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LEGAL UPDATE

IRS Warning: HSAs, Health FSAs and HRAs Cannot Pay for Personal Health and Wellness Expenses

The IRS recently issued a bulletin to remind taxpayers that tax-advantaged medical savings accounts, such as health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs), cannot pay for personal expenses for general health and wellness. Similarly, health savings accounts (HSAs) cannot be used to pay for these personal expenses on a tax-free basis.

The IRS provided this reminder as a warning to taxpayers to beware of companies' misrepresentation of when personal health expenses can be reimbursed by health FSAs, HRAs and HSAs.

HIGHLIGHTS

- The IRS is reminding taxpayers that health FSAs, HRAs or HSAs cannot reimburse personal health and wellness expenses.
- The IRS is concerned that taxpayers are being misled by companies that misrepresent when personal health expenses can be reimbursed by these medical savings accounts.
- Health FSAs, HRAs and HSAs can only be used to pay for qualified medical expenses on a tax-advantaged basis.
- Nutrition, wellness and general health expenses are qualified medical expenses only in very limited circumstances.

Qualified Medical Expenses

Health FSAs, HRAs and HSAs can be used to pay out-of-pocket costs for qualified medical expenses that are not covered by a health plan. Qualified medical expenses must be incurred primarily to alleviate or prevent a physical or mental defect or illness. These expenses include payments for medical services rendered by physicians, surgeons, dentists and other practitioners. They include the costs of equipment, supplies and diagnostic devices needed for these purposes. They also include the costs of medicines and drugs prescribed by a physician. **However, expenses that are merely beneficial to general health are not qualified medical expenses.**

Nutrition, Wellness and General Health Expenses

The IRS maintains a set of FAQs addressing when costs related to nutrition, wellness and general health are qualified medical expenses. These FAQs clarify that these costs are qualified medical expenses only in narrow circumstances. For example:

- The cost of **nutritional counseling** or a **weight-loss program** is a qualified medical expense only if it treats a specific disease diagnosed by a physician (such as obesity or diabetes).
- The cost of **nutritional supplements** is a qualified medical expense only if the supplements are recommended by a medical practitioner as treatment for a specific medical condition diagnosed by a physician.
- The cost of **weight-loss food or beverages** is a qualified medical expense only if the food or beverage does not satisfy normal nutritional needs, the food or beverage alleviates or treats an illness, and the need for the food or beverage is substantiated by a physician. The medical expense is limited to the amount by which the cost of the food or beverage exceeds that of a product that satisfies normal nutritional needs.
- The cost of **exercise for the improvement of general health**, such as swimming or dance lessons, is never a qualified medical expense (even if recommended by a doctor).

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- The cost of a **gym membership** is a qualified medical expense only if the membership was purchased for the sole purpose of affecting a structure or function of the body (such as a prescribed plan for physical therapy to treat an injury) or for the sole purpose of treating a specific disease diagnosed by a physician (such as obesity, hypertension or heart disease).

IRS' Warning to Taxpayers

The IRS cautions taxpayers to beware of companies misrepresenting nutrition, wellness and general health expenses as qualified medical expenses that can be reimbursed by a health FSA, HRA or HSA. According to the IRS, some companies mistakenly claim that notes from doctors based merely on self-reported health information can convert nonmedical food, wellness and exercise expenses into qualified medical expenses.

The IRS provides the following example of this type of situation: A man with diabetes decides to eat foods that are lower in carbohydrates in an attempt to control his blood sugar. He sees an advertisement from a company stating that he can use pre-tax dollars from his health FSA to purchase healthy food if he contacts that company. He contacts the company, who tells him that for a fee, the company will provide him with a "doctor's note" that he can submit to his FSA to be reimbursed for the cost of food purchased in his attempt to eat healthier. However, when he submits the expense with the "doctor's note," the claim is appropriately denied because food is not a qualified medical expense.