

IRS RELEASES NEW GUIDANCE FOR DEBIT CARDS AND OTHER SUBSTANTIATION METHODS

Guidance to be published July 31

The IRS recently announced new guidance for the use of debit cards, credit cards, and stored value cards by participants in self-insured medical reimbursement plans, including Flexible Spending Accounts (“FSAs”) and Health Savings Accounts (“HSAs”). The guidance will be formally published on July 31.

The new guidance expands on the 2003 guidance by providing additional substantiation methods for Health FSAs and HRAs that utilize electronic payment cards. It also addresses certain general substantiation issues that apply to all plans, whether or not cards are used. For flex plans with card reimbursement options that have been administering the plan in a conservative manner consistent with existing IRS guidance, very few changes will be needed.

When does the new guidance take effect?

Although the proposed regulations will not formally take effect until the published date of July 31, the IRS has stated that plan sponsors and administrators may follow the guidance immediately. There is a delayed effective date (applicable to plan years after 12/31/06) for the more restrictive recordkeeping aspects of the merchant-based adjudication elements of the guidance (*see below*).

What are the primary elements of the new guidance?

The major features of the new guidance include the following:

- (1) Multiples of copays may be auto adjudicated. The guidance allows automatic adjudication for card transactions involving multiples of copays (up to a maximum of 5x the designated copay amount) at service providers or merchants with health care-related merchant category codes;

- (2) Allows for inventory based product adjudication by merchants under certain circumstances. The guidance provides a method under which cards can be used to purchase qualifying OTC drugs and prescriptions with automatic substantiation (at merchants with or without health care-related merchant category codes), as long as systems are in place to ensure that only eligible medical care expenses are used, and as long as the employer (or TPA) has access to the transaction-level detail and documentation for recordkeeping purposes. This element of the guidance which has a delayed effective and is applicable to plan years beginning after 12/31/06;
- (3) Auto adjudication based on EOBs is acceptable;
- (4) Self-substantiation by participants is NOT an acceptable substantiation method. In the guidance, the IRS gave notice of harsh penalties for plans that reimburse based on self-certification without appropriate documentation;
- (5) Allows for use of electronic cards for Dependent Care FSA plans. The guidance allows for auto-adjudication of recurring dependent care transactions including a previously-used provider and service period, so long as the adjudication is made after an expense is incurred and does not exceed the amount previously substantiated.

à For a full copy of the new debit card guidance, visit www.irs.gov/pub/irs-drop/n-06-69.pdf.

How is ProBenefits handling implementation of the new guidance for its debit card clients?

As a third-party administrator focused on compliance issues, ProBenefits has closely monitored these issues, and the recent guidance was fully anticipated and expected. ProBenefits is currently working with the provider of MyResourceCard to implement the final administrative details of the new card guidance, and these changes should be fully effective by 1/1/07.

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