

Qualifying Medical Expenses Include COVID-Related PPE Issue Date: April 2021

Introduction

In IRS Announcement 2021-07, the IRS clarified that amounts paid for personal protective equipment (PPE) such as masks, hand sanitizer, and sanitizing wipes may be treated as qualifying medical expenses and thereby qualify for tax-favored reimbursement if it is purchased for the primary purpose of preventing the spread of COVID-19. The full text may be found at <https://www.irs.gov/pub/irs-drop/a-21-07.pdf>.

Application for Health FSAs, HRAs, and HSAs

Health flexible spending arrangements (FSAs), health reimbursement arrangements (HRAs), and health savings accounts (HSAs) are allowed to reimburse most medical care expenses as defined by the IRS in §213(d) that are incurred by the employee or the employee's spouse or tax dependents. Such medical care must be "for the diagnosis, cure, mitigation, treatment or prevention of disease." Preventive care, which would include PPE, is generally reimbursable on a tax-favored basis only if it is needed to treat an existing or imminently probably disease, physical or mental defect, or illness. Therefore, prior to the IRS announcement, PPE was reimbursable only if, for example, it was prescribed by a physician to treat a specific condition or for an individual who was in close and frequent contact with a family member known to have a contagious disease. The announcement changes this narrow interpretation and allows any PPE (e.g., masks, hand sanitizer, sanitizing wipes) purchased for the primary purpose of preventing the spread of COVID-19 to be reimbursable on a tax-favored basis so long as the expenses are not already being reimbursed elsewhere. Such expenses are reimbursable on a tax-favored basis retroactively beginning January 1, 2020.

- Health FSAs are generally designed to reimburse all §213(d), except that cafeteria plan regulations prohibit reimbursement of expenses incurred for qualified long-term care services and insurance premiums. Employers may further limit reimbursable expenses, but many do not. If the plan currently allows reimbursement for all "medical care" as defined by §213(d), except for qualified long-term care services and insurance premiums, then the plan would now allow for reimbursement of PPE without any need to amend such language. However, if reimbursable expenses have been limited to specifically exclude PPE, or there if the plan is written broadly and there is a desire not to reimburse expenses incurred for PPE, a plan amendment may be required.
- HRAs are permitted to reimburse all "medical care" as defined by §213(d), but reimbursable expenses are often limited by plan design (i.e., by the employer). Employers should review the plan's definition of eligible expenses and make an appropriate amendment to include or exclude PPE as needed.
- HSAs are broadly available to reimburse all "medical care" as defined by §213(d), except for most insurance premiums. As an individual-owned account, reimbursable expenses are not limited by plan design, but instead simply follow IRS guidelines. Individuals with HSAs will be able to receive tax-favored reimbursement from HSAs for any PPE expenses incurred January 1, 2020 or later.

Conclusion

Employers have some flexibility to define what expenses are reimbursed by a health FSA or HRA sponsored by the employer. Employers should review their plan's definition of eligible expenses and determine whether an amendment is required. Such amendments may be adopted up until the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective (e.g., by December 31, 2022 for a calendar year 2021 plan or for a non-calendar year plan ending in 2021) so long as the plan is operated consistent with the terms of the amendment prior to such adoption.

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