

April 15, 2013

The Honorable Diane Black  
Education and Family Benefits  
Tax Reform Working Group  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Danny Davis  
Education and Family Benefits  
Tax Reform Working Group  
Committee on Ways and Means  
U.S House of Representatives  
Washington, DC 20515

Dear Representatives Black and Davis:

On behalf of the Health Choices Coalition representing physicians, dentists, consumers, retailers, manufacturers, pharmacies, pharmacists, patients, insurers, small businesses and employers, we would like to submit the following comments as your Committee considers comprehensive tax reform. Specifically, we encourage the Ways and Means Committee to examine Section 9003 of the Patient Protection and Affordable Care Act (“PPACA”) requiring holders of tax-preferred healthcare accounts, such as Flexible Savings Arrangements (“FSAs”) and Health Savings Accounts (“HSAs”), to obtain a physician’s prescription in order to use funds from those accounts to purchase over-the-counter (“OTC”) medicines.

The goal of PPACA was to expand access to affordable care for all healthcare consumers. We also know that one of the stated goals of tax reform, which you are currently considering, is simplification of the tax code for Americans. Unfortunately, the provision that limits coverage of OTC medicines does not advance either of these stated priorities. Instead, Section 9003 of the Affordable Care Act (“ACA”) increases costs to the healthcare system, places a new administrative burden on already over-burdened physician offices, and confuses consumers who have become accustomed to using their tax preferred accounts to plan for their household medical expenses. We ask that you include in your work on behalf of the Committee, a provision to repeal this problematic provision.

In 2003, the Internal Revenue Service expanded coverage of tax-preferred accounts to include OTC medicines as qualified medical expenses, allowing consumers to purchase OTC medicines with pre-tax dollars. In the following years, millions of consumers budgeted for their annual healthcare expenses, enrolled in an FSA program, set aside pre-tax money, and utilized their FSA accounts to purchase OTC medicines. The retail community made this process as seamless as possible by identifying eligible products and processing payments electronically through consumers’ FSA accounts.

Unfortunately, for the consumer and the healthcare system, the efficiencies in processing these transactions ended on January 1, 2011, the effective date of the ACA provision limiting FSA and HSA reimbursement of OTC medicines to situations where

consumers obtained a prescription for the OTC medicine. After that date, consumers were required to obtain a physician's prescription prior to being reimbursed from their FSAs and HSAs for the purchase of OTC medicines. There is no medical justification for this requirement, and as a nation, we want to encourage Americans to make smart, efficient healthcare choices, including through utilizing FSAs for OTC medicine purchases. But instead, the requirement today discourages efficient choices and further complicates the tax code.

Consumers depend on OTC medicines as a first line of defense for their families' healthcare needs. OTC medicines provide Americans with a safe, effective, affordable, convenient and accessible means to address their healthcare needs. These medicines save consumers billions of dollars annually through reducing unnecessary doctors' visits, increased productivity at work, and the cost advantages of using OTC medicines as a frontline treatment.

A recent study<sup>1</sup> found that OTC medicines contribute a total of \$102 billion each year in savings and cost avoidance in the healthcare system. In other words, for every \$1 spent on OTC medicines, the healthcare system reaps \$6-\$7 in savings. The availability of OTC medicines off-the-shelf and without a prescription provides medicines for an estimated 60 million people who would otherwise not seek treatment. OTC medicines are an essential part of the healthcare system and deserve equal tax treatment under flexible spending arrangements with prescription drugs and medical devices.

Furthermore, millions of American families rely on flexible spending arrangements and other tax-preferred accounts to purchase these cost-effective medications. This issue is of critical importance to the estimated 19 million working Americans who rely on voluntary contributions of pre-tax dollars to FSAs and HSAs to help meet their basic healthcare needs, including the purchase of safe, affordable OTC medicines. Prohibiting the use of FSA funds to purchase these medicines, or requiring documentation from a doctor that OTCs are being used to treat a medical condition, is already limiting access and greatly reducing the cost-efficiencies associated with these medicines.

A 2010 survey<sup>2</sup> found that more than 90 percent of Americans prefer to seek treatment with OTCs before seeing a healthcare provider. At the same time, nearly 90 percent of the physicians and pharmacists surveyed recommend that patients self-treat with OTC medicines prior to seeing a doctor. As a result, an overwhelming majority of pharmacists and physicians surveyed believe it would cause an increased burden on medical professionals because of this provision in the healthcare reform law.

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<sup>1</sup> "The Value of OTC Medicine to the United States," Booz & Co. 2012, on behalf of CHPA

<sup>2</sup> "Your Health at Hand" Survey, CHPA 2010

We believe the limitation on the use of tax-preferred accounts for the purchase of over-the-counter medicines has resulted in unintended consequences to both physicians and patients and further complicates the tax code. We thank you for the Committee's efforts in repealing this onerous provision and remain committed to working with you and others in Congress to restore the ability to pay for OTC medicines with tax-preferred account funds without the need for a prescription.

Sincerely,

AARP

American Academy of Family Physicians

American College of Physicians

American Dental Association

America's Health Insurance Plans

American Medical Association

American Osteopathic Association

American Society of Association Executives

Associated Builders and Contractors, Inc.

Consumer Healthcare Products Association

Food Marketing Institute

National Association of Chain Drug Stores

National Association of Manufacturers

National Community Pharmacists Association

National Federation of Independent Business

National Grocers Association

Retail Industry Leaders Association

Sjögren's Syndrome Foundation

U.S. Chamber of Commerce