

The Honorable Wally Herger

Statement for the Record

House Ways and Means Subcommittee on Oversight

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

April 25, 2012

Chairman Boustany and Ranking Member Lewis, thank you for the opportunity to submit testimony regarding the definition of qualified medical expenses with respect to flexible spending accounts (FSAs), health savings accounts (HSAs), and health reimbursement arrangements (HRAs). In an era of ballooning deficits and skyrocketing healthcare costs, we need to be doing everything we can to support individuals and families that are making an investment in their own well-being through these accounts. Participating in an HSA, FSA or HRA is an excellent way to save money on medical expenses by using tax-free dollars to pay for healthcare products and services. In addition, these accounts help individuals and families to take responsibility for their own healthcare, and they encourage Americans to make wise decisions in their healthcare spending.

Unfortunately, arbitrary restrictions on the types of medical expenses for which FSA, HSA, or HRA funds may be used can prevent hard-working American families from spending their own money for legitimate medical expenses. I share the concerns raised by many physician and patient groups regarding the new limitations on the purchase of over-the-counter medications. While these restrictions were put in place by Congress as part of the 2010 health care overhaul, I would encourage the Subcommittee to also review other limitations that have been imposed by the Internal Revenue Service through rulemaking or informal guidance.

One expense I care particularly about that is currently excluded from these accounts is umbilical cord blood banking.

Umbilical cord blood is a rich and non-controversial source of stem cells for current and emerging therapies. Stem cells from umbilical cord blood have been used in more than 15,000 transplants worldwide during the last 20 years to treat a wide range of serious diseases in both adults and children, including many forms

of cancer, blood disorders, and immune diseases. In addition, clinical trials are currently underway to study use of a child's own cord blood stem cells to treat traumatic brain injury, cerebral palsy and hearing loss. However, because umbilical cord blood stem cells require processing and storage before use, many families choose the services of private cord blood banks to store their child's cord blood for future medical therapy.

When I learned about this emerging medical field, I wrote to the IRS, along with 12 of my colleagues, to ask that umbilical cord blood banking be defined as a qualified medical expense so that families could use HSAs, FSAs, or HRAs to pay for cord blood banking services. Regrettably, the IRS has taken the position that these costs are not qualified medical expenses because they do not address an "existing or imminently probable" medical condition, despite the fact that Section 213(d)(1)(A) of the Internal Revenue Code explicitly includes "prevention of disease" in the definition of medical care. There are clear medical expenses associated with processing and storage of umbilical cord blood at the time of birth and during storage, as well as at the time of a future transplant, and these expenses should be eligible to be paid from tax-advantaged health care accounts.

As a result, Congressman Ron Kind and I introduced the Family Cord Blood Banking Act in 2009 and reintroduced the legislation in 2011 to clarify that umbilical cord blood banking is a qualified medical expense for tax purposes. I am grateful to Ranking Member Lewis and the other members of the Ways and Means Committee who have cosponsored our legislation. My sincere hope is that this issue can be resolved, either administratively by the IRS or through legislation, in the very near future so that families with HSAs, FSAs, and HRAs can have access to this exciting new frontier in personalized medicine.