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XX. What Expenses Can Be Reimbursed Under a Health FSA?

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## M. Table of Common Expenses, Showing Whether They Are for “Medical Care”

**Administration Tip.** In order to demonstrate that plan administrators are being reasonable, uniform, and consistent in their interpretation of what's reimbursable and what's not, we recommend keeping a table of how different types of expenses are handled.\*

\*ERISA plans are required to maintain reasonable procedures governing benefit claims that ensure consistency in the claims approval process. See Section XXII for details.

The following table describes whether certain types of expenses qualify as medical care under Code §213(d) Code §213(d) for purposes of reimbursement by a health FSA or HRA, or for a tax-free distribution from an HSA. The table consists of three columns. We list various expenses in Column 1. In Column 2, we comment on whether the item is likely to be a qualifying expense, not a qualifying expense, or a potentially qualifying expense. In Column 3, we provide additional comments and special rules based on specific regulations, revenue rulings, private letter rulings, informal comments by IRS officials, and other guidance. For items for which there is no official guidance, our comments are based on our interpretation of available guidance. For more details, see the Key to using the Table below.

### Cautions Regarding Use of the Table.

*Additional Restrictions Apply.* Confirming that an expense is for medical care under the Table does not mean that the expense is reimbursable under a health FSA or HRA or qualifies for a tax-free distribution from an HSA—other legal requirements must also be met. Requirements applicable under a health FSA are summarized in a short checklist in subsection B and are described in detail in subsections C through K; also see subsection L for a discussion of expenses that are difficult to administer. HRAs and HSAs are discussed in detail in *Consumer-Driven Health Care* (Thomson Reuters/EBIA, 2004-present, updated quarterly). Note also that some items in the Table might not be reimbursable under a health FSA or HRA if the health FSA or HRA contains exclusions, restrictions, or other limitations or requirements.

*Caution Regarding Publication 502 Publication 502.* On occasion, the Table makes reference to IRS Publication 502 IRS Publication 502, usually in circumstances where no other source was readily available. However, administrators should use Publication 502 Publication 502 only with caution. See subsection D .

*Consult Other Subsections.* The statements in Column 3 are only intended to briefly highlight general principles. For a full understanding of how to determine whether an expense is for medical care, read subsection D , which discusses generally applicable principles; also, if noted under the Table, consult subsection L .

*Guidelines Only.* Just because an item is listed as a qualifying expense doesn't mean that an administrator can ignore actual knowledge that the participant is using it for personal purposes. Nor does the fact that an item is generally known to be incurred or obtained primarily for personal, cosmetic, or general health purposes mean that an administrator can't be persuaded by credible evidence that an item is in fact being used for medical care.

### Key to Using the Table:

Each item in the Table has been identified in column 2 as a “Qualifying expense,” a “Potentially qualifying expense,” or “Not a qualifying expense.” These designations are the views of EBIA and are

not in all cases based on official guidance—reasonable minds can differ on them. Each administrator will have to develop its own list of appropriate designations and decide how to use them in substantiating claims based on experience.

**Qualifying Expense.** These are expenses that are generally known to be incurred or obtained primarily for medical care. In other words, they are expenses that practically no one would incur or obtain unless they had a medical condition that prompted the expenditure. These “primarily medical” items or services are the types of expenses that normally qualify for reimbursement under a health FSA or HRA or for a tax-free distribution from an HSA if other health FSA, HRA, or HSA requirements are met.

**Potentially Qualifying Expense.** These are expenses in one of the following categories:

- Expenses that are generally known to be used for both a medical purpose and a personal, cosmetic, or general health purpose. These dual-purpose expenses qualify for reimbursement under a health FSA or HRA or a tax-free distribution from an HSA only if there is appropriate proof that the expense was incurred/obtained primarily for medical care. In most cases, participants must show that the item or service is recommended by a medical practitioner to treat a specific medical condition.
- Medicines or drugs (other than insulin), which must be prescribed in order to qualify for reimbursement under a health FSA or HRA or a tax-free distribution from an HSA if incurred after December 31, 2010. See subsection L for details.

**Not a Qualifying Expense.** These are expenses in one of the following categories:

- Expenses that are generally known to be incurred or obtained primarily for personal, cosmetic, or general health purposes and not primarily for medical care. These “primarily personal” expenses almost never qualify for reimbursement from a health FSA or HRA or for a tax-free distribution from an HSA. Expenses in this category theoretically could qualify in the extremely rare case where an individual can overcome a strong presumption of nonqualification and prove that, based on all the facts and circumstances and taking into account the prevailing IRS guidance, the item or service was incurred or obtained primarily to treat an existing medical condition diagnosed by a medical practitioner.
- Items or services for which reimbursement is not allowed under statutory or regulatory provisions, even if they might seem to be for medical care (for example, insurance premiums cannot be reimbursed by a health FSA).

**Health Care Reform: New Restrictions Apply to Medicines and Drugs Incurred After December 31, 2010.** Medicines and drugs (other than insulin) incurred after December 31, 2010 must be prescribed in order to qualify for reimbursement under a health FSA or HRA or for a tax-free distribution from an HSA. See subsection L for further discussion.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
AA meetings, transportation to	Potentially qualifying expense	See <b>Alcoholism treatment</b> .
Abortion	Qualifying expense	Expenditures for operations that are illegal do not qualify. *
Acne treatment	Potentially qualifying expense	Because acne is considered a disease, the cost of acne treatment will generally qualify, † although over-the-counter (OTC) acne medications must be prescribed if incurred after December 31, 2010. However, the cost of regular skin care (face creams, etc.) does not qualify. And when the expense has both medical and cosmetic purposes (e.g., Retin-A, which can be used to treat both acne and wrinkles), a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Drugs and medicines; Cosmetic procedures; Cosmetics; Retin-A; Toiletries</b> ; and subsections L.1 and L.2.
Acupuncture	Qualifying expense ‡	

<b>Adaptive equipment</b>	Potentially qualifying expense	Includes various items that assist individuals in performing activities of daily living (e.g., feeding, bathing, toileting, and mobility). To qualify, the item must be used to relieve or alleviate sickness or disability. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition (e.g., multiple sclerosis or arthritis) is normally required. Where applicable, only amounts above the cost of the regular version of the item will qualify. Depending on the nature of the item, other special rules may apply. See <b>Capital expenses</b> and <b>Home improvements</b> .
<b>Adoption, pre-adoption medical expenses</b>	Qualifying expense	Medical expenses incurred before an adoption is finalized will qualify, if the child qualifies as your tax dependent when the services/items are provided. (Adoption fees and other nonmedical expenses incurred in connection with an adoption may qualify for an adoption assistance credit (under Code §23) Code §23) or for reimbursement under an adoption assistance program (under Code §137).) Code §137). <sup>a</sup>
<b>Air conditioner</b>	Potentially qualifying expense	The primary purpose must be to treat or alleviate a medical condition, and the expense must not have been incurred "but for" the condition. <sup>b</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. If it is attached to a home (such as central air conditioning), only the amount spent that is more than the value added to the property will qualify. <sup>c</sup> See <b>Capital expenses</b> .
<b>Air purifier</b>	Potentially qualifying expense	To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition (such as a severe allergy) is normally required. <sup>d</sup> Several special rules apply. See <b>Air conditioner</b> and <b>Capital expenses</b> .

<sup>a</sup> Rev. Rul. 73-201, Rev. Rul. 73-201, 1973-1 C.B. 140.

<sup>b</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>c</sup> Rev. Rul. 72-593, Rev. Rul. 72-593, 1972-2 C.B. 180; IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>d</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses). For more information on adoption assistance programs, see *Fringe Benefits* (Thomson Reuters/EBIA, 2006-present, updated quarterly).

<sup>b</sup> Treas. Reg. §1.213-1(e)(iii). Treas. Reg. §1.213-1(e)(iii).

<sup>c</sup> Treas. Reg. §1.213-1(e)(iii). Treas. Reg. §1.213-1(e)(iii).

<sup>d</sup> Priv. Ltr. Rul. 8009080 Priv. Ltr. Rul. 8009080 (Dec. 6, 1979).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Alcoholism treatment</b>	Qualifying expense	Amounts paid for inpatient treatment (including meals and lodging), at a therapeutic center for alcohol addiction will qualify. See <b>Health institute fees; Lodging at a hospital or similar institution; Meals at a hospital or similar institution; and Schools and education, residential</b> . Transportation expenses associated with attending meetings of an Alcoholics Anonymous group in the community would also qualify if attending due to a physician's advice that membership is necessary to treat alcoholism. <sup>*</sup>
<b>Allergy medicine</b> (Examples: Alavert, Claritin)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Allergy treatment products other than</b>	Potentially qualifying expense	Expenses generally won't qualify if the product would be owned even without allergies, such as a pillow or a vacuum cleaner. <sup>†</sup> However, an air

<b>medicine (e.g., household improvements to treat allergies)</b>		purifier or water filter necessary to treat a specific medical condition might qualify. <sup>‡</sup> The excess cost of a special version of an otherwise personal item (e.g., a vacuum cleaner with a HEPA filter) over the normal cost of the item might also qualify if the special version of the item is necessary to treat a specific medical condition. <sup>‡</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Air purifier; Air conditioner; and Capital expenses.</b>
<b>Alternative healers</b>	Potentially qualifying expense	Nontraditional healing treatments provided by professionals may be eligible if provided to treat a specific medical condition, but the IRS looks at these expenses very closely. <sup>b</sup> The treatments must be legal. And the expenses may not qualify if the remedy is a food or a substitute for food that the person would normally consume in order to meet nutritional requirements. <sup>c</sup> It appears that drugs and medicines recommended by alternative healers to treat a specific medical condition also can qualify as medical care, although drugs and medicines incurred after December 31, 2010 must be prescribed by an individual legally authorized to issue prescriptions in the applicable state in order to qualify. See <b>Drugs and medicines; Christian Science practitioners; Special foods; and Vitamins.</b>
<b>Ambulance</b>	Qualifying expense <sup>d</sup>	
<b>Analgesics</b> (Examples: Advil, Aspirin, Tylenol)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>Antacids</b> (Examples: Maalox, Prilosec OTC, Zantac)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. <sup>e</sup> See <b>Drugs and medicines.</b>

<sup>‡</sup> Rev. Rul. 63-273, Rev. Rul. 63-273, 1963-2 C.B. 112.

<sup>‡</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1998 ECFC Annual Symposium; see also Rev. Rul. 76-80, Rev. Rul. 76-80, 1976-1 C.B. 71.

<sup>‡</sup> Priv. Ltr. Rul. 8009080 Priv. Ltr. Rul. 8009080 (Dec. 6, 1979).

<sup>a</sup> Rev. Rul. 76-80, Rev. Rul. 76-80, 1976-1 C.B. 71.

<sup>b</sup> Treas. Reg. §1.213-1(e)(1)(ii); Treas. Reg. §1.213-1(e)(1)(ii); IRS Information Letters 2011-0045 IRS Information Letters 2011-0045 (June 6, 2011) and 2000-0410 2000-0410 (Nov. 27, 2000). See also IRS Information Letter (July 30, 1999).

<sup>c</sup> Rev. Rul. 55-261, Rev. Rul. 55-261, 1956-1 C.B. 307.

<sup>d</sup> Treas. Reg. §1.213-1(e)(1)(ii). Treas. Reg. §1.213-1(e)(1)(ii).

<sup>e</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Antibiotic ointments</b> (Examples: Bacitracin, Neosporin)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>Antihistamines</b> (Examples: Benadryl, Claritin)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>

<b>Anti-itch creams</b> (Examples: Benadryl, Cortaid, Ivarest)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Appearance improvements</b>	Not a qualifying expense	See <b>Cosmetic procedures; Cosmetics; Toiletries</b> ; and subsection L.1.
<b>Arthritis gloves</b>	Qualifying expense	
<b>Artificial limbs</b>	Qualifying expense <sup>†</sup>	
<b>Artificial teeth</b>	Qualifying expense <sup>†</sup>	
<b>Aspirin</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Asthma delivery devices and medications</b>	Potentially qualifying expense	Delivery devices (e.g., inhalers and nebulizers) will qualify. Medications will qualify if incurred before 2011 but must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Automobile modifications</b>	Potentially qualifying expense	To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition (e.g., a physical handicap) is normally required. <sup>‡</sup> But see <b>Capital expenses</b> . Expenses of operating a specially equipped car (other than for medical reasons—see Transportation) do not qualify. <sup>‡</sup>
<b>Babysitting and child care</b>	Not a qualifying expense <sup>‡</sup>	Babysitting, child care, and nursing services for a normal, healthy baby do not qualify as medical care. <sup>‡</sup> But see <b>Dependent care expenses</b> and <b>Disabled dependent care expenses</b> .
<b>Bactine</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Bandages, elastic</b> (Example: Ace)	Qualifying expense	

<sup>†</sup> Treas. Reg. §1.213-1(e)(1)(ii). Treas. Reg. §1.213-1(e)(1)(ii).

<sup>‡</sup> Treas. Reg. §1.213-1(e)(1)(ii). Treas. Reg. §1.213-1(e)(1)(ii).

<sup>‡</sup> Rev. Rul. 66-80, Rev. Rul. 66-80, 1966-1 C.B. 57; see also *Henderson v. Comm'r*, T.C.M. 2000-321 (2000).

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> Rev. Rul. 78-266, Rev. Rul. 78-266, 1978-2 C.B. 123. See Section XXIV regarding expenses reimbursable under a dependent care assistance program (DCAP).

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Bandages, for torn or injured skin</b> (Examples: Band-Aid, Curad)	Qualifying expense <sup>†</sup>	While unclear, medicated bandages likely should not be considered drugs or medicines that must be prescribed if incurred after December 31, 2010 in order to qualify. <sup>†</sup> See <b>Drugs and medicines</b> .
<b>Behavioral modification programs</b>	Potentially qualifying expense	See <b>Schools and education, residential</b> and <b>Schools and education, special</b> .

<b>Birth-control pills</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. <sup>‡</sup> See <b>Drugs and medicines</b> . Also see <b>Contraceptives; “Morning-after” contraceptive pills</b> ; and subsection L.2.
<b>Birthing classes</b>	Potentially qualifying expense	See <b>Lamaze classes</b> .
<b>Blood-pressure monitoring devices</b>	Qualifying expense	They are diagnostic items. <sup>‡</sup> See <b>Diagnostic items/services and Screening tests</b> .
<b>Blood storage</b>	Potentially qualifying expense	Fees for temporary storage may qualify under some circumstances, such as where the blood is collected as part of the diagnosis, treatment, or prevention of an existing or imminent medical condition (e.g., in advance of a scheduled surgery for use in a possible transfusion). Fees for indefinite storage, just in case the blood might be needed, would not be considered medical care. <sup>‡</sup> “Temporary” is not defined; however, one consideration might be whether the blood is stored and used within the same year. <sup>‡</sup> Also see <b>Stem cell, harvesting and/or storage of</b> and <b>Umbilical cord, freezing and storage of</b> .
<b>Blood-sugar test kits and test strips</b>	Qualifying expense	They are diagnostic items. <sup>‡</sup> See <b>Diagnostic items/services and Screening tests</b> .
<b>Body scans</b>	Qualifying expense	Body scans employing MRIs and similar technologies are diagnostic services. <sup>‡</sup> See <b>Diagnostic items/services and Screening tests</b> .
<b>Books, health-related</b>	Potentially qualifying expense	Will qualify only if recommended to treat an illness (such as asthma or diabetes) diagnosed by a physician. <sup>†</sup> The purpose of the expense must be to treat the disease rather than to promote general health. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.

