

## **Over the Counter Drugs Now Eligible for Reimbursement**

On September 3, 2003, the IRS issued Revenue Ruling 2003-102 (the “Ruling”). The Ruling paves the way for employer sponsored health plans to reimburse many over the counter (OTC) drugs on a tax-free basis.

The Ruling applies to any OTC drugs that are for “medical care”. An OTC drug is for “medical care” if it is for the diagnosis, cure, mitigation, treatment, or prevention of disease or for the purpose of affecting any structure or function of the body. In addition, there has to be an “imminent probability” of disease. Therefore, items that are taken only for an individual’s general health and well-being are not reimbursable. Cosmetic items (deodorant, face cream, hand lotion, etc.) and toiletries (toothpaste, shaving lotion, mouthwash) are also not reimbursable.

Although the Ruling expands the definition of medical care, it does not change the minimum substantiation requirements for accident and health plans, including Health FSAs. Generally, participants must provide a receipt or other document from the third party provider (e.g. the grocery store, the pharmacy, etc.) that identifies the following:

- The date the expense was incurred
- The specific OTC drug that was purchased
- The amount of the drug

The IRS has indicated that FSA reimbursement should be limited to a reasonable quantity of drugs for use during the plan year.

## OTC Drugs Used Primarily for Medical Care

These typically reimbursable with only a proper receipt. No recommendation from a health care provider is needed.	
<i>Type of Drug</i>	<i>Examples<sup>1</sup></i>
Allergy Prevention & Treatment	Benadryl, Sudafed, Actifed, Chlora Trimaton, and Nasalcrom
Antacids and Acid Reducers	Gas-X, Maalox, Mylanta, Tums, AXID AR, Pepcid AC, Prilosec OTC, Tagamet HB, and Zantac 75AXID AR, Pepcid AC, Prilosec OTC, Tagamet HB, and Zantac 75;
Anticandial	Femstat 3, Gyne-Lotrimin, Mycelrx-7, Monistat 3, 7, and Vagistat-1
Antihistamines	Actidil Syrup and Capsules, Actifed, Allerest, Benadryl, Claritin, Chlor-Trimeton, Contac, Dimetane, Drixoral, Nyquil, Sudafed, Tavist-1, and Triaminic
Antidiarrheal and Laxatives	Ex-Lax, Pepto-Bismol, Immodium A.D. and Kaopectate
Anti-fungal	Lamisil AT, Lotramin AF, and Micatin,
Anti-itch Lotions and Creams (e.g., for athletes foot, jock itch, bug bites, poison ivy)	Bactine, Caldecort, Cortaid, Hydrocortisone, and Lanacort, Calamine Lotion, Benadryl Cream, Caladryl, Cortaid, Lamisil AT, Lotramin AF, and Micatin
Cold Sore/Fever Blister	Abreva Cream
Cough Suppressants	Robitussin, Vicks 44, Chloraseptic
Decongestant/ Nasal Decongestant and Cold Remedies	Advil Cold and Sinus, Afrin, Afrinol, Aleve Cold and Synus, Children's Advil Cold, Duration, Dristan Long Lasting, Neo-Synephrine- 12 Hour, Orrivin, Sudafed, Tavist-D, Tylenol Cold and Flue, Thera-flu, Alka Seltzer Cold and Flu, Nyquil, Actidil Syrup and Capsules, Actifed, Allerest, Benadryl, Claritin, Chlor-Trimeton, Contac, Dimetane, Drixoral, Sudafed, Tavist-1, and Triaminic
Diaper Rash Ointments	Balmax and Desitin
Eye Drops for Allergy/Cold Relief	Ocu Hist
Hemorrhoid Treatments	Preparation H, Hemorid, and Tronolane
Internal Analgesic/antipyretic	Advil, Aleve, Children's Motrin, Nuprin, Excedrin, Tylenol, Bayer,
Menstrual Cycle Medications	Midol, Pamprin, and Premysyn PMS
Migraine	Advil Migraine Liqui-gels, Excedrin Migraine, Motrin Migraine Pain,
Motion Sickness Medication	Dramamine and Marizine
Nicotine Gum or Patches and Smoking Cessation Aids	Nicorette, Nicotrol, and Nicodin
Pediculicide (head lice)	Nix
Poison Ivy Protection	Ivy Block
Smoking Cessation	Commit, Nicoderm CQ, Nicorette, Nicotrol,
Toothache and teething pain relievers	Orajel

<sup>1</sup> This list is not an exhaustive list and is intended to give examples of some of the most common brand names of OTC drugs.