



2012 A TO Z SAMPLE LISTING OF ELIGIBLE HEALTH CARE FSA EXPENSES AND CLAIM PROCESSING REQUIREMENTS EXPLAINED

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Section 1 Introduction

This publication is designed to offer very specific details in regards to the IRS regulations, definitions, and claim requirements of Flex Spending Arrangements. It should be used with caution, as the concepts are general in nature and may not apply to your specific situation or plan.

If you're looking for the basic concepts and benefits of a flex plan, please go to our website at www.pagroup.us Click on the FLEX Tab and you will see a drop down menu of topics and literature. Claim forms, work sheets, and enrollment forms are all available online.

As your claims administrator, we are required to follow very specific claim guidelines. This is necessary to keep your plan in compliance, both on an individual taxpayer level – and on a plan sponsor level. We are here to be a source of information and service – and have prepared this guide to assist you in understanding what we are required to do in order to process reimbursements. We recognize that filing a claim isn't always fun – and can be frustrating if you do not understand why we may not be able to process it. If you have any questions, need assistance in getting a reimbursement paid or just need to review expenses – please reach out and let us know. We want to make sure you get reimbursed quickly and properly and will do what we can to advocate on your behalf.

Section 2

MEDICAL CARE Defined

The tax laws (the Code, regulations and court decisions) prescribe rules about whether an expense is considered to be for medical care. Under Code Section 213(d)(1) it **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.**

- Diagnose: means using any procedure to find out whether someone has a disease or dysfunction. Hearing, vision, and blood tests, CT scans, and urine analysis are all examples of diagnostic tests.
- Cure: means a medical treatment or drug used to restore health, such as using chemotherapy to treat cancer.
- Mitigate: it must make a medical condition less harsh or severe. Examples include a wheelchair if a participant has multiple sclerosis and a seeing-eye dog for a blind child.
- Prevent: requires that the care involve the immediate and proximate prevention of a disease, defect, or illness, and that the disease, etc. be imminent. An example would be if the doctor prescribes an antibiotic to treat an ear infection.
- Affecting any structure of the body: include operations or treatments affecting any portion of the body, such as obstetrical services and X-rays.

The regulations also require that for medical care expenses to be allowable under Code § 213, they must be “confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness.” The IRS provides specific examples of expenses that satisfy this requirement:

- hospital services;
- nursing services, including nurses’ board where paid by the taxpayer;
- medical, laboratory, surgical, dental, and other diagnostic and healing services;
- X-rays;
- medicine and drugs;
- artificial teeth and limbs; and
- ambulance hire.

If an expense involves some personal benefit (as well as medical care), it is not so easy to be sure that the “primarily for medical care” test is met and will generally require additional documentation.

Expenses That Merely Benefit General Health Do Not Meet the “Primarily for a Medical Purpose” Rule

Expenditures that are merely “beneficial” to an individual’s general health (e.g., vacation) are not medical care under Code § 213(d). Such expenses will ordinarily not satisfy the “primarily for a medical purpose” requirement unless they are determined by a physician to be necessary to treat or alleviate a specific physical or mental illness. Court cases have established that expenses are not for the prevention of disease unless there is an existing or imminently probable disease, physical or mental defect, or illness.

You Must Be Sick before You Can Get Well.

The requirement of an existing or imminently probable defect or ailment is sometimes expressed informally as the rule that “you must be sick before you can get well.” Under this rule, expenses that merely benefit an individual’s general health or well-being are not reimbursable; there must be a specifically diagnosable condition. This rule does allow for annual physicals, immunizations, flu shots, and certain diagnostic procedures and devices (e.g., pregnancy test kits). These expenses may be for medical care even if incurred by a healthy person.

Personal Expenses Must Meet the “But For” Test

Another guiding principle is applied by the IRS where expenses are of a type “conventionally understood to be personal, living, or family expenses.” Such expenses will not be for medical care unless they would not have been incurred “but for” the medical condition.

