSAs, RRAs and FHRAs). This information is provided by OptumHealth Financial Services, a UnitedHealth Group company that administers tax-advantaged health accounts for UnitedHealthcare.

Summary of Legislation

Starting January 1, 2011, benefit plans may not allow employees to use HSA, health care FSA, HRA, RRA or FHRA dollars to pay for over-the-counter (OTC) medicines without a prescription. Employees will still be able to use their tax-advantaged accounts to pay for insulin.

In order for employees to be reimbursed from their health care FSA, HRA, RRA or FHRA for a prescription OTC medicine purchase, they will need to submit copies of their prescription and receipt.

Beginning January 1, 2013, the pre-tax contribution limit per plan year for a health care FSA will be $2,500 for each participant.

The $2,500 cap is, however, above the national average for employee health care FSA contributions, which was $1,424 in 2009, according to Mercer’s National Survey of Employer-Sponsored Health Plans.

If an employee has a prescription for an OTC medicine and uses an HSA to pay for the medicine, he or she will need to keep copies of the prescription and receipt for his or her tax records.

The new restriction on OTC medicines begins on January 1, 2011 and will apply to grace periods of current plans that extend to, on, or after January 1, 2011.

Effective March 30, 2010, eligible expenses of adult children may be reimbursed from a reimbursement plan, such as a health care FSA, HRA, RRA or FHRA, through the end of the year in which the child turns 26. Employers may allow this change even if their cafeteria plan has not yet been amended (employers have until the end of 2010 to amend the plan language).

Effective January 1, 2011 (for calendar-year plans), there is a new mandate for group health plans that requires coverage of adult children to age 26. The premium payments for this new mandated coverage may be run through your cafeteria plan. You may need to update the eligibility rules in your document to comply with the new law.

*OptumHealth Financial Services, a UnitedHealth Group company that administers tax-advantaged health accounts for UnitedHealthcare.
Frequently Asked Questions and Answers

Are other medical supplies like contact lens solution, bandages, blood-sugar test kits and durable medical equipment (such as wheel chairs or hospital beds) affected by the limit on OTC medicines?

The IRS has yet to issue final rules on this issue. Health reform addressed OTC medicine, which we believe includes non-prescription pain relievers, allergy medicine and cold and flu medicine. Health reform also made it clear that tax-advantaged health accounts will still be able to be used to pay for insulin.

**Why/How?** Health reform is still being interpreted by the appropriate federal agencies and UnitedHealthcare is awaiting more detailed guidance surrounding the definition of “medicine or drug” and how to administer the prescription requirement. The legislation itself referred only to medicine or drugs that are prescribed drugs or insulin and does not clarify the definition of medicine or drug.

**Detail:** Until appropriate federal agencies issue rules or additional guidance, we are interpreting the limitation on reimbursing medicine or drugs purchased without a prescription to apply to OTC medicine only.

Do I have to update my plan documents to reflect the changes to OTC restrictions, the FSA contribution limit and the new definition of dependent children?

The law change will require employers to update plan documents for 2011 to comply with the restrictions on OTC medicine or drug purchases (if those were eligible expenses under the plan) and the changes to the definition of dependent children (if employers want to allow employees to include them in their cafeteria-plan elections).

Looking ahead, plan documents may require updating to comply with the restrictions on employee contributions to health care FSAs effective on January 1, 2013. Over the next several months and years, federal agencies will be writing and issuing regulations to implement health reform. You will want to stay informed about any regulations that are issued.

**Why/How?** The OTC restrictions, FSA contribution limit and new definition of dependent children may constitute material changes to the benefits of a health account plan. Plan documentation will need to be updated accordingly, and employees will need to be notified of the plan changes.

**Detail:** Amending plan documents is a normal business activity. It is not uncommon for employers to change their benefit plans during a plan year, and these changes occur for a number a reasons.

How will this affect my debit card transactions?

