



CONSUMER HEALTHCARE
PRODUCTS ASSOCIATION



Council for Responsible Nutrition®

The Science Behind the Supplements®



April 17, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Room 3000
Washington, DC 20224-0002

Dear Commissioner Rettig:

We applaud the recent Congressional action through the CARES Act that restored the ability to obtain reimbursement from eligible Health Savings Accounts (HSA) and Flexible Spending Accounts (FSA) for over the counter medications and also expanded coverage for menstrual products. This action recognizes the importance of personal healthcare products in maintaining a healthy lifestyle. Our organizations believe that now is the time to expand eligibility to an additional critically important healthcare sector: nutritional supplements, or as they are called in Federal food and drug law, dietary supplements.

The inclusion of dietary supplements as a “medical expense” eligible for FSA/HSA coverage does not require Congress to act—the IRS can expand HSA and FSA reimbursements to include these important nutritional supplements without a legislative change. Indeed the only barrier now is an IRS guidance from 20 years ago that could be updated to recognize the increased need for proactive self-care by Americans in these times. Specifically, we request that you revise Internal Revenue Service (IRS) Publication 502 to permit nutritional and dietary supplements to be considered "medical expenses" under the Internal Revenue Code (IRC). This change would allow Americans to be reimbursed from their HSAs and FSAs for the out-of-pocket expenses they pay for dietary supplements. To do so would not only encourage Americans to maintain healthy lifestyles and recognize the valuable role that nutritional supplements play in attaining better health, especially in these critical, unprecedented times, it would also free up scarce household resources for other critical needs.

Section 262 of the Internal Revenue Code states that, except as otherwise expressly provided, no deduction shall be allowed for expenses from these tax-advantaged accounts unless it is for the medical care of the taxpayer, the taxpayer's spouse, or the taxpayer's dependents. 26 USC §223(d)(2). The IRS's regulations further provide that qualifying medical care expenses can include "expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness." 26 CFR §1.213-1 (e)(1)(i). Neither the statute nor the regulation excludes dietary supplements. However, IRS Publication 502, as revised for tax year 2000 and forward, specifically excluded “nutritional supplements” from the definition of “medical expenses.” This guidance

document disregards the mandate of both the statute and the regulations, which permit funds from tax-advantaged accounts to be used for preventive medical care.

The IRC defined “medical care” in 1954 as “amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.” Congressional definitions of dietary supplements (or nutritional supplements, as they were termed earlier in your regulations) conform to this definition in two ways:

- First, the 1994 Dietary Supplement Health and Education Act (DSHEA) allows dietary supplement manufacturers to lawfully make a claim that a nutrient or dietary ingredient will “affect the structure or function in humans,” or “acts to maintain such structure or function.” See 21 U.S.C. 343(r)(6)(A). The law clearly indicates that nutritional or dietary supplements are expressly permitted to be identified as “affecting any structure or function of the body,” satisfying the IRC’s medical care definition.
- Second, under the 1990 Nutrition Labeling and Education Act (NLEA), dietary supplements may carry health claims regarding the reduced risk of disease. See 21 U.S.C. 343(r)(3). Nutritional/ dietary supplements making such claims should be covered by the IRC’s “medical care” definition.

Today, the science supporting nutrition and dietary supplements has revealed a range of specific health benefits associated with the use of these products. More than three-quarters of Americans use dietary supplements for a range of benefits, from addressing nutrient deficiencies to strengthening bones and helping to prevent osteoporosis. American consumers view dietary supplements as a critical part of their preventive care, creating cost savings to the healthcare system, to employers, and individual consumers. A study commissioned by the Council for Responsible Nutrition in 2012 found that high-risk populations can reduce the number of disease-associated medical events by taking certain dietary supplements, representing the potential for hundreds of millions of dollars - and in some cases billions - of savings.

Therefore we urge the IRS to revise its Publication 502 for tax years 2019 and beyond to remove the section on Nutritional Supplements from the section of the booklet *What Expenses Aren't Includible?*, and to add the following paragraph to the section *What Medical Expenses Are Includible?*:

You can include in medical expenses the cost of dietary supplements, provided that such products are labeled with Supplement Facts labels that are compliant with federal regulations for these products.

This revision would modernize the treatment of nutritional supplements by the IRS to recognize the contributions of these products to the better health of Americans. It would permit taxpayers to reimburse their out-of-pocket expenses for dietary supplements from HSA and FSA accounts. This revision would modernize the treatment of “nutritional supplements” (now defined in law as “dietary supplements”) by the IRS to recognize the contributions these products make to better the health of Americans. And it could provide American families with much-needed additional resources during this critical economic time.

Thank you for your attention to this matter.

Sincerely,



Michael McGuffin
President
American Herbal Products Association



Scott Melville
President & CEO
Consumer Healthcare Products Association



Steve Mister
President & CEO
Council for Responsible Nutrition



Loren Israelsen
President
United Natural Products Alliance

The American Herbal Products Association (AHPA) is the national trade association and voice of the herbal and botanical products industry. AHPA is comprised of more than 300 domestic and foreign companies doing business as growers, processors, manufacturers, and marketers of herbs and herbal products, including foods, dietary supplements, cosmetics, and non-prescription drugs. Founded in 1982, AHPA's mission is to promote the responsible commerce of herbal products. Website: www.ahpa.org.

The Consumer Healthcare Products Association (CHPA) is the 137-year-old trade association representing the leading manufacturers and marketers of over-the-counter (OTC) medicines and dietary supplements. Every dollar spent by consumers on OTC medicines saves the U.S. healthcare system \$6-\$7, contributing a total of \$102 billion in savings each year. CHPA is committed to promoting the increasingly vital role of over-the-counter medicines and dietary supplements in America's healthcare system through science, education, and advocacy. Visit www.chpa.org and www.KnowYourOTCs.org.

The Council for Responsible Nutrition (CRN), founded in 1973, is a Washington, D.C.-based trade association representing 150+ dietary supplement and functional food manufacturers, ingredient suppliers, and companies providing services to those manufacturers and suppliers. In addition to complying with a host of federal and state regulations governing dietary supplements and food in the areas of manufacturing, marketing, quality control and safety, our manufacturer and supplier members also agree to adhere to additional voluntary guidelines as well as to CRN's Code of Ethics. Visit www.crnusa.org. Follow us on Twitter [@CRN_Supplements](https://twitter.com/CRN_Supplements), [Facebook](https://www.facebook.com/CRN_Supplements), and [LinkedIn](https://www.linkedin.com/company/crnusa).

The United Natural Products Alliance (UNPA) is an international trade association representing many leading natural products, dietary supplement, functional food, scientific and technology and related service companies that share a commitment to provide consumers with natural health products of superior quality, benefit and reliability. Founded in Utah in 1992, UNPA was instrumental in the passage of the 1994 Dietary Supplement Health and Education Act (DSHEA) and continues to take a leadership position in legislative and regulatory issues and industry best practices. Visit www.unpa.com.