



The Vita Viewpoint

Important Information for Decision Makers

Homeland Security Legislation Lightens Up Canadian Drug Importation Laws

Background

The issue of Canadian drug imports has received a lot of media attention in the last year. The cost of prescription drugs has been sky rocketing and consumers are looking for ways to purchase drugs at a lower cost. Prescription drugs are significantly less expensive in Canada, and many lawmakers believe that U.S. citizens should be allowed to import these prescriptions in order to mitigate the rising costs in the United States. Regardless of the arguments on both sides, the FDA has not approved the importation of Canadian drugs and this practice remains illegal.

The question of whether or not a Canadian drug would be eligible for reimbursement under a Health FSA has come up repeatedly in recent years. In order for a Health FSA expense to be eligible, it must meet the criteria outlined in IRC § 213. IRC § 213 specifically excludes any illegal treatments, operations, or drugs. Since the Canadian prescription drugs are not "legally procured," they are not eligible for reimbursement under an IRC § 125 Plan.

Current News

In the past two weeks, two significant developments have occurred that will impact the importation of drugs from Canada.

- In November 2005, U.S. Customs and Border Protection Officials instituted a policy to seize prescription drugs procured through the mail from Canada. Last week this policy was reversed, and the border procedures have reverted back to not seizing such drugs.
- President Bush signed homeland security appropriations legislation that includes a provision allowing limited importation of prescription drugs from Canada for personal use. Section 535 of the new law provides that funds made available under the law's provisions for customs and border protection may not be used "to prevent an individual *not in the business of importing a prescription drug*...from importing a prescription drug from Canada that complies with the Federal Food, Drug and Cosmetic Act." The provision applies only to individuals importing personal-use quantities, limited to a 90-day supply for one person.

Commentary

The new law allows the importation of drugs from Canada in limited circumstances, but it does so by way of expressed non-enforcement rather than by legalizing the act. Although the enforcement of laws regarding importation of Canadian drugs for personal use will be more lax, it does not make it legal. Therefore any drugs imported from Canada are still not eligible for reimbursement under an IRC § 125 FSA Plan.

For questions or additional information, please contact Vita Benefits Group at (650) 968-8811.