The “But For” Test. This test basically asks whether an expense that would normally be thought of as a personal expense would have been incurred in the absence of the medical condition. If the answer is yes, then the expense is not reimbursable. For example, a child’s ballet lessons were found not to meet the “but for” test because, although the lessons alleviated the child’s scoliosis, she had already been taking ballet lessons before diagnosis. Expenses incurred for a divorce would not be deductible even if the divorce had been “prescribed” by a physician. An IRS official has informally commented that factors to be considered in applying the “but-for” test include the extent to which other family members use the item and whether the individual with the medical condition also uses the item for nonmedical purposes.

Special Medical Care Rules: Depend on the Type of Expense (Transportation, Drug, etc.)

In addition to asking whether an expense meets the general principle described above (that is, whether it diagnoses, cures, treats, or prevents disease, or affects any structure or function of the body), an administrator must check whether an item falls within any special tax rules. These rules may impose additional standards and conditions to those set forth in the general rule, or they may prohibit reimbursement of the expense altogether. Some of these items are addressed in Code § 213(d); others are covered elsewhere in the Code or in applicable regulations. Here are some examples of items that are subject to special statutory and regulatory restrictions

- cosmetic procedures;
- medicines and drugs;
- capital expenditures;
- expenses paid for transportation primarily for and essential to medical care (including meals and lodging); and
- cost of inpatient hospital care (including the cost of meals and lodging)

What “Medical Care” Does Not Include for Health FSA Purposes

Certain items are clearly not included in the definition of medical care, or are only included under very limited conditions. Other items technically fall within the definition of medical care but cannot be reimbursed under a health FSA because of other special rules under the Code or regulations.

Cosmetic Procedures (Except to Cure a Deformity, Congenital Abnormality, etc.)

Congress specifically excluded cosmetic procedures (e.g., cosmetic surgery) from the definition of medical care. Code § 213(d) (9) defines cosmetic surgery very broadly to mean “any procedure which 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. There are some exceptions to this, however, such as surgery to ameliorate a deformity arising from a congenital abnormality, personal injury, or disfiguring disease.

Illegal Operations or Treatments

The regulations exclude amounts expended for illegal operations or treatments. Generally, the IRS will look at the locality where an item was obtained to determine whether it was legally procured (e.g. to see whether its sale and use were permitted). However, the IRS has indicated that if a treatment is in violation of federal law, then it is an illegal treatment within the meaning of the regulations, even if lawful where procured. In addition, it appears that procedures must not be illegal under state law.

Section 3

Details and Listing of Expenses A-Z

Remember that only if the item/service has first met the definition of medical care, should you then refer to the list below.

NEW: OTC DRUGS AND MEDICINES ARE ONLY REIMBURSABLE WITH A WRITTEN PRESCRIPTION FROM A MEDICAL PROFESSIONAL. As of 2011, due to healthcare reform, only those over the counter drugs and medicines that are prescribed by a medical professional to treat a specific condition can be considered eligible for reimbursement. OTC drugs or medicines that are merely beneficial to one's health are not considered eligible – even with the advice of a medical professional.

*Please use caution when reviewing this list of **typically** eligible expenses – as again, even though the expense would indicate it is eligible – certain facts and circumstances may prove that the expense is not eligible for reimbursement.* For example, Retin-A is a prescribed drug or medicine used for the treatment of acne or also as a 'wrinkle' medicine. If the Retin-A is prescribed for the treatment of acne, under the care of a doctor, it is reimbursable. If it is being used for wrinkle removal – the expense is cosmetic and therefore not eligible for reimbursement.

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 psychoanalysts. Providers of medical services are not required by the Code or IRS regulations to be licensed, certified or otherwise qualified to perform such services.

Alternative Healers, Dietary Substitutes and Drugs & Medicines

Non traditional treatments provided by professionals may be eligible if provided to treat a *specific medical condition*, but the IRS looks at these expenses very closely. The treatment must be legal, and the expenses do not qualify if the remedy is a food or substitute for food that the person would normally consume in order to meet nutritional requirements. It would appear that drugs and medicines recommended by an alternative healer to treat a specific medical condition can also qualify as medical care. To show that the expense is primarily for medical care, a note from the practitioner recommending the item to treat a specific medical condition is normally required. (*Note: that vitamins and dietary supplements for *general wellness* are not eligible even if recommended by a practitioner*).