<sup>‡</sup> Rev. Rul. 2003-58, Rev. Rul. 2003-58, 2003-22 I.R.B. 959.

<sup>†</sup> Informal, nonbinding remarks of Kevin Knopf, Attorney-Advisor, Office of Tax Policy of the Treasury Department, Mar. 4, 2011 ECFC Annual Conference.

<sup>‡</sup> Rev. Rul. 73-200, Rev. Rul. 73-200, 1973-1 C.B. 140.

<sup>‡</sup> Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include “medical, laboratory, surgical, dental and other diagnostic and healing services”).

<sup>‡</sup> See, e.g., IRS Information Letter 2010-0017 IRS Information Letter 2010-0017 (Nov. 2, 2009) and Priv. Ltr. Rul. 200140017 Priv. Ltr. Rul. 200140017 (June 25, 2001).

<sup>‡</sup> Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>‡</sup> Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include “medical, laboratory, surgical, dental and other diagnostic and healing services”) and Rev. Rul. 2003-58, Rev. Rul. 2003-58, 2003-22 I.R.B. 959.

<sup>‡</sup> See Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include “medical, laboratory, surgical, dental and other diagnostic and healing services”); see also Rev. Rul. 2007-72, Rev. Rul. 2007-72, 2007-50 I.R.B. 1154 (full-body electronic scan that served no nonmedical purpose was diagnostic and therefore was for medical care even though it was obtained without a doctor’s recommendation).

<sup>†</sup> See, e.g., *Halby v. Comm’r*, T.C.M. 2009-204 T.C.M. 2009-204 (2009) (sex-therapy books and magazines did not qualify as medical care expenses where they were not for treatment of a medical condition).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
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<b>Braille books and magazines</b>	Qualifying expense	Only amounts above the cost of regular printed material will qualify. <sup>†</sup>
<b>Breast pumps</b>	Qualifying expense	Breast pumps and other supplies that assist lactation will qualify. <sup>†</sup>
<b>Breast reconstruction surgery following mastectomy</b>	Qualifying expense	Will qualify to the extent that surgery was done following a mastectomy for cancer. <sup>‡</sup> This is an exception to the general rules regarding cosmetic procedures. See <b>Cosmetic procedures</b> .
<b>Calamine lotion</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Capital expenses</b>	Potentially qualifying expense	Improvements or special equipment added to a home (for example, an <b>Elevator</b> or <b>Inclinor</b> ) or other capital expenditures (such as <b>Automobile modifications</b> for a physically handicapped person) may qualify if the primary purpose of the expenditure is medical care for you (or your spouse or dependent) and the expense would not be incurred "but for" this purpose. <sup>§</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. How much of the expense would qualify depends on the extent to which the expense permanently improves the property. Also see subsection L.9.
<b>Car modifications</b>	Potentially qualifying expense	See <b>Automobile modifications</b> .
<b>Car seats</b>	Not a qualifying expense	Car seats for infants and children generally won't qualify. However, if a special car seat is needed because of an infant's or child's medical condition, amounts above the cost of a regular car seat might qualify. See <b>Adaptive equipment</b> and <b>Automobile modifications</b> .
<b>Carpal tunnel wrist supports</b>	Qualifying expense	
<b>Cayenne pepper</b>	Potentially qualifying expense	May qualify if used to treat or alleviate a specific medical condition and would not have been purchased but for the condition. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. <sup>§</sup> See <b>Alternative healers; Special foods; Vitamins;</b> and subsections L.2, L.3, L.4, and L.7.
<b>Chelation therapy</b>	Qualifying expense	Will qualify if used to treat a medical condition such as lead poisoning.

<sup>†</sup> Rev. Rul. 75-318, Rev. Rul. 75-318, 1975-2 C.B. 88.

<sup>‡</sup> IRS Announcement 2011-14, IRS Announcement 2011-14, 2011-9 I.R.B. 532.

<sup>‡</sup> Rev. Rul. 2003-57, Rev. Rul. 2003-57, 2003-22 I.R.B. 959. Health FSAs are potentially subject to the Women's Health and Cancer Rights Act (WHCRA) and thus may be required to cover breast reconstruction surgery, prostheses, and certain other expenses following mastectomy. See Section XXII.

<sup>§</sup> Treas. Reg. §1.213-1(e)(iii). Treas. Reg. §1.213-1(e)(iii). See also *Zipkin v. U.S.*, 86 AFTR 2d 2000-7052 86 AFTR 2d 2000-7052 (D. Minn. 2000) (\$646,000 deduction approved for custom-building a house to accommodate medical condition).

<sup>§</sup> IRS Information Letters 2010-0080 IRS Information Letters 2010-0080 (Mar. 31, 2010) and 2001-0297 2001-0297 (Dec. 31, 2001).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Childbirth classes</b>	Potentially qualifying expense	See <b>Lamaze classes</b> .

<b>Chinese herbal practitioner</b>	Potentially qualifying expense	See <b>Alternative healers</b> .
<b>Chiropractors</b>	Qualifying expense <sup>†</sup>	
<b>Chondroitin</b>	Potentially qualifying expense	Will qualify if used primarily for medical care (for example, to treat arthritis). Won't qualify if used just to maintain general health. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition (for example, arthritis) is normally required.
<b>Christian Science practitioners</b>	Potentially qualifying expense	Fees that you pay to Christian Science practitioners for medical care will qualify. <sup>†</sup> Fees for other purposes generally do not qualify. See <b>Alternative healers</b> and subsection L.7.
<b>Circumcision</b>	Qualifying expense	
<b>Claritin (loratadine), an allergy drug</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Classes, health-related</b>	Potentially qualifying expense	Will qualify only if recommended to treat an illness (such as asthma or diabetes) diagnosed by a physician. The purpose of the expense must be to treat the disease rather than to promote general health. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the class to treat a specific medical condition is normally required. See also <b>Lamaze classes</b> and <b>Medical conference admission, transportation, meals, etc.</b>
<b>Club dues and fees</b>	Potentially qualifying expense	See <b>Health club fees</b> .
<b>COBRA premiums</b>	Depends on whether plan is a health FSA, HRA, or HSA; see next column for details	<i>Health FSA:</i> COBRA premiums are not qualifying expenses. <sup>‡</sup> <i>HRA:</i> COBRA premiums are qualifying expenses. <sup>a</sup> <i>HSA:</i> COBRA premiums are qualifying expenses. <sup>b</sup> Also see <b>Insurance premiums</b> .
<b>Co-insurance amounts</b>	Qualifying expense	Will qualify if the underlying service/item qualifies.
<b>Cold medicine</b> (Examples: Comtrex, Sudafed)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Cold/hot packs</b>	Potentially qualifying expense	Only cold/hot packs sold as medical supplies will qualify; those sold for other purposes (e.g., to keep beverages cold or hot) won't qualify. Hot water bottles and heating pads generally won't qualify.

<sup>†</sup> Rev. Rul. 63-91, Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>‡</sup> IRS Information Letter 2000-0410 IRS Information Letter 2000-0410 (Nov. 27, 2000); Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91, Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>‡</sup> Prop. Treas. Reg. §1.125-5(k)(4). Prop. Treas. Reg. §1.125-5(k)(4).

<sup>a</sup> IRS Notice 2002-45, IRS Notice 2002-45, 2002-28 I.R.B. 93, Part II.

<sup>b</sup> Code §223(d)(2)(C) Code §223(d)(2)(C) and IRS Notice 2004-2, IRS Notice 2004-2, 2004-2 I.R.B. 269, Q/A-27.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
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<b>Cold sore medicine</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Cologne</b>	Not a qualifying expense	See <b>Toiletries</b> and <b>Cosmetics</b> .
<b>Compression hose</b>	Potentially qualifying expense	Won't qualify if used for personal or preventive reasons. If used to treat or alleviate a specific medical condition, only the excess cost of the specialized hose over the cost of regular hose will qualify. * To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Condoms</b>	Qualifying expense	Generally a qualifying expense. † While unclear, condoms with spermicide likely should not be considered drugs or medicines that must be prescribed if incurred after December 31, 2010 in order to qualify. Also see <b>Contraceptives</b> and <b>Drugs and medicines</b> .
<b>Contact lenses, materials, and equipment</b>	Qualifying expense	Materials and equipment needed for using lenses (such as saline solution and enzyme cleaner) will qualify if the lenses are needed for medical purposes, as will distilled water used to store and clean the lenses. ‡ Contact lens insurance will not qualify, however. See <b>Insurance premiums</b> . Contact lenses for solely cosmetic purposes (for example, to change one's eye color) do not qualify. See <b>Cosmetics</b> and subsection L.1.
<b>Contraceptives</b>	Potentially qualifying expense	See <b>Birth-control pills</b> ; <b>Condoms</b> ; <b>“Morning-after” contraceptive pills</b> ; and <b>Spermicidal foam</b> . Also see <b>Sterilization procedures</b> .
<b>Controlled substances in violation of federal law</b>	Not a qualifying expense	If the substance violates federal law (e.g., the Controlled Substances Act), the expense would not qualify even if a state law allows its use with a physician's prescription (for example, marijuana or laetrile prescribed to treat a specific medical condition). § See <b>Drugs and medicines</b> ; <b>Illegal operations and treatments</b> ; and subsection D.
<b>Co-payments</b>	Qualifying expense	Will qualify if the underlying service/item qualifies.
<b>Cosmetic procedures</b>	Not a qualifying expense	Most cosmetic procedures do not qualify. This includes cosmetic surgery or other procedures that are directed at improving the patient's appearance and don't meaningfully promote the proper function of the body or prevent or treat illness or disease. Examples include face lifts, hair transplants, hair removal (electrolysis), teeth whitening, and liposuction. There is an exception, however, for procedures necessary to ameliorate a deformity arising from a congenital abnormality, personal injury from an accident or trauma, or disfiguring disease—these may qualify. ¶ See <b>Breast reconstruction surgery following mastectomy</b> . Also see <b>Drugs and medicines</b> and subsections L.1 and L.2.

\* IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

† Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

‡ IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses); Priv. Ltr. Rul. 7308270520A Priv. Ltr. Rul. 7308270520A (Aug. 27, 1973).

§ Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) and Rev. Rul. 97-9, Rev. Rul. 97-9, 1997-9 I.R.B. 4; see also IRS Publication 502 (Medical and Dental Expenses). IRS Publication 502 (Medical and Dental Expenses).

¶ Code §213(d)(9); Code §213(d)(9); see also Rev. Rul. 2003-57, Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

	<b>Is Expense a</b>	
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Expense	Qualifying Expense?	Comments and Special Rules
<b>Cosmetics</b>	Not a qualifying expense	Cosmetics are articles used primarily for personal purposes, and are intended to be rubbed on, poured on, sprinkled on, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. * Examples include skin moisturizers, perfumes, lipsticks, fingernail polish, eye and facial makeup, shampoos, permanent waves, hair colors, toothpastes, and deodorants. Also see <b>Cosmetic procedures; Toiletries;</b> and subsection L.2.
<b>Cough suppressants</b> (Examples: Pediapcare, Robitussin, cough drops)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b> Also see <b>Throat lozenges.</b>
<b>Counseling</b>	Potentially qualifying expense	Will qualify if for a medical reason. Marriage counseling doesn't qualify. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the counseling to treat a specific medical condition is normally required. Also see <b>Psychiatric care</b> and <b>Psychologist.</b>
<b>CPAP (continuous positive airway pressure) devices</b>	Qualifying expense	
<b>Crowns, dental</b>	Potentially qualifying expense	Will not qualify if they are obtained for a cosmetic reason. See <b>Cosmetic procedures.</b>
<b>Crutches</b>	Qualifying expense	Will qualify whether purchased or rented. †
<b>Dancing lessons</b>	Potentially qualifying expense	Generally the cost of dancing lessons, swimming lessons, etc., does not qualify, even if recommended by a medical practitioner, if the lessons are to improve general health. ‡ But the expenditure might qualify if recommended by a medical professional to treat a specific medical condition (such as part of a rehabilitation program after surgery) and the expense would not have been incurred "but for" the condition. To show that the lessons are primarily for medical care, a note from a medical practitioner recommending them to treat a specific medical condition is normally required.
<b>Decongestants</b> (Examples: Dimetapp, Sudafed)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>Deductibles</b>	Potentially qualifying expense	Will qualify if the underlying item or service qualifies.
<b>Dental floss</b>	Not a qualifying expense	
<b>Dental sealants</b>	Qualifying expense	

\* Code §213(d)(9)(A) Code §213(d)(9)(A) and Treas. Reg. §1.213-1(e)(2). Treas. Reg. §1.213-1(e)(2).

† Treas. Reg. §1.213-1(e)(1)(iii). Treas. Reg. §1.213-1(e)(1)(iii).

‡ IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Dental services and</b>	Qualifying expense	Includes expenses incurred for the prevention and alleviation of dental

<b>procedures</b>		disease. Preventive treatment includes the services of a dental hygienist or dentist for such procedures as teeth cleaning, application of sealants, and fluoride treatments to prevent tooth decay, but not <b>Teeth whitening</b> . Treatment to alleviate dental disease includes X-rays, fillings, braces, extractions, dentures, and treatment of other dental ailments. <sup>†</sup> When an orthodontic treatment plan is paid up-front at the time of the first visit, some health FSAs will apportion the reimbursements as services are provided during the treatment plan. See subsection G.3 discussing how to reconcile reimbursement requests involving a prepayment component with the claims incurred requirement, particularly for orthodontia. Also see <b>Prepayments</b> .
<b>Dentures and denture adhesives</b>	Qualifying expense <sup>†</sup>	
<b>Deodorant</b>	Not a qualifying expense <sup>‡</sup>	See <b>Cosmetics and Toiletries</b> .
<b>Dependent care expenses</b>	Not a qualifying expense	Such expenses won't qualify, even if you are paying for dependent care (for example, hiring a babysitter) so that you can receive medical care. <sup>§</sup> But see <b>Disabled dependent care expenses</b> . Such expenses might be reimbursable under a DCAP if applicable rules are met (but the same expenses may not be reimbursed under a health FSA, HRA, or HSA and a DCAP—there is no "double-dipping" allowed). Also see <b>Babysitting and child care</b> .
<b>Diabetic socks</b>	Potentially qualifying expense	Won't qualify if used for personal or preventive reasons. If used to treat or alleviate a specific medical condition, only the excess cost of the specialized socks over the cost of regular socks will qualify. <sup>¶</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Diabetic supplies</b>	Qualifying expense	Includes <b>Blood-sugar test kits and test strips; Glucose-monitoring equipment; and Insulin</b> .
<b>Diagnostic items/services</b>	Qualifying expense	Includes a wide variety of procedures to determine the presence of a disease or dysfunction of the body, such as tests to detect heart attack, stroke, diabetes, osteoporosis, thyroid conditions, and cancer. <sup>¶</sup> Also see <b>Body scans; Blood-pressure monitoring devices; Blood-sugar test kits and test strips; Medical monitoring and testing devices</b> ; and other entries throughout.
<b>Diaper rash ointments and creams</b> (Example: Desitin)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .

