



Flexible Spending Accounts

Benefits Available Through Health FSAs

A health FSA can be used to reimburse medical and dental expenses that qualify under Section 213 of the tax code. "Medical care" expenses as defined by Section 213 include amounts paid for the diagnosis, treatment, or prevention of disease, and for treatments affecting any part or function of the body. The expenses must be to alleviate or prevent a physical defect or illness. Expenses for solely cosmetic reasons generally are not expenses for medical care. Examples include face lifts, hair transplants, and hair removal (electrolysis). Also, expenses that are merely beneficial to one's general health (for example, vacations) are not expenses for medical care.

Nonprescription Drugs

Nonprescription and over-the-counter medicines also are reimbursable from a health FSA if purchased by the employee for personal use, or for the use of the employee's spouse or dependents, to treat or alleviate sickness or personal injury. The purchase must be properly substantiated. Thus expenses that are not deductible as "medical care" under Code Section 213 may be reimbursable from a health FSA under Section 105.

Rev. Rul. 2003-102 allows, but does not require, plan sponsors to permit reimbursements of nonprescription medicines from a health FSA. Thus, plan sponsors have a role in determining whether certain items will qualify as medical expenses under their respective FSAs, which in turn depends on plan documents and summary plan descriptions.

Using IRS Publication 502

The IRS publishes a booklet, "Publication 502, Medical and Dental Expenses," to help individual taxpayers identify medical expenses that may be deducted on the Form 1040 income tax return.

It is important to note that many medical expenses are deductible for a taxpayer, and thus listed in Publication 502, but not reimbursable under a health FSA. A prominent example of this is health insurance premiums, which are listed as a deductible expense but cannot be reimbursed under a health FSA.

Health Care Providers

Services provided by a variety of organizations and individuals may be reimbursable, including those provided by hospitals, medical doctors, dentists, eye doctors, chiropractors, nurses, osteopaths, podiatrists, psychiatrists, psychologists, physical therapists, acupuncturists and psycho-analysts. Providers of medical services are not required by the Code or IRS regulations to be licensed, certified or otherwise qualified to perform such services. Nonetheless, one factor that often, but not always, indicates that medical care involves the treatment of or prevention of a medical condition is whether care is prescribed by a physician. (A mere *suggestion* by a physician probably is not sufficient.)

Eligible Individuals

Expenses under a health FSA may be incurred by the employee or by the employee's spouse or eligible dependents (children, siblings, parents and others for whom an exemption may be claimed under Code Section 152)

List of Popular Expenses

Following is an alphabetical list of items that are encountered frequently by sponsors of FSAs. Some of these items may be reimbursed, and some may not; each item is followed by a brief note indicating which category the item falls into.

Abortion. Medical expenses associated with a legal abortion are reimbursable.

Acupuncture. Medical expenses paid for acupuncture are reimbursable.

Air filter. If prescribed to treat a specific medical condition, this expense is reimbursable. Also see Personal use items.

Alcoholism and drug abuse. Medical expenses paid to a treatment center for alcohol or drug abuse are reimbursable. This includes meals and lodging provided by the center during treatment.

Allergy medicine. Allergy medicine purchased for personal use of the employee, spouse or dependent to alleviate or treat personal injuries or sickness, without a prescription, is reimbursable.

Alternative medicine. See Naturopathy.

Ambulance. Medical expenses paid for ambulance service are reimbursable.

Antacid. Nonprescription antacid purchased for personal use of the employee, spouse or dependent to alleviate or treat personal injuries or sickness is reimbursable.

Antihistamine. Antihistamine purchased for personal use of the employee, spouse or dependent to alleviate or treat personal injuries or sickness, without a prescription, is reimbursable.

Artificial limb. Medical expenses paid for an artificial limb are reimbursable.

Artificial teeth. See Medical aids.

Aspirin. Aspirin whether prescribed by a physician or purchased over-the-counter without a prescription is reimbursable when purchased to alleviate or treat personal injury or sickness.

Attendant. See Nursing services.

Autoette. See Wheelchair.

Automobile. See Car.

Babysitting and child care. These expenses are not reimbursable under a health FSA, even if the care allows a parent to get medical care. Also see Dependent care expenses.

Birth control pills and devices. Medical expenses paid for birth control pills and devices prescribed by a doctor are reimbursable. Condoms are also reimbursable.

Braille books and magazines. The amount by which the cost of Braille books and magazines for use by a visually impaired person exceeds the price for regular books and magazines is reimbursable.

