ConnectedHealthInitiative

The Wearable Equipment Adoption and Reinforcement and Investment in Technology (WEAR IT) Act

Millions of Americans have flexible spending accounts or health savings accounts (FSAs or HSAs). These accounts mainly benefit middle income earners. For example, about **32.5 million Americans have HSA accounts** (*which can also cover family members*), and approximately 69 percent of them earn between $30,000 and $90,000 per year, and 78 percent of them earn less than $100,000 annually.[1]

FSAs are also popular, but **workers lost up to $4.2 billion** total from their own paychecks in 2020[2] because they failed to spend the money on FSA-eligible items before the end of the year, in part because Internal Revenue Service (IRS) rules have struggled to keep pace with new digital health technologies.

The tax-exempt funds in HSAs and FSAs are set aside from an employee's paycheck into an account to spend on certain qualified health expenses. Currently, you can spend HSA and FSA funds on items like:

- Catastrophic fall devices like LifeAlert
- Neck pillows
- Heart rate monitors
- Electrocardiogram (EKG) monitors

However, **HSAs and FSAs generally do not cover devices, apps, or software platforms that perform more than one healthcare function or a combination of healthcare functions and non-healthcare functions.** For example, if a wearable device can monitor heart rate, EKG, and catastrophic fall detection, FSA and HSA funds may not be spent on that device. In part, this is due to an IRS determination (based on a 1974 tax case!) that amounts spent on a device would not have been spent "but for" the existence or risk of developing a specific medical condition. In other words, the **IRS declines to automatically include wearable devices that help mitigate, prevent, or treat *several* conditions**, even if those conditions are related.

The WEAR IT Act would modernize the law by covering the following types of devices and software:

- EKG monitors that also detect catastrophic falls
- Wearable devices that help detect the onset of acute illness—and help monitor chronic illness—with a combination of thermometry, heart rate, motion, and sleep quality
- Wearable devices that collect pulse oximetry and temperature to detect onset of acute conditions, especially for those with preexisting chronic conditions
- Apps that analyze any combination of these physiologic parameters to make them useful for patients and caregivers

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[1] https://www.devenir.com/wp-content/uploads/2021-Devenir-and-HSA-Council-Demographic-Report.pdf
[2] https://money.com/fsa-contributions-workers-forfeit-money/

Why support WEAR IT?

- *WEAR IT is simpler for taxpayers:* under current eligibility rules, taxpayers would need to buy several separate items (EKG monitor, catastrophic fall detector, heart rate monitor, passive highly sensitive thermometer, and pulse oximeter) to obtain the functionality of a single device that WEAR IT would cover.

- *HSAs and FSAs mainly benefit middle income earners:* 69 percent of HSA holders earn between $30,000 and $90,000.

- *WEAR IT is future-proof:* instead of needing to add devices and software separately for each medical condition, WEAR IT would include life-saving innovations, so long as they collect and analyze physiologic data to "prevent, mitigate, or treat" a medical condition, consistent with the current statute.

- *Wearable tech works better:* the multi-function devices WEAR IT would partially cover (up to $375) are often FDA listed and work better than covered competing devices.[3]

- *Coverage like that proposed in WEAR IT has precedent:* in a private letter to a DNA testing service, the IRS has already clarified that FSAs and HSAs may be used for a portion of expenditures with both medical and non-medical purposes, in an amount attributable to their healthcare-related purposes.

[3] https://www.ncoa.org/adviser/medical-alert-systems/apple-watch-medical-alert-review/