<sup>†</sup> Treas. Reg. §1.213-1(e)(1)(ii); Treas. Reg. §1.213-1(e)(1)(ii); IRS Publication 502 (Medical and Dental Expenses). IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, Nov. 5, 2003 ECFC Teleconference.

<sup>§</sup> Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>§</sup> Rev. Rul. 78-266, Rev. Rul. 78-266, 1978-2 C.B. 123. See subsection D.

<sup>¶</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>¶</sup> Treas. Reg. §1.213-1(e)(1)(ii); Treas. Reg. §1.213-1(e)(1)(ii); see also Rev. Ruls. 2003-58, Rev. Ruls. 2003-58, 2003-22 I.R.B. 959 and 2007-72, 2007-72, 2007-50 I.R.B. 1154 (explaining that amounts paid for certain diagnostic procedures and devices are medical care expenses under Code §213(d), Code §213(d), even when incurred by an individual without symptoms of illness; ruling addresses annual physical exams, full-body electronic scans, and pregnancy test kits).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Diapers or diaper service</b>	Potentially qualifying expense	Regular diapers or diaper services for newborns do not qualify. But diapers or diaper services that are used to relieve the effects of a diagnosed medical condition do qualify. <sup>†</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See also <b>Incontinence supplies</b> and subsections D.6 and L.15.
<b>Diarrhea medicine</b> (Examples: Imodium, Kaopectate)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Diet foods</b>	Not a qualifying expense	Special foods to treat a specific disease (such as obesity) do not qualify to the extent that they satisfy ordinary nutritional requirements. <sup>†</sup> Thus, food associated with a weight-loss program, such as special pre-packaged meals, would not qualify, since it just meets normal nutritional needs. See <b>Weight-loss programs and/or drugs prescribed to induce weight loss</b> . But see <b>Special foods</b> .
<b>Dietary supplements</b>	Potentially qualifying expense	The cost of dietary supplements, nutritional supplements, vitamins, herbal supplements, and natural medicines does not qualify if they are merely beneficial for general health (e.g., one-a-day vitamins). <sup>‡</sup> But may qualify if recommended by a medical practitioner for a specific medical condition (for example, a prescribed dosage to treat a vitamin deficiency). To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition (e.g., 1,000 mg of Vitamin B-12 daily to treat a specific vitamin deficiency) is normally required. See <b>Special foods; Mineral supplements; Vitamins;</b> and subsection L.3.
<b>Disabled dependent care expenses</b>	Potentially qualifying expense	Such expenses will qualify if the expenses are for medical care of the disabled dependent. Note that some disabled dependent care expenses that qualify as medical expenses may also qualify as work-related expenses for purposes of the dependent care tax credit under Code §21 Code §21 or for reimbursement under a dependent care assistance program under Code §129. Code §129. The same expenses may not be used for more than one purpose (for example, medical expenses reimbursed under a health FSA cannot be used to claim a dependent care tax credit). <sup>§</sup>
<b>DNA collection and storage</b>	Potentially qualifying expense	Such expenses generally won't qualify. But temporary storage may qualify under some circumstances, such as where the DNA is collected as part of the diagnosis, treatment, or prevention of an existing or imminent medical condition. <sup>§</sup> "Temporary" is not defined; however, one consideration might be whether it is stored and used within the same plan year. <sup>¶</sup> Also see <b>Umbilical cord blood storage</b> .
<b>Doula</b>	Potentially qualifying expense	Will only qualify to the extent that the doula provides medical care for the mother or child; services such as emotional support, parenting information, child care, and housekeeping will not qualify. <sup>¶</sup> See also <b>Household help; Lamaze classes; Midwife;</b> and <b>Nursing services</b> .

<sup>†</sup> Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91, Rev. Rul. 63-91, 1963-1 C.B. 54; Priv. Ltr. Rul. 8137085 Priv. Ltr. Rul. 8137085 (June 17, 1981); IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> IRS Information Letter 2007-0037 IRS Information Letter 2007-0037 (Aug. 9, 2007); Treasury Tax Correspondence, 2006 TNT 144-20 (July 19, 2006).

<sup>§</sup> Rev. Rul. 2002-19, Rev. Rul. 2002-19, 2002-16 I.R.B. 778; IRS Information Letter 2007-0037 IRS Information Letter 2007-0037 (Aug. 9, 2007).

<sup>¶</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses). See Section XXIII for more information about the dependent care credit vs. the DCAP.

<sup>b</sup>. See, e.g., IRS Information Letter 2010-0017 IRS Information Letter 2010-0017 (Nov. 2, 2009).

<sup>c</sup>. Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>d</sup>. Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Drug addiction treatment</b>	Qualifying expense	Amounts paid for an inpatient's treatment at a therapeutic center for drug addiction will qualify. <sup>*</sup> See <b>Alcoholism treatment</b> .
<b>Drug overdose, treatment of</b>	Qualifying expense	
<b>Drug testing kits for home use</b>	Not a qualifying expense	Kits that test for the presence of controlled substances probably won't qualify, as they do not treat a medical condition. However, if the drug testing kit is used in the course of treating a medical condition, such as addiction, it could qualify. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Drugs and medicines</b>	Potentially qualifying expense	Must be primarily for medical care (and not for personal, general health, or cosmetic purposes), legally procured, and generally accepted as medicines and drugs. <sup>†</sup> In addition, expenses incurred after December 31, 2010 will qualify only if the medicine or drug is prescribed or is <b>Insulin</b> . <sup>‡</sup> Prescriptions must meet the legal requirements for a prescription in the state where the expense is incurred. To show that a medicine or drug that can be obtained without a prescription (i.e., an OTC drug) was prescribed, a prescription or other documentation that a prescription was issued (e.g., a pharmacist's receipt with the name of the purchaser or patient, the date and amount of the purchase, and an Rx number) is required. <sup>§</sup> See subsections L.1 and L.2. Also see <b>Aspirin</b> and other entries throughout for both prescription and OTC drugs.
<b>Dyslexia treatment</b>	Potentially qualifying expense	See <b>Language training</b> .
<b>Ear piercing</b>	Not a qualifying expense	See <b>Cosmetic procedures</b> and subsection L.1.
<b>Ear plugs</b>	Potentially qualifying expense	Will qualify if recommended by a medical practitioner for a specific medical condition (for example, to protect surgically implanted ear tubes). To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Ear wax removal drops</b> (Examples: Debrox, Murine)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Eczema treatments</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. <sup>b</sup> See <b>Drugs and medicines</b> .

<sup>\*</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>†</sup>. Code §213(d). Code §213(d). See also Treas. Reg. §1.213-1(a)(1)(ii). Treas. Reg. §1.213-1(a)(1)(ii).

<sup>‡</sup>. Code §106(f), Code §106(f), as added by the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 Pub. L. No. 111-148 (2010) (PPACA).

<sup>§</sup>. IRS Notice 2010-59, IRS Notice 2010-59, 2010-39 I.R.B. 396.

<sup>b</sup>. IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Egg donor fees</b>	Potentially qualifying expense	Amounts paid for the egg donor fee, an agency fee, an egg donor's medical and psychological testing, and the legal fees for preparation of the egg donor contract will qualify, if preparatory to a procedure performed on you, your spouse, or your dependent. <sup>*</sup> Also see <b>Fertility treatments; Sperm, storage fees; Surrogate or gestational carrier expenses;</b> and subsection L.13.
<b>Eggs and embryos, storage fees</b>	Potentially qualifying expense	Fees for temporary storage qualify, but only to the extent necessary for immediate conception. Storage fees for undefined future conception probably aren't considered medical care. "Temporary" is not defined; however, one consideration might be whether it is stored and used within the same year. <sup>†</sup> Also see <b>Fertility treatments; Sperm, storage fees; Surrogate or gestational carrier expenses;</b> and subsection L.13.
<b>Electrolysis or hair removal</b>	Not a qualifying expense	See <b>Cosmetic procedures.</b>
<b>Elevator</b>	Potentially qualifying expense	Installing an elevator upon the advice of a physician so that a person with heart disease won't have to climb stairs may be medical care to the extent of the amount in excess of value enhancement to the property. <sup>‡</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Capital expenses</b> and subsection L.9.
<b>Exercise equipment or programs</b>	Potentially qualifying expense	Qualifies only if required to treat an illness (such as obesity) diagnosed by a physician. <sup>§</sup> See subsection L.6. The purpose of the expense must be to treat the disease rather than to promote general health, and the expense must not have been incurred "but for" this purpose. <sup>¶</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item or program to treat a specific medical condition is normally required. See <b>Capital expenses; Health club fees; Pre-payments; and Weight-loss programs and/or drugs prescribed to induce weight loss.</b>
<b>Expectorants</b> (Examples: Comtrex, Robitussin)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>Eye drops</b> (Example: Visine)	Potentially qualifying expense	Will qualify if incurred before 2011. Medicated eye drops must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>Eye examinations, eyeglasses, equipment, and materials</b>	Qualifying expense <sup>◦</sup>	Materials and equipment needed for using the eyeglasses (such as eyeglass cleaners) also should be medical care. <sup>◦</sup> Also see <b>Contact lenses and Sunglasses.</b>

<sup>\*</sup> Priv. Ltr. Rul. 200318017 Priv. Ltr. Rul. 200318017 (Jan. 9, 2003); IRS Information Letter 2005-0102 IRS Information Letter 2005-0102 (Mar. 29, 2005); *Magdalin v. Comm'r*, T.C. Memo. 2008-293 (2008), *aff'd* 105 AFTR 2d 2010-442 105 AFTR 2d 2010-442 (1st Cir. 2009).

<sup>†</sup> Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>‡</sup> Treas. Reg. §1.213-1(e)(1)(iii). Treas. Reg. §1.213-1(e)(1)(iii).

<sup>§</sup> *Disney v. Comm'r*, 267 F. Supp. 1 267 F. Supp. 1 (C.D. Cal. 1967), *aff'd on other issues*, 413 F.2d 783 413 F.2d 783 (9th Cir. 1969).

<sup>b</sup>. IRS Information Letters 2010-0175 IRS Information Letters 2010-0175 (June 25, 2010) and 2003-0202 2003-0202 (Sept. 30, 2003).

<sup>c</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>d</sup>. Treas. Reg. §1.213-1(e)(iii) Treas. Reg. §1.213-1(e)(iii) provides that normally, if a capital expenditure (such as eyeglasses) qualifies as a medical expense, expenditures for the operation or maintenance of a capital asset will also qualify, so long as the medical reason for the capital expenditure still exists.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Face creams</b>	Not a qualifying expense	See <b>Cosmetics; Toiletries; and Cosmetic procedures.</b>
<b>Face lifts</b>	Not a qualifying expense	See <b>Cosmetic procedures</b> and subsection L.1.
<b>Feminine hygiene products (tampons, etc.)</b>	Not a qualifying expense	Such expenses generally won't qualify, as they are ordinarily considered as being used to maintain general health. See <b>Toiletries and Cosmetics.</b> There may be exceptions (e.g., if a medical practitioner recommends the product to alleviate a specific medical condition).
<b>Fertility treatments</b>	Potentially qualifying expense	Will qualify to the extent that procedures are intended to overcome an inability to have children and are performed on you, your spouse, or your dependent. * Examples are IVF (in vitro fertilization—including temporary storage of eggs or sperm), surgery (including an operation to reverse prior surgery preventing someone from having children), shots, treatments, and GIFT (gamete intrafallopian transfer). Expenses paid to or for an in vitro surrogate usually do not qualify, nor do egg donor expenses unless preparatory to a procedure performed on you, your spouse, or a dependent. † See <b>Egg donor fees; Eggs and embryos, storage fees; Legal fees in connection with fertility treatments; Pre-payments; Sperm, storage fees; Surrogate or gestational carrier expenses;</b> and subsection L.13.
<b>Fever-reducing medications</b> (Examples: Aspirin, Motrin, Tylenol)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>Fiber supplements</b>	Potentially qualifying expense	Won't qualify if used for general health purposes or other personal reasons. May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred "but for" the condition. ‡ To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Dietary supplements; Prenatal vitamins; and Special foods.</b>
<b>First aid cream</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>
<b>First aid kits</b>	Qualifying expense	Must be for use by the participant, spouse, or other individual eligible for tax-free health coverage under the plan. Note that large first aid kits raise concerns about stockpiling.
<b>Fitness programs</b>	Potentially qualifying expense	See <b>Exercise equipment or programs.</b>
<b>Flu shots</b>	Qualifying expense	Immunizations to prevent disease will qualify, even though no medical condition has been diagnosed. <sup>a</sup>
<b>Fluoridation services</b>	Qualifying expense	Will qualify if recommended by a dentist to prevent tooth decay. The amount that qualifies is limited to the cost allocable to the current year.

<sup>1</sup> IRS Publication 502 (Medical and Dental Expenses); *Magdalin v. Comm'r*, T.C.M. 2008-293 (2008), *aff'd* 105 AFTR 2d 2010-442 105 AFTR 2d 2010-442 (1st Cir. 2009).

<sup>2</sup> See IRS Information Letter 2002-0291 IRS Information Letter 2002-0291 (Aug. 12, 2002); *Magdalin v. Comm'r*, T.C.M. 2008-293 (2008), *aff'd* 105 AFTR 2d 2010-442 105 AFTR 2d 2010-442 (1st Cir. 2009).