Breast augmentation. Expenses related to breast augmentation (such as implants or injections) are not reimbursable because the procedure is cosmetic in nature. However, medical costs related to the removal of breast implants that are defective or are causing a medical problem are reimbursable.

Breast pump. Even if prescribed, a breast pump used for the convenience of the mother is not reimbursable. However, a breast pump may be reimbursable if prescribed to alleviate a specific medical condition affecting either the mother (such as a cyst, for example) or the child (such as an ailment that prevents nursing).

Breast reconstruction surgery. Breast reconstruction surgery following a mastectomy ameliorates a deformity related to a disease; therefore, the cost is an expense for medical care and is deductible.

Breast reduction. Medical expenses related to breast reduction surgery are reimbursable only if a physician substantiates that the procedure is medically necessary and not for cosmetic purposes (that is, to prevent or treat an illness or disease).

Cancer insurance. See Supplemental insurance policies.

Capital expenses. If their main purpose is medical care, capital expenses paid for special equipment installed in a participant's home or for improvements to the home are reimbursable. For further details, see discussion under the heading, "Capital expenses," below.

Car. Medical expenses are reimbursable for special hand controls and other special equipment installed in a car for the use of a person with disabilities. Also, the amount by which the cost of a car specially designed to hold a wheelchair exceeds the cost of a regular car is a reimbursable medical expense. However, the cost of operating a specially equipped car is not reimbursable (see Transportation).

Chair. The cost of a reclining chair purchased on the advice of a physician to alleviate a heart, back or other condition is reimbursable.

Child care. See Dependent care.

Childbirth classes. Expenses for childbirth classes are reimbursable, but are limited to expenses incurred by the mother-to-be. Expenses incurred by a "coach", even if that is the father-to-be, are not reimbursable. To qualify as medical care, the classes must address specific medical issues, such as labor, delivery procedures, breathing techniques and nursing.

Chiropractor. Expenses paid to a chiropractor for medical care are reimbursable.

Christian Science practitioners. Medical expenses paid to Christian Science practitioners are reimbursable.

Church of Scientology. See Scientology.

Clinic. Medical expenses for treatment at a health clinic are reimbursable.

COBRA coverage. Premiums for COBRA continuation coverage may be reimbursed if the COBRA coverage is provided by the sponsor of the flex plan. However, premiums for COBRA coverage obtained through a different employer's health plan *cannot* be reimbursed through a health FSA. (See Insurance premiums.) COBRA premiums paid through a health FSA also do not qualify for a 65 percent tax credit available to workers who receive trade adjustment assistance under the Trade Act of 2002, and thus cannot be reimbursed through their health FSAs

Coinsurance amounts. Medical coinsurance amounts and deductibles are reimbursable.

Cold medicine. Cold medicine purchased for personal use of the employee, spouse or dependent to alleviate or treat personal injuries or sickness is reimbursable.

Commuting costs. See Trips.

Contact lenses. See Vision care.

Cosmetic surgery. Medical expenses for cosmetic surgery are reimbursable if the surgery is necessary to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. However, medical expenses paid for other cosmetic surgery are not deductible medical expenses under Code Section 213, and thus are not reimbursable by a health FSA. This applies to any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease. For example, face lifts, hair transplants, hair removal (electrolysis) and liposuction generally are not deductible. However, the cost of cosmetic surgery to improve a facial deformity caused by prior surgeries to correct congenital abnormalities is deductible. If there is a concern that a medical or dental surgery could be considered cosmetic, a doctor's certification should be obtained explaining how the procedure meaningfully promotes the proper function of the body or prevents or treats an illness or disease. This will help to prove that the claim is reimbursable.

Crutches. Medical expenses paid to buy or rent crutches to enhance mobility during healing are reimbursable.

Dancing lessons, swimming lessons, etc. Dancing lessons, swimming lessons, etc., are not reimbursable even if they are recommended by a doctor.

Day care. See Dependent care.

Deductibles. Medical insurance deductibles and coinsurance amounts under the employer's plan are reimbursable.

Dental treatment. Medical expenses for dental treatment are reimbursable, such as x-rays, fillings, braces, extractions, dentures, etc. Also see Cosmetic surgery.

Dependent care expenses. Dependent care expenses are not reimbursable under a health FSA but may be reimbursable under a dependent care FSA

Diaper service. Payments for diapers or diaper services are not reimbursable unless they are needed to relieve the effects of a particular disease.

Diets. See Special foods.