ELIGIBLE INDIVIDUALS

Expenses under a typical flex reimbursement plan 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 Section 152 of the tax code). As of the writing of this publication, a 'child' under the age of 27 that is covered under the parents group medical insurance or not, may also qualify if the parent pays for eligible medical expenses. This is a part of the PPACA – or Health Care Reform in 2010. Expenses incurred by a domestic partner are not eligible, unless the domestic partner is your tax dependent.

NOTE: Publication 502 is not to be relied upon for Health FSA Purposes

Publication 502 should not be relied upon to determine whether an expense is reimbursable under a Health FSA because it is written solely for the purpose to assist taxpayers determine what medical expenses can be deducted on the Form 1040 Schedule A. It is for after tax deductions and not intended to help someone determine if the expense is eligible under an FSA. For example, Health FSAs cannot reimburse for LTC insurance – period. However, Publication 502 indicates it is a medical expense. There are differences between this publication and eligible expenses under the FSA and we strongly suggest you not try to utilize this publication for FSA purposes as it can be confusing and the rules are different.

LIST OF TYPICALLY QUALIFIED EXPENSES

Abortion

Acne Treatment Medicines - (RX expense most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription from a medical professional that indicates the specific condition it is treating and duration).

Adoption Pre Adoption Medical Expenses – Medical expenses incurred before an adoption is finalized, if the child qualifies as your tax dependent when the services are provided.

Acupuncture

Air Filters – may qualify if the expense is incurred to treat a specific medical condition or illness. Must be accompanied by a written recommendation of a medical practitioner. Not eligible if the expense merely promotes good health or wellness.

Alcoholism and Drug Abuse (includes meals and lodging)

Allergy Medicines - (RX expense most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

Alternative Medicine/Healers (treating a specific condition See Section Above)

Ambulance

Analgesics - (If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

Antacids - (RX expense most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

Antibiotic Ointments - (RX expense most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

Antihistamines- such as Claritin or Benadryl (RX expense most likely eligible) If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration.

Anti Itch Creams - (RX expense most likely eligible) If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration.

Artificial Limb

Artificial Teeth

Aspirin - (RX expense most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration.

Bandages - purchased or used to treat cut or injury are most likely eligible. These are considered medical supplies.

Behavioral Modification Programs – See **Schools and Education**

Birth Control Pills and Devices (condoms, IUD, etc)

Birthing Classes – See **Lamaze Classes**

Blood Pressure Monitoring Devices

Blood Sugar Test Kits and Strips

Body Scans

Braille Books and Magazines - (only amounts in excess cost vs. the cost of regular printed material)

Breast Augmentation Removal - may qualify if treatment is needed to remove breast implants that are defective or are causing medical problems.

Breast Pump – New in 2011, the expense qualifies. Previously the expense only qualified if prescribed to alleviate a specific medical condition affecting either the mother or the child – not if used for convenience – note from practitioner was required.

Breast Reconstruction surgery following mastectomy – Will qualify to the extent that surgery was done following a mastectomy for cancer.

Breast Reduction – may qualify if recommended by a medical practitioner to prevent or treat a medical condition. Doctor note would be recommended/required.

Calamine Lotion - (If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

Capital Expenses – see plan administrator. Special tax rules apply.

Carpal Tunnel Wrist Supports

Cayenne Pepper – potentially qualifying expense if used to treat a specific medical condition. Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

Chelation Therapy – qualifies if used to treat a medical condition such as lead poisoning.

Childbirth Classes - (Only for the mother-to-be, not the coach – also See Lamaze Classes)

Chinese Herbal Medicines - (see Alternative Healer at publication beginning) potentially qualifying expense if used to treat a specific medical condition. Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration.

Chiropractor

Chondroitin - prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement request.

Christian Science Practitioners – medical care treatment only is eligible

Circumcision

Claritin - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement request.

Clinic for Health Services

Club Dues and Fees – See **Health Club Fees**

Co-Insurance Amounts - generally qualify if the underlying treatment qualifies

Cold Medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Cold/Hot Packs – only for medical use (not to keep a beverage cool!)

Condoms

Contact Lenses, supplies & equipment

Contraceptives

Co-Payments

Cosmetic Surgery - note that most cosmetic procedures do not qualify – but if it is 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 it may qualify.

