

## **IRS Notice 2011-5, Regarding use of Health FSA or HRA Debit Cards**

Pursuant to the PPACA, effective January 1, 2011, the cost of over-the-counter (“OTC”) medicine or drugs is not reimbursable from a health FSA or HRA unless purchased pursuant to a prescription. (NOTE: This requirement does not apply to insulin.) In Notice 2010-59, the IRS indicated that health FSA or HRA debit cards could not be used to purchase OTC drugs after January 15, 2011. On December 23, 2010, the Internal Revenue Service issued new guidance (IRS Notice 2011-5) allowing the continued use of health FSA or HRA debit cards for the purchase of prescribed OTC medicines and drugs subject to certain requirements.

Under Notice 2011-5, drug stores and pharmacies, non-health care merchants that have pharmacies (i.e., Wal-Mart) and mail order and Web-based vendors that sell prescription drugs may accept health FSA or HRA debit cards if the following requirements are met:

- Before the purchase, the FSA/HRA participant provides a prescription, the pharmacist provides the OTC drug and assigns an Rx number;
- The pharmacy or other vendor retains a record of the Rx number, the name of the patient/purchaser and the date and amount of purchase;
- The pharmacy can make the record available to an employer upon request;
- The card will not work without an assigned Rx number
- All other usual requirements are followed.

A card can also be used at other vendors with a health care-related Merchant Category Code, if all requirements except those related to an Rx number are followed (because no pharmacy is involved). The stricter Notice 2010-59 substantiation requirements will still apply to “90% pharmacies,” or pharmacies that get 90% of gross receipts from the sale of items that the IRS classifies as medical items.

The IRS notes that the new rules apply only to purchases made on or after Jan. 1, 2011. The rules do not apply to purchases made in 2010, even if the purchases will be reimbursed after Dec. 31, 2010. The same Internal Revenue Code Section 106(f) OTC drug reimbursement restrictions that apply to FSA and HRA holders will apply to health savings account (HSA) holders, but Notice 2011-5 and Notice 2010-59 do not directly apply to HSA holders, because HSA holders do not have to provide HSA purchase substantiation to employers, plan administrators or insurers. However, HSA holders may be asked to document how they have used HSA funds if they are audited.

MedQuest Pharmacy is currently registered as a 90% pharmacy. As such, you may continue to purchase OTC products from MedQuest; however, to be compliant, a prescription is required if payment will be made using FSA/HSA funds. If you have questions or concerns, we recommend you contact your employer’s benefits provider for additional clarification of this rule change for 2011. As new information is available we will continue to pass along.

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