For health care FSAs, HRAs, RRAs and FHRRAs

Starting January 1, 2011, account holders will no longer be able to use health care FSA, HRA, RRA or FHRA debit cards to pay for OTC medicines. Participants will still be able to use those accounts to pay for insulin. In order for participants to be reimbursed from their health care FSA, HRA, RRA or FHRA for a prescription OTC medicine purchase, they will need to
pay for the expenses out-of-pocket and submit a copy of their prescription and receipt for the purchase.

**Why/How?** The Special Interest Group for IIAS Standards (SIGIS) issued a press release indicating that to comply with the new law, OTC medicines will no longer be approved at the point of sale. Merchant inventory systems may also be adjusted to reflect the changes in what products are considered qualified medical expenses under federal regulations.

**Detail:** In order for account holders to be reimbursed from their health care FSA, HRA, RRA or FHRA for a prescription OTC medicine purchase, they will need to pay for the expenses out of pocket and submit a copy of their prescription and receipt for the purchase.

If account holders do not submit a copy of their prescription along with their receipt for the purchase of OTC medicine, the claim will be denied for reimbursement. Updated claim forms explaining what documents must be submitted with claims will be available on our website.

**For HSAs**

It is the account holder's responsibility to only use the HSA debit card for qualified medical expenses as defined by the IRS or to pay the applicable penalties if nonqualified expenses are reimbursed. Starting January 1, 2011, qualified expenses will no longer include OTC medicine unless prescribed. HSA account holders will still be able to use an HSA to pay for insulin. If an HSA account holder has a prescription for an OTC medicine and they use an HSA to pay for such medicine, they will need to keep the prescription and receipt for the purchase along with their tax records.

**Why/How?** HSA purchases are not substantiated, or verified, at the time of purchase. Responsibility for using the HSA debit card for only qualified medical expenses lies with the account holder. HSA account holders need to save all receipts for HSA purchases to verify that they used their HSA funds to pay for only qualified medical expenses. Starting January 1, 2011, withdrawals from HSAs to pay for nonqualified expenses will be subject to 20 percent penalty (unless the account holder is age 65 or older or becomes disabled).

**Detail:** UnitedHealthcare provides its customers with tax documents that show aggregate contributions and withdrawals. It is the HSA account holder’s responsibility to keep all receipts and any other documentation, such as doctor's prescriptions for OTC medicine, verifying that withdrawals were made to pay for qualified medical expenses. Consult the HSA tax center at www.optumhealthbank.com or the IRS website for more information.

If I incur an eligible OTC medicine expense during the 2010 plan year, can I still submit it for health care FSA, HRA, RRA or FHRA reimbursement during the run-out period?

Yes, provided the expense is incurred on or before December 31, 2010 and provided that the OTC medicine expense is an eligible expense under your employer's plan.

**Why/How?** A run-out period provides extra time to submit reimbursement requests for the preceding plan year. So, if a plan has a run-out period, a participant under that plan may be reimbursed for eligible OTC medicine expenses in 2011, provided the eligible OTC medicine expenses were incurred on or before December 31, 2010.
**Detail:** Your employer should be able to provide you with the details about the run-out period applicable to its plan, if any. You will need to follow your employer’s guidelines and deadlines for submitting eligible OTC medicine expenses incurred during 2010. Claims that are not submitted on time or with proper documentation will be denied, so care should be taken to follow the instructions received with your plan information.

If my plan has a grace period attached to the 2010 plan year, can I continue to incur eligible OTC medicine or drug expenses through the grace period?

No. As of January 1, 2011, consumers may not pay for OTC medicines or drugs from tax-advantaged health accounts unless prescribed.

**Why/How?** The law does not treat a plan’s grace period as if it were part of the preceding plan year for non-prescription OTC purchases. Starting January 1, 2011, except for a prescribed OTC medicine, consumers will not be reimbursed for non-prescription OTC expenses incurred on or after that date, even if their 2010 plan has a grace period that extends into 2011.

**Detail:** Health reform explicitly provides that no OTC medicines may be reimbursed from tax-advantaged accounts if they are purchased on or after January 1, 2011, unless they were prescribed. The presence of a grace period does not change that.