Cough Suppressants - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Counseling – qualifies if it is for a medical reason. Marriage counseling doesn't qualify.

Crutches

Decongestants -Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Deductibles for Medical Insurance

Dental Treatments - routine cleaning, extractions, x rays, root canals, dental implants, fillings, scaling and periodontal care would qualify. Teeth whitening or bleaching would not qualify.

Dentures and denture adhesives qualify (not denture toothpastes)

Diabetic supplies

Diaper Rash Cream and Ointments - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Diarrhea medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Dietary supplements – only if prescribed for a specific medical condition, such as iron if anemic, or prenatal vitamins during pregnancy. A note from the medical practitioner/doctor is required. Other than that, expenses not eligible.

Domestic Partner Medical Expenses – would not qualify if that individual is not your tax dependent.

Drugs & Medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is for the purpose of treating a specific medical condition and accompanied by a written prescription from a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Drug Addiction Treatment

Drug Overdose Treatment

Dyslexia – see **Language Training**

Ear Wax Removal Products - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Ear Plugs – will qualify if treating a specific condition, such as required for the protection of surgically implanted ear tubes. A written note or letter of medical necessity may be required.

Egg Donor fees – egg donor fee, an agency fee, an egg donor's medical and psychological testing, and the legal fees for preparation of the egg donor contract may qualify.

Egg & Embryo Storage fees – fees for temporary storage may qualify – but only to the extent necessary for immediate conception. Expenses for 'future contraception' are not considered medical care. (Some plans would consider storage & use expenses within one year as a potentially eligible expense)

Exercise Programs/equipment - qualifies only if required to treat an illness such as obesity, as diagnosed by a doctor. The purpose of the expense must be to treat the disease rather than to promote general health. The expense must not have been paid 'but for' this purpose. Note from practitioner is required, indicating the medical condition (if prescribed to treat a specific medical condition). Expense would only qualify for duration of the treatment of the existing condition.

Expectorants Products - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Eye Exam

Eyeglasses, equipment and materials (prescription lenses)

Fertility treatments

Fever reducing medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement request.

Fiber Supplements – if used to treat a medical condition, such as irritable bowel syndrome (a prescription drug is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

First Aid Cream - (a prescription drug is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration).

First Aid Kits may be eligible

Fitness Programs – See Exercise Program/Equipment

Flu Shot

Fluoridation device or services

Gauze Pads

Genetic Testing – gray area. Probably eligible to detect possible defects during pregnancy. Testing done to determine the sex of the child is probably not eligible.

GIFT – see **Fertility Treatments**

Glucosamine – see **Chondroitin**

Glucose Monitoring Equipment – meters, strips are eligible

Guide Dog or other animal aide – eligible expenses include purchasing, training and caring for the service animal, including veterinary fees, if the animal is used for a physically disabled person.

Headache Medications – aspirin, acetaminophen, etc. Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Health Club Fees – typically NOT eligible. Only in very limited circumstances would fees paid to a health club qualify. One instance might be where fees are incurred upon the advice of a medical practitioner to treat a medical condition, such as rehab after back surgery, or treatment for obesity. The expense must not have been incurred 'but for' the disease (for example, if you belonged to the health club before being diagnosed, then the fees would not apply). When treatment is no longer needed, the fees would no longer apply. To show the expense is primarily for medical care, a note from a medical practitioner recommending it to treat the specific medical condition would be required. Maintaining ones own health would not qualify.

Healthy Baby Care – immunizations, checkups, etc

Hearing Aids and batteries

Hemorrhoid treatment - prescribed drugs or surgery to treat condition qualifies. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration)

Herbs – See **Vitamins**

Holistic/Natural Healers – see **Alternative Healers**

Home Care – See **Nursing Services**

Home Improvement – contact the plan administrator

Hormone Replacement Therapy – eligible if used for medical care, such as treating menopausal symptoms. Will not qualify if taken to maintain general health. A note from a medical practitioner would be necessary.

Hospital Expenses

Immunizations

Impotence – treatment and prescription medicines will likely qualify. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration

Incontinence supplies – adult diapers used to treat incontinence would be eligible, but diapers for children not yet potty trained would not qualify.

