

## **Over the Counter Drug Reimbursements Approved by the IRS Vitamins Specifically Excluded. Is the use it or lose it rule dead?**

### **Release of IRS Notice 2003-102**

Today's IRS announcement -- expanding the breadth of flexible spending accounts (FSAs) -- is unprecedented.

Permitting allergy and other OTC drugs to be reimbursed through FSAs will encourage greater participation in the pretax arrangement. The revenue ruling will also give further incentives for employer-provided health reimbursement arrangements.

Previously, FSAs reimbursed prescription only drugs. The ruling also specifically excluded vitamins and other dietary supplements for general health purposes from reimbursement.

Cafeteria/HRA plan administrators will have to be vigilant in substantiating nonprescription drugs to distinguish OTC drugs that are for the general well being of the individual (such as nutritional supplements) or for cosmetic purposes (excepted as otherwise permitted under Section 213), which are still not permitted. The good news is that employees only need to submit receipts that clearly show that the OTC was to treat a medical condition.

**YOU DO NOT NEED A PRESCRIP FROM A PHYSICIAN.** Here is an excerpt from the IRS Notice:

Please tell your staff that we will probably question information at the beginning as we get more comfortable and just to put up with us. Here is the actual wording out of the Notice.

Employee A purchases an antacid, an allergy medicine, a pain reliever, and a cold medicine from a pharmacy, none of which are purchased with a physician's prescription. Employee A purchases these items for personal use, or for the use of Employee A's spouse or dependents, to alleviate or treat personal injuries or sickness. Employee A also purchases dietary supplements (e.g., vitamins) without a physician's prescription to maintain the general health of Employee A, or Employee A's spouse or dependents. Employee A submits substantiated claims for all of these expenses, which have been incurred during the current plan year, to Employer N's health FSA for reimbursement. Employee A is not compensated for these expenses by insurance or otherwise.

This is great news because it means the use it or lose it rule could be gone. Why? The employee can "shop" at the local pharmacy at the end of the year to clean out their account shopping for OTCs!

On another note I have been in the cafeteria plan administration field for nearly 20 years and prior to 1994 employees could submit for over the counter physician prescribed medicine. This Notice is broader in scope. The timing on the release of Revenue Ruling 2003-102 is helpful, as most of our clients begin their enrollments for 2004 in the fall and this good news should encourage participation in the plans.

Our plan document is flexible enough to allow employees to submit NOW for OTC. Please pass on a blurb about this to your staff.

Please call if you have any questions

Sincerely,

Ric Joyner, CFI  
President