

# Over-the-Counter Drugs Now Reimbursable Under Health Care Flexible Spending Accounts

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If your company's cafeteria plan includes a medical flexible spending arrangement (sometimes called a "medical FSA" or a "medical flex account feature"), you'll want to know about some recent guidance from the IRS.

The IRS has just announced that medical FSAs can reimburse participants for amounts they spend on certain over-the-counter drugs. The IRS's guidance specifically endorsed reimbursement for an antacid, an allergy medicine, a pain reliever and a cold medicine. Reimbursement is permissible for these items, according to the IRS, because they are purchased to alleviate or treat personal injuries or sickness. In contrast, the IRS said participants may not be reimbursed for dietary supplements or vitamins, which are purchased for the purpose of maintaining general health. The IRS makes this distinction based on the legal requirement that a medical FSA may only reimburse expenses incurred for "medical care." Vitamins and dietary supplements, according to the IRS, are merely beneficial to good health and therefore do not qualify as being for medical care.

It appears that this guidance from the IRS will require a medical FSA to reimburse these over-the-counter medications if it is drafted broadly (as most medical FSAs are) to permit reimbursement of any expense for medical care. If you believe the administrative hassle of reimbursing these expenses is greater than the benefit to employees, you should act now to amend your medical FSA to exclude reimbursement for over-the-counter medications.

For further advice on this or any other benefits issue, call any of the attorneys in Holland & Hart's Employee Benefits practice group.

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