Disability. See Braille books and magazines, Car, Guide dog, Learning disability, Lifetime care, Mentally retarded, Personal use items, Schools, Television, Therapy, Transportation, Wheelchair. Also see discussion under the heading “Capital expenses,” below.

Drug addiction. See Alcoholism.

Ear piercing. Expenses for ear piercing are not reimbursable.

Egg donor fees and expenses. The un-reimbursed expenses for egg donor fees for an attempted pregnancy, the agency fee for procuring the donor and coordinating the transaction between the donor and recipient, medical and psychological testing of the donor, and the legal fees for preparing a contract between the recipient and the donor are deductible medical expenses under Code Section 213 and therefore reimbursable from a health FSA.

Electrolysis or hair removal. See Cosmetic surgery.

Employment-related expenses. Employment-related expenses such as employment physicals are not reimbursable. (Note, however, that physical exams that are *not* employment-related *are* reimbursable. See Physical exams.)

Employment taxes. See Nursing services.

Equipment, supplies and diagnostic devices. Equipment such as crutches, supplies such as bandages and diagnostic devices such as blood sugar test kits may be deductible medical expenses if they are for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any body structure or function. The cost of home exercise equipment purchased on a doctor’s recommendation as part of treatment for a taxpayer’s obesity is a deductible medical expense and thus potentially reimbursable from a health FSA. See Special Foods.

Exercise programs. Unless prescribed by a physician to treat a specific medical condition, exercise programs are related to general health and are not reimbursable.

Eyeglasses. See Vision care.

Face lifts. See Cosmetic surgery.

Fertility. Medical expenses related to the treatment of infertility, including *in vitro* fertilization, fertilization (including storage of eggs or sperm) and surgery (including an operation reversing sterilization surgery) are reimbursable.

Fitness programs. Fitness programs or physical therapy for general health are not reimbursable.

Food. See Special foods

Foreign countries. Medical expenses incurred in countries outside the United States are reimbursable.

Founder’s fee. See Lifetime care.

Funeral expenses. Expenses for funerals are not reimbursable.

Group medical insurance. See Insurance premiums.

Guide dog or other animal. The cost of a guide dog or other animal used by the visually impaired or hearing impaired is reimbursable. Costs associated with a dog or other animal trained to assist persons with other physical disabilities are also reimbursable, as are amounts paid for the care of these specially trained animals.

Hair transplant. See Cosmetic surgery.

Health club dues. Health club dues, YMCA dues, or amounts paid for steam baths for general health or to relieve physical or mental discomfort not related to a particular medical condition are not reimbursable.

Healthy baby care. See Nursing services.

Hearing aids. Medical expenses for a hearing aid and batteries are reimbursable.

Heartburn medicines. Heartburn medicines, including antacids, purchased for personal use of the employee, spouse or dependent to alleviate or treat personal injuries or sickness, without a prescription, are reimbursable.

Herbal medicines. See Naturopathy.

Hospital. Expenses incurred as a hospital in-patient or out-patient for laboratory, surgical and diagnostic services qualify as medical expenses.

Hot tub. See Capital expenses.

Household help. The cost of household help, even if recommended by a doctor, is not reimbursable. However, certain expenses paid to an attendant providing nursing-type services are reimbursable (see Nursing services).

Human guide. Expenses for a human guide, to take a blind child to school, for example are reimbursable. Also see Guide dog.

Impotence or sexual inadequacy. Medical expenses related to the treatment of impotence are reimbursable if substantiated by a physician.

In vitro fertilization. See Fertility.

Infertility. See Fertility.

Insulin. The cost of insulin is reimbursable.

In-patient meals. See Lodging and meals.

Insurance premiums. Premiums for health coverage other than coverage offered by the flex plan sponsor (i.e., COBRA coverage) are not reimbursable. For example, the cost of health coverage obtained through the employer of an employee's spouse or dependent is not reimbursable (see

COBRA coverage), and employers may not use salary reduction amounts (such as FSA contributions) to reimburse employees for the cost of health insurance policies obtained on their own.

Laboratory fees. Laboratory fees that are part of medical care are reimbursable.

Laetrile. Laetrile, even if prescribed by a doctor, is *not* reimbursable.

LASIK. The cost of laser surgery to correct or promote the proper function of the eye is reimbursable. (Also see Radial keratotomy.)

Lead-based paint removal. The costs of removing lead-based paints from surfaces in a home to prevent a child who has (or has had) lead poisoning from eating the paint is reimbursable. These surfaces must be in poor repair (peeling or cracking) or within the child's reach. The cost of repainting the scraped area, however, is not reimbursable.

