

Will you be able to continue taking Flexible Spending Account (FSA) cards in 2009?

By Brad G. Jones

Retail Management Solutions

The following article builds upon last month's column entitled "The IRS Ruling on FSAs: Will You Be Ready?" by Marsha Millonig and covers additional details and questions. If you have not read Marsha's article, you should do so as I will not repeat much of the background information provided in that column.

As many of you know, beginning January 1, 2009, IRS regulations require merchants who wish to accept Flexible Spending Account (FSA) or Health Reimbursement Arrangement (HRA) cards to process those cards through an Inventory Information Approval System (IIAS). The only exception to this requirement is if 90 percent or more of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care (this includes prescriptions and qualified nonprescription medications). Merchants who do not certify with their credit card processor as having an IIAS compliant POS system or the 90% exemption, will no longer be able to accept these cards after January 1, 2009 – the cards will simply come back declined.

How do I know if I take FSA cards? Do I really need to take them?

Statistically, there is a high likelihood that you currently accept FSA cards. However, there is no way for you to tell the difference between an FSA card and any other VISA or MasterCard logoed credit/debit card. Your POS system and credit card processor know the difference based upon the BIN range of the credit card itself. Consequently, you are almost certainly accepting these cards without even realizing it.

Additionally, one thing is certain; the use of these pre-tax benefit cards is becoming wide spread. MasterCard projects FSA and HSA cards will contain over \$150 Billion in charging value within the next two years! If you can't accept these cards, you can be certain any customer possessing one will be forced to shop elsewhere. This isn't simply about having your reimbursement reduced – this is about losing the customer completely.

Should I apply for the 90% exemption and how do I do so?

If you don't have a POS system today, your first step should be to determine if you qualify for the 90% exemption (NCPA statistics show 70% of independent pharmacies qualify), and if so, apply as soon as possible. However, there is not currently a process in place to handle the exemption rule and many details remain unknown. When the IRS wrote the 90% exemption into the rule it is obvious they were considering the burden on the independent retailer, however, they did not provide any details on how this would work as a practical matter.

Shortly after the original IRS rule, a consortium of chains, mass merchandisers, credit card processors, and financial institutions got together to create processes to meet the IRS requirements. From this, the Special Interest Group for IIAS Standards (SIGIS) was born. Unfortunately, the founding membership did not include any representation from the independent pharmacy world. As a result, SIGIS never addressed the 90% rule and the process needed to deal with it. Recently, SIGIS has asked the IRS for clarification; NCPA has discussed the situation with the IRS as well. According to individuals responsible for the IIAS certification process at First Data (a SIGIS founding member and the largest credit card processor in the United States), the IRS stated it will give further clarification in August or September. However, NCPA met with the IRS on July 2nd and was told the market needed to create the process. Consequently, NCPA is currently working with the necessary parties to create a simple and efficient process for pharmacies qualifying for the exemption. Once the process is in place, those of you who qualify should complete the paperwork as quickly as possible to avoid an interruption in service.

Another remaining unanswered question with regard to the exemption process is whether or not exempt pharmacies will be placed on the SIGIS list. This appears to be an important step in ensuring health benefits

administrators don't unknowingly discriminate against independent pharmacies that qualify for the IRS exemption. This is also being addressed by NCPA in their discussions with SIGIS and the IRS.

Does the IRS require me to join SIGIS?

Technically no and in fact, the IRS does not even officially recognize SIGIS. However, you will need to join for two practical reasons. First, many health benefits administrators tell their employees they can only shop at businesses listed on the SIGIS Certified Merchant List and only SIGIS members can be placed on the list. So if you aren't on the list, customers may simply stop coming to your store. Second, SIGIS is currently the only place you can get the Eligible Products List required by IRS regulations. The IRS does not specify where the list is to come from, but SIGIS contracted with the Hamacher Resource Group to create the list and keep it updated on a monthly basis. Unfortunately, members of SIGIS are not allowed to share the list, so POS vendors and drug wholesalers are not allowed to purchase the list and share it with their customers.

An additional concern is the list itself. Currently the list does not contain private label products from any of the drug wholesalers. All three of the major drug wholesalers say they are currently working to get their private label products on the list. Those of you purchasing from a regional wholesaler or those of you with your own private label products should immediately discuss this situation with your vendor. This is time critical as the group that approves additions to the list only meets monthly so if you get started today it will probably take at least 2-3 months to get your products on the list.

If you have or will have an IIAS compliant POS system now or in the near future, you should join SIGIS immediately. SIGIS is run by a consulting firm hired by the consortium and has very limited staffing. When we joined, it took over two months and repeated phone calls and emails. According to one of the people I spoke with, there are only three employees staffing SIGIS. Based on my experience and discussions with SIGIS staff members, if you wait to apply for membership, you may find yourself stuck in a major backlog of applicants resulting in you missing the December 31st deadline. If you join SIGIS now you will get placed on the merchant list with a status of "Pending Certification." You will still need to complete the certification process, but that process is handled by completing a 21-page self assessment questionnaire and certifying with your credit card processor. Once the processor certifies you, they pass the information on to SIGIS and you are added to the "Certified" list.

If you qualify for the 90% exemption, the question as to whether or not you will need join SIGIS remains unanswered. I believe you will need to do so to get on the list of certified merchants, but it depends on the final clarification from the IRS.

How do I certify with my credit card processor?

The first question is whether or not your credit card processor itself is or will be IIAS compliant and able to process FSA cards after December 31st. Just like merchants, credit card processors have to make changes to continue processing FSA cards. Many processors have decided against making the required changes at the processor or gateway level. If the processors focus is the hospitality market, they may not choose to become compliant. However, even if the processor is heavily ingrained in the pharmacy market, they may not choose to make one or more of their gateways compliant. The first step for you is to ask your POS system vendor if your processor is compliant. Some of you may be forced to change processors or gateways due to non-compliance. If your POS vendor is or will be compliant before year end, they will have a relationship with one or more compliant processors and/or gateways.

Once you're aligned with a compliant processor, you will need to contact them to initiate the certification process. Once again, your first source of information will be your POS vendor. However, if you are using or trying to use a processor other than one with an ongoing relationship with your POS vendor, you may have to go directly to your processor for this kind of information. The bottom line is that if your processor is a SIGIS member then you can download a 21-page self assessment questionnaire from the SIGIS website http://www.sig-is.org/en/join/membership_signupform.asp#certification_program and complete the process with your credit card

processor. Certification processes and timeframes may vary by processor. If your credit card processor is not a member of SIGIS, you will need to deal directly with them for more information. Once again, get started today.

Unfortunately, POS vendors are not allowed to certify on behalf of their merchants. Your POS vendor may develop a streamlined process to make certification easier, but in the end you as the merchant are responsible to certify prior to the deadline. The sooner you get started the better.

The Bottom Line

If you don't qualify for the 90% exemption, then you need an IIAS compliant system before January 1, 2009 or you will lose those customers wishing to use their FSA cards in your store. If you wait until the last minute to act, you may be stuck in a massive backlog at SIGIS. If you wait until the last minute to purchase a POS system, you will be stuck in a backlog of customers waiting for installation of their systems. No matter whose numbers you use, there is not enough capacity in the marketplace to install a POS system into every store that needs one before year end – So don't wait! If you want to continue taking FSA cards in 2009, act today!