

TAXSAVER PLAN

"Your Satisfaction Is Our Success"

WHAT YOU NEED TO KNOW...

LEGISLATIVE UPDATES – WHAT DOES CHARLES THINK?:

The August recess has allowed much discussion and input to Congress in regards to the Health Care debate. From town hall meetings to individual meeting with legislators, Congress will have much to reconsider when they convene in September. I believe President Obama has changed his focus so that the issue becomes “you can not afford to do nothing”. As the President presses forward, he will continue to remind the public that America can not afford the present delivery system. He will emphasize change and will save face by compromising those changes originally proposed.

I do believe that we will see legislation passed that will have mandates for both employee and employer. Also, I think that there will be cooperatives established by private insurers to provide individual coverage on a guaranteed basis. The insurers would rather do this than have a threat of a Government Plan.

To pay for all of this, we may see caps imposed on employer provided benefits as well. If the cap is exceeded, there may be a 35% excise tax. It is too early to tell what caps may be put in place. Health Spending accounts may be limited as well.

My last opinion concerns the politics of all of this. Some Republicans are pushing hard for some type of taxation to middle America. This would absolutely put the President in a poor position politically. Some Democrats are pushing for a Government Plan so that the all of this becomes more controllable by Uncle Sam and ultimately removes the private insurers. Also, if Senator Kennedy loses his battle with cancer, there may be a ground swell to get this resolved quickly as a sign of his devotion to the cause. I am not sure any of the politics mentioned will be the best thing for health care reform.

The System is broken and to fix it on a short term basis is very expensive. Unfortunately, that is how it is being examined and will result in massive change. The long term fix would be to approach it incrementally by promoting healthier life styles so that access to the system is not as frequent.

These opinions are based upon trying to predict the future from information that changes daily. However, certain themes seem to be reoccurring. Stay tuned in. If you would like to put your two cents in to Congress here are a few contact points.

www.SaveMyFlexPlan.com

<http://www.ecfc.org/legislative/effective-lobbying/congressional-contact-information/>

OVER-THE-COUNTER ITEMS – ARE THEY FOR MEDICAL CARE?:

The IRS recently published an Information Letter that was a response to a request for guidance on whether certain over-the-counter (OTC) items qualify as medical care expenses that can be paid out of a Health FSA or HRA.

Remember that the Code defines “medical care” expenses as amounts paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting a structure or function of the body. Medical care expenses are limited to expenses paid primarily for the prevention or alleviation of a physical or mental defect or illness.

There are hundreds of items available in local pharmacies that can be used for personal as well as medical reasons. There are several objective factors that TPA’s must use to determine if the expense is primarily for medical care. These include:

- 1) the motivation or purpose for the expenditure
- 2) whether the item has been recommended to treat or mitigate a diagnosed medical condition (a Medical Determination Form completed by physician or nurse)
- 3) linkage between the treatment and condition and proximity in time to the condition’s onset or recurrence
- 4) establish that the expense would not have been paid “but for” the disease or illness

The letter analyzes the following categories of OTC expenses:

Dual Purpose Items: some items may be personal items or may qualify as medical care, depending upon their use. According to the letter, items such as sun-screen, fiber supplements, probiotics, anti-bacterial hand sanitizers, fluoride rinses and others are used to maintain general health are personal items.

However, if it can be shown that such items are being used to treat or alleviate a disease or injury, and the “but for” test is satisfied, they may qualify as medical care.

Example: After gum surgery, it is often necessary to purchase a fluoride rinse in place of brushing teeth with a traditional toothbrush and paste. The fluoride rinse would be eligible with a Medical Determination Form, explaining the recent surgery.

Medical Only Items: Items whose only purpose is to treat a disease, illness or mental or physical defect may qualify as medical care. Thus, treatments for acne, incontinence,

arthritis, constipation, colds and sinus problems, dehydration and indigestion and support braces and show inserts for injured or weakened body parts most likely qualify as medical care expenses.

Example: Items such as these do not require a Medical Determination Form and often are marked with an "F" in many stores to designate the eligibility.

Excess Cost of Otherwise Personal Items: The excess cost of an otherwise personal item that is specially designed to treat or alleviate a medical condition (e.g., the excess cost for diabetic socks, compression hose or orthopedic shoes) may be allowable medical care expenses. However, these items can have personal or preventive and it is appropriate to request a Medical Determination Form.

Example: If orthopedic shoes cost \$100 and the average work shoe costs \$30, \$70 would be reimbursable under a FSA or HRA Plan.

Food and Food Thickeners: The letter explains that the cost of food that substitutes for the food an individual would normally consume to meet nutritional requirements is not a medical care expense. However, whether food thickeners are medical care is a question of fact that must be determined on a case-by-case basis.

Example: Someone who has had a stroke that affected their ability to swallow will require food thickeners in order to eat their meals without choking.

Taxsaver Plan has formed an internal Benefits Review Committee that will review Medical Determination Letters that are not clear-cut, on a weekly basis. Clear-cut Medical Determination Letters will receive a response in the standard 48 hour period of time.

DEPENDENT AUDITS:

Many of our clients have mentioned that they have been through a Dependent Audit and asked what to do when it is discovered that an ineligible dependent has been covered under the Plan and possibly utilized the Plan during their period of ineligibility.

We often suggest that the Employer cease the deduction, refund any pre-tax deductions as taxable income and then allow the Plan to recover any benefit over-payments. A recent court case involved an employee who reported an individual as a spouse for purposes of the employer's health plan. The individual did not qualify as a spouse and the plan paid over \$70,000 in medical benefits for the individual.

Because the money was obtained through fraud or wrong-doing, the Ninth Circuit agreed with trial court, who ruled in favor of the TPA and the TPA was entitled to repayment.

We would suggest that if you are going through a Dependent Audit, it is wise to establish a written policy to determine how your company will handle situations that may arise from the audit results and apply that policy to all employees.

As always, we are here to answer your questions.

Charles Zelazny, President Kelsey Horne, Vice President

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