<sup>3</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>4</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, August 1998 ECFC Annual Symposium.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Fluoride rinses</b>	Potentially qualifying expense	Won't qualify if used to maintain general health or for other personal reasons (e.g., as a toiletry). May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred "but for" the condition. <sup>1</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Food thickeners</b>	Potentially qualifying expense	Whether food thickeners are a medical care expense is a question of fact that must be determined on a case-by-case basis. <sup>2</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Foods</b>	Potentially qualifying expense	See <b>Special foods; Meals; and Alternative healers</b> .
<b>Foreign countries, medical care received in</b>	Potentially qualifying expense	In general, expenses incurred in other countries must meet the same requirements that would apply if the expenses were incurred in the U.S. (e.g., the expenses must be primarily for medical care, may not be for a cosmetic procedure, etc.). Note that the treatments must be legal in the U.S. and the other country, and that special rules apply to medicines and drugs obtained outside the U.S. See <b>Cosmetic procedures; Illegal operations and treatments; Prescription drugs and medicines obtained from other countries</b> ; and subsection L.8.
<b>Founder's fee</b>	Not a qualifying expense	Founder's fees are amounts you pay under an agreement with a retirement home. Even if a portion is allocable to medical care, these expenses usually do not qualify. <sup>3</sup> See subsection L.10.
<b>Funeral expenses</b>	Not a qualifying expense <sup>4</sup>	
<b>Gambling problem, treatment for</b>	Potentially qualifying expense	Pathological gambling has been classified as an impulse control disorder by the American Psychiatric Association and thus, it could be argued, is a mental illness. If so, its treatment would be a qualifying expense. See <b>Alcoholism treatment</b> .
<b>Gauze pads</b>	Qualifying expense	While unclear, medicated gauze pads likely should not be considered drugs or medicines that must be prescribed if incurred after December 31, 2010 in order to qualify. See <b>Bandages and Drugs and medicines</b> .
<b>Genetic testing</b>	Potentially qualifying expense	Would qualify to the extent that testing is done to diagnose a medical condition or to determine possible defects. <sup>5</sup> However, testing done just to determine the sex of a fetus would not qualify.
<b>Glucosamine</b>	Potentially qualifying expense	See <b>Chondroitin</b> .
<b>Glucose-monitoring equipment</b>	Qualifying expense	Items such as blood-glucose meters and glucose test strips are diagnostic items and are primarily for medical care. <sup>6</sup> Also see <b>Blood-sugar test kits and test strips</b> .

<sup>1</sup>. IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>2</sup>. IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>3</sup>. See, e.g., *Baker v. Comm'r Baker v. Comm'r*, 122 T.C. 143 (2004).

<sup>4</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>5</sup>. Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, July 31, 2009 ECFC Annual Symposium. See also Rev. Rul. 2007-72, 2007-50 I.R.B. 1154.

<sup>6</sup>. Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include “medical, laboratory, surgical, dental and other diagnostic and healing services”); see also Rev. Rul. 2003-58, Rev. Rul. 2003-58, 2003-22 I.R.B. 959.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Guide dog</b>	Qualifying expense	Expenses of buying, training, and maintaining a guide dog used by a physically disabled person would qualify; this includes the expenses of food and inoculations. <sup>1</sup> Veterinary fees for such animals also qualify as medical care. <sup>2</sup> Also see <b>Service animal, to assist individual with mental health disabilities</b> and <b>Veterinary fees</b> .
<b>Hair colorants</b>	Not a qualifying expense	See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Hair removal and transplants</b>	Not a qualifying expense	Such expenses generally won't qualify. <sup>3</sup> See <b>Cosmetic procedures; Drugs and medicines</b> ; and subsections L.1 and L.2.
<b>Hand lotion</b>	Not a qualifying expense	Such expenses generally won't qualify. See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Hand sanitizer</b>	Potentially qualifying expense	Won't qualify if used for general health purposes or other personal reasons (e.g., as a toiletry). May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred “but for” the condition. <sup>4</sup> Might also qualify where there is an imminent probability of contracting a specific illness (e.g., from a household member who has a contagious disease). A note from a medical practitioner recommending the item to treat a specific medical condition (or if applicable, to prevent a specific and imminent illness) is normally required.
<b>Headache medications</b> (Examples: Advil, Aspirin, Tylenol)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Health club fees</b>	Potentially qualifying expense	Only in very limited circumstances would fees paid to a health club qualify. One instance might be where fees are incurred upon the advice of a medical practitioner to treat a specific medical condition (e.g., rehabilitation after back surgery or treatment for obesity). The expense must not have been incurred “but for” the disease (for example, if you belonged to the health club before being diagnosed, then the fees would not qualify). When treatment is no longer needed, the fees would no longer qualify. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. See <b>Prepayments</b> and <b>Weight-loss programs and/or drugs prescribed to induce weight loss</b> .
<b>Health institute fees</b>	Potentially qualifying expense	Qualifies only if the treatment at the health institute is prescribed by a physician who issues a written statement that the treatment is necessary to alleviate a physical or mental defect or illness of the individual receiving the treatment. <sup>5</sup>

<b>Hearing aids</b>	Qualifying expense	Includes the costs of the hearing aid and its batteries, <sup>c</sup> as well as repair expenses. <sup>d</sup>
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<sup>1</sup>. Treas. Reg. §1.213-1(e)(1)(iii); Treas. Reg. §1.213-1(e)(1)(iii); Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307; Rev. Rul. 57-461, . Rev. Rul. 57-461, . Rev. Rul. 57-461, Rev. Rul. 57-461, 1957-2 C.B. 116 (“food, inoculations, and other expenses” of maintaining guide dog were deductible as medical expenses); Rev. Rul. 68-295, Rev. Rul. 68-295, 1968-1 C.B. 92. See also Priv. Ltr. Rul. 6806110470A Priv. Ltr. Rul. 6806110470A (June 11, 1968) and Priv. Ltr. Rul. 8033038 Priv. Ltr. Rul. 8033038 (May 20, 1980).

<sup>1</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>2</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>3</sup>. IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>b</sup>. Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307.

<sup>c</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>d</sup>. IRS information Letter 2011-0055 IRS information Letter 2011-0055 (May 16, 2011).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Hemorrhoid treatments</b> (Example: Preparation H)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Herbs</b>	Potentially qualifying expense	May qualify if used to treat or alleviate a specific medical condition and would not have been purchased but for the condition. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. <sup>1</sup> See <b>Alternative healers; Special foods; Vitamins;</b> and subsections L.2, L.3, L.4, and L.7.
<b>HMO premiums</b>	Depends on whether plan is a health FSA, HRA, or HSA	See <b>Insurance premiums</b> .
<b>Holistic or natural healers, dietary substitutes, and drugs and medicines</b>	Potentially qualifying expense <sup>1</sup>	See <b>Alternative healers</b> and subsection L.7.
<b>Home care</b>	Potentially qualifying expense	See <b>Nursing services</b> .
<b>Home improvements (such as exit ramps, widening doorways, etc.)</b>	Potentially qualifying expense	May qualify if done to accommodate a disability. If the improvement is permanent and increases the value of the property, the expense will qualify only to the extent that the improvement cost exceeds the increase in property value. If the improvement doesn't increase the property value at all, then the entire cost may qualify. Items that usually don't increase property value include constructing entrance or exit ramps, widening or modifying doorways or hallways, installing railings or support bars to bathrooms, lowering or modifying kitchen cabinets or equipment, moving or modifying electrical outlets and fixtures, installing porch lifts, modifying fire alarms or smoke detectors, modifying other warning systems, and modifying stairways. <sup>2</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Capital expenses; Elevator;</b> and <b>Air conditioner</b> .
<b>Hormone replacement therapy (HRT)</b>	Potentially qualifying expense	Will qualify if used primarily for medical care (for example, to treat menopausal symptoms such as hot flashes, night sweats, etc.). Won't qualify if primarily for maintaining general health. To show that the expense

		is primarily for medical care, a note from a medical practitioner recommending the therapy to treat a specific medical condition is normally required. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> and subsections L.2, L.3, L.4, and L.7.
<b>Hospital services</b>	Qualifying expense	Expenses of inpatient care (plus meals and lodging) at a hospital or similar institution qualify if a principal reason for being there is to get medical care. <sup>a</sup> Also see <b>Nursing services; Meals at a hospital or similar institution; and Lodging at a hospital or similar institution.</b>

<sup>1</sup>. IRS Information Letters 2010-0080 IRS Information Letters 2010-0080 (Mar. 31, 2010) and 2001-0297 2001-0297 (Dec. 31, 2001).

<sup>2</sup>. See IRS Information Letter (July 30, 1999).

<sup>3</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>a</sup>. Treas. Reg. §§1.213-1(e)(1)(ii) Treas. Reg. §§1.213-1(e)(1)(ii) and 1.213-1(e)(1)(v). 1.213-1(e)(1)(v).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Household help</b>	Not a qualifying expense	Won't qualify, even if a medical practitioner recommends such help, unless the expenses qualify as nursing services. <sup>1</sup> See <b>Nursing services</b> . In some cases, household services may qualify for reimbursement under a DCAP if attributable in part to care of a qualifying individual (i.e., certain children under age 13 and certain individuals who are physically or mentally incapable of self-care). <sup>2</sup>
<b>Humidifier</b>	Potentially qualifying expense	To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition (such as a severe allergy) is normally required. Several special rules apply. See <b>Air conditioner; Air purifier; and Capital expenses</b> .
<b>Hydrotherapy</b>	Potentially qualifying expense	May qualify if the primary purpose is medical care and the expense would not be incurred "but for" this purpose. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required.
<b>Hypnosis</b>	Potentially qualifying expense	Will qualify if performed by a professional to treat a medical condition, or for other medical purposes (e.g., smoking cessation); won't qualify if for general stress relief, personal enjoyment, or other personal purposes. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Also see <b>Psychoanalysis</b> and <b>Therapy</b> .
<b>Illegal operations and treatments</b>	Not a qualifying expense	Won't qualify, even if they are rendered or prescribed by licensed medical practitioners. <sup>3</sup> See <b>Controlled substances in violation of federal law</b> and subsection D.
<b>Immunizations</b>	Qualifying expense	Immunizations to prevent disease (such as tetanus or well-baby shots) will qualify, even if no medical condition has been diagnosed. <sup>a</sup>
<b>Inclinor</b>	Potentially qualifying expense	May qualify to the extent of the amount in excess of value enhancement to the property, if the primary purpose is medical care and the expense would not be incurred "but for" this purpose. <sup>b</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Capital expenses</b> and <b>Elevator</b> . Also see subsection L.9.
<b>Incontinence supplies</b>	Qualifying expense	Adult diapers used to relieve incontinence generally will qualify as medical care expenses. <sup>c</sup> But see <b>Diapers</b> .
<b>Infant formula</b>	Potentially qualifying	Ordinary infant formula won't qualify. <sup>d</sup> However, the excess cost of a special

	expense	formula to treat an infant's medical condition may qualify. <sup>o</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See also <b>Special foods</b> and subsection L.4.
<b>Infertility treatments</b>	Potentially qualifying expense	See <b>Egg donor fees; Eggs and embryos, storage fees; Fertility treatments; Prepayments; Sperm, storage fees; Surrogate or gestational carrier expenses;</b> and subsection L.13.
<b>Insect-bite creams and ointments</b> (Examples: Benadryl, Cortaid)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b>

<sup>1</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>2</sup>. See Section XXIV regarding expenses reimbursable under a DCAP.

<sup>3</sup>. Treas. Reg. §1.213-1(e)(1)(ii). Treas. Reg. §1.213-1(e)(1)(ii). See also *Halby v. Comm'r*, T.C.M. 2009-204 T.C.M. 2009-204 (2009) (illegal prostitution expenses were not for medical care).

<sup>4</sup>. Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1998 ECFC Annual Symposium.

<sup>5</sup>. Treas. Reg. §1.213-1(e)(1)(iii). Treas. Reg. §1.213-1(e)(1)(iii).

<sup>6</sup>. IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>7</sup>. Priv. Ltr. Rul. 200941003 (July 1, 2009) and IRS Information Letter 2008-0039 IRS Information Letter 2008-0039 (Sept. 2, 2008) (explaining that infant formula for the healthy baby of a woman who could not breastfeed due to a double mastectomy satisfied the baby's normal nutritional needs and thus was properly viewed as food that the baby would normally consume, not as a medical expense).

<sup>8</sup>. Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Insect repellent</b> (Examples: Cutter, OFF!)	Potentially qualifying expense	May qualify when there is an imminent probability of contracting a specific illness from an insect bite (e.g., in a locality with a high incidence of Lyme disease or West Nile virus). <sup>1</sup>
<b>Insulin</b>	Qualifying expense <sup>2</sup>	Equipment needed to inject the insulin, such as syringes or insulin pumps, also qualifies as a medical expense. Also see <b>Glucose-monitoring equipment and Drugs and medicines.</b>
<b>Insurance premiums</b>	Depends on whether plan is a health FSA, HRA, or HSA; see next column for details	<p><i>Health FSA:</i> Insurance premiums are not qualifying expenses. <sup>3</sup></p> <p><i>HRA:</i> The following premiums are qualifying expenses: premiums for traditional health insurance (including COBRA) and qualified long-term care insurance. (Note that reimbursing premiums for individual major medical insurance policies raises concerns under HIPAA, COBRA, and ERISA, and that qualified long-term care premium reimbursements are subject to an indexed annual limit.) The following insurance premiums are not qualifying expenses: premiums for employer-sponsored group health coverage that could be paid on a pre-tax basis under the employer's cafeteria plan, LTD insurance, fixed indemnity cancer insurance, and hospital indemnity insurance.</p> <p><i>HSA:</i> Payments for health insurance premiums or contributions for self-funded health coverage generally aren't qualifying expenses. However, the following premiums will qualify for reimbursement from an HSA: COBRA coverage, a qualified long-term care insurance contract, any health plan maintained while the individual is receiving unemployment compensation under federal or state law, or, for those age 65 or older (whether or not they</p>

		are entitled to Medicare), any deductible health insurance (e.g., retiree medical coverage) other than a Medicare supplemental policy. (Note: Long-term care insurance premium reimbursements that exceed the indexed annual limit will be treated as taxable and may be subject to the additional tax on distributions not used for qualified medical expenses.)  Also see <b>COBRA premiums</b> .
<b>IVF (in vitro fertilization)</b>	Potentially qualifying expense	See <b>Eggs and embryos, storage fees; Fertility treatments; Prepayments; Sperm, storage fees; Surrogate or gestational carrier expenses;</b> and subsection L.13.
<b>Laboratory fees</b>	Qualifying expense	Such expenses will qualify if they are part of medical care. <sup>a</sup>
<b>Lactation consultant</b>	Potentially qualifying expense	If a woman is having lactation problems and cannot breastfeed her child, then the expense of a lactation consultant helping to overcome this dysfunction might qualify. <sup>b</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required.
<b>Lactose intolerance tablets</b> (Example: Lactaid)	Potentially qualifying expense	May qualify if used to treat or alleviate a specific medical condition. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Dietary supplements</b> .
<b>Lamaze classes</b>	Potentially qualifying expense	Expenses may qualify to the extent that instruction relates to birth and not childrearing. <sup>c</sup> The fee should be apportioned to exclude instruction in topics such as newborn care. Expenses for the coach or significant other do not qualify. <sup>d</sup> See also <b>Doula</b> and <b>Midwife</b> .