Learning disability. Tuition payments to a special school for a child, who has severe learning disabilities caused by mental or physical impairments, including nervous system disorders, are reimbursable. A doctor must recommend that the child attend the school. See Schools. Also, tutoring fees paid on a doctor's recommendation for a child's tutoring by a teacher who is specially trained and qualified to work with children who have severe learning disabilities are reimbursable.

Legal fees. Legal fees paid to authorize treatment for mental illness are reimbursable. However, any part of a legal fee that is a management fee, for example, a guardianship or estate management fee, is not reimbursable.

Licensing requirement. Neither the tax code nor IRS regulations require a plan participant to determine whether a provider is qualified, authorized under state law or licensed to practice before using his/her services. The main issue is the nature of the treatment, not the license held by the practitioner. Thus, services provided by a range of organizations and individuals may be reimbursable, including care provided by hospitals, medical doctors, dentists, eye doctors, chiropractors, nurses, osteopaths, podiatrists, psychiatrists, psychologists, physical therapists, acupuncturists, psychoanalysts and others.

Life insurance premiums. Life insurance premiums are not reimbursable because they would constitute prohibited deferred compensation.

Lifetime care. Part of a life-care fee or "founder's fee" paid either monthly or as a lump sum under an agreement with a retirement home is reimbursable if it is allocable to medical care. The agreement must require a specified fee payment as a condition for the home's promise to provide lifetime care that includes medical care. Also, advance payments to a private institution for the lifetime care, treatment and training of an employee's physically or mentally impaired dependent upon the employee's death or inability to provide care are reimbursable. The payments must be a condition for the institution's future acceptance of the dependent and must not be refundable.

Liposuction. See Cosmetic surgery.

Lodging and meals. The cost of lodging and meals at a hospital or similar institution are reimbursable if the employee's main reason for being there is to receive medical care. (Also see Nursing home.) The cost of lodging not provided in a hospital or similar institution while an employee is away from home is reimbursable if four requirements are met: (1) the lodging is primarily for and essential to medical care; (2) medical care is provided by a doctor in a licensed hospital or in a medical care facility related to, or the equivalent of, a licensed hospital; (3) the

lodging is not lavish or extravagant under the circumstances; and (4) there is no significant element of personal pleasure, recreation or vacation in the travel away from home.

The reimbursable amount cannot exceed \$50 for each night for each person. Lodging is included for a person for whom transportation expenses are a medical expense because that person is traveling with the person receiving the medical care. For example, if a parent is traveling with a sick child, up to \$100 per night is reimbursable as a medical expense for lodging. Meals and lodging away from home for medical treatment that is not received at a medical facility, or for the relief of a specific condition, are not reimbursable even if the trip is made on the advice of a doctor.

Long-term care insurance premiums. Long-term care insurance premiums are not reimbursable under a medical FSA.

Marijuana. Marijuana, even if prescribed for medicinal purposes, is not a reimbursable expense.

Marriage counseling. Expenses for marriage counseling services do not qualify as medical expenses. However, sexual inadequacy or incompatibility treatment is reimbursable if the treatment is provided by a psychiatrist.

Maternity clothes. Expenses for maternity clothes are not reimbursable.

Massage. Fees paid for massages are not reimbursable unless prescribed and substantiated by a physician to treat a physical defect or illness.

Mattresses. Mattresses and mattress boards for the treatment of arthritis are reimbursable.

Meals. See Lodging and meals.

Medical alert devices. Personal emergency transmitters worn as a bracelet or necklace are not reimbursable.

Medical aids. Medical aids such as false teeth, hearing aids, orthopedic shoes; crutches and elastic hosiery are reimbursable.

Medical information plan. Amounts paid to a plan that keeps medical information so that it can be retrieved from a computer data bank for medical care are reimbursable.

Medical savings accounts (MSAs). MSAs cannot be offered as part of a flex plan or FSA.

Medical services. Only legal medical services are reimbursable. Amounts paid for illegal operations or treatments, regardless of whether they are rendered by licensed or unlicensed practitioners, are not reimbursable.

Medicare Part A. The tax paid for Medicare Part A is not reimbursable.

Medicare Part B. Premiums paid for Medicare Part B are not reimbursable.

Medicines. Amounts paid for prescribed medicines and drugs are reimbursable. A prescribed drug is one which requires a prescription by a doctor for its use by an individual. The cost of insulin is also reimbursable. Over-the-counter medicines and drugs to alleviate or treat personal injury or sickness are reimbursable, whether or not prescribed by a physician.

