Summary of Legislation

Key elements of the “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 2010 that may affect UnitedHealthcare customers include:

- Consumers may not pay for over-the-counter (OTC) medicines and drugs, such as pain relievers and cold and flu medicine, purchased after Jan. 1, 2011, from tax-advantaged health accounts unless prescribed. Consumers will still be able to use tax-advantaged health accounts to pay for insulin and for many OTC supplies, such as bandages and contact lens supplies.

- The types of accounts affected by the OTC restriction are: health savings, health reimbursement, health care flexible spending, retiree reimbursement, and funded health reimbursement (HSAs, HRAs, health care FSAs, RRAs and FHRAs, respectively).

- Starting Jan. 1, 2013, health care FSA contributions under a cafeteria plan will be limited to a maximum of $2,500. The limit will be adjusted according to the consumer price index (CPI) starting in 2014. This does not affect FSA contribution limits in 2011 or 2012.

- The penalty for nonqualified distributions from HSAs increased from 10 percent to 20 percent on Jan. 1, 2011.

- Employers may now – but are not required to – allow health care FSA, HRA, FHRA and RRA plans to reimburse eligible expenses of adult children who have not turned 27 as of the end of the calendar year. In other words, the plans may reimburse health care expenses of an adult child through the end of the year in which that child turns 26.

- 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 a cafeteria plan. Employers may need to update the eligibility rules in their plan document to comply with the new law.

- For HSAs, an adult child must still be considered a tax dependent in order for the adult child’s medical expenses to qualify as HSA-qualified expenses.
Frequently Asked Questions and Answers

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

OTC supplies such as these are still eligible for payment or reimbursement from a tax-advantaged health account. OTC medicines and drugs, such as pain relievers, allergy medicine and cold and flu medicine, now require a prescription to be eligible for purchase or reimbursement from a tax-advantaged health account. Health reform also made it clear that tax-advantaged health accounts will still be able to be used to pay for insulin.

**Why/How?:** The law says that OTC medicines and drugs must be prescribed in order to qualify for reimbursement or payment from a tax-advantaged health account. This affects nearly 16,000 OTC medicines and drugs, according to the industry group known as SIGIS, or the Special Interest Group for HHS Standards. OTC medical supplies and equipment such as contact lens solutions, bandages, crutches, durable medical equipment or diagnostic devices, such as blood sugar test kits may continue to be purchased with tax-advantaged health accounts.

**Detail:** UnitedHealthcare will use the SIGIS list of medicines and drugs that now require a prescription in its claims and reimbursement process. Sample lists of medicines and drugs that now require prescriptions for reimbursement or payment are available on our customer-serving websites and from our account and sales representatives.

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?

For group plans that consider OTC medicines and drugs to be eligible expenses reimbursable from a tax-advantaged health account and those plans that provide dependent-child coverage, plan documents should be amended to reflect the new requirements.

Looking ahead, plan documents may require updating to comply with the restrictions on employee contributions to health care FSAs effective on Jan. 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 group health 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, and can be prompted for a number of reasons.
How will this affect my debit card transactions?

For health care FSAs, HRAs, RRAs and FHRAs

As of Jan. 15, 2011, consumers can use health care FSA, HRA, RRA or FHRA debit cards to pay for prescribed OTC medicines or drugs at pharmacies, non-health care merchants with pharmacies and mail-order and web-based vendors that sell prescription drugs. Vendors accepting debit cards as payment for prescribed OTC medicines or drugs must follow guidelines established by the IRS for the dispensing and recordkeeping of prescribed OTC medicines and drugs. Participants will also still be able to use their cards to pay for insulin. The actual consumer experience may vary based on the pharmacist’s ability to comply with IRS guidelines.

**Why/How?:** IRS Notice 2011-5, issued in December 2010, said that consumers can use debit cards to pay for prescribed OTC medicines under these guidelines:

- Consumers must present prescriptions for OTC medicines or drugs to pharmacists before purchasing.
- Pharmacists must dispense the OTC medicines or drugs according to applicable law and assign Rx numbers.
- Debit card systems will accept debit cards for OTC medicines or drugs only if Rx numbers have been assigned.
- Pharmacists must comply with IRS record-keeping requirements and make those records available to employers or employers’ agents.

**Manual Claims Submission:** Although consumers may use their debit cards as described above, they may also pay for prescribed OTC medicines or drugs out-of-pocket and submit copies of their prescriptions and receipts to be reimbursed from their accounts.

If consumers do not submit a copy of their prescription along with their receipt for the purchase of OTC medicines or drugs, 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. As of Jan. 1, 2011, qualified expenses no longer include OTC medicines or drugs 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 or drug 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. As of Jan. 1, 2011, withdrawals from HSAs to pay for nonqualified expenses will be subject to 20 percent penalty (unless the account owner 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 doctors’ prescriptions for OTC medicines or drugs, verifying that withdrawals were made to pay for qualified medical expenses. Consult the HSA tax center at [www.optumhealthbank.com](http://www.optumhealthbank.com) or the IRS website for more information.