<sup>\*</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium.

<sup>†</sup> Code §§106(f), Code §§106(f), 223(d)(2)(A), 223(d)(2)(A), and 213(b). 213(b).

<sup>‡</sup> Prop. Treas. Reg. §1.125-5(k)(4). Prop. Treas. Reg. §1.125-5(k)(4).

<sup>a</sup> Treas. Reg. §1.213-1(e)(1)(ii). Treas. Reg. §1.213-1(e)(1)(ii).

<sup>b</sup> Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>c</sup> Priv. Ltr. Rul. 8919009 Priv. Ltr. Rul. 8919009 (Feb. 6, 1989).

<sup>d</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1998 ECFC Annual Symposium.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Language training</b>	Potentially qualifying expense	Such expenses will qualify for a child with dyslexia or an otherwise disabled child. <sup>*</sup> But amounts paid for regular schooling normally don't qualify. <sup>†</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Also see <b>Learning disability, instructional fees; Prepayments; Schools and education, residential/special;</b> and subsection L.14.
<b>Laser eye surgery; Lasik</b>	Qualifying expense	Will qualify because the procedure is done primarily to promote the correct function of the eye. <sup>‡</sup> Also see <b>Radial keratotomy; Vision correction procedures;</b> and <b>Prepayments</b> .
<b>Laser hair removal</b>	Not a qualifying expense	See <b>Cosmetic procedures</b> .
<b>Late fees (e.g., for late</b>	Not a qualifying	Such fees would not be for medical care. <sup>a</sup>

payment of bills for medical services)	expense	
<b>Laxatives</b> (Example: Ex-Lax)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Lead-based paint removal</b>	Potentially qualifying expense	The expense of removing lead-based paints from surfaces in the participant's home to prevent a child who has (or has had) lead poisoning from eating the paint would qualify. <sup>b</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. The surfaces must be in poor repair (peeling or cracking) or be within the child's reach; the cost of repainting the scraped area does not qualify. If instead of removing the paint, the area is covered with wallboard or paneling, treat these items as <b>Capital expenses</b> . The cost of painting the wallboard does not qualify. Also see <b>Chelation therapy</b> .
<b>Learning disability, instructional fees</b>	Potentially qualifying expense	If prescribed by a physician, tuition fees paid to a special school and tutoring fees paid to a specially trained teacher for a child who has learning disabilities caused by mental or physical impairments (such as nervous system disorders) will qualify. <sup>c</sup> Also see <b>Prepayments; Schools and education, residential/special</b> ; and subsection L.14.
<b>Legal fees, general</b>	Potentially qualifying expense	Legal fees may qualify as medical care if they bear a direct or proximate relationship to the provision of medical care—for example, if the medical care could not have been provided without legal assistance. <sup>d</sup> Fees for legal services retained to authorize treatment for mental illness may qualify. But legal fees for management of a guardianship estate for conducting the affairs of the person being treated or other fees that aren't necessary for medical care do not qualify; <sup>e</sup> neither do divorce costs. <sup>f</sup> See <b>Legal fees in connection with fertility treatments</b> .

<sup>1</sup> See, e.g., Rev. Rul. 69-607, Rev. Rul. 69-607, 1969-2 C.B. 40 and Priv. Ltr. Rul. 8401024 Priv. Ltr. Rul. 8401024 (Sept. 30, 1983).

<sup>2</sup> See, e.g., *Coyne v. Comm'r*, T.C. Memo 1982-262 (T.C. 1982) and *Barnes v. Comm'r*, T.C. Memo 1978-339 (T.C. 1978).

<sup>3</sup> Rev. Rul. 2003-57, Rev. Rul. 2003-57, 2003-22 I.R.B. 959 and IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>4</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 6, 2010 ECFC Annual Symposium.

<sup>5</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>6</sup> See, e.g., Treas. Reg. §1.213-1(e)(1)(v); Treas. Reg. §1.213-1(e)(1)(v); *Sims v. Comm'r*, T.C. Memo 1979-499 (1979); and Rev. Rul. 78-340 Rev. Rul. 78-340, 1978-2 C.B. 124.

<sup>7</sup> Priv. Ltr. Rul. 200318017 Priv. Ltr. Rul. 200318017 (Jan. 9, 2003) (legal fees for preparing a contract between the taxpayer and an egg donor were found to be deductible as medical care). See also IRS Information Letter 2008-0033 IRS Information Letter 2008-0033 (July 21, 2008) (explaining that legal fees and mileage directly related to establishing a guardianship to provide medical care would qualify as medical care expenses). *But see Magdalin v. Comm'r*, T.C. Memo. 2008-293 (2008) (legal fees and other expenses incurred to father children through unrelated egg donor and gestational carriers were not for medical care where expenses were not incurred to prevent or alleviate a physical or mental defect or illness of the taxpayer and did not affect a function or structure of the taxpayer's body), *aff'd* 105 AFTR 2d 2010-442 105 AFTR 2d 2010-442 (1st Cir. 2009).

<sup>8</sup> Rev. Rul. 71-281, Rev. Rul. 71-281, 1971-2 C.B. 165.

<sup>9</sup> *Smith v. Comm'r*, T.C. Memo 1982-441 (1982).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Legal fees in connection</b>	Potentially qualifying	May qualify if the legal fees are in connection with a medical procedure

<b>with fertility treatments</b>	expense	performed upon you (or your spouse or dependent). Legal fees for preparing a contract for you to obtain a donated egg from an egg donor may also qualify, if preparatory to a procedure performed on you, your spouse, or your dependent. <sup>*</sup> In contrast, legal fees incurred in connection with a procedure performed on a surrogate mother do not constitute medical care. See <b>Fertility treatments</b> and <b>Legal fees, general</b> .
<b>Lice treatment</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Lipsticks</b>	Not a qualifying expense	See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Liquid adhesive for small cuts</b>	Qualifying expense	See <b>Bandages</b> .
<b>Lodging at a hospital or similar institution</b>	Qualifying expense	Will qualify if a principal reason for being there is to receive medical care. <sup>†</sup> Presumably, this would include the additional cost of a private room, <sup>‡</sup> but not separately charged non-medical add-ons (e.g., Internet or cable TV). See subsections L.8 and L.14. Also see <b>Meals at a hospital or similar institution</b> and <b>Schools and education, residential</b> .
<b>Lodging not at a hospital or similar institution</b>	Potentially qualifying expense	Up to \$50 per night will qualify if these conditions are met: (1) The lodging is primarily for and essential to medical care; (2) the medical care is provided by a physician in a licensed hospital or medical care facility related to (or equivalent to) a licensed hospital; (3) the lodging isn't lavish or extravagant; and (4) there is no significant element of personal pleasure, recreation, or vacation in the travel. <sup>§</sup> If a parent is traveling with a sick child, up to \$100 may qualify (\$50 for each person). Also see <b>Meals not at a hospital</b> and subsection L.8.
<b>Lodging of a companion</b>	Potentially qualifying expense	Will qualify if accompanying a patient for medical reasons and all of the conditions described under <b>Lodging not at a hospital or similar institution</b> are also met. For example, if a parent is traveling with a sick child, up to \$100 per night (\$50 for each person) will qualify. See <b>Lodging not at a hospital or similar institution</b> . Also see subsection L.8.
<b>Lodging while attending a medical conference</b>	Not a qualifying expense <sup>¶</sup>	See <b>Medical conference admission, transportation, meals, etc.</b> and <b>Meals while attending a medical conference</b> .
<b>Long-term care insurance premiums</b>	Depends on whether plan is a health FSA, HRA, or HSA	See <b>Insurance premiums</b> .

<sup>\*</sup> Priv. Ltr. Rul. 200318017 Priv. Ltr. Rul. 200318017 (Jan. 9, 2003) (legal fees for preparing a contract between the taxpayer and an egg donor were found to be for medical care where donated egg was to be implanted into taxpayer's body); *Magdalin v. Comm'r*, T.C. Memo. 2008-293 (2008) (legal fees and other expenses incurred to father children through unrelated egg donor and gestational carriers were not for medical care where expenses were not incurred to prevent or alleviate a physical or mental defect or illness of the taxpayer and did not affect a function or structure of the taxpayer's body), *aff'd* 105 AFTR 2d 2010-442 105 AFTR 2d 2010-442 (1st Cir. 2009).

<sup>†</sup> Treas. Reg. §1.213-1(e)(1)(v). Treas. Reg. §1.213-1(e)(1)(v).

<sup>‡</sup> See *Ferris v. Comm'r*, 42 AFTR 2d 78-5674 42 AFTR 2d 78-5674 (7th Cir. 1978).

<sup>§</sup> Code §213(d)(2). Code §213(d)(2).

<sup>¶</sup> Rev. Rul. 2000-24, Rev. Rul. 2000-24, 2000-19 I.R.B. 963.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Long-term care services</b>	Depends on whether	<i>Health FSA</i> : Qualified long-term care services (defined as certain services

	plan is a health FSA, HRA, or HSA; see next column for details	<p>that a chronically ill individual requires and that are prescribed by a licensed health care practitioner under a plan of care) cannot be reimbursed on a tax-free basis, even if they otherwise qualify as medical care expenses. (To be chronically ill, an individual must be unable to perform two or more daily living activities for at least 90 days without substantial assistance from another individual, or have a severe cognitive impairment that requires substantial supervision to protect him or her from threats to health and safety.) It is unclear whether health FSAs can provide taxable reimbursement of such services or can reimburse "nonqualified" long-term care services to the extent that the services otherwise qualify as medical care expenses. See subsection L.10.</p> <p><i>HRA:</i> For HRAs that are health FSAs, the health FSA rules will apply (see above). HRAs that are not health FSAs should be able to reimburse qualified long-term care expenses that otherwise qualify as medical care expenses.</p> <p><i>HSA:</i> Long-term care services will qualify for reimbursement to the extent that the services otherwise qualify as medical care expenses.</p>
<b>Makeup</b>	Not a qualifying expense	See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Marijuana or other controlled substances in violation of federal law</b>	Not a qualifying expense <sup>†</sup>	See <b>Controlled substances</b> and <b>Illegal operations and treatments</b> .
<b>Masks, disposable</b>	Potentially qualifying expense	Won't qualify if used for general health purposes or other personal reasons. May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred "but for" the condition. <sup>†</sup> Might also qualify where used to prevent a specific illness that is imminent (e.g., if a household member has a contagious disease). A note from a medical practitioner recommending the item to treat a specific medical condition (or, if applicable, to prevent a specific and imminent illness) is normally required.
<b>Massage therapy</b>	Potentially qualifying expense	The costs of a massage just to improve general health don't qualify. <sup>‡</sup> However, if the massage therapy was recommended by a physician to treat a specific injury or trauma, then it would qualify. <sup>§</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. See subsections D and L.15.

<sup>†</sup> Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) and Rev. Rul. 97-9, Rev. Rul. 97-9, 1997-9 I.R.B. 4; see also IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>§</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1998 ECFC Annual Symposium.

<sup>§</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Mastectomy-related special bras</b>	Qualifying expense	Will qualify when incurred following a mastectomy for cancer. See <b>Breast reconstructive surgery following mastectomy</b> .
<b>Maternity clothes</b>	Not a qualifying expense <sup>†</sup>	
<b>Mattresses</b>	Not a qualifying expense	In rare cases, a portion of the expenditure might qualify if a unique type of mattress is prescribed by a physician to treat a specific medical condition. <sup>†</sup> Also see <b>Capital expenses</b> .

<b>Meals at a hospital or similar institution</b>	Potentially qualifying expense	Meals that are part of the cost of inpatient care at a hospital or similar institution will qualify if a principal reason for the recipient's being there is to receive medical care; the meals must be furnished as a necessary incident to the individual's continuing medical care. Meals that are not part of inpatient care generally won't qualify. It is unclear whether meals provided at a hospital or similar institution for an outpatient who must remain at the institution for continuing care for some period (e.g., following a medical procedure) would qualify. <sup>‡</sup> See <b>Lodging at a hospital or similar institution; Meals of a companion; Schools and education, residential; and Schools and education, special</b> . Also see subsections L.8 and L.14.
<b>Meals not at a hospital or similar institution</b>	Not a qualifying expense <sup>‡</sup>	See <b>Lodging not at a hospital or similar institution</b> . Also see subsection L.8.
<b>Meals of a companion</b>	Not a qualifying expense	Won't qualify even if accompanying a patient for medical reasons. See <b>Lodging of a companion</b> and subsection L.8.
<b>Meals while attending a medical conference</b>	Not a qualifying expense	See <b>Medical conference admission, transportation, meals, etc.</b>
<b>Medical alert bracelet or necklace</b>	Qualifying expense	Will qualify if recommended by a medical practitioner in connection with treating a medical condition. <sup>‡</sup>
<b>Medical conference admission, transportation, meals, etc.</b>	Potentially qualifying expense	Expenses for admission and transportation to a medical conference qualify, if they relate to a chronic disease suffered by you, your spouse, or your dependent and if the conference is primarily for and essential to the person in need of medical care. <sup>‡</sup> Includes transportation expenses to the city where the conference is held, plus local transportation to the conference. Most of the time at the conference must be spent attending sessions on medical information. The expenses of meals and lodging while attending the conference don't qualify. <sup>‡</sup> See subsection L.8.

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> Rev. Rul. 55-155, Rev. Rul. 55-155, 1955-1 C.B. 245; Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91, Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>‡</sup> Treas. Reg. §§1.213-1(e)(1)(iv) Treas. Reg. §§1.213-1(e)(1)(iv) and (v) (v) (referring to meals that are part of the cost of "inpatient care" as an expenditure for medical care), and Rev. Rul. 2000-24, Rev. Rul. 2000-24, 2000-19 I.R.B. 963. See also Rev. Rul. 73-325, Rev. Rul. 73-325, 1973-2 C.B. 75 and IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses). See also *Levine v. Comm'r* *Levine v. Comm'r*, 695 F.2d 57 (2d Cir. 1982).

<sup>‡</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 1997 ECFC Annual Symposium.

<sup>‡</sup> Rev. Rul. 2000-24, Rev. Rul. 2000-24, 2000-19 I.R.B. 963.

<sup>‡</sup> Rev. Rul. 2000-24, Rev. Rul. 2000-24, 2000-19 I.R.B. 963.

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Medical information plan charges</b>	Qualifying expense	These are expenses paid to a plan to keep medical information so that it can be retrieved from a computer databank for your (or your spouse's or dependent's) medical care. <sup>‡</sup>
<b>Medical monitoring and testing devices</b>	Qualifying expense <sup>‡</sup>	Examples of such devices are blood-pressure monitors, syringes, glucose kit, etc. Also see <b>Blood-sugar test kits and test strips; Body scans; Diagnostic items/services; Ovulation monitor; and Pregnancy test kits</b> .
<b>Medical records charges</b>	Qualifying expense <sup>‡</sup>	For example, the fee associated with transferring medical records to a new medical practitioner will qualify.