Infertility treatments

Insect Bite Creams and Ointments medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Insulin IVF In Vitro Fertilization

In-Patient Meals

Laboratory Fees

Lamaze classes – expenses may qualify to the extent that the classes relate to the birth itself and not childrearing. The fees should be broken down to indicate and exclude amounts for instructions and topics not directly related to the birthing process itself.

Language Training – the expense will generally qualify if they are for a child with dyslexia or a disabled child - but school fees for regular schooling don't normally apply. Doctor note will be required.

Laser eye correction surgery

Lasik

Lead-Based Paint Removal – may qualify only if lead poisoning has been diagnosed.

Learning Disability (tuition payments to a special school for a child who has a severe learning disability caused by mental or physical impairments, including nervous system disorders. A doctor must recommend that the child attend school).

Legal Fees (paid to authorize treatment for mental illness – see plan administrator)

Liquid adhesive/bandages - for small cuts may likely qualify. Ointments or medicated bandages would be OTC and need written prescription by a medical practitioner.

Lodging and Meals - (at hospitals and similar institutions) eligible for the individual receiving the care

Lodging Not at a Hospital or similar institution – Up to \$50 per night may qualify if the lodging is primarily for and essential to medical care, and if the care is provided by a physician in a licensed hospital or medical care facility related to the hospital or equivalent site, and if the lodging isn't lavish or extravagant, and if there is no significant element of personal pleasure, recreation, or vacation in the travel. If the parent is traveling with a sick child, up to \$100 may qualify (\$50 per person). This amount subject to change at any time. Also see **Meals Not at a Hospital**

Lodging of a Companion – may qualify if accompanying a patient for medical reasons and all of the above conditions apply. For example, if a parent is traveling with a sick child, up to \$100 per night (\$50 per each person) may qualify. Amounts subject to change at any time.

Massage Therapy – If the massage therapy is recommended (in writing) by a physician to treat a specific injury or trauma, it would qualify. If it is mainly to improve general health it would not qualify.

Meals at a hospital or similar institution – may qualify if the reason for being there is to receive medical care.

Meals NOT at a hospital or similar institution – meals that are not a part of inpatient care do not qualify. Meals of a companion do not qualify – even if accompanying a patient for medical reasons.

Medical alert bracelet or necklace – qualifies if recommended by a practitioner in connection with treating a medical condition. For example, a bracelet that alerts paramedics of an allergy to penicillin of the person wearing it would be qualified.

Medical Conference admission, transportation, meals, etc – admission and transportation may qualify if they relate to a specific chronic disease suffered by you, your spouse, or your dependent and if the conference is primarily for and essential to the person in need of medical care. Includes transportation expenses to the city where the conference is held, plus local transportation to the conference. Most of the time at the conference must be spent attending sessions on medical information. The expenses of meals and lodging while attending the conference do not qualify.

Medical Information Plan charges – they would qualify. This is expenses paid to a plan to keep medical information so that it can be retrieved from a computer databank for you/your dependents medical care

Medical Records Charges

Medicines and Drugs – See **Drugs and Medicines**

Menstrual Pain Relievers medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement

Morning after contraceptive pills

Motion sickness pills medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement

Nasal Strips – may qualify if they are used to treat sinus problems or treat sleep apnea. However, nasal strips that are used to treat common snoring or to help an athlete breathe would not qualify. Doctor note required.

Naturopathic – See **Alternative Healers**, etc.

Nicotine Gum/patches – eligible when used for stop-smoking programs

Norplant insertion or removal

Nursing Services – qualify whether provided in home or at a facility. There is no requirement that the caregiver be a nurse, so long as the services are of kinds that are generally provided by a nurse. This would include changing dressings, giving medications as well as bathing and grooming. But if the person providing such services also provides household and personal services, only the amounts actually incurred for the nursing care would be eligible.

Nutritionist – may qualify if the treatment relates to a specifically diagnosed medical condition. It does not qualify if it is for general health or wellness purposes. A practitioner’s note may be required.

Obstetrical Services/Expenses

Occlusal Guards – when used to prevent teeth grinding as prescribed by a professional

Operations – legal operations would qualify, so long as they are for medical (not cosmetic) purposes

Optometrist

Organ Donor – see **Transplants**

Orthodontia

Orthopedic shoes and inserts – cost for orthopedic shoes would qualify up to the extent that they exceed the cost for normal shoes. Inserts used to treat medical condition such as plantar fasciitis or bunions may qualify. Doctor note may be required. Inserts for general comfort or non medical use would not qualify.

