


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



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In a clear example of the U.S. healthcare system not keeping up with the 21st century, flexible spending accounts or health savings accounts (FSAs or HSAs) do not cover cutting-edge wearable health technology. These accounts mainly benefit middle income earners. For example, about **32.5 million Americans have HSA accounts** (which can also cover family members) and millions more have FSAs. Approximately 69 percent of HSA account holders earn between \$30,000 and \$90,000 per year. [Seventy-eight percent of them earn less than \\$100,000 annually.](#)

FSAs, which are use-it-or-lose-it every year, can be put to better use. **Workers collectively lost up to \$4.2 billion** from their paychecks in 2020 because they failed to spend the money on FSA-eligible items before the end of the year. This mismatch between savings and expenditures is due in part to Internal Revenue Service (IRS) rules struggling to keep pace with new digital health technologies.

The tax-exempt funds in HSAs and FSAs are set aside from an employee's paycheck and into an account to spend on certain qualified health expenses. 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 tax case from 1974 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 devices and software like:

- [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](#)

From atrial fibrillation to chronic obstructive pulmonary disorder (COPD), many different types of conditions can be treated or mitigated through remote patient monitoring and wearable health technology. These devices monitor users for catastrophic falls and AFib incidents, alert patients to worrisome heart rate changes, and can even call emergency services. They are also part of the shift toward value-based care, which pays for prevention rather than the more expensive treatment of conditions.



Congress Should Pass 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 are often FDA listed and [work better than covered competing devices](#)**.
- 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.
- We don't need innovation at the speed of government: the IRS recently added the Oura ring to its allowable expenses under FSA and HSA, demonstrating that although they will eventually cover new technology, **it will take years and much work on the part of smaller businesses to get their devices covered**.