<b>Medicines and drugs</b>	Potentially qualifying expense	See <b>Drugs and medicines</b> .
<b>Menstrual pain relievers</b> (Example: Midol)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Mentally handicapped, special home for</b>	Potentially qualifying expense	The cost of keeping a mentally handicapped person in a special home (not a relative's home) on a psychiatrist's recommendation to help that person adjust from life in a mental hospital to community living may qualify. <sup>a</sup> See also <b>Schools and education, residential</b> and subsection L.14.
<b>Midwife</b>	Qualifying expense <sup>b</sup>	See also <b>Doula; Lamaze classes; and Nursing services</b> .
<b>Mineral supplements</b>	Potentially qualifying expense	Won't qualify if used to maintain general health. <sup>c</sup> But under narrow circumstances, mineral supplements might qualify if recommended by a medical practitioner for a specific medical condition (for example, a prescribed dosage of iron daily to treat iron-deficiency anemia). To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Dietary supplements</b> and subsection L.4.
<b>Missed appointment fees</b>	Not a qualifying expense	Such fees would not be for medical care.
<b>Moisturizers</b>	Not a qualifying expense	See <b>Cosmetics; Toiletries; and Cosmetic procedures</b> .

<sup>1</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>t</sup>. Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include "medical, laboratory, surgical, dental and other diagnostic and healing services").

<sup>\*</sup>. Cf. Rev. Rul. 71-282, Rev. Rul. 71-282, 1971-2 C.B. 166 (fee for retrieval of medical information from computer databank).

<sup>a</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>b</sup>. Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium.

<sup>c</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>"Morning-after" contraceptive pills</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> . Also see <b>Birth-control pills</b> and <b>Contraceptives</b> .
<b>Motion sickness pills</b> (Examples: Bonine, Dramamine)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Motion sickness wristbands</b>	Qualifying expense	
<b>Mouthwash</b>	Not a qualifying expense	Such expenses generally won't qualify. <sup>†</sup> See <b>Cosmetics</b> and <b>Toiletries</b> . However, depending on the facts and circumstances, a special mouthwash recommended by a medical practitioner for the treatment of gingivitis might qualify. <sup>†</sup>
<b>Nail polish</b>	Not a qualifying expense	See <b>Cosmetics</b> and <b>Toiletries</b> .

<b>Nasal strips or sprays</b>	Potentially qualifying expense	Nasal sprays or strips that are used to treat sinus problems qualify as being primarily for medical care, as would those that are used to prevent sleep apnea. <sup>‡</sup> However, nasal strips or sprays used to prevent run-of-the-mill snoring wouldn't qualify, nor would those used by athletes. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. Note that medicated sprays must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Naturopathic healers</b>	Potentially qualifying expense	See <b>Alternative healers; Drugs and medicines; Special foods; Vitamins</b> ; and subsections L.2, L.3, L.4, and L.7.
<b>Nicotine gum or patches</b> (Examples: Nicoderm, Nicorette)	Potentially qualifying expense	Such items are primarily for medical care when used for stop-smoking purposes and will qualify if incurred before 2011 but must be prescribed in order to qualify if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Nonprescription drugs and medicines</b>	Potentially qualifying expense	See <b>Drugs and Medicines</b> .
<b>Norplant insertion or removal</b>	Qualifying expense <sup>ª</sup>	Also see <b>Contraceptives; Birth-control pills; Vasectomy</b> ; and <b>Spermicidal foam</b> .
<b>Nursing services for a baby</b>	Not a qualifying expense.	Won't qualify if the baby is normal and healthy. <sup>º</sup>

<sup>‡</sup> Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>‡</sup> Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>‡</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>ª</sup> Treas. Reg. §1.213-1(e). Treas. Reg. §1.213-1(e).

<sup>º</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Nursing services provided by a nurse or other attendant</b>	Potentially qualifying expense	Wages, employment taxes, and other amounts you pay for nursing services (including extra costs for nurses' room and board) generally will qualify, whether provided in the participant's home or another facility. <sup>†</sup> The attendant doesn't have to be a nurse, so long as the services are of a kind generally performed by a nurse. These include services connected with caring for the patient's condition, such as giving medication or changing dressings, as well as bathing and grooming. But if the person providing nursing services also provides household and personal services, the amounts must be accounted for separately—only those for nursing services qualify. <sup>†</sup> Also see subsection L.10 .
<b>Nutritional supplements</b>	Potentially qualifying expense	See <b>Dietary Supplements</b> . <sup>‡</sup>
<b>Nutritionist's professional expenses</b>	Potentially qualifying expense	May qualify if the treatment relates to a specifically diagnosed medical condition. Won't qualify if the expense is for general health. <sup>ª</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. Also see <b>Special foods</b> and subsections L.3 and L.4 .
<b>Obstetrical expenses</b>	Qualifying expense <sup>º</sup>	

<b>Occlusal guards to prevent teeth grinding</b>	Qualifying expense <sup>c</sup>	
<b>Occupational therapy</b>	Potentially qualifying expense	Will qualify if it treats or alleviates a medical condition. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required.
<b>One-a-day vitamins</b>	Not a qualifying expense	See <b>Vitamins</b> .
<b>Online or telephone consultation, medical practitioner's fee for</b>	Qualifying expense	Will qualify, so long as the consultation's purpose is to obtain advice to treat or mitigate a medical condition and the practice is legal in the applicable state or other locality. <sup>d</sup>
<b>Operations</b>	Qualifying expense	Will qualify if the operations are legal (and aren't cosmetic procedures). <sup>e</sup> See <b>Cosmetic procedures</b> and subsection L.1 .
<b>Optometrist</b>	Qualifying expense	Also see <b>Eye examinations, eyeglasses, equipment, and materials</b> .
<b>Organ donors</b>	Qualifying expense	See <b>Transplants</b> .
<b>Orthodontia</b>	Qualifying expense	Such expenses generally will qualify. <sup>f</sup> When an orthodontic treatment plan is paid up-front at the time of the first visit, some health FSAs will apportion the reimbursements as services are provided during the treatment plan. Also see <b>Dental services and procedures; Prepayments;</b> and subsections G.3 and L.1 .
<b>Orthopedic shoe inserts</b>	Qualifying expense	Will qualify if used to treat injured or weakened body parts. <sup>g</sup>

<sup>c</sup>. Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii).

<sup>d</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>e</sup>. Rev. Rul. 2003-102 Rev. Rul. 2003-102, 2003-38 I.R.B. 559. Although the IRS has declared this Ruling obsolete as of January 1, 2011 (see Rev. Rul. 2010-23, Rev. Rul. 2010-23, 2010-39 IRB 388), its logic would still seem to be applicable regarding nutritional supplements.

<sup>a</sup>. Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1999 ECFC Annual Symposium.

<sup>b</sup>. Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii).

<sup>c</sup>. Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1996 ECFC Annual Symposium.

<sup>d</sup>. Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium.

<sup>e</sup>. Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii).

<sup>f</sup>. See IRS Information Letter (Feb. 19, 1997).

<sup>g</sup>. IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Orthopedic shoes</b>	Potentially qualifying expense	Won't qualify if used for personal or preventive reasons. If used to treat or alleviate a specific medical condition, only the excess cost of the specialized orthopedic shoe over the cost of a regular shoe will qualify. <sup>*</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Osteopath fees</b>	Qualifying expense <sup>†</sup>	

<b>Over-the-counter (OTC) drugs</b>	Potentially qualifying expense	See <b>Drugs and medicines</b> .
<b>Ovulation monitor</b>	Qualifying expense <sup>†</sup>	Also see <b>Medical monitoring and testing devices</b> .
<b>Oxygen</b>	Qualifying expense	This includes the expenses of oxygen and oxygen equipment for breathing problems caused by a medical condition. <sup>¶</sup>
<b>Pain relievers</b> (Examples: Advil, Aspirin, Tylenol)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>Perfume</b>	Not a qualifying expense	See <b>Cosmetics and Toiletries</b> .
<b>Permanent waves</b>	Not a qualifying expense	See <b>Cosmetics and Toiletries</b> .
<b>Personal trainer fees</b>	Potentially qualifying expense	Will qualify if a medical practitioner has recommended a supervised exercise regimen in order to treat a disease or injury (e.g., rehabilitation after surgery or the treatment of obesity) and if incurred for a limited duration. <sup>§</sup> The expense must not have been incurred "but for" the disease (e.g., if you were working with a personal trainer before being diagnosed, the expense would not qualify). To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. See <b>Weight-loss programs and/or drugs prescribed to induce weight loss</b> .
<b>Petroleum jelly</b>	Potentially qualifying expense	Won't qualify if used to maintain general health or for other personal reasons (e.g., as a toiletry or a cosmetic). May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred "but for" the condition. <sup>¶</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.

<sup>†</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>‡</sup> Rev. Rul. 55-261 Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91 Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>¶</sup> Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include "medical, laboratory, surgical, dental and other diagnostic and healing services").

<sup>§</sup> Rev. Rul. 55-261 Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91 Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>§</sup> Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>¶</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Physical exams</b>	Qualifying expense <sup>†</sup>	
<b>Physical therapy</b>	Qualifying expense <sup>†</sup>	
<b>Pregnancy test kits</b>	Qualifying expense <sup>‡</sup>	Also see <b>Medical monitoring and testing devices</b> and <b>Ovulation monitor</b> .
<b>Prenatal vitamins</b>	Potentially qualifying	Obstetricians routinely recommend prenatal vitamins for the health of unborn

	expense	children. If taken during pregnancy (a medical condition), prenatal vitamins would be considered primarily for medical care. <sup>a</sup> Vitamins taken at other times generally do not qualify. See <b>Vitamins</b> .
<b>Prepayments</b>	Not a qualifying expense	Generally, prepayments for services/items that have not yet been incurred/obtained are not reimbursable under a health FSA. See <b>Dental services and procedures; Fertility treatments; and Orthodontia</b> .
<b>Prescription drug discount programs</b>	Not a qualifying expense	If an individual pays a fee for a card that provides for a 20% discount on all drugs, the fee would not qualify. In contrast, the cost of a prescribed drug generally will qualify. See <b>Drugs and Medicines</b> .
<b>Prescription drugs</b>	Potentially qualifying expense	See <b>Drugs and medicines</b> .
<b>Prescription drugs and medicines obtained from other countries</b>	Not a qualifying expense	Importing prescription drugs from other countries generally will violate federal law. <sup>b</sup> However, a drug or medicine may qualify for reimbursement if (1) it is purchased and consumed in the other country and is legal in both that country and the U.S. or (2) the FDA announces that it can be legally imported by individuals. See <b>Drugs and medicines</b> and subsection L.2.
<b>Preventive care screenings</b>	Qualifying expense	Will qualify if the tests are used for medical diagnoses. <sup>c</sup> Examples include hearing, vision, and cholesterol screenings. Also see <b>Body scans and Diagnostic items/services</b> .
<b>Probiotics</b>	Potentially qualifying expense	Won't qualify if used to maintain general health or for other personal reasons. May qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred "but for" the condition. <sup>d</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Propecia</b>	Potentially qualifying expense	Generally won't qualify if purchased for cosmetic purposes (for example, to treat male pattern baldness), even if recommended by a medical practitioner. But the expense may qualify if it is to ameliorate a deformity arising from a congenital abnormality, personal injury from an accident or trauma, or disfiguring disease. See <b>Cosmetic procedures</b> and <b>Drugs and medicines</b> .

<sup>1</sup> Rev. Rul. 2007-72, Rev. Rul. 2007-72, 2007-50 I.R.B. 1154 (annual physical exam is diagnostic and qualifies as a medical care expense, even when individual lacks symptoms of illness).

<sup>1</sup> Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91, Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>2</sup> Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii) (allowing that payments for medical care include "medical, laboratory, surgical, dental, and other diagnostic and healing services"); see also Rev. Rul. 2007-72, Rev. Rul. 2007-72, 2007-50 I.R.B. 1154 (pregnancy test kit is for medical care).

<sup>a</sup> Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, Nov. 5, 2003 ECFC Teleconference.

<sup>b</sup> See IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses) and IRS Information Letter 2005-0011 (Mar. 14, 2005).

<sup>c</sup> Priv. Ltr. Rul. 200140017 Priv. Ltr. Rul. 200140017 (June 25, 2001).

<sup>d</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Prosthesis</b>	Qualifying expense <sup>1</sup>	See <b>Artificial limbs and teeth</b> .
<b>Psychiatric care</b>	Qualifying expense	Includes the cost of supporting mentally ill dependent at a special center that provides medical care. <sup>†</sup>

<b>Psychoanalysis</b>	Potentially qualifying expense	Will qualify if provided for medical care, and not just for the general improvement of mental health, relief of stress, or personal enjoyment, nor if the expense stems from training to be a psychoanalyst. <sup>‡</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Also see <b>Psychologist</b> and <b>Therapy</b> .
<b>Psychologist</b>	Potentially qualifying expense	Will qualify if the expense is for medical care, <sup>‡</sup> and not just for the general improvement of mental health, relief of stress, or personal enjoyment. <sup>‡</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Also see <b>Therapy</b> .
<b>Radial keratotomy</b>	Qualifying expense <sup>°</sup>	Corneal ring segments (removable plastic half-rings that correct vision) would also qualify. <sup>°</sup> See <b>Laser eye surgery; Lasik</b> and <b>Vision correction procedures</b> .
<b>Reading glasses</b>	Qualifying expense <sup>°</sup>	Both prescription and nonprescription reading glasses would qualify. Also see <b>Eye examinations, eyeglasses, equipment, and materials</b> .
<b>Recliner chairs</b>	Not a qualifying expense	Generally won't qualify, unless used exclusively to treat a specific medical condition, as diagnosed and prescribed by a medical practitioner. See <b>Mattresses</b> .
<b>Rehydration solution</b> (Example: Pedialyte)	Qualifying expense <sup>†</sup>	
<b>Rental cars</b>	Potentially qualifying expense	See <b>Transportation</b> .
<b>Retin-A</b>	Potentially qualifying expense	Generally won't qualify if purchased for cosmetic purposes (for example, to reduce wrinkles), even if recommended by a medical practitioner. But may qualify if recommended by a medical practitioner for a specific medical condition (e.g., acne vulgaris) and not for cosmetic purposes. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Must be prescribed if incurred after December 31, 2010. See <b>Acne treatment; Cosmetic procedures; Drugs and medicines</b> ; and subsections L.1 and L.2.

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>‡</sup> Rev. Rul. 75-187, Rev. Rul. 75-187, 1975-1 C.B. 92.

<sup>‡</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>°</sup> Priv. Ltr. Rul. 9625049 Priv. Ltr. Rul. 9625049 (June 21, 1996); Priv. Ltr. Rul. 200226003 Priv. Ltr. Rul. 200226003 (Mar. 7, 2002); IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>°</sup> Rev. Rul. 2003-57, Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

<sup>°</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1999 ECFC Annual Symposium.