Mentally retarded, special home for. The cost of keeping a mentally retarded person in a special home (not the home of a relative) on the recommendation of a psychiatrist to help the person adjust from life in a mental hospital to community living is reimbursable.

Naturopathy. The issue of whether naturopathic expenses are reimbursable is problematic. (Naturopathy is the practice of treating a medical condition with “natural” methods, such as processed plant matter, for example.) There is no directly applicable official guidance on whether such expenses should be reimbursed under a health FSA, and scant (and contradictory) guidance that is indirectly applicable. Two questions are at the heart of this issue:

Are naturopathic treatments “medicine”? The answer to this question is: No. Section 213(b) limits the definition of “medicine or drugs” to those prescribed by a physician, and cross-references the definition of “physician” found in the Social Security Act (SSA). Naturopaths are not included in the SSA definition’s list of approved medical professionals. Thus, naturopathic treatments prescribed by a naturopath are not reimbursable. (Presumably, a naturopathic treatment prescribed by an SSA-approved physician, such as an M.D., *would* be reimbursable.)

If a prescribed naturopathic treatment (not over-the-counter) were deemed to be dietary in nature, rather than medicinal (such as a natural dietary supplement, for example), then any reimbursable expense would be limited to the amount in excess of the cost of a normal diet. (See Special foods.)

Is naturopathy “medical care”? Although the answer to this question is unclear and subject to debate, a conservative interpretation is: No.

As noted above, the IRS has not issued any guidance on whether naturopathy falls under the Section 213 definition of medical care. Often in such situations one can look to other sources of related or precedential guidance for an answer; in this instance, four points are relevant.

First, naturopathy is illegal in several states. For plan sponsors in those states, this does provide a definitive answer, since Section 213 specifically excludes treatments that are illegal. Second, naturopathy is not covered by Medicare. Third, decisions over the years by the U.S. Tax Court on the deductibility of naturopathic or similar expenses (such as Native American tribal practices, for example) are conflicting to the point of being unhelpful. And fourth, the IRS often challenges deductions for non-traditional medical treatment.

Nicotine patches and gum. Even if prescribed, over-the-counter drugs to help stop smoking are not deductible under Section 213. They may be reimbursable, however. (Also see over-the-counter medications and Smoking cessation programs.)

Non-prescription drugs. See Over-the counter medications.

Nursing home. The cost of medical care in a nursing home or home for the aged for an employee, or for an employee’s spouse or dependent, is reimbursable. This includes the cost of meals and lodging in the home if the main reason for being there is to get medical care.

Nursing services. Wages and other amounts paid for nursing services are reimbursable. Services need not be performed by a nurse as long as the services are of a kind generally performed by a Nurse. This includes services connected with caring for the patient’s condition, such as giving medication or changing dressings, as well as bathing and grooming the patient. Only the amount spent for nursing services is reimbursable. If the attendant also provides personal and household

services, these amounts must be divided between the time spent performing household and personal services and the time spent on nursing services.

Meals. Amounts paid for an attendant's meals are also reimbursable. This cost may be calculated by-dividing a household's total food expenses by the number of household members to find the cost of the attendant's food, then apportioning that cost in the same manner used for apportioning an attendant's wages between nursing services and all other services (see above).

Upkeep. Additional amounts paid for household upkeep because of an attendant are also reimbursable. This includes extra rent or utilities paid because of having to move to a larger apartment to provide space for an attendant.

Infant care. Nursing or babysitting services for a normal, healthy infant are not reimbursable.

Social Security, unemployment (FUTA) and Medicare taxes paid for a nurse, attendant or other person who provides medical care are reimbursable.

Nutritional supplements. See Special foods.

Optometrist. See Vision care.

Orthodontia. Expenses for orthodontic care are generally reimbursable, except care for cosmetic purposes. See Cosmetic surgery.

Orthopedic shoes. See Medical aids.

Organ donor. See Transplants.

Osteopath. Osteopathic expenses are reimbursable.

Over-the-counter medications. The cost of purchasing over-the-counter, nonprescription medicines is reimbursable when purchased for the employee's personal use, or for the use of the employee's spouse or dependents, to alleviate or treat personal injuries or sickness. These items include antacids, allergy medicines, pain relievers and cold medicines purchased from a pharmacy.

Pain reliever. The cost of purchasing a pain reliever, without a prescription, is reimbursable when purchased to treat or alleviate personal injury or sickness.

Patterning exercises. See Therapy.

