

## Updated IRS Guidance on the Use of Debit Cards for OTC Medicines

Notice 2011-5 modifies the prior IRS guidance and permits participants to use their health FSA debit cards to pay for OTC medicines and drugs on and after January 16, 2011, but only in accordance with the following restrictions, which are based on the type of entity selling the medicine or drug.

**When the OTC medicine or drug order is sold by a drug store, pharmacy, non-healthcare merchant with a pharmacy, mail-order vendor, or web-based vendor,** all of the following conditions must be satisfied:

- The prescription must be presented to the pharmacist at or before the time of purchase,
- The OTC medicine or drug must be dispensed by a pharmacist under applicable law;
- A prescription number must be assigned;
- The pharmacy or other entity must retain records of the prescription number, purchaser, amount, and date of sale;
- The pharmacy or other entity must make these records available to the employer on request;
- The debit card system must be designed so that it will not accept a charge for OTC medicines or drugs unless a prescription number is assigned; and
- Other existing rules for the use of debit cards are satisfied.

**When the OTC medicine or drug order is sold by a vendor that uses health-related Merchant Codes,** all of the following conditions must be satisfied:

- The vendor must retain records of the purchaser, amount, and date of sale;
- The vendor must make these records available to the employer on request; and
- Other existing rules for the use of debit cards are satisfied.

**When the OTC medicine or drug order is sold by a "90% pharmacy,"** the following condition must be satisfied:

- Substantiation (including a copy of the prescription or other documentation that a prescription has been issued) must be properly submitted in accordance with the terms of the plan with other information from an independent third party that satisfies the requirements of the proposed cafeteria plan regulations.

*Note: A pharmacy is a "90% pharmacy" if (i) it maintains no inventory information approval system, and (ii) 90% of the store's gross receipts in its prior taxable year met the definition of medical care expenses under section 213(d) of the Internal Revenue Code.*

**When the OTC medicine or drug order is filled by a vendor that is not described above:**

- The vendor may not accept FSA debit cards to pay for OTC medicines and drugs after January 15, 2011.