



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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UIL: 213.05-00

The Honorable Patty Murray
United States Senator
2988 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174

Attention:

Dear Senator Murray:

I am responding to your inquiry dated January 26, 2016, on behalf of your constituent, . He wrote that a third-party administrator of his health flexible spending arrangement (FSA) requested verification of certain medical expenses for supplements related to a medical condition. He questioned whether IRS guidance requires the third-party administrator to request his physician's signature, identification number and an explanation of how the supplements relate to the medical condition.

Under a health FSA, an employer may pay or reimburse only those medical expenses that an employee substantiates. (See Proposed Income Tax Regulation section 1.125-6(b)(2).) IRS Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans*, states the general rule that non-prescription medicines (other than insulin) are not considered qualified medical expenses for FSA purposes. It then states that a medicine or drug will be a qualified medical expense for FSA purposes only if the medicine or drug:

1. Requires a prescription,
2. Is available without a prescription (an over-the-counter medicine or drug) and you get a prescription for it, or
3. Is insulin.

In addition, IRS Publication 502, *Medical and Dental Expenses*, (*including the Health*

Coverage Tax Credit), states that except for insulin, qualified medical expenses do not include medical expense amounts paid for a drug that is not prescribed. Enclosed are both publications, and they also are available on www.irs.gov.

This IRS guidance is not contrary to the request from the third-party administrator for verification of certain medical expenses for the supplements related to a medical condition. Employer reimbursement of non-qualified medical expenses puts the nontaxable status of the plan at risk.

Based on the information you provided, it appears the third-party administrator's request for documentation is reasonable. The third-party administrator can only pay those medical expenses after it deems them substantiated. If a third-party administrator notifies an employee that the documents submitted by a physician's office are inadequate, it is the employee's responsibility to submit the additional documentation in order to get reimbursement.

I hope this information is helpful. If you need additional information, please contact me or _____ of my staff at _____.

Sincerely,

Victoria A. Judson
Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure:

IRS Publication 969
IRS Publication 502