Personal use items. Items that are ordinarily used for personal, living and family purposes are not reimbursable unless they are used primarily to prevent or alleviate a physical or mental defect or illness. For example, the cost of a wig purchased on the advice of a physician for the mental health of a patient who has lost all of his or her hair from disease is reimbursable. If an item purchased in a special form primarily to alleviate a physical defect is one that in normal form is ordinarily used for personal, living and family purposes, the cost of the special form in excess of the cost of the normal form is reimbursable.

Phone equipment. See Telephone.

Physical exams. Physical exams are generally reimbursable, except for employment-related physicals. See Employment-related expenses.

Pre-existing conditions. Medical expenses not covered because of the plan's pre-existing condition limitation are reimbursable.

Pregnancy test. The cost of an over-the-counter pregnancy test is not reimbursable. A pregnancy test performed by a physician, however, is reimbursable.

Prescription drugs. See Medicines.

Private hospital room. The extra cost of a private hospital room is reimbursable.

PRK (photorefractive keratectomy). See Radial keratotomy.

Prosthesis. See Artificial limb.

Psychiatric care. Expenses for psychiatric care are reimbursable. These expenses include the cost of supporting a mentally ill dependent at a specially equipped medical center where the dependent receives medical care. Also see Psychoanalysis and Transportation.

Psychoanalysis. Expenses for psychoanalysis are reimbursable.

Psychologist. Expenses for psychological care are reimbursable.

Radial keratotomy. Radial keratotomy (RK) is a reimbursable expense. (Also see LASIK.)

Reasonable and customary charges, amounts in excess of Medical expenses in excess of the plan's reasonable and customary charges are reimbursable.

Resort. See Spa or resort.

Retin-A. Reimbursable when prescribed by a physician to treat a specific medical condition (such as acne), but not for cosmetic purposes (such as wrinkles).

Rogaine. Reimbursable when prescribed by a physician for a specific medical condition (such as hypertension), but not for cosmetic purposes (that is, to stimulate hair growth).

Schools, special. Expenses paid to a special school for a mentally impaired or physically disabled person are reimbursable if the main reason for using the school is its resources for treating the disability. This includes the cost of a school that:

- teaches Braille to a visually impaired child;
- teaches lip-reading to a hearing-impaired child; or
- provides remedial language training to correct a condition caused by a birth defect.

The cost of meals, lodging and ordinary education supplied by a special school is reimbursable only if the main reason for using the school is its resources for treating the mental or physical disability. The cost of sending a non-disabled "problem child" to a special school for benefits the child may get from the course of study and disciplinary methods is not reimbursable.

Scientology “audits.” Amounts paid to the Church of Scientology for “audits” do not qualify as expenses for medical care.

Sexual counseling. Expenses for counseling regarding sexual inadequacy or incompatibility are reimbursable if the counseling is provided to a husband and/or wife by a psychiatrist.

Smoking cessation program. The cost of a stop-smoking program is reimbursable. In June 1999 the IRS reversed its position on this issue based on scientific evidence proving the addictive nature of tobacco. (Previously, these expenses were not reimbursable.) Stop-smoking drugs prescribed by a physician are also reimbursable. The cost of nonprescription drugs, such as nicotine patches or gum, should be reimbursable when purchased to quit smoking.

Spa or resort. Although a visit to a spa-or resort maybe prescribed by a physician for medical treatment, only the costs of the medical services provided are reimbursable, not the cost of transportation. (See Transportation and Trips.)

Special foods. The costs of special foods and/or beverages, even if prescribed, that substitute for other foods or beverages that a person would normally consume and that satisfy nutritional requirements (such as the consumption of bananas for potassium, for example) are not deductible. However, prescribed special foods or beverages are reimbursable if they are consumed primarily to alleviate or treat an illness or disease, they are substantiated by a physician and they are not part of normal nutritional needs. Special foods purchased as part of a weight loss program are not reimbursable expenses because, according to the IRS, reduced-calorie foods are substitutes for the food individuals would normally eat. Special foods and beverages are reimbursable only to the extent that the cost is greater than the cost of the commonly available version of the same product. In a December 2001 letter ruling, the IRS set four standards for determining whether cayenne pepper qualifies under Code Section 213:

1. The individual has a medical condition (i.e., a disease, illness, or injury);
2. the purpose for buying the pepper is to treat the condition;
3. the individual would not have purchased the pepper “but for” the condition; and
4. the individual does not consume pepper to satisfy nutritional needs.

Sterilization. The cost of a legal sterilization (a legally performed operation to make a person unable to have children) is reimbursable.

Substance abuse. See Alcoholism and drug abuse.