Osteopath

Over the Counter Drugs & Medicines - OTC drugs or medicines may be eligible if accompanied by a written prescription from a medical professional indicating the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement request.

Ovulation monitor

Oxygen

Pain Relievers - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement

Personal Trainer – see Weight loss programs

Physical Exam

Physical therapy

Pre-Existing Medical Conditions

Pregnancy Test - Kits and those performed by a doctor are eligible

Prenatal Vitamins – taken during pregnancy on the written advice of a medical practitioner

Prescription Drugs - will likely qualify if used to treat a medical condition

Prescription Drugs & Medicines obtained from other countries – Crossing any border to obtain and import prescription drugs for you or others, is in general, a violation of Federal law. However, if you are on a trip and are injured or become ill and need to purchase and consume the drug in that country, it would be eligible, providing the drug is legal in both the US and that country. It would also be eligible if the FDA announces that it can be imported by individuals.

Preventive care screening

Propecia – generally not eligible if purchased/used for cosmetic purposes (such as male pattern baldness). However, if it is used to ameliorate a deformity arising from a congenital abnormality, deformity or personal injury from accident or trauma, it may qualify.

Private Hospital Room

Prosthesis

Psychiatric Care – includes the cost of supporting mentally ill dependent at a special center that provides medical care.

Psychoanalysis – it will qualify if provided for medical care, and not just for the general improvement of mental health, relief of stress, or personal enjoyment – nor if it is part of the required training necessary to be a psychoanalyst. Doctor note recommended.

Psychologists – same as psychoanalysis – see above

Radial Keratotomy

Reading Glasses – qualifies if purchased at a drug store or through your optometrist so long as the glasses improve your vision.

Retin-A – qualifies if used to treat acne – but not if for cosmetic purposes. Doctor note is required.

Rogaine – qualifies if used to treat a specific medical condition. Does not qualify if it is used for cosmetic purposes.

Rubbing Alcohol – qualifies if used for medical purposes such as prior to injection of diabetic medication.

Sales Tax – sales tax charged/paid for medical care is generally a qualified expense

Special Schools - that teach Braille to a visually impaired child; teach lip-reading to a hearing-impaired child; or provide remedial language training to correct a condition caused by a birth defect. See administrator for more details

Screening Tests

Seeing Eye Dog – See **Guide Dog**

Shipping Costs of Mail order Prescriptions – generally qualifies

Smoking Cessation Programs & Medicines – Expenses for a smoking cessation program would qualify. However, nicotine gums and patches would require a written prescription after 2010.

Special Foods – generally does not qualify. However, if it is prescribed primarily to alleviate or treat an illness or disease, the amounts that exceed commonly used foods could be eligible. Doctor note required.

Spermicidal Foam – also see **Birth Control/Contraceptives**

Sperm Storage – See **Egg/Embryo Storage Fees**

Sterilization

Sunscreen - typically will not qualify if used to maintain health or as a toiletry or a cosmetic. Won't qualify if to maintain general health or for other personal reasons. May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred "but for" the condition.* A personal history of skin cancer might qualify, but if it's used because there is a family history of the condition, it typically would not qualify. This type of expense requires a written note from a medical practitioner indicating or recommending this item to treat a specific medical condition. It must also be prescribed by a doctor, and the written prescription must be included with the reimbursement request. Cosmetics containing sunscreen do not qualify.

Substance Abuse

Sunglasses – will qualify for prescribed sunglasses

Surrogacy or Gestational Carrier Fees and Expenses - do not qualify. Those expenses generally won't qualify, even if they are for the medical care expense of the surrogate/gestational carrier or her unborn child. The procedure must be performed upon you, your spouse, or your dependent in order to be medical care.

Taxes on Medical Care/Services

Telephone (for the hearing impaired)

Therapy (received as medical treatment)

Thermometers

Throat Lozenges - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Toothache and Teething pain relievers – i.e. Orajel. Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Transplants - organ transplants qualify. Hair transplants do not qualify.

