

# Concerns for Unintended Consequences Regarding the Ineligibility of OTCs for Purchase with Health Care Account Funds

A Perspective from Our Fellows  
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## A Perspective from Our Fellows

The Fellows of The Foundation for HealthSMART Consumers provide expertise and advice on a range of topics around the current and future of health care systems and their stakeholders. Our Fellows participate in ongoing research and publishing projects, including assessing current attitudes about individual health responsibility and personal care accountability and tracking consumer confidence in health care decision making.

## Background: The Patient Protection and Affordable Care Act

### Senate Bill Section 9003: Distributions for medicine qualified only if for prescribed drug or insulin<sup>1</sup>

Conforms the definition of qualified medical expenses for HSAs, FSAs, and HRAs to the definition used for the medical expense itemized deduction. Over-the-counter medicine obtained with a prescription continues to qualify as a qualified medical expense.

### House Bill Section 531: Distributions for medicine qualified only if for prescribed drug or insulin<sup>2</sup>

(a) HSAs- Subparagraph (A) of section 223(d)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following: 'Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug or is insulin.'

(b) Archer MSAs- Subparagraph (A) of section 220(d)(2) of such Code is amended by adding at the end the following: 'Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug or is insulin.'

(c) Health Flexible Spending Arrangements and Health Reimbursement Arrangements- Section 106 of such Code is amended by adding at the end the following new subsection:

(f) Reimbursements for Medicine Restricted to Prescribed Drugs and Insulin- For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug or is insulin.

(d) Effective Dates- 'The amendment made by this section shall apply to expenses incurred after December 31, 2010.'

## Fellows Point of View

With the passage of the Patient Protection and Affordable Care Act (Public Law No. 111-148) and the Health Care and Education Reconciliation Act (Public Law No. 111-152), The Foundation for HealthSMART Consumers is concerned about the ensuing confusion among consumers and health care professionals regarding medication access, choice and use of health care account funds.

We believe the confusion will build and can drive health care costs out of the consumer market and back into the health care system. Following are stakeholder scenarios which illustrate this concern:

## Health Care Consumer

- Unaware of the restriction on use of the account funds, some consumers will present products for purchase at retail only to have the debit from their account denied. Retail checkout employees will not be trained on how to explain this occurrence. The consumer may or may not complete the purchase with cash. Many of these dissatisfied consumers will consult the pharmacist. The follow-on will likely be a call to the benefits administrator, health plan and/or a doctor.
- Once informed that only 'prescribed' medications – including OTCs when 'prescribed' – are eligible, the consumer will engage doctors to address the problem. If the doctor recommended the OTC, the consumer will contact the office to ask what alternatives exist. If the consumer was making the purchase as a part of an established self-care protocol, it is likely they will schedule an office visit to discuss alternatives.
- In the case of a call back from the pharmacy or from the patient, the doctor may call in an alternative Rx – and the consumer will be dispensed a generic or a branded prescription.
- In the case of an office visit, the consumer may agree to start a new medication that the doctor knows will be available to them under the prescription benefit – either a branded or generic Rx. Or, that consumer may walk out with a 'prescription' for an OTC medication (ORx), which they can take to the pharmacist.
- At the pharmacy, the consumer may get an ORx (over-the-counter medication adjudicated through the pharmacy) or may be offered an alternate generic, driving pharmacy adjudication fees.

## Health Care Provider

- Unaware of the restrictions on use of the account funds, physicians will begin to encounter patients making requests for 'OTC prescriptions.' This is not completely unfamiliar to physicians as some health plans cover some OTCs, and Medicaid typically covers these products as well.
- Since physicians and their office staff cannot accommodate the distraction of office call-backs and will need to satisfy the needs of patients in the office, it is likely we will see preclusive prescriptions – a prescription written with an OTC recommendation...just in case. This will be proactively provided to patients – and not just 'account holders' – so that a potentially very disruptive situation in the office can be avoided.
- If the physician is concerned about the patient's ability to follow the prescribed treatment protocol due to confusion about what is covered and what is not, additional Rx activity is expected. Doctors know what is generally 'on formulary.' Filling an Rx prescription will be easier and more certain for both the patient and the physician.
- If the physician is considering an alternate treatment, there is a likelihood of additional lab tests and other diagnostic measures to re-qualify the diagnosis.

## Pharmacist

- As patients begin to present at the pharmacy with questions about what purchases are and are not eligible, the pharmacist and pharmacy techs will need training to prevent customer abrasion. There is little the pharmacist can do to solve the problem of debit cards not working, other than offer to call the doctor's office to discuss prescription alternatives.

