

## Personal Health and Wellness Expenses or Medical Expenses?

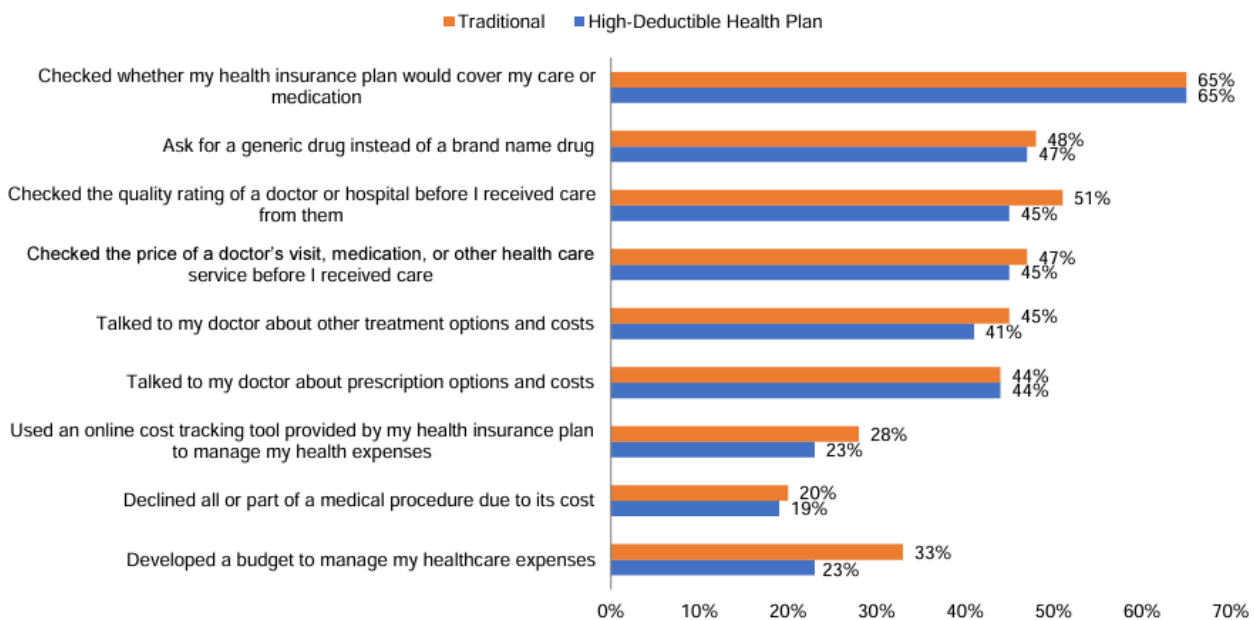
The IRS recently issued a reminder to taxpayers and health spending plan administrators that personal expenses for general health and wellness are not considered medical expenses under tax law. This means personal expenses are not deductible or reimbursable under health flexible spending arrangements, health savings accounts, or health reimbursement arrangements.

This reminder is important because some companies are misrepresenting the circumstances under which food and wellness expenses can be paid or reimbursed under FSAs and other health spending plans. For example: A diabetic, in his attempts to control his blood sugar, decides to eat foods that are lower in carbohydrates. He sees an advertisement from a company stating that he can use pre-tax dollars from his FSA to purchase healthy food if he contacts that company. He contacts the company, who tells him that for a fee, the company will provide him with a 'doctor's note' that he can submit to his FSA to be reimbursed for the cost of food purchased in his attempt to eat healthier. However, when he submits the expense with the 'doctor's note', the claim is denied because food is not a medical expense and plan administrators are wary of claims that could invalidate their plans.

