

M e m o r a n d u m**425.0168.300**

To: District Administrators

Date: October 4, 1984

From: Principal Tax Auditor

Subject: Prescription Medicine

It has recently come to my attention that there is some confusion as to what qualifies as medicines under Section 6369(c)(2), (3), and (4). There appears to be a misconception that an item must be permanently implanted in the human body to qualify as an exempt medicine.

A device may not qualify as an exempt medicine under Section 6369(c)(2) which requires permanent implantation, but may qualify under Section (c)(3) or (c)(4). Those sections require that the item be worn on or in the person of the user as a brace, etc., or to replace or assist the function of a natural part of the body, but do not require permanence. For example, a temporary pacemaker worn outside the skin with temporary leads inserted into the body does not qualify under (c)(2) since it is not permanently implanted. This device does not qualify under (c)(3) since it is not an orthotic device used as a brace, etc. However, this pacemaker does qualify under (c)(4) since it is a prosthetic device worn on the body to assist the functioning of the heart. The entire pacemaker qualifies, both the unit and the leads, even though both are designed for temporary use.

Permanently implanted is more a matter of intent than time. If the item or device in question is intended to stay implanted for a long period of time it is considered permanent. As a general guideline we have used six months to define permanent; that is, was the item intended to be "permanently" implanted even if for some reason the item had to be removed sooner.

Worn on or in the body of the person means the item is either completely below the surface of the body or is attached to the body. "Implanted" and "worn in" are nearly synonymous terms. The difference is one of location and attachment. Implanted generally means inserted or grafted into the tissue versus being placed below the surface of the skin. "Worn on" the person requires some physical attachment and must be fully worn on the body and may be of a temporary nature. As long as part of the item is attached and the entire device is fully worn on the person, it will be considered worn on or in the person. If any part of the device is not on the person of the user it will not qualify.

Each separate definition contained in Section 6369(c) must be used independently of the others to determine whether a device qualifies as an exempt medicine.

If there are any questions regarding this memorandum, please address them to me.

GAB:nc

cc: Mr. R. Nunes
Mr. C. Graziano
Mr. P. K. Taylor
Headquarters Audit Supervisors