Sunglasses. Prescription sunglasses are reimbursable. Non-prescription sunglasses may be reimbursable if they meet the Section 213 definition of medical care for example, if an optometrist recommends them for a patient with contact lenses that correct a retina condition causing sensitivity to light.

Supplemental insurance policies. Certain supplemental insurance policies, such as policies covering cancer or other specific diseases, hospital confinement and intensive care, may be reimbursed under a health FSA.

Swimming lessons. See Dancing lessons.

Taxes. Sales and service taxes imposed on qualified medical care or products are reimbursable.

Teeth guards. These devices, prescribed to treat the grinding of teeth while sleeping, are reimbursable. Guards designed for sports use are not reimbursable.

Teeth whitening. These expenses are cosmetic and are not reimbursable.

Telephone. The costs of purchasing and repairing special equipment that lets a hearing-impaired person communicate over a telephone are reimbursable.

Television. The cost of equipment that displays the audio part of TV programs as subtitles for the hearing-impaired is reimbursable. This may include an adapter that attaches to a regular TV or the cost of a specially equipped TV in excess of the cost of the same model regular TV set.

Tests. Diagnostic or screening tests such as those that detect or evaluate the risk of heart disease, stroke, diabetes, osteoporosis, cancer, etc. qualify as medical care under Section 213 if there is a direct relationship between the test and a medical diagnosis.

Therapy. Amounts paid for therapy received as medical treatment are reimbursable. Payments made to an individual for special exercises administered to a mentally retarded child are also reimbursable. These so-called “patterning” exercises consist mainly of coordinated physical manipulation of the child’s arms and legs to imitate crawling and other normal movements.

Transplants. Payments for surgical, hospital, laboratory and transportation expenses for a prospective or actual donor of a kidney or other organ are reimbursable.

Transportation. Amounts paid for transportation primarily for, and essential to, medical care are reimbursable (except as provided below). These include:

- bus, taxi, train or plane fare, or ambulance service;
- actual car expenses, such as gas and oil (but not expenses for general repair, maintenance depreciation and insurance);
- parking fees and tolls;
- transportation expenses of a parent who must accompany a child who needs medical care;
- transportation expenses of a nurse or other person who can give injections, medications or other treatment required by a patient who is traveling to get medical care and is unable to travel alone;
- transportation expenses for regular visits to see a mentally ill dependent if these visits are recommended as a part of treatment; and
- transportation and registration fees (but not meals or lodging expenses) incurred to attend a medical conference on a chronic disease of the employee or a dependent. Instead of actual expenses, it is acceptable to use a flat rate of 14 cents per mile for each mile a car is used for medical purposes in 2005. The cost of tolls and parking may be added to this amount. Reimbursable expenses do not include:
 - depreciation on a vehicle;
 - transportation expenses to and from work, even if a medical condition requires an unusual means of transportation; or

- transportation expenses incurred if, for non-medical reasons, an employee chooses to travel to another location (or to a resort or spa) for an operation or other medical care prescribed by a doctor.

Trips. Amounts paid for transportation to another location, if the trip is primarily for and essential to receiving medical services, are reimbursable. (Also see Lodging and meals.) A trip or vacation taken for a change in environment, improvement of morale or general improvement of health, is not reimbursable, even if it is taken at the advice of a doctor. (See Spa or resort.) The cost of commuting to a job not explicitly prescribed as therapy for a medical condition also is not reimbursable.

Tuition. Charges for medical care included in the tuition of a college or private school are reimbursable if the charges are separately stated in the tuition bill. (Also see Learning disability and Schools, special.)

Tutors' fees. See Learning disability.

Vacation. See Trips.

Vaccines. Expenses for vaccines are reimbursable.

Vasectomy. Medical expenses related to a vasectomy are reimbursable.

Viagra. If prescribed to treat impotence as a specific medical condition, the cost of Viagra is reimbursable.

Vision care. Optometric services and medical expenses for eyeglasses (including non-prescription reading glasses) and contact lenses needed for medical reasons are reimbursable. Eye exams and expenses for contact lens solutions are also reimbursable. However, premiums for contact lens replacement insurance are not reimbursable. (Also see Radial keratotomy.)

Vitamins. Only expenses for vitamins prescribed by a physician that are only available by prescription and are to treat a specific medical condition are reimbursable. Vitamins purchased without a physician's prescription to maintain the general health of the employee, the employee's spouse or dependents, are not reimbursable.

Wage continuation policies. Premiums paid under wage continuation policies are not reimbursable because they could provide benefits that would be received in a subsequent plan year, resulting in prohibited deferred compensation.