Transportation - (primarily for, and essential to, medical care). The parking, tolls, and mileage amount may qualify. Mileage amounts are subject to change at any time. The 2012 mileage rate is 23.5 cents per mile. Rental cars, ferry, ambulance fees may also qualify. This assumes transportation is for the person receiving the care. Transportation of someone other than the person receiving care – may qualify in some cases, such as: 1) Parent who must go with child for medical care; 2) Nurse or other person who give injections, medicines, and must accompany the person who is traveling to get medical care and is not able to travel alone; 3) An individual who travels to visit a mentally ill dependent, if such visits are recommended as a part of the treatment. Also see Lodging.

Tuition for special needs program– would only qualify if the primary purpose is for medical care. Includes reading program for dyslexia. See **Schools and Education**

Ultrasound Umbilical Cord freezing or storing – will only qualify if there is a specific medical condition in place at the time of storage that the cord will be used to treat. Not eligible if freezing or storing cord for a future medical need that may arise.

Usual and Customary charges – qualifies so long as it is medical care

Vaccines

Varicose Veins – only qualifies if treatment is for medical care – (treating or alleviating a medical condition) and not primarily for cosmetic purposes (cosmetic expenses are ineligible).

Vasectomy

Vasectomy Reversal

Veterinary Care – qualifies if the fees are incurred for the care of a guide dog or other animal used by a disabled person

Viagra

Vision Care

Vitamins - does not qualify if used for general wellness or health. However, may qualify if there is a specific medical condition in place that the vitamin will treat, such as pre natal vitamins or an iron deficiency. A note from a medical practitioner is required. See OTC drugs and medicines.

Walkers – qualifies if used to relieve sickness or disability

Wart removal treatment - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

Weight Loss Program – will qualify if the weight-loss program is recommended by a physician to treat a specific medical condition (diabetes, obesity, heart disease and is not simply to improve general health). However, the costs of food associated with a program will not qualify. To show that the expense is necessary and primarily for medical care, a note from a practitioner is necessary. The cost of the program may only be eligible during the active treatment of the ongoing medical condition and not merely for maintaining general health.

Wheel Chair

Wig – qualifies if prescribed by a physician for the mental health of a patient that has lost hair from a disease or treatment, such as chemotherapy

Yeast Infection medicines - Prescription drug or medicine is most likely eligible. If the item is an OTC drug or medicine, the expense may be eligible if it is accompanied by a written prescription by a medical professional that indicates the specific condition it is treating and duration of the treatment. The written prescription needs to be submitted with each reimbursement.

X-Ray Fees

LIST OF TYPICALLY NON-QUALIFIED EXPENSES – there are more – this is just a sample.....

Babysitting/Child Care	Cosmetics	Dancing Lessons	Day Care
Diapers	Dependent Care	Diets	Ear Piercing
Electrolysis	Exercise Programs	Face Lifts	Fitness Programs
Funeral Expenses	Group Medical Ins.	Hair Transplant	Health Club Dues
Health Savings Accounts	Herbal Medicines	Household Help	Illegal Drugs
Laetrile	Legal Fees	Life Insurance	Long Term Care Insurance
Liposuction	Marijuana	Marriage Counseling	Maternity Clothes
Medical Savings Accounts	Medical Marijuana	Medicare Part A	Medicare Part B
Music Lessons	Personal Use Items	Rogaine (for hair loss)	Scientology Audit
Spa	Swimming Lessons	Tattoo Removal	Toiletries

About Reimbursements

The IRS has guidelines and requirements that must be adhered to prior to paying a claim. Specifically, the expense must be for qualified medical care, and the expense must be properly substantiated. Basically it's a matter of: *What, who, when, how much and why!*

1. What is the expense for? Is it medical care? What was the nature of service? Is it considered medical care as defined by the tax code?
2. Who is the expense for? It must be for the employee, their spouse, a tax dependent, or a child up to the age of 27 at the end of the tax year.
3. When was the expense incurred? It must fall within the plan year.
4. How much is the expense? Must fall within the plan limits – and we need to see the cost after all other plans have paid or reimbursed.
5. Why was the expense incurred? It needs to be for a qualified medical purpose – which is thoroughly described within the publication.