<sup>†</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
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<b>Rogaine</b>	Potentially qualifying expense	Generally won't qualify if purchased for cosmetic purposes. But may qualify if it is recommended by a medical practitioner for a specific medical condition. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Must be prescribed if incurred after December 31, 2010. See <b>Propecia</b> and <b>Drugs and medicines</b> . Also see subsections L.1 and L.2.
<b>Rubbing alcohol</b>	Qualifying expense	Will qualify when purchased for first-aid purposes (e.g., when purchased in first-aid quantities in a pharmacy or first-aid section of a retail store). <sup>7</sup>
<b>Rubdowns</b>	Potentially qualifying expense	Generally won't qualify, unless a medical practitioner determines that the procedure is necessary to treat a specific medical condition. <sup>†</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. See <b>Massage therapy</b> and subsection L.6.
<b>Safety glasses</b>	Not a qualifying expense	Probably won't qualify unless prescribed. <sup>‡</sup> See <b>Eye examinations, eyeglasses, equipment, and materials</b> .
<b>Schools and education, residential</b>	Potentially qualifying expense	Payments made to a residential school or program to treat an individual for behavioral, emotional, or addictive conditions (tuition, meals, and lodging) will qualify if a principal reason for attending the program is to receive medical care. (Ordinary education must be an incidental component.) Whether someone is attending to receive medical care is a question of fact that must be determined for each individual—just because a school or program provides medical care to some individuals does not mean that it provides medical care to all individuals. If a child is at a school because the courses and disciplinary methods have a beneficial effect on the child's attitude, the expenses won't qualify. See subsection L.14. Also see <b>Schools and education, special</b> and <b>Pre-payments</b> .
<b>Schools and education, special</b>	Potentially qualifying expense	Payments made for a mentally impaired or physically disabled person to attend a special school (tuition, meals, and lodging) will qualify if a principal reason for attending the school is to overcome or alleviate the disability. (Ordinary education must be an incidental component.) This includes teaching Braille to a visually impaired person, teaching lip reading to a hearing-impaired person, and remedial language training to correct a condition caused by a birth defect. If a child is at a school because the courses and disciplinary methods have a beneficial effect on the child's attitude, the expenses won't qualify. See subsection L.14. Also see <b>Schools and education, residential</b> and <b>Prepayments</b> .
<b>Screening tests</b>	Qualifying expense	Will qualify if the tests are used for medical diagnoses. <sup>§</sup> Examples include hearing, vision, and cholesterol screenings. Also see <b>Body scans</b> and <b>Diagnostic items/services</b> .

<sup>7</sup> Although not official guidance, the Federal Flexible Spending Account Program treats rubbing alcohol as a reimbursable expense. See the Federal "Eligible Expenses Juke Box," available at <https://www.fsafeds.com/fsafeds/eligibleexpenses.asp> (as visited Nov. 16, 2011).

<sup>†</sup> IRS Information Letter 2000-0405 IRS Information Letter 2000-0405 (Dec. 29, 2000).

<sup>‡</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1999 ECFC Annual Symposium.

<sup>§</sup> Priv. Ltr. Rul. 200140017 Priv. Ltr. Rul. 200140017 (June 25, 2001).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Service animal, to assist individual with mental health disabilities</b>	Potentially qualifying expense	Expenses of buying, training, and maintaining a service animal to assist an individual with mental health disabilities may qualify if the individual can show that he or she is using the service animal primarily for medical care to alleviate a mental defect or illness and would not have paid the expenses but

		for the defect or illness. <sup>†</sup> Also see <b>Guide dog</b> and <b>Veterinary fees</b> .
<b>Shampoos</b>	Not a qualifying expense	Generally won't qualify. See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Shaving cream or lotion</b>	Not a qualifying expense	See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Shipping and handling fees</b>	Qualifying expense	Shipping and handling fees incurred to obtain an item that constitutes medical care (e.g., drugs or medicine) are inextricably linked to the cost of the medical care and therefore qualify. <sup>†</sup> See subsection L.12 .
<b>Sinus medications</b> (Example: Sudafed)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> and <b>Nasal strips or sprays</b> .
<b>Skin moisturizers</b>	Not a qualifying expense	See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Sleep-deprivation treatment</b>	Qualifying expense	Probably qualifies if the person is under the care of a medical practitioner.
<b>Smoking-cessation medications</b>	Potentially qualifying expense	Amounts paid for drugs used to stop smoking would qualify if incurred before 2011 but must be prescribed if incurred after December 31, 2010. <sup>‡</sup> See <b>Drugs and medicines; Nicotine gum or patches; and subsection L.2</b> .
<b>Smoking-cessation programs</b>	Qualifying expense	Amounts paid for a smoking-cessation (stop-smoking) program would qualify. <sup>§</sup> See <b>Smoking-cessation medications</b> and subsection L.2.
<b>Soaps</b>	Not a qualifying expense	Generally won't qualify. See <b>Cosmetics</b> and <b>Toiletries</b> .
<b>Special foods</b>	Potentially qualifying expense	Will qualify if prescribed by a medical practitioner to treat a specific illness or ailment and if the foods do not substitute for normal nutritional requirements. <sup>§</sup> Food modified for special diets (e.g., gluten-free) may also qualify, but only to the extent that the cost of the special food exceeds the cost of commonly available versions of the same product. <sup>¶</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. See subsection L.4; see also <b>Infant formula</b> .

<sup>†</sup> IRS Information Letter 2010-0129 IRS Information Letter 2010-0129 (May 11, 2010).

<sup>‡</sup> Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>§</sup> Rev. Rul. 99-28, Rev. Rul. 99-28, 1999-25 I.R.B. 6.

<sup>¶</sup> Rev. Rul. 99-28, Rev. Rul. 99-28, 1999-25 I.R.B. 6.

<sup>§</sup> See, e.g., Rev. Rul. 2002-19, Rev. Rul. 2002-19, 2002-16 I.R.B. 778, Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307, Priv. Ltr. Rul. 200941003 Priv. Ltr. Rul. 200941003 (July 1, 2009) (infant formula for the healthy baby of a woman who could not breastfeed due to a double mastectomy was a personal expense; because the formula satisfied the baby's normal nutritional needs, it was food that the baby would normally consume and was not a medical care expense), and Treasury Tax Correspondence, 2006 TNT 144-20 (July 19, 2006).

<sup>¶</sup> See, e.g., *Randolph v. Comm'r*, 67 T.C. 481 67 T.C. 481 (1976).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Speech therapy</b>	Qualifying expense <sup>†</sup>	

<b>Sperm, storage fees</b>	Potentially qualifying expense	Fees for temporary storage might qualify, but only to the extent necessary for immediate conception. Storage fees for undefined future conception probably aren't considered to be for medical care. "Temporary" is not defined; however, one consideration might be whether it is stored and used within the same year. <sup>†</sup> Also see <b>Fertility treatments; Eggs and embryos, storage fees; Surrogate or gestational carrier expenses; Prepayments;</b> and subsection L.13.
<b>Spermicidal foam</b>	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b> Also see <b>Contraceptives.</b>
<b>St. John's Wort</b>	Potentially qualifying expense	Will qualify if used primarily for medical care (for example, to treat a diagnosed medical condition such as depression); won't qualify if used to maintain general health. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.
<b>Stem cell, harvesting and/or storage of</b>	Potentially qualifying expense	Might qualify if there is a specific and imminent medical condition that the stem cells are intended to treat. For example, the cost of harvesting and storing stem cells because a newborn has a birth defect and the stem cells would be needed in the near future might be allowable. <sup>‡</sup> But collection and storage indefinitely, just in case an item might be needed, is not medical care. <sup>§</sup> See <b>DNA collection and storage; Prepayments;</b> and <b>Umbilical cord blood storage.</b>
<b>Sterilization procedures</b>	Qualifying expense	Sterilization means the cost of a legally performed operation to make a person unable to have children. <sup>b</sup> Also see <b>Vasectomy.</b>
<b>Stop-smoking program</b>	Qualifying expense	See <b>Smoking-cessation programs.</b>
<b>Student health fee</b>	Potentially qualifying expense	A fee that is simply the cost of belonging to the program won't qualify. Expenses for specific medical services might qualify.
<b>Sunburn creams and ointments, medicated</b> (Example: Solarcaine)	Potentially qualifying expense	Will qualify if used to treat a sunburn (and not as regular skin moisturizers), but must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines.</b> Also see <b>Sunscreen.</b>
<b>Sunglasses</b>	Potentially qualifying expense	Prescription sunglasses would qualify. Allowable amounts include the expenses of eye examinations, eyeglasses, and lenses needed for medical reasons. It is unclear whether nonprescription sunglasses or clip-on sunglasses recommended by a physician to alleviate an eye condition would qualify. <sup>c</sup>

<sup>†</sup> Rev. Rul. 55-261, Rev. Rul. 55-261, 1955-1 C.B. 307, as modified by Rev. Rul. 63-91, Rev. Rul. 63-91, 1963-1 C.B. 54.

<sup>‡</sup> Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>§</sup> See ABA Joint Committee on Employee Benefits, Questions and Answers for the IRS, Q/A-3 (May 11, 2002) (as visited Aug. 30, 2011). See also IRS Information Letter 2010-0017 IRS Information Letter 2010-0017 (Nov. 2, 2009).

<sup>a</sup> See, e.g., IRS Information Letter 2010-0017 IRS Information Letter 2010-0017 (Nov. 2, 2009) and Priv. Ltr. Rul. 200140017 Priv. Ltr. Rul. 200140017 (June 25, 2001).

<sup>b</sup> Rev. Rul. 73-603, Rev. Rul. 73-603, 1973-2 C.B. 76.

<sup>c</sup> IRS Information Letter 2000-0073 IRS Information Letter 2000-0073 (June 30, 2000).

<b>Expense</b>	<b>Is Expense a Qualifying Expense?</b>	<b>Comments and Special Rules</b>
<b>Sun-protective (SPF) clothing</b>	Potentially qualifying expense	Won't qualify if used to maintain general health or for other personal reasons. May qualify if used to treat or alleviate a specific medical condition (e.g., melanoma) and if the expense would not have been incurred "but for"

		the condition, but only the excess cost of the specialized garment over the cost of ordinary clothing will qualify. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. Also see <b>Sunscreen</b> and <b>Sunscreen, cosmetics or similar products with</b> .
<b>Sunscreen</b>	Qualifying expense	There is no official guidance, but an IRS official has informally commented that sunscreen will likely qualify as a medical care expense because its sole purpose is to prevent sunburn and that sunscreen is not a medicine or drug. <sup>*</sup> Some plans may take a more cautious approach, for example by reimbursing only products at or above a specified SPF (e.g., 15, due to recent FDA guidance). <sup>†</sup> Also see <b>Sunscreen, cosmetics or similar products with</b> and <b>Suntan lotion</b> .
<b>Sunscreen, cosmetics or similar products with</b>	Potentially qualifying expense	There is no official guidance, but an IRS official has informally commented that the excess cost of the version of the item with the sunscreen over the cost of the regular item would probably qualify. <sup>‡</sup> Some plans may take a more cautious approach, for example by reimbursing only products at or above a specified SPF (e.g., 15, due to recent FDA guidance) <sup>§</sup> or not reimbursing the excess cost of items with a sunscreen component. Also see <b>Sunscreen</b> and <b>Suntan lotion</b> .
<b>Suntan lotion</b>	Not a qualifying expense	Suntan lotion and similar products generally won't qualify. Also see <b>Sunscreen</b> and <b>Sunscreen, cosmetics or similar products with</b> .
<b>Supplies to treat medical condition</b>	Qualifying expense	Will qualify if the medical supply is used to diagnose or treat a specific medical condition and isn't a personal comfort item. Also see <b>Bandages</b> and <b>Crutches</b> .
<b>Support braces</b>	Qualifying expense	Will qualify if used for injured or weakened body parts. <sup>b</sup>
<b>Surgery</b>	Qualifying expense	Generally will qualify. See <b>Operations</b> .
<b>Surrogate or gestational carrier expenses</b>	Not a qualifying expense	Such expenses generally won't qualify, even if they are for medical care of the surrogate/gestational carrier or her unborn child. <sup>c</sup> The procedure must be performed upon you, your spouse, or your dependent in order to be medical care. Also see <b>Fertility treatments; Egg donor fees; Eggs and embryos, storage fees; Legal fees in connection with fertility treatments; Sperm, storage fees;</b> and subsection L.13.
<b>Swimming lessons</b>	Potentially qualifying expense	Such expenses generally won't qualify, but there are some exceptions. <sup>d</sup> See <b>Dancing lessons</b> and subsection D.

<sup>\*</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium; *but see* IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009) (characterizing sunscreen as a dual-purpose item that may qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred but for the condition).

<sup>†</sup> See FDA Sheds Light on Sunscreens (June 14, 2011) (as visited Aug. 30, 2011).

<sup>‡</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, Aug. 12, 2011 ECFC Annual Symposium; *but see* IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009) (characterizing sunscreen as a dual-purpose item that may qualify if used to treat or alleviate a specific medical condition, and if the expense would not have been incurred but for the condition).

<sup>§</sup> See FDA Sheds Light on Sunscreens (June 14, 2011) (as visited Aug. 30, 2011).

<sup>b</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>c</sup> IRS Information Letter 2002-0291 IRS Information Letter 2002-0291 (Aug. 12, 2002); *Magdalin v. Comm'r*, T.C. Memo. 2008-293 (2008), *aff'd* 105 AFTR 2d 2010-442 105 AFTR 2d 2010-442 (1st Cir. 2009).

