

# LEGAL UPDATE



## HIGHLIGHTS

- Federal agencies have requested public input about expanding first-dollar coverage for OTC preventive products.
- Currently, health plans and issuers are only required to cover OTC preventive products without cost sharing when they are prescribed by a health care provider.
- A key motivation for this possible change is expanding access to contraceptive care.
- The first OTC daily oral contraceptive is expected to become available soon.

## Federal Agencies May Expand Health Coverage for OTC Preventive Products, Including Contraceptives

On Oct. 4, 2023, the Departments of Health and Human Services, Labor and the Treasury (Departments) issued a [request for information](#) (RFI) on the scope of the Affordable Care Act's (ACA) preventive care coverage requirements for over-the-counter (OTC) products. Specifically, the Departments are gathering input from the public on requiring group health plans and health insurance issuers to cover OTC preventive products without cost sharing *even when they are not prescribed by a health care provider*.

The RFI signals that the Departments are considering eliminating the prescription requirement for first-dollar coverage of OTC preventive products. The Departments note that eliminating the prescription requirement is an important option to consider for *expanding access to contraceptive care*, as the first OTC daily oral contraceptive is expected to become available soon.

### Preventive Care Coverage Requirements

The ACA requires non-grandfathered health plans and issuers to cover certain recommended preventive health services without imposing cost-sharing requirements when the services are provided by in-network providers. Most recommended preventive services require a health care provider to either provide a prescription for the item or service or directly furnish the service. However, there are several OTC preventive products available to consumers without a prescription. Examples of these include:

- Certain types of tobacco cessation pharmacotherapy;
- Folic acid supplements;
- Breastfeeding supplies (e.g., breast pumps and breast milk storage supplies); and
- Certain contraceptives, including the OTC daily oral contraceptive that was approved by the Food and Drug Administration in July 2023 and is expected to become available soon.

Current agency guidance requires health plans and issuers to cover OTC preventive products without cost sharing *only when they are prescribed for an individual by their health care provider*. The RFI seeks public input regarding the potential benefits and costs of eliminating the prescription requirement for OTC preventive products.

### HSAs, Health FSAs and HRAs

Individuals can pay for OTC medicines, including contraceptives, using their health savings accounts (HSAs). In addition, health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs) can be designed to reimburse all OTC drugs. Thus, although health plans and issuers are not currently required to cover OTC oral contraceptives without cost sharing, consumers may be able to use their HSAs, health FSAs or HRAs to pay for this medication.