

**Leadership Roundtable Finds Health Care Reform Rule Is Likely to Drive Billions in New Costs;
*Surfaces Concerns about Restricted Access and Consumer Choice of Non-Prescription Medicines***

WASHINGTON, DC, October 11, 2010 – According to experts, retailers are already taking steps to warn shoppers of new restrictions regarding purchases of over-the-counter (OTC) medicines with funds from health care accounts. Employers and health plans are communicating a similar message as they begin open enrollment for 2011 benefit plans.

As of January 1, 2011, consumers will no longer be able to pay for most OTC medicines with funds from their flexible spending accounts and other health accounts (including HSAs and HRAs) unless the OTCs are “prescribed.” This little-known rule change, enacted as part of the Patient Protection and Affordable Care Act, is intended to help fund increases in health care spending in other parts of the Bill. However, a panel of health care thought leaders has concluded that the rule change triggers retail system challenges which are operationally impossible to overcome in the timeframe required by the Bill and has the potential to increase annual health care costs by billions of dollars.

The Foundation for HealthSMART Consumers convened a Leadership Roundtable in Washington, DC to discuss this topic. Jon Comola, executive director of The Foundation said, “We see this as a threat to consumer access and choice at a time when we need our citizens to be more engaged in managing their health and the cost of care.”

He noted that the new rule only allows OTC medicines obtained with a prescription to be reimbursed or purchased tax-free with health account funds. “Therefore,” he adds, “some consumers are likely to seek prescriptions for OTCs or alternative Rx drugs in order to comply with the new tax requirement.”

According to Foundation researchers, the resulting costs could reach \$2.5 billion annually if office visits and lab tests are incurred by even 10 percent of the insured population; potential new pharmacy costs could reach \$3 billion annually. At the Roundtable meeting, employer groups expressed concern about additional indirect costs associated with more presenteeism and absenteeism in the workplace.



John Hickman, partner, Alston & Bird, LLC, said this new policy will drive significant technology costs for retailers because they must re-engineer point-of-sale systems to track the purchases according to the new rules. “Based on IRS guidance, just over 15,000 items are impacted and will need to be removed from the system,” says Hickman. He adds, “This work cannot be achieved before the January deadline and retailers are scrambling to find ways to communicate this to shoppers.”

“We are concerned about the negative impact on people who are using OTCs to address health issues like smoking cessation, weight control, arthritis and allergies because of the increased tax on higher cost products,” according to Jim Parker, Fellow for The Foundation. “This may result in increased physician visits and potentially the prescribing of more expensive prescription drugs.”

According to Roy Ramthun, President, HSA Consulting, “More than 50 million of the 195 million commercially insured consumers have health care accounts and will be directly affected by this new rule. However,” he adds, “when retailers have warnings at the shelf, the issue may be a point of confusion for many consumers.”

Joseph McGovern, Fellow for The Foundation for HealthSMART Consumers, expressed concern about how this policy may thwart future Rx-to-OTC switches. “We have a robust pipeline of branded prescription medicines that will be losing patent exclusivity over the next five years, and which may represent opportunities for increased consumer access and cost savings through OTC availability,” according to McGovern. “Any destabilization of consumer confidence in OTC use may dissuade companies from going through the process with FDA to make these medicines available without a prescription, particularly if there are generic prescription alternatives,” he adds.

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