

## ARRA Subsidy Eligibility - Expanded Through 5/31/2010

On April 15, 2010, the President signed HR 4851, the Continuing Extension Act of 2010, into law providing an additional two-month extension of unemployment benefits and COBRA premium assistance. This extension provides a COBRA premium subsidy for eligible individuals who are involuntarily terminated from employment through May 31, 2010.

The new law also provides retroactive eligibility for individuals who lost their jobs after the prior COBRA subsidy expired on March 31, 2010 but makes no change in the 15 month subsidy eligibility period.

An "assistance eligible individual" is extended by this new law to include the employee or a member of his/her family who elects COBRA coverage timely following a qualifying event related to an involuntary termination of employment that occurs at any point from:

- September 1, 2008 through May 31, 2010; or
- March 2, 2010 through May 31, 2010 if:
  - the involuntary termination follows a qualifying event that was a reduction of hours; and
  - the reduction of hours occurred at any time from September 1, 2008 through May 31, 2010 (a reduction of hours is a qualifying event when the employee and his/her family lose coverage because the employee, though still employed, is no longer working enough hours to satisfy the group health plan's eligibility requirements).

We have modified our system and updated the Qualified Event Notice (QEN) for all notices mailed starting Monday, April 19. In anticipation of this extension, we also held off mailing QENs for Qualifying Events reported during the week of April 12 and have now mailed the updated QEN – avoiding both the cost and confusion of a second notice.

QENs previously sent for those with a qualifying event after March 31 will need to be provided a revised notice after model notices become available. We have identified these participants and will send notices as they become available.

It is very likely that Congress will continue this approach – a series of short-term fixes, rather than a longer extension – for the remainder of the year.

7 a.m. – 5 p.m.

Monday – Friday  
[www.tri-starsystems.com](http://www.tri-starsystems.com)  
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Contact us:

## Use of FSA/HRA/HSA Funds for OTC Products After 1/01/2011

The recently enacted Patient Protection and Affordable Care Act of 2010 changes the rules for the purchase of over-the-counter (OTC) products using Flexible Spending Account (FSA), Health Reimbursement Arrangement (HRA) and Health Savings Account (HSA) pre-tax funds effective January 1, 2011.

### ***Key messages for employers and employees describing the OTC change***

1. Employees with an FSA, HRA, or HSA can no longer use their account funds to purchase OTC drugs and medicines (e.g. Advil, ibuprofen, cough syrup) unless they have a Letter of Medical Necessity (LMN) or a prescription from their doctor.
2. If an employee has an LMN or a prescription for an OTC drug or medicine, they must pay at the point of service and submit a manual claim for reimbursement. They will not be able to pay for these non-prescription medicines using their FSA debit card.
3. Employees can continue to use their FSA, HRA and HSA funds to purchase OTC items that are not considered a drug or a medicine (e.g. bandages, wound care, contact lens solution). FSA debit cards can continue to be used for these purchases.
4. Employees should consider the new OTC rules when estimating the amount to put in their FSAs, HRAs or HSAs for the next plan year. It is important that your communication materials include information on this change.

### ***Additional Notes***

- IAS merchants will be changing their OTC lists before or after the effective date of 1/1/11.
- The OTC change impacts those treated as 90% merchants, in that the calculation for who meets the 90% exception would be based on the new definition of eligible expenses, which excludes OTC drugs and medicines.
- After 1/1/11, if an OTC drug or medicine is purchased at a 90% merchant, a debit card substantiation letter will continue to be sent to the participant.

We will provide more specific information to employers on the impact of the new legislation as it becomes available.