

# SUPREME COURT RULING: CONSTITUTIONAL RIGHT TO ABORTION OVERTURNED



In a response to the recent U.S. Supreme Court ruling which overturned restrictions on abortion (Roe v. Wade), thousands of women across the country are now unsure of where to find the correct care and abortion expenses. Please see the following information which helps to clarify changes to employee benefits.

## Travel Expenses: Transportation, Meals, and Lodging

Individuals may seek medical treatment in the city they reside or at a location hundreds of miles away. The following describes those expenses obtained for transportation, meals, and lodging involving medical treatment that qualify as eligible medical care expenses.

### ***Must Be “Primarily for and Essential to” Medical Care***

All services that provide medical care include the amounts paid “for transportation primarily for and essential to medical care.” In addition, this allows for the deductibility of amounts paid for lodging (up to \$50 per night per individual) while away from home primarily for, and essential to, medical care if:

- The medical care is provided by a physician in a licensed hospital (or in a medical care facility that is related to, or is the equivalent of, a licensed hospital); and
- There is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

Determining whether costs of transportation, meals, and lodging are deductible requires distinguishing between expenses incurred such as:

1. Going to and from the medical treatment site
2. Going to the medical treatment to receive treatment
3. Attending a medical conference

### ***Mileage Rate for Traveling to Obtain Medical Care***

Every year, the IRS announces the standard mileage rate for calculating the cost of using an automobile to obtain medical care. Use of the medical standard mileage rate is not mandatory, but it can be an alternative for calculating the actual operating expenses that are incurred when a car is used to obtain medical care. The medical standard mileage rate as of June 30, 2022 is 22 cents per mile for the duration of the year.

*Note: The medical standard mileage rate is significantly less than the standard mileage rate that can be deducted for business purposes. The medical standard mileage rate is in lieu of the out-of-pocket variable expenses allocable to this purpose, such as gas and oil. Fixed costs such as depreciation (or lease payments), insurance, and license and registration expenses are not medical care expenses and are not included in the medical standard mileage rate.*



### ***Transportation To and From the Medical Treatment Site***

Transportation includes costs associated with actual movement from place to place, such as the cost of taxis, buses, trains, airplanes, rental cars, and ambulances hired to go to and from the point of medical treatment. Reasonable travel expenses associated with a rideshare service (e.g., Uber or Lyft) incurred to obtain medical care also qualify. In addition, any tips or gratuities not required for taxis or rideshare services are expenses and qualify as amounts paid for the transportation.

Also, if a patient uses an automobile to travel to the place of treatment, expenses may be reimbursed at the applicable medical standard mileage rate. Parking fees and tolls related to the use of an automobile to obtain medical care are reimbursable as medical care expenses, too. Transportation expenses may qualify whether for travel to another city or to a local doctor's office.

In order for the cost of transportation to qualify as a medical expense, it must only be incurred to treat a specific ailment or disease of the participant and not merely be for the general improvement of the participant's health. For example, if a doctor prescribes an operation or other medical care, and if the participant chooses for purely personal considerations to travel to another locality (such as a resort area) for the treatment, then the cost of transportation will not qualify.

Lastly, transportation costs incurred by a companion (such as a nursing attendant) plus transportation costs to arrange for the medical care of a family member also qualify.

### ***Meals and Lodging While Receiving Medical Treatment***

Meal expenses while away from home undergoing treatment are not expenses for medical care unless they are provided at a hospital or similar institution at which the individual is receiving medical care.

Lodging expenses are reimbursable as follows:

1. If incurred primarily for and essential to medical care
2. If the medical care is provided by a physician in a licensed hospital (or in a medical care facility related to one)
3. If there is no significant element of personal pleasure, recreation, or vacation.

The maximum amount reimbursable for lodging is \$50 per day per individual. Lodging expenses of a companion who accompanies a patient for medical reasons may also qualify.

### ***Claims Substantiation Requirements***

A receipt satisfies any transportation expenses relating to travel in a vehicle, taxi, rideshare, or rental car. However, if someone drives his or her own vehicle, then the participant's certification and copy of odometer readings recorded on a mileage log before and after each trip are required.



## Abortion Travel Benefits for Employees and What Employers Need to Know

With the recent abortion ruling, employers may want to rework their employee health care benefits. The information below provides an overview of what to expect regarding the change.

### **Group Health Plan Coverage Governance**

Coverage under fully insured plans are governed by State Insurance Laws. Coverage under self-insured plans, however, are not subject to State Insurance Laws. Guidance from your providers and legal counsel is recommended to determine what laws are applicable to your benefit offerings.

### **Reimbursement for Abortion Services from Consumer-Driven Healthcare Plans**

Abortion services are considered eligible expenses, meaning they are included by the plan in a Health Care Flexible Spending Account (FSA) and Health Savings Account (HSA) as an eligible medical expense. All adoption service reimbursements must comply with plan limits which are governed by regulations and/or plan sponsors. If an employer’s plan, including HSAs, covers all necessary expenses, then abortion services are eligible for reimbursement if the procedure is performed in a state where it is legal.

### **Travel Costs Associated With Abortion Care**

As the need to travel for abortion services increases, so does the cost to travel. Many companies in the past few weeks have added abortion travel benefits to their benefit package to help with these expenses. Here is what the following expenses for abortion travel benefits could cover:

- Ground transportation (bus, taxi, or train)
- Airfare
- Lodging (\$50/night for individual, or up to \$100/night if traveling with a companion)

### **Considerations and Actions Employers Can Take**

Benefit Type	Available Options
Health Reimbursement Arrangement (HRA)	Employers may fund a Medical Travel HRA to support potentially new out-of-pocket costs associated with medical care travel.
Health Savings Account (HSA)	Employer contributions are allowed into the HSA up to the calendar year. The 2022 contribution limits are \$3,650 (individual), \$7,300 (family), plus \$1,000 for account holders over age 55.
Health Care Flexible Spending Account (FSA)	Employers may contribute up to \$500 of employee contributions into an FSA. Contributions may be made as an add-on to the legal maximum for employee contributions (\$2,850/year).

Sources: Thomson Reuters, NaviaBenefits, SupremeCourt.gov



***Do these tax rules apply to all reimbursement accounts?***

Yes, these rules apply to HSAs, FSAs, HRAs, and tax-preferred LSAs provided three guidelines are followed:

1. Reimbursement rules need to meet requirements for tax-free treatment (see previous FAQ answers).
2. Services must be lawfully obtained in the jurisdiction where they are provided.
3. Substantiation and other rules continue to apply.

This table below explains more.

Account	Summary	Fully Insured	Self-Insured	State vs. Federal
HSA	IRS tax preference on reimbursement eligibility of abortion services and travel-related expenses remains unchanged.	Pre-deductible eligibility may vary by plan or state.	Pre-deductible eligibility may vary by plan, (included or excluded) independent of state regulation.	Always eligible for reimbursement of legal abortion services and related travel; plan (pre-deductible) eligibility varies by state and plan administration type.
FSA/HRA	Services and related/qualifying travel expenses generally eligible based on plan design.	Eligibility will vary by state and likely be excluded from states that outlaw or heavily limit legal abortion services.	If under ERISA jurisdiction, the plan administrator still determines eligibility of services and related travel.	Eligibility can be determined regardless of state of residence for services in, or travel to, states where abortion services remain legal.