

New Coverage for OTC without Prescriptions and Menstrual Products May Help Employees Use Account-Based Funds before Plan Year End

The recently passed Coronavirus Aid, Relief and Economic Security Act (CARES Act) now allows patients to use funds from Health Savings Accounts (HSAs), Archer MSAs, health flexible spending accounts (FSAs), and health reimbursement arrangements (HRAs) to cover over-the-counter (OTC) drugs without a prescription (thus repealing a prohibition from the Patient Protection and Affordable Care Act (ACA)) and menstrual products. These changes are effective for amounts paid and expenses incurred in 2020 and apply indefinitely. Since many employees may not be able to fully utilize their health FSA or HRA amounts due to shelter-in-place orders, delays on elective surgeries, etc. because of COVID-19, employees may appreciate this new reimbursement opportunity. In particular, employees may be concerned about losing their health FSA contributions under the use-it-or-lose-it rule. The following is a discussion of the recent changes under the CARES Act, and plan design features that may help plan participants reduce their account balances. In particular, this article focuses on health FSAs due to the nature of their designs.

New reimbursements under the CARES Act

For a period of time prior to enactment of the ACA, individuals were able to obtain reimbursement from account-based plans, such as health FSAs, for OTC drugs without prescriptions, but the ACA changed the rule so that the reimbursement of any OTC drugs by group health plans or account-based plans - FSA, Archer MSA, HRAs, and HSAs - was again prohibited unless they were prescribed by a physician. Additionally, while attempts in recent years have been made to have menstrual care products added to the list of qualified medical expenses, none were successful until passage of the CARES Act.

With the passage of CARES Act, expenses for both OTC drugs without prescriptions and menstrual care products can now be paid with pre-tax dollars from account-based plans. These are permanent changes and effective for expenses incurred after December 31, 2019.