If I incurred an eligible OTC medicine or drug 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 was incurred on or before Dec. 31, 2010, and provided that the OTC medicine or drug expense was 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 or drug expenses in 2011, provided the eligible OTC medicine expenses were incurred on or before Dec. 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 or drug 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 had 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 Jan. 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. Consumers cannot be reimbursed for non-prescription OTC medicine or drug expenses incurred on or after Jan. 1, 2011, even if their 2010 plan had a grace period that extends into 2011.

**Detail:** Health reform explicitly provides that no OTC medicines or drugs may be reimbursed from tax-advantaged accounts if they are purchased on or after Jan. 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 FHRAAs. As of Jan. 1, 2011, consumers may not use the accounts for OTC medicines or drugs unless they have a prescription. Consumers can still use a tax-advantaged health account to pay for insulin.
Why/How?: The new law explicitly provides that a medicine that is a prescribed drug or is insulin qualifies for reimbursement. The actual text of the law does not require that the medicine or drug be available only by prescription. This change makes all medicines or drugs that are purchased without a prescription not qualified for reimbursement as of Jan. 1, 2011.

Detail: UnitedHealthcare is updating its websites and claim forms to reflect the new guidelines for OTC medicines and drugs. Please refer to them for guidance in making purchases and requesting reimbursement.

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

No, the OTC medicine may be purchased out-of-pocket. In order to be reimbursed for a prescription OTC medicine purchase, you can submit a claim form with a copy of the prescription and receipt for the purchase.

You may, if you choose, take a prescription for an OTC medicine or drug to a pharmacist for dispensing. You should ask for a receipt that includes a prescription number, name of the person the prescription is for, date of purchase and dollar amount. You can then submit the pharmacy receipt with a claim form for reimbursement.

If you have a debit card associated with an FSA, HRA, RRA or FHRA, you can use the card to pay for a prescribed OTC medicine or drug if you take your prescription to a pharmacy, non-health care merchant with a pharmacy, or a mail-order or web-based vendor that sells prescription drugs and the pharmacist follows the IRS guidelines below.

If you purchase an OTC medicine or drug 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?: FSA, HRA, RRA or FHRA debit cards may be used at the pharmacies and other types of vendors that sell prescription drugs under guidelines set out by the IRS. Those include:

- Consumers must present prescriptions for OTC medicines or drugs to pharmacists before purchasing.

- Pharmacists must dispense the OTC medicines or drugs according to applicable law and assign Rx numbers.

- Debit card systems will accept debit cards for OTC medicines or drugs only if Rx numbers have been assigned.

- Pharmacists must comply with IRS record-keeping requirements and make those records available to employers or employers’ agents.

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 doctors’ prescriptions for OTC medicines or drugs, to verify that withdrawals were made to pay for qualified medical expenses.
**Detail:** In order for consumers to be reimbursed from their health care FSA, HRA, RRA or FHRA for an OTC medicine or drug purchase obtained with a prescription, they can pay for the expenses out-of-pocket and submit a copy of their prescription and receipt for the purchase.

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

If consumers have debit cards, they may use those cards to pay for prescribed OTC medicines or drugs following the guidelines above.

**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 took effect Jan. 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 Jan. 1, 2011, regardless of whether an employer’s plan is a non-calendar year plan.

**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, a consumer may not be reimbursed for non-prescription OTC medicines purchased on or after Jan. 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, to June 30, 2011, plan year.

In addition, a consumer cannot be reimbursed from his or her health care FSA (or other applicable tax-advantaged health account) for non-prescription OTC medicines or drugs 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, a consumer cannot be reimbursed for any non-prescription OTC medicine purchase on or after Jan. 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.
Please remember that a health care FSA, RRA, FHRA or HRA is an employer-sponsored benefit. The new law does not require plans to reimburse expenses incurred by children through the end of the year in which they turn 26; it is up to the employer.

**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 Dec. 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. 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 Sept. 23, 2010 (so, Jan. 1, 2011, for calendar year plans), non-grandfathered 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 of increased participation under the plan.

**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 medicines purchases after Jan. 15, 2011?

If you want to use your debit card for OTC medicine or drug purchases, you must have a prescription and take the prescription to a pharmacy, non-health care merchant with a pharmacy, or a mail-order or web-based vendor that sells prescription drugs. Further, these guidelines from the IRS must be followed:

- Consumers must present prescriptions for OTC medicines or drugs to pharmacists before purchasing.
- Pharmacists must dispense the OTC medicines or drugs according to applicable law and assign Rx numbers.
- Debit card systems will accept debit cards for OTC medicines or drugs only if Rx numbers have been assigned.
- Pharmacists must comply with IRS record-keeping requirements and make those records available to employers or employers’ agents.

Why/How?: Debit card processors will allow purchases of OTC medicines under the conditions described above. Merchant inventory systems may be adjusted to reflect the changes in what products are considered qualified medical expenses under federal law. The individual consumer experience may vary based on the pharmacy’s ability to comply with the requirements.

Manual Claims Submission: Alternatively, health care FSA, RRA, FHRA or HRA consumers can be reimbursed for a prescription OTC medicine purchase by paying for the expenses out-of-pocket and submitting a copy of their prescription and receipt for the purchase.

If consumers 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.

Health savings accounts (HSAs) are individual accounts 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.