

Over-The-Counter Drugs Now Reimbursable by Health Care Flexible Spending Accounts

On September 3, 2003, the Treasury Department and the IRS issued Revenue Ruling 2003-102 which announced that over-the-counter (OTC) drugs can be paid for with pre-tax dollars through health care flexible spending accounts (FSAs). Following are some of the most commonly asked questions and answers regarding this new change in the administration of health care flexible spending accounts.

Is there a list of OTC drugs that qualify as reimbursable expenses under my health FSA?

With this Ruling the IRS did not release a list of OTC drugs that it considers to be eligible expenses. OTC medicines and drugs must still meet the definition of “medical care” in IRC section 213(d)(1) which defines “medical care” to include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. In the example provided by the IRS in this Ruling an employee purchased an antacid, an allergy medicine, a pain reliever and a cold medicine from a pharmacy - without a doctor’s prescription. The employee purchased these items for personal use, or for the use of a spouse or dependents, to alleviate or treat personal injury or sickness. The employee also bought dietary supplements for general health maintenance purposes. The IRS concluded that those items purchased to alleviate or treat personal injury or sickness are reimbursable under a health FSA; however, the purchase of the dietary supplements (e.g., vitamins) was merely beneficial to the employee’s good health and was not reimbursable under a health FSA because it could not be considered an expense for medical care.

What is the effective date for this IRS Ruling?

Although the Revenue Ruling did not contain an effective date, the IRS views the Ruling as a “statement of current law”. What this means is that employer sponsored flexible benefit plans may take full advantage of the ruling in their current plan years. OTC drugs purchased prior to the Ruling are still eligible expenses under an individual health FSA as long as the purchase was made during the current plan year.

What type of documentation do I need to provide Interactive Medical Systems when filing a claim for OTC drugs?

The Ruling clearly indicates that reimbursements by health FSAs for the cost of OTC drugs available without prescription are not subject to tax if “properly substantiated by the employee”. IRS officials have noted that at a minimum, employees seeking reimbursement for their nonprescription drug purchases through a health FSA must present a receipt of purchase indicating the date of purchase, the amount and the name of the product purchased. A doctor’s note is not required unless the employee is claiming that a product often purchased for general health – for example, a dietary supplement - is being used to treat a specific injury or illness.

Now that the IRS has issued this new Revenue Ruling can I increase my health FSA election to cover OTC drug expenses?

No, mid-year election changes for health FSAs are not permitted as a result of this new Revenue Ruling issued by the IRS.

Please contact the Flexible Benefits Department at IMS at (919) 877-9933 if you have any questions concerning the reimbursement of OTC drugs under your health flexible spending account.