Which tax-advantaged health accounts does the OTC change affect?

The OTC change affects all types of tax-advantaged health accounts, including HSAs, health care FSAs, HRAs, RRAs and FHRAs. Starting January 1, 2011, account holders may not use the accounts for OTC medicines unless they have a prescription. Account holders will still be able to use a tax-advantaged health account to pay for insulin.

**Why/How?** Health reform explicitly provides that a medicine that is a prescribed drug or is insulin qualifies for reimbursement. The actual text of the legislation does not require that the medicine or drug be available only by prescription. This change makes all medicine or drugs that are purchased without a prescription not qualified for reimbursement as of January 1, 2011.

**Detail:** We expect the IRS will publish guidance on qualified medical expenses for 2011 and beyond.

If I get a prescription for an OTC medicine, do I need to present it to the pharmacist in order to submit a claim and be reimbursed?

No, the OTC medicine will be purchased out-of-pocket. In order to be reimbursed for a prescription OTC medicine purchase, a copy of the prescription and receipt for the purchase must be submitted.

If you purchase an OTC medicine with an HSA, you will need to keep a copy of the receipt and the prescription with your tax records to verify that withdrawals were made to pay for qualified medical expenses.

**Why/How?** Regardless of whether an OTC medicine or drug purchase is prescribed, the health care FSA, HRA, RRA or FHRA debit card may not be used at the cash register to make the purchase. The prescription will be required to be submitted along with the reimbursement claim.
An HSA debit card can continue to be used for OTC medicine purchases, but it is the HSA account holder’s responsibility to keep all receipts and any other documentation, such as doctor’s prescriptions for OTC medicine, to verify that withdrawals were made to pay for qualified medical expenses.

**Detail:** In order for account holders to be reimbursed from their health care FSA, HRA, RRA or FHRA for a prescription OTC medicine purchase, they will need to pay for the expenses out-of-pocket and submit a copy of their prescription and receipt for the purchase.

If account holders do not submit a copy of their prescription along with their receipt for the purchase of OTC medicine, the claim will be denied for reimbursement. Updated claim forms explaining what documents must be submitted with claims will be available on our website.

**What about plans that don't run along the calendar year (January to December) but, for example, from June to May?**

The new restriction on non-prescription OTC medicine or drug purchases takes effect January 1, 2011. Employers should modify their plan documents to comply with the law and notify employees as required.

**Why/How?** The OTC restriction is effective for expenses incurred on or after January 1, 2011, regardless of whether an employer’s plan is a non-calendar year plan. If yours is such a plan, and OTC medicines and drugs are eligible expenses under the plan, the change in law will result in a material change to your benefit plan that will require you to amend your plan documentation and notify employees.

**Detail:** For example, if a health care FSA (or other applicable tax-advantaged health expense account) falls under a plan year that started July 1, 2010 and ends June 30, 2011, an account holder may not be reimbursed for non-prescription OTC medicines purchased on or after January 1, 2011. This applies even if the account holder calculated likely OTC medicine purchases when deciding how much to contribute to his or her health care FSA for the July 1, 2010–June 30, 2011 plan year.

In addition, an account holder cannot be reimbursed from his or her health care FSA (or other applicable tax-advantaged health expense account) for non-prescription OTC medicines purchased during a grace period for a 2010 calendar year plan. For example, if a calendar year plan has a grace period through March 15, 2011, an account holder cannot be reimbursed for any non-prescription OTC medicine purchase on or after January 1, 2011, even if the claim is for reimbursement from the 2010 health care FSA contribution.

**Can my health care FSA, HRA, RRA or FHRA now be used for my dependents until the end of the year in which they turn 26? Does this mean that I need to make an election change?**

Yes, a health care FSA, HRA, RRA, or FHRA can now be used for eligible dependents until the end of the year in which they turn 26, if the employer allows. And yes, if the employer allows, such a change would qualify as an election event, allowing a person affected to increase their tax-exempt contributions to a health care FSA.