<sup>d</sup> IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Swimming pool maintenance</b>	Potentially qualifying expense	Such expenses generally won't qualify if the swimming pool is used for recreation. However, if the swimming pool is used primarily for medical care by someone who has been diagnosed with a medical condition and a medical practitioner has substantiated that the pool is part of the medical treatment, then the cost of maintaining the pool might qualify. <sup>*</sup> Also see <b>Capital expenses</b> .
<b>Tanning salons and equipment</b>	Not a qualifying expense	See <b>Cosmetic procedures</b> . In rare cases, they might qualify if recommended for a specific medical condition (such as a skin disorder), so long as there is no personal element or use of the equipment by other family members. <sup>†</sup>
<b>Taxes on medical services and products</b>	Qualifying expense	Such expenses generally will qualify to the extent that the tax is imposed on qualified medical care services/items. This includes local, sales, service, and other taxes. See subsection L.12.
<b>Teeth whitening</b>	Not a qualifying expense	Won't qualify if tooth discoloration is simply the result of aging, and the whitening is done for cosmetic purposes. <sup>‡</sup> But if tooth discoloration (rising to the level of a deformity) was caused by disease, birth defect, or injury, expenses for teeth whitening might qualify. <sup>§</sup> See <b>Cosmetic procedures</b> and subsection L.1.
<b>Telephone for hearing-impaired persons</b>	Qualifying expense	The expenses of buying and repairing special telephone equipment for a hearing-impaired person will qualify. <sup>¶</sup> This includes teletypewriter (TTY) and telecommunications device for the deaf (TDD) equipment. See <b>Capital expenses</b> .
<b>Television for hearing-impaired persons</b>	Qualifying expense	Equipment that displays the audio part of television programs as subtitles for hearing-impaired persons will qualify. But the amount that qualifies is limited to the excess of the cost over the cost of the regular item. For example, the cost of a specially equipped television qualifies only to the extent that it exceeds the cost of a regular model. <sup>◦</sup> See <b>Capital expenses</b> .
<b>Therapy</b>	Qualifying expense	Will qualify if provided for medical care (and not just for the general improvement of mental health, relief of stress, or personal enjoyment). <sup>♠</sup> Also see <b>Psychoanalysis; Psychologist; Schools and education, residential/special</b> ; and subsection L.14.
<b>Thermometers</b>	Qualifying expense	Will qualify if for medical use. See <b>Supplies to treat medical condition</b> .
<b>Throat lozenges</b> (Examples: Cepacol, Chloraseptic)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> . Also see <b>Cough suppressants</b> .
<b>Toiletries</b>	Not a qualifying expense	A toiletry is an article or preparation that is used in the process of dressing and grooming oneself. Examples include toothpaste, shaving cream or lotion, and cologne. Also see <b>Cosmetics</b> .
<b>Toothache and teething pain relievers</b> (Example: Orajel)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .

<sup>\*</sup> See *Emanuel v. Comm'r*, T.C. Summary Opinion 2002-127 (2002).

<sup>†</sup> Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1998 ECFC Annual Symposium.

<sup>‡</sup> Rev. Rul. 2003-57, Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

<sup>§</sup> Informal, nonbinding remarks of Donna Crisalli, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>b</sup>. Rev. Rul. 71-48, Rev. Rul. 71-48, 1971-1 C.B. 99; Rev. Rul 73-53, Rev. Rul 73-53, 1973-1 C.B. 139.

<sup>c</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>d</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Toothbrushes</b>	Not a qualifying expense	Won't qualify even if a dentist recommends special ones (such as electric or battery-powered) to treat a medical condition like gingivitis. Toothbrushes are items that are used primarily to maintain general health—a person would still use one even without the medical condition. Thus, they are not primarily for medical care. <sup>†</sup> See <b>Toiletries</b> and <b>Cosmetics</b> .
<b>Toothpaste</b>	Not a qualifying expense	Won't qualify even if a dentist recommends a special one to treat a medical condition like gingivitis. Toothpaste is an item that is primarily used to maintain general health—a person would still use it even without the medical condition. Thus, it is not primarily for medical care. <sup>†</sup> But topical creams or other drugs (e.g., fluoride treatment) used to treat a dental condition would qualify, so long as they are primarily for medical care. See <b>Cosmetics</b> ; <b>Drugs and medicines</b> ; and <b>Toiletries</b> .
<b>Transplants</b>	Qualifying expense	Includes surgical, hospital, and laboratory services as well as transportation expenses for organ donors. <sup>‡</sup>
<b>Transportation costs of disabled individual commuting to and from work</b>	Not a qualifying expense	A disabled individual's commuting costs to and from work are personal expenses and not expenses for medical care. <sup>‡</sup> However, the costs incurred for transportation to and from work may be medical expenses if the employment itself is explicitly prescribed as therapy to treat a medical condition. <sup>b</sup>
<b>Transportation expenses for person to receive medical care</b>	Qualifying expense	Will qualify if the transportation is primarily for and essential to medical care. <sup>c</sup> Includes car and rental car <sup>a</sup> expenses; bus, taxi, train, plane, and ferry fares; and ambulance services. Instead of actual car expenses, a standard mileage rate (19 cents per mile for January–June 2011; 23.5 cents per mile for July–December 2011) for use of a car to obtain medical care is allowed. Parking fees and tolls can also qualify. <sup>e</sup> See subsection L.8.
<b>Transportation of someone other than the person receiving medical care</b>	Potentially qualifying expense	Will qualify in some cases. Transportation expenses of the following persons will qualify: (1) a parent who must go with a child who needs medical care; (2) a nurse or other person who gives injections, medications, or other treatment required by a patient who is traveling to get medical care and is unable to travel alone; and (3) an individual who travels to visit a mentally ill dependent, if such visits are recommended as part of treatment. See <b>Transportation expenses for person to receive medical care</b> and <b>Lodging not at a hospital or similar institution</b> .
<b>Transportation to and from a medical conference</b>	Potentially qualifying expense	See <b>Medical conference admission, transportation, meals, etc.</b> Also see subsection L.8.
<b>Treadmill</b>	Potentially qualifying expense	See <b>Exercise equipment or programs</b> ; <b>Capital expenses</b> ; and subsection L.9.
<b>Tuition evidencing separate breakdown for medical expenses</b>	Qualifying expense	Will qualify to the extent that charges for medical expenses are separately broken down in a bill for tuition for a college or private school and are for specific qualified medical services/items that have been incurred/obtained (and are not premiums for medical care generally). See <b>Student health fee</b> and <b>Insurance premiums</b> .

<sup>†</sup>. Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>1</sup>. Informal, nonbinding remarks of Harry Beker, Barbara Pie, and John Sapienza, IRS, Office of Chief Counsel, Oct. 22, 2003 ECFC Teleconference.

<sup>2</sup>. Rev. Rul. 73-189, Rev. Rul. 73-189, 1973-1 C.B. 139.

<sup>3</sup>. See, e.g., *Alderman v. Comm'r*, T.C. Summary Opinion 2004-74 T.C. Summary Opinion 2004-74 (2004) (citing cases).

<sup>4</sup>. *Weinzimer v. Comm'r*, T.C. Memo. 1958-137 T.C. Memo. 1958-137 (1958); *Misfeldt v. Kelm*, 44 AFTR 1033 44 AFTR 1033 (D. Minn. 1951).

<sup>5</sup>. Code §213(d)(1)(B) Code §213(d)(1)(B) and Treas. Reg. §1.213-1(e)(iv). Treas. Reg. §1.213-1(e)(iv).

<sup>6</sup>. Priv. Ltr. Rul. 8321042 Priv. Ltr. Rul. 8321042 (Feb. 18, 1983).

<sup>7</sup>. IRS Notice 2010-88, IRS Notice 2010-88, 2010-51 I.R.B. 882; Rev. Proc. 2010-51, Rev. Proc. 2010-51, 2010-51 I.R.B. 883; IRS Announcement 2011-40, IRS Announcement 2011-40, 2011-29 I.R.B. 56; and IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses). See the Table of Limits regarding the mileage rate for other years.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Tuition for special-needs program</b>	Potentially qualifying expense	Will qualify if the primary purpose is for medical care. * Includes reading program for dyslexia. See <b>Learning disability, instructional fees; Schools and education, residential/special; Prepayments;</b> and subsection L.14.
<b>Ultrasound, prenatal</b>	Potentially qualifying expense	Will qualify if used as a diagnostic tool to determine fetal health and development. Won't qualify if for other purposes (e.g., to obtain prenatal snapshots).
<b>Umbilical cord blood storage</b>	Potentially qualifying expense	Collection and storage as a precaution to treat a disease or condition that might possibly develop in the future, just in case it is needed, is not medical care. But might qualify if there is an existing or imminently probable disease that the umbilical cord blood is intended to treat. † For example, the cost of storing cord blood where a newborn has a birth defect and where the cord blood would be needed in the near future might qualify. ‡ Also see <b>Blood storage; Stem cell, harvesting and/or storage of; and Prepayments.</b>
<b>Usual and customary charges, excess</b>	Qualifying expense	Medical expenses in excess of an insurance plan's usual, customary, and reasonable charges qualify if the underlying expense is for medical care.
<b>Vaccines</b>	Qualifying expense	See <b>Immunizations.</b>
<b>Varicose veins, treatment of</b>	Potentially qualifying expense	Such expenses generally won't qualify if the procedure merely improves appearance and doesn't meaningfully promote the proper function of the body or prevent or treat illness or disease. May qualify if the procedure promotes the proper function of the body or prevents or treats an illness or disease. To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. See <b>Cosmetic procedures.</b>
<b>Vasectomy</b>	Qualifying expense <sup>a</sup>	See <b>Sterilization procedures.</b>
<b>Vasectomy reversal</b>	Qualifying expense	
<b>Veneers</b>	Not a qualifying expense	Such expenses generally won't qualify, as veneers are used primarily for cosmetic purposes. See <b>Cosmetic procedures</b> and <b>Teeth whitening.</b>
<b>Veterinary fees</b>	Potentially qualifying expense	Will qualify if the veterinary fees are incurred for the care of a guide dog or other animal used by a disabled person. <sup>b</sup> Otherwise, no.
<b>Viagra</b>	Qualifying expense	Will qualify if prescribed by a physician to treat a medical condition. <sup>c</sup> See <b>Drugs and medicines.</b>

<sup>1</sup>. See, e.g., Rev. Rul. 69-607, Rev. Rul. 69-607, 1969-2 C.B. 40 and Priv. Ltr. Rul. 200521003 Priv. Ltr. Rul. 200521003 (Mar. 1, 2005).

<sup>1</sup>. See, e.g., IRS Information Letter 2010-0017 IRS Information Letter 2010-0017 (Nov. 2, 2009) and Priv. Ltr. Rul. 200140017 Priv. Ltr. Rul. 200140017 (June 25, 2001).

<sup>4</sup>. Informal, nonbinding remarks of John Sapienza, IRS, Office of Chief Counsel, May 2002 ECFC Teleconference.

<sup>a</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>b</sup>. IRS Publication 502 IRS Publication 502 (Medical and Dental Expenses).

<sup>c</sup>. Informal, nonbinding remarks of Katherine Kiss, IRS, Office of Chief Counsel, Aug. 1998 ECFC Annual Symposium.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>Vision correction procedures</b>	Qualifying expense	Medical procedures that correct vision, including laser procedures such as Lasik and radial keratotomy, qualify. <sup>1</sup> Also see <b>Laser eye surgery; Lasik and Radial keratotomy</b> .
<b>Vision discount programs</b>	Not a qualifying expense	Such expenses generally won't qualify. See <b>Insurance premiums</b> . In contrast, expenses for actual medical treatment (such as an eye exam) generally will qualify.
<b>Vitamins</b>	Potentially qualifying expense	Won't qualify if used to maintain general health (e.g., one-a-day vitamins). <sup>1</sup> But under narrow circumstances, vitamins might qualify if recommended by a medical practitioner for a specific medical condition (for example, a prescribed dosage of Vitamin B-12 daily to treat a specific vitamin deficiency). To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required. See <b>Prenatal vitamins; Dietary supplements; Special foods</b> ; and subsection L.4.
<b>Walkers</b>	Qualifying expense	Will qualify if used to relieve sickness or disability.
<b>Wart remover treatments</b> (Example: Compound W)	Potentially qualifying expense	Although not addressed in IRS guidance, we believe such products are for the treatment of a disease and thus would qualify as medical care but must be prescribed if incurred after December 31, 2010. <sup>2</sup> See <b>Drugs and medicines</b> .
<b>Weight-loss programs and/or drugs prescribed to induce weight loss</b>	Potentially qualifying expense	Weight-loss programs will qualify if recommended by a physician to treat a specific medical condition (such as obesity, heart disease, or diabetes) and not simply to improve general health. However, food associated with a weight-loss program (such as special pre-packaged meals) would not qualify, since it just meets normal nutritional needs. <sup>a</sup> To show that the expense is primarily for medical care, a note from a medical practitioner recommending it to treat a specific medical condition is normally required. Drugs and medicines must be prescribed if incurred after December 31, 2010. See <b>Diet foods; Drugs and medicines; Exercise equipment or programs; Health club fees; Prepayments; Special Foods</b> ; and subsection L.5.
<b>Wheelchair</b>	Qualifying expense	If used to relieve sickness or disability, amounts you pay for a wheelchair or autoeette and the upkeep costs will qualify. <sup>b</sup> Wheelchair cushions will also qualify as a necessary accessory to the wheelchair. <sup>c</sup>
<b>Wigs</b>	Potentially qualifying expense	Might qualify if the wig is prescribed by a physician for the mental health of a patient who has lost all of his or her hair from disease or treatment (e.g., chemotherapy or radiation). <sup>d</sup>

<sup>1</sup> Rev. Rul. 2003-57, Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

<sup>2</sup> Rev. Rul. 2003-102, Rev. Rul. 2003-102, 2003-38 I.R.B. 559. Although the IRS has declared this Ruling obsolete as of January 1, 2011 (see Rev. Rul. 2010-23, Rev. Rul. 2010-23, 2010-39 IRB 388), its logic would still seem to be applicable regarding vitamins.

<sup>3</sup> According to one dictionary definition, a wart is "caused by any of numerous genotypes of the human papillomavirus." U.S. National Library of Medicine, MEDLINEplus: Medical Dictionary (as visited Nov. 17, 2011).

<sup>4</sup> Rev. Rul. 2002-19, Rev. Rul. 2002-19, 2002-16 I.R.B. 778.

<sup>5</sup> Treas. Reg. §1.213-1(e)(1)(iii). Treas. Reg. §1.213-1(e)(1)(iii).

<sup>6</sup> IRS Information Letter 2009-0209 IRS Information Letter 2009-0209 (July 14, 2009).

<sup>7</sup> Rev. Rul. 62-189, Rev. Rul. 62-189, 1962-2 C.B. 88.

Expense	Is Expense a Qualifying Expense?	Comments and Special Rules
<b>X-ray fees</b>	Qualifying expense	Will qualify if the X-rays are performed for medical reasons. <sup>7</sup>
<b>Yeast infection medications</b> (Example: Monistat)	Potentially qualifying expense	Will qualify if incurred before 2011. Must be prescribed if incurred after December 31, 2010. See <b>Drugs and medicines</b> .
<b>YMCA day camp</b>	Not a qualifying expense	Such expenses generally won't qualify. However, if a camp is a special program that is therapeutic and treats a specific disability, then the expense might qualify. <sup>8</sup> To the extent attributable to a qualifying individual under a dependent care assistance program (DCAP), such expenses might be reimbursable under a DCAP if applicable rules are met (but the same expenses may not be reimbursed under a health FSA, HRA, or HSA and a DCAP—there is no "double-dipping" allowed).

<sup>7</sup> Treas. Reg. §1.213-1(e)(1)(ii) Treas. Reg. §1.213-1(e)(1)(ii).

<sup>8</sup> See *Emanuel v. Comm'r*, T.C. Summary Opinion 2002-127 (2002).