

## **Flexible Spending Accounts and the 90% Rule**

Since 1989, The Department of Treasury has required third party substantiation of qualified expenses for medical care for reimbursement from a Flexible Spending Account. The proposed rule required a participant to provide a written statement from an independent third party stating that the medical expense has been incurred and the amount of such expense.

However, Treasury has made exceptions to this rule in an effort to adapt to the wide spread use of debit cards to process reimbursements. Treasury has continuously worked to keep fraud and abuse out of the FSA program, and that is to be commended. In fact, you can only use FSA debit cards at Drug Stores and Pharmacies that can substantiate qualified expenses through one of two ways.

- 1) The store participates in the inventory information approval system (IIAS), which electronically approves or rejects card transactions using inventory control information (e.g. SKUs).
- 2) The store is certified under the 90% Rule. The 90% Rule states that a store's gross receipts, on a location by location basis, during the prior taxable year must have been composed of at least 90 percent of items which qualify as expenses for medical care.

In both of these cases the Special Interest Group for IIAS Standards (SIGIS), a private entity created to introduce a voluntary industry standard solution to meet IRS requirements, has verified that a store meets the stated requirements.

This 90% rule was specifically created to provide relief to many small and independent pharmacies that do not own the POS systems needed to utilize the IIAS and cannot afford to purchase a new POS system. Unfortunately, Treasury has not made clear to the card processors and employers who provide these benefits that purchases from stores certified under the 90% Rule are fully substantiated. This confusion has led to 90% Rule certified stores being rejected from debit card programs and a significant loss in revenue.

As the benefit year is quickly closing, we respectfully request that the Department of Treasury actively work with SIGIS, the card processors, and employer sponsors to ensure that community pharmacists certified under the 90% Rule are reinstated into the FSA debit card program with the same rights and benefits as stores using the inventory information approval system.

### **Doing Our Part**

We are working with POS vendors to develop an affordable option to bring our remaining members online with the inventory information approval system to help streamline the process. There are several vendors developing less expensive technology that could be online in 2010.

### **Personal Responsibility**

In addition to the controls being implemented at the retail level it is also important to highlight requirements placed on the user of the FSA debit cards.

Specifically, each participating employee certifies upon enrollment and for each plan year thereafter that the card will only be used for eligible medical care expenses of the employee, the employee's spouse and dependents. In addition, this certification is printed on the back of the card and the employee-cardholder understands the certification is reaffirmed each time the card is used.