



## **Statement**

**of the**

**American Medical Association**

**to the**

**Committee on Ways and Means  
Subcommittee on Oversight  
U. S. House of Representatives**

**Re: Impact of Limitations on the Use of Tax-  
Advantaged Accounts for the Purchase of  
Over-the-Counter Medication**

**April 25, 2012**

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On behalf of our physician and medical student members, the American Medical Association (AMA) appreciates the opportunity to submit a statement regarding today's hearing on the Impact of Limitations on the Use of Tax-Advantaged Accounts for the Purchase of Over-the-Counter Medication. We commend Chairman Boustany for holding this hearing to consider the consequences of a provision in the Patient Protection and Affordable Care Act (ACA) that restricts the use of tax-advantaged accounts, such as flexible savings accounts (FSAs) and health savings accounts (HSAs), for the purchase of over-the-counter (OTC) drugs.

Millions of Americans currently rely on tax-advantaged accounts, such as FSAs and HSAs, to save for "qualified" medical expenses as defined by the Internal Revenue Code. Approximately 33 million Americans are in families with FSAs, which are offered by 29 percent of small businesses and 85 percent of large employers. An additional 11.4 million Americans are enrolled in an HSA. Contributions to and distributions from these accounts are generally tax-exempt and may be used for unreimbursed medical expenses, such as deductibles, co-payments, and co-insurance.

In 2003, as several popular drugs moved to OTC status, the Internal Revenue Service changed the regulations on these accounts to allow them to be used for the purchase of nonprescription medications and other health care products. Consumers depend on OTC medicines as a first line of defense for their families' health care needs. OTC medicines, such as aspirin, acid reflux medications, allergy medications, vitamins, and eye drops,

provide Americans with effective, affordable, convenient, and accessible means to address their health care needs. These medicines save consumers billions of dollars annually by reducing unnecessary physician visits, minimizing time lost from work due to illness, and allowing patients to benefit from the cost advantage of OTC medicines, which tend to be less expensive than prescription medications. A survey conducted by the Consumer Healthcare Products Association in 2010 found that more than 90 percent of Americans prefer to seek treatment with OTCs before seeing a health care provider. At the same time, nearly 90 percent of the physicians surveyed recommend patients try to address minor ailments with self-care interventions, including the use of OTC medicines, before seeking professional care.

As a way to offset costs associated with the ACA, Congress revisited the guidelines governing the use of tax-advantaged accounts to purchase OTC medications. However, as an alternative to returning to the pre-2003 limits, Section 9003 of the ACA allowed consumers, beginning in 2011, to continue purchasing OTC medications with pre-tax dollars, but only with a prescription. We believe this change has resulted in several unintended consequences. Under U.S. Food and Drug Administration rules governing drug safety and efficacy, OTC medications do not need a prescription; yet, now, because of Section 9003, patients have to get a prescription solely to use their tax-advantaged accounts. This requirement makes no sense from a drug safety or patient safety perspective since OTC drugs, by definition, do not require prescriptions in order to be purchased.

This new OTC requirement has placed new administrative burdens on already overburdened office-based physicians, particularly small primary care practices. We believe it will result in increased office visits, increased physician and staff time talking to patients over the phone (usually not reimbursed), and increased costs and inconvenience to patients.

Physicians face many new challenges as they begin to implement the numerous reforms included in the ACA and incorporate health information technology into their practices. Rather than improving access and saving money, however, this particular ACA provision may instead increase overall health care spending by forcing patients to schedule office visits with their physicians solely to obtain prescriptions for OTC medications. While some practices may have the resources to handle prescription requests over the phone, others may not. Many physicians require patients to schedule an appointment before prescribing any medication, so that they can examine the patient, determine whether a medication is appropriate, and counsel the patient about possible side-effects and drug interactions. This increased demand on their time means less time and attention to other patients with more urgent treatment needs, and results in increased costs to patients, who are charged for an office visit.

To maintain office productivity, other physicians may decide not to issue prescriptions that simply are not needed for the purchase of OTC medications, and could find themselves with unhappy patients who may decide to leave the practice, thus disrupting long-standing patient-physician relationships. Furthermore, since a prescription for an

OTC product must be treated as any other prescription, record keeping requirements are increased for physicians who must document in patient medical records that a prescription for an OTC drug or vitamin has been ordered.

The AMA has long-standing policy supporting HSAs and FSAs. Last year, the AMA strengthened its position on this issue by adopting policy to support repeal of the federal restriction on the use of tax-advantaged accounts to buy OTC medications without a prescription. We support the legislation, "Restoring Access to Medication Act," that was introduced in the U.S. House of Representatives by Representatives Lynn Jenkins (R-KS) and Shelley Berkley (D-NV), as H.R. 2529 and as S. 1368 in the Senate by Senators Pat Roberts (R-KS) and Ben Nelson (D-NE).

Key advantages of assigning OTC status to drugs that once were available only by prescription are ease of access and reduced costs. The new restrictions effectively eliminate these advantages. We urge Congress to pass this legislation to repeal these new restrictions and once again allow consumers to use tax-advantaged accounts to purchase OTC medications. By so doing, Congress can help to remove the additional burdens and costs imposed on physicians and their patients by this new provision.