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Over-The-Counter Drugs Reimbursed Through Health FSAs

Now is the time to remind employers and employees that over-the-counter drug expenses can be reimbursed through flexible benefit plans. For employers it means greater participation and bigger savings. For employees it means no more use-it-or-lose-it.

Background

In September of 2003, the IRS released Revenue Ruling 2003-102. This ruling allowed employer-sponsored health plans to reimburse participants for medically necessary over-the-counter drugs and medications. These expenses can include items like antacids, allergy medicines, pain relievers and cold medicines.

The purchases can be for the use of the participant or the participant's spouse or dependents. However, the purchase of dietary supplements, such as vitamins, are not eligible expenses because they are merely beneficial to the general health of the participant or the participant's spouse or dependents.

What to Tell Employees

The revenue ruling expressly points out common purchases for pain relievers and allergy medicines. But what about creams or lotions used to alleviate arthritis pain or the itching from poison ivy? If the cream or lotion is an expenditure for medical care—to cure or treat a disease, the expense should be allowed as an eligible medical expense to be reimbursed through an employer's health FSA.

Claims Adjudication

What can participants in a health FSA use as their guide? It's as easy as reading the description on the box for an OTC medications rule. For instance, if the box reads "relieves the cough and stuffy nose associated with a cold or allergy," it would pass the test. Generally a dietary supplement like vitamin E carries no such claim.

But what about the recommendation from the doctor to take a specified dose of vitamin E for relief from psoriasis? With a doctor's letter stating the medical condition, specified time period, and prescription for a dietary supplement—a participant could be confident this type of expense would be eligible to be reimbursed from a health FSA.

However, certain medications could be considered medically necessary in some conditions, but for general health in other instances—e.g., weight-loss products. For an individual with an underlying disease or who is obese, the weight-loss product would be medically necessary. However, if the individual just wants to drop 10 pounds before the high school reunion, the same weight-loss product would be considered a personal use item.

No More "Use-It-or-Lose-It"

There is yet to be legislation to guarantee a participant non-forfeiture of their account balance, but this over-the-counter drug ruling comes very close. Instead of suggesting a new pair of glasses, prescription sunglasses, or another visit to the dentist,

suggest a survey of their medicine cabinet.

The end of a participant's flexible benefits plan year is a great time to evaluate the expiration date on their supply of cough syrup, aspirin supplies and other medications. Throw out the dated pills and replace with fresh medical supplies.

What to Tell Employers

Employees are more likely to sign up for participation in a health FSA if they are educated and armed with all the facts. Make a special effort to list those over-the-counter drugs or medications that can be paid with untaxed dollars, and make sure the list gets distributed to every employee. In addition, remind employees that they will be buying a lot of the items on the list, so why not pay for those expenses with untaxed dollars.

With more participation and each par-

ticipant putting aside more pretax dollars, everyone wins. Suggest that the employer raise the annual limit of their health FSA. A higher dollar limit means higher election amounts, and the 7.65 percent FICA savings on every dollar adds up fast for the employer.

With just 10 employees participating at an average rate of \$4,000, there is a savings of more than \$3,000 for the employer. By raising the medical limit, the plan is also more attractive to employees. With employees' average savings ranging from 25 to 40 percent on every dollar they put through the plan, a \$4,000 annual election could save an employee as much as \$1,600!

Check the Plan Document

Before reimbursing any unusual items, the employer needs to check the plan docu-

ment. The employer's health FSA or health reimbursement arrangement (HRA) plan might contain language that would prohibit introducing OTC drug reimbursement. Look for the plan document and summary plan description (SPD) to reference IRC Section 213(d) as the guidance for eligible medical expenses.

By adding an over-the-counter drug benefit, the IRS created a valuable benefit for employees. Administrators will need to get ready for difficult questions from employees, and implement thorough claims procedures to ensure that only qualified expenses are paid from FSAs and HRAs. 🌐

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