Once those are answered, the next requirement is that the claim be properly substantiated.

The Claim needs to be substantiated with:

- Information from an independent third party describing the service or product, the date of the service or sale, and the amount of the expense (see Requirement #1, below); and
- A statement from the participant providing that the medical expense has not been reimbursed and that the participant will not seek reimbursement for the expense under any other health plan coverage (see Requirement #2 below).
- The proposed regulations also indicate that the claim needs to be reviewed by someone other than the participant. This would typically be the plans sponsor or claims administrator. (See Requirement #3, below).

These requirements have been set up to make sure that the Health FSA operates like an insurance or accident plan and if the substantiation requirements aren't met and followed, the IRS can actually go back to the plan sponsor AND participants and determine that all health FSA reimbursements should be reversed and taxable – even the ones that were already substantiated! So all claim substantiation rules are required for every claim.

Don't get mad if we ask you for independent substantiation. We Trust You! Remember – these aren't our rules. The IRS has specifically been asked if the FSA administrator can accept a participant's "self-substantiation" or "self-certification" as a substitute for all or part of the information in a third-party statement. Their answer? IRS guidance confirms that the answer is no, clarifying that Code § 105 and 125 require the substantiation of all medical expenses as a precondition of payment or reimbursement and that a participant's self-substantiation or self-certification of an expense "does not satisfy the substantiation requirement." For example, a health FSA may not reimburse expenses based solely on a participant's statement describing the expense, its amount, and its date. Plans that do so face harsh consequences: "all amounts paid under a plan that permits 'self-substantiation' or 'self-certification' are includable in gross income, including amounts reimbursed for medical expenses whether or not substantiated."

Example: Prohibited Self-Substantiation. Frank buys bandages at a convenience store. The receipt shows the date of sale and the amount paid, but there is no description that identifies the purchase as bandages. Frank writes "bandages" and the brand name on the receipt and submits it with his reimbursement claim. The plan must deny Frank's claim because there is no description of the product from an independent third party.

1. Requirement #1: Third Party Substantiation (a receipt or a bill)

Health FSA claims must be substantiated with information from *an independent third party* (e.g., a receipt or bill) describing the service or product, the date of the service or sale, and the amount of the expense. This allows us to help determine whether the expense is for medical care (not teeth bleaching), and it also proves that the expense has actually been incurred. Health FSAs cannot reimburse prior to the expense having been incurred – nor can they reimburse for expenses incurred prior to participation in the plan or the plan year itself. The proposed regulations clarify that “independent” means independent of the employee and the employee’s spouse and dependents. Originals, copies/facsimiles, or scanned copies of originals should satisfy this requirement. Credit card receipts or canceled checks normally *do not satisfy the third-party statement requirement*. Note, that these requirements are the same if you were trying to take a medical expense deduction on your tax return. So this isn’t a special rule just set up for Health FSAs.

2. Requirement #2: Participant Statement

Health FSA claims must also be accompanied by a written statement from the participant indicating that the medical expense has not been reimbursed and that the participant will not seek reimbursement for the expense under any other health plan coverage. This is part of the language we use on the lower portion of our claim form:

- *I certify that these expenses have not been reimbursed and I will not seek reimbursement for them under a major medical plan or any other health plan, such as an individual policy or my spouse's or dependent's health plan. I understand that the expense for which I am reimbursed may not be used to claim any federal income tax deduction or credit.*

3. Requirement #3: Independent Adjudication

The previously described substantiation requirements clearly contemplate claims adjudication by an entity other than the plan participant (e.g., the employer or a third-party claims administrator). In other words, claims must be independently reviewed to determine whether all of the requirements for reimbursement have been met. This independent adjudication requirement is in stark contrast to the self adjudication of claims allowed under HSAs and Archer MSAs.

In order for independent adjudication to occur, the participant generally must provide the required information and written statement (see Requirements #1 and #2, discussed above) to the health FSA administrator after the expense is incurred and before it is reimbursed. Every claim must be reviewed and substantiated. Consequently, sampling techniques are not permitted, whether under electronic payment card programs or for paper reimbursement requests. For example, plans cannot review only a percentage of claims or automatically approve claims below a certain dollar threshold—all claims are subject to the claims substantiation requirements.