Weight loss program. The cost of a weight loss program *for general health* is not reimbursable even if a doctor prescribes the program. However, the cost of a weight loss program may be reimbursable in two instances. First, if attendance at a weight loss program is prescribed by a physician to treat a *specific illness* (e.g., heart disease), the expense is reimbursable. The physician should substantiate the necessity of this treatment. Second, obesity is now medically recognized by the IRS as a disease in its own right, and weight loss programs to treat obesity are reimbursable expenses. Apparently, weight loss programs to treat obesity do not have to be prescribed by a physician, but obesity must be diagnosed. (Also see Special Foods.)

Well baby care. See Nursing services.

Wheelchair. Amounts paid for an autoette or a wheelchair used mainly for the relief of sickness or

disability, and not just to provide transportation to and from work, are reimbursable. The cost of operating and maintaining the autoette or wheelchair is also reimbursable.

Wigs. See Personal use items.

X-ray fees. Amounts paid for X-rays taken for medical reasons are reimbursable.

Capital Expenses

Medical expenses incurred by employees for special equipment installed in the home or for improvements are reimbursable under a health FSA (subject to the discussion below) if their main purpose is medical care. Under Code Section 213, the cost of permanent improvements that increase the value of the property may be partly deducted as a medical expense. The cost of the improvement is reduced by the increase in the value of the property; the difference is a deductible medical expense. If the value of the property is not increased by the improvement, the entire cost is deductible as a medical expense. Depreciation on the property being improved may not be claimed as a medical expense.

Improvements made to accommodate a residence for a person's disability do not usually increase the value of the residence, and the full cost is usually reimbursable. These improvements include, but are not limited to:

- constructing entrance or exit ramps;
- widening doorways at entrances or exits;
- widening or otherwise modifying hallways and interior doorways;
- installing railing, support bars or other modifications to bathrooms;
- lowering or making other modifications to kitchen cabinets and equipment;
- moving or otherwise modifying electrical outlets and fixtures;
- installing porch lifts and other forms of lifts (but generally not elevators);
- modifying fire alarms, smoke detectors and other warning systems;
- modifying stairways;
- adding handrails or grab bars;
- modifying hardware on doors;
- modifying areas in front entrance and exit doorways; and
- re-grading the ground to provide access to the residence.

Only reasonable costs to accommodate a personal residence to a disabled condition are considered medical care. Additional costs for personal motives, such as for architectural or aesthetic reasons, are not reimbursable.

Capital Expenses Worksheet

The following worksheet may be used to figure the amount of a reimbursable capital expense.

1. Enter the cost of the improvement. \$ _____
2. Enter the increase in the value of the home. \$ _____

If line 2 is equal to or greater than line 1, the amount is not reimbursable.

If line 2 is less than line 1, go on to line 3.

3. Subtract line 2 from line 1. This is the deductible medical expense.

Although a capital expense may be reimbursable under Section 213, it is not certain to what extent such an expense may be reimbursable under a health FSA. The flex plan proposed regulations prohibit as a benefit "deferred" compensation. For this purpose, deferred compensation means the use of contributions "from one year to purchase a benefit that will be provided in a subsequent year".

Since a capital expenditure by its nature has value over more than one year, reimbursement of such an expense might be considered deferred compensation. The IRS has not provided specific guidance on this point.

Accordingly, a plan administrator may take one of three approaches: (1) not reimburse the expenditure at all (most conservative); (2) prorate the reimbursement over the usable life of the asset (a middle-ground approach); and (3) reimburse the entire expenditure in the year in which it is acquired (most aggressive).

Operation and maintenance

If a capital expense qualifies as a reimbursable medical expense, then expenses related to operation and maintenance also qualify as medical expenses, as long as the medical reason for the capital expense still exists. This is so even if none or only part of the original capital expense qualified as a medical care expense.

Improvements to property rented by a person with disabilities

Amounts paid by a person with disabilities to buy and install special plumbing fixtures, mainly for medical reasons, in a rented house are reimbursable medical expenses. For example, Don has arthritis and a heart condition. He cannot climb stairs or get into a bathtub. On his doctor's advice, he installs a bathroom with a shower stall on the first floor of his two-story rented house. Don's landlord did not pay any of the cost of buying and installing the special plumbing and did not lower the rent. Don can deduct the entire amount he paid. (See, however, the discussion above regarding the reimbursement through his health FSA of capital expenditures with a useful life over one year. The same issues apply to improvements.)