FSAs and other health spending plans that pay for, or reimburse, non-medical expenses are not qualified plans. If the plan is not qualified, all payments made to taxpayers under the plan, even reimbursements for actual medical expenses, are includible in income. [IRS](#)

### High-Deductible Health Plan (HDHP) and Traditional Plan Enrollees Equally Likely to Report Making Cost-Conscious Decisions

In the last 12 months/Since you joined your current health plan, did you do any of the following?  
Percentage Yes



Enrollees in both high-deductible health plans (HDHPs) and traditional plans engage in cost-conscious health care behavior according to the latest Health Care Study from Employee Benefit Research Institute (EBRI) and Greenwald Research. [EBRI](#)

### Evidence of Insurability (EOI) Audits

A 2023 settlement between the DOL and Prudential Life Insurance Company is significant for employers in at least two respects. First, it clearly relays the DOL's position that collecting supplemental life insurance premiums from employees and dependents in the absence of an approved EOI is not an appropriate practice, and quite likely is a fiduciary breach. Second, the DOL warns employers engaging in such a practice that they do so at their own peril, as they may be liable for claims submitted by beneficiaries if they fail to give notice to employees of a denied EOI.

So, what should employers do?

Employers sponsoring supplemental life insurance plans should reach out to their carriers to:

- Confirm that the carrier has implemented or is implementing a process to not accept premiums until EOI is approved, and to notify the employer and/or employees of any EOI denials.
- Identify a means to audit and correct past and existing coverages for which there is no record of EOI approval but where premiums have been/are being collected by the employer and remitted to the carrier.

Maintaining good health and welfare benefit plan administrative practices means taking the time to periodically and proactively confirm that the right benefits are being delivered or are available to the right participants. As the recent DOL settlements show, EOI audits are another way employers can use administrative best practices to prevent undue burdens from arising.

[Fidelity](#)

### Hot Topic: Updates on GLP-1 Drugs

A curated selection of recent news articles regarding GLP-1 drugs:

- At \$11,500-\$14,000 annual wholesale acquisition price for GLP-1 weight loss treatment, the Institute for Clinical Economic Review (ICER) cost-effectiveness [analysis](#) identified that GLP-1 weight loss therapies are over-priced two-fold to their expected value in weight loss associated reduction in cardiovascular events and diabetes development avoidance over a lifetime. [Prime Therapeutics](#)
- It may come as a surprise, but not all weight loss is healthy. One key question for people over 65 is whether the weight-loss drugs that have become so popular also pose a risk of melting away much-needed muscle. It's almost inevitable when a person loses weight — be it from medication, strict dieting, or bariatric surgery — that not all of it will be from shedding fat. About a quarter is typically from the loss of lean mass, like muscle and bone, which is essential for metabolism and preventing injury as we age. That's true for weight loss from GLP-1 medications like Ozempic and Wegovy, as well. For younger adults, the loss of muscle may not cause problems right away, but in people over 65, it's critical for maintaining strength and mobility. Muscle weakness is a risk factor in falls among older adults, one of the leading causes of injury death for that age group. [Fortune](#)
- KFF's analysis of newly released Medicare Part D [spending data](#) from CMS shows that total gross Medicare spending on these medications has skyrocketed in recent years, rising from \$57 million in 2018 to \$5.7 billion in 2022. (Gross spending does not account for rebates that would result in lower net spending.) As of 2022, Part D covered three GLP-1s for diabetes: Ozempic, Rybelsus, and Mounjaro. [KFF](#)
- Eli Lilly is partnering with Amazon's pharmacy unit to offer home delivery for diabetes, migraine and obesity medications, including GLP-1 weight loss drug Zepbound. The drugmaker Eli Lilly launched its direct-to-consumer service, LillyDirect, in January to provide consumers access to telehealth and pharmacy services and the ability to get some medications directly from the company via online pharmacies. [Fierce Healthcare](#)

### New Independent Contractor Rules Now Effective

Effective March 11, 2024, the DOL states a worker is not an independent contractor if they are, as matter of economic reality, economically dependent on an employer for work. The final rule applies the following six factors to analyze employee or independent contractor status under the FLSA:

1. Opportunity for profit or loss depending on managerial skill
2. Investments by the worker and the potential employer
3. Degree of permanence of the work
4. Nature and degree of control
5. Extent to which the work performed is an integral part of the potential employer's business
6. Skill and initiative

For full details, please visit: [DOL.gov](#)