The unavoidable result of this regulation will be confusion among all parties – and cost for all parties. Here are some directional models to illustrate the cost potential:

## The Risk of Not Protecting Self-Care Behaviors

Example: Office Visits and Labs

- Potential to drive Billions of additional dollars in health care system cost resulting from increased office visits and consults

Forecast: Medical Impact		
Total Covered Lives in US	180,000,000	
Transition Factor	10%	
Office Visit Increase for Prescription	\$1,908,000,000	Assumes \$106 doctor visit cost
Lab Service Increase for Prescription	\$594,000,000	Assumes \$33 lab services cost
<b>Total Increase in Cost</b>	<b>\$2,502,000,000</b>	

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## The Risk of Not Protecting Self-Care Behaviors

Example: Over the Counter Medicines

- Potential to drive Billions of dollars of current self-care / self-pay over the counter medication use into the health care system

Forecast: Potential Pharmacy Impact		
Current US OTC Expenditures	\$ 20,000,000,000	Estimated total US OTC market
Population Driven back into Healthcare System for alternative solutions	10%	Reverse Migration to Rx Solutions
<b>Potential New Pharmacy Cost - Base</b>	<b>\$ 2,000,000,000</b>	Base Cost Estimate
Increased Cost of Rx versus OTC	150%	Assumes brand and generic use
<b>Potential Pharmacy Cost - Range</b>	<b>\$ 3,000,000,000</b>	Potential New Pharmacy Cost

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## || The Risk of Not Protecting Self-Care Behaviors

The Combined Threat

- ! Long term risk of de-activating self-care consumers and establishing new behavior patterns driving system engagement

Full Coverage Impact			
Transfer Factors	10%	25%	50%
Total Pharmacy Cost Increase	\$ 2,000,000,000	\$ 5,000,000,000	\$ 10,000,000,000
Total Medical Cost Increase	\$ 2,502,000,000	\$ 8,864,725,000	\$ 17,729,450,000
<b>Long-Term Increase in Annual Health Care Costs</b>	<b>\$ 4,502,000,000</b>	<b>\$ 13,864,725,000</b>	<b>\$ 27,729,450,000</b>

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## || United Kingdom: A Case Study for Reference



Cost Impact of System-Driven Office Visits		
	UK	US Analog
1 in 5 Consultations for minor, self-treatable conditions	\$ 57,000,000	\$ 285,000,000
90% of visits result in Rx	\$ 51,300,000	\$ 256,500,000
<b>Total Impact/Cost to System</b>	<b>\$ 3 Billion</b>	<b>\$ 30 Billion</b>



There are currently 57 million GP consultations every year for minor ailments that could be self treated, resulting in every GP spending on average an hour a day seeing patients with minor ailments at an estimated cost to the NHS of £2 billion.

In these straitened times, is this really appropriate use of the health service in the 21st century?

The 2010 review addresses what changes need to be implemented to break the culture of dependency on the NHS for minor ailments and give people the confidence to know when they need the NHS and when they can manage their minor ailments themselves.

Source: United Kingdom Data, IMS

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## The Fellows

### Michael Alan Kaufman, MD JD



Dr. Michael A. Kaufman is a senior health care executive with extensive experience in both commercial insurance and Medicare. His core competencies are in the areas of business planning, regulatory compliance, reimbursement strategies and health care consumerism.

### Joseph McGovern



Joseph McGovern is an accomplished pharmaceutical executive with extensive experience in strategic management of global health care businesses, including portfolio management, product launches, Rx-to-OTC switches, and acquiring new products through business development.

### Jim Parker



Jim Parker is a senior health care executive with 20 years of experience leading organizations through mergers and acquisitions, driving market share, revenue growth, and building high-performing organizations.

## About The Foundation

The Foundation for HealthSMART Consumers is a not-for-profit organization dedicated to activating health care consumers by properly informing them about their health responsibility and care accountability. Our goal is to enable consumers to make consistently informed health decisions with confidence, especially as they manage conditions that require self-care. The Foundation believes consumers need to be better educated about how they can improve their personal health and the health of family members, while using health care resources appropriately.

The Foundation conducts research to identify policy, social, and economic trends that may impact the progression of smart health care consumers. It also serves as a communications and education conduit for health care consumers. Further, The Foundation acts as a catalyst to organize alliance consortiums for collective initiatives.

[www.healthsmartconsumers.org](http://www.healthsmartconsumers.org)

#### Fellows:

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