**Why/How?** The new law allows reimbursement of eligible medical expenses from a reimbursement plan (such as a health care FSA, RRA, HRA or FHRA) for expenses incurred by an employee’s child who has not reached age 27 as of the end of the employee’s tax year (which is generally the calendar year). In other words, the medical expenses of children may
be reimbursed through the end of the year in which they turn 26. This applies even if the employee does not claim the child as a dependent on their income tax return. Please note that this rule provides eligibility for expense reimbursements for a slightly longer period of time than the separate mandate to provide coverage to adult children under a group health plan.

The new dependent coverage mandate for group health plans only requires coverage through the date the child turns age 26. For example, a participant has an adult child who turns age 26 on June 15, 2011, and the group health plan complies with the mandate and covers children only until they turn age 26. On June 15, 2011, she loses coverage under the group health plan because she is now 26. However, even though she is no longer eligible for coverage under the group health plan after June 15, 2011, the medical expenses she incurs through December 31, 2011 may be reimbursed by the health care FSA (or other applicable tax-advantaged account).

**Detail:** As of March 30, 2010, employers may permit employees to receive reimbursement for an adult child’s eligible medical expenses from a reimbursement plan such as a health care FSA, HRA, RRA or FHRA until the end of year in which the child turns 26, even if the cafeteria plan has not yet been amended to cover these individuals. You should ask your employer for more information and instructions.

With dependent child coverage in a group health plan being extended to age 26, how will I be affected as an employer?

For plan years beginning after September 23, 2010 (so, January 1, 2011 for calendar year plans), group health plans (e.g., major medical plan) must allow participants’ adult children to be eligible for coverage under the group health plan until the child turns 26. Employers will need to revise plan summary documents to comply with the new mandate. It’s also likely that the costs for medical benefit and cafeteria plan administration will increase as a result.

**Why/How?** Adding dependents to employer-sponsored plans will mean higher costs for medical administration in the form of increased premiums for fully insured plans or administration and claims fees for plans that are funded by the employer. Employers will also need to revise their plan summaries to reflect the new mandate. This mandated coverage of adult children under a group health plan to age 26 may be paid by pre-tax salary reduction through a cafeteria plan.

Will I get a new debit card?

Not necessarily. You may continue to use the same debit card unless informed otherwise by your health plan administrator or employer.

What if I try to use my health care FSA, RRA, FHRA or HRA debit card for OTC medicine purchases after January 1, 2011?

The card will be rejected by the retail store when you try to use it at the cash register.

**Why/How?** We have been advised that debit card processors will stop allowing purchases of OTC medicines to comply with the law. Merchant inventory systems may be adjusted to reflect the changes in what products are considered qualified medical expenses under federal regulations.

**Detail:** In order for health care FSA, RRA, FHRA or HRA account holders to be reimbursed for a prescription OTC medicine purchase, they will need to pay for the expenses out of pocket and submit a copy of their prescription and receipt for the purchase.
If account holders do not submit a copy of their prescription along with their receipt for the purchase of OTC medicine, the claim will be denied for reimbursement. Updated claim forms explaining what documents must be submitted with claims will be available on our website.

How does health reform affect COBRA and the COBRA premium reduction subsidy that was enacted last year?

Health reform does not extend the maximum time periods of continuation coverage established by COBRA or the eligibility period for the COBRA premium subsidy. The COBRA premium subsidy is defined by separate laws.

**Why/How?** The new mandate to provide coverage to adult children until they reach age 26 does not modify the COBRA rights of dependents who lose eligibility. The new mandate does interact with COBRA by delaying when adult children lose coverage under the plan, thus delaying when the adult children will become eligible for COBRA continuation coverage.

Health savings accounts (HSAs) are individual accounts offered by OptumHealth Bank, Member FDIC, and are subject to eligibility and restrictions, including but not limited to restrictions on distributions for qualified medical expenses set forth in section 213(d) of the Internal Revenue Code. This communication is not intended as legal or tax advice. Please contact a competent legal or tax professional for personal advice on eligibility, tax treatment, and restrictions. Federal and state laws and regulations are subject to change.