November 13, 2009

The Honorable Esther H. Vassar
National Ombudsman
Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Subject: Community Pharmacies and Consumers Negatively Impacted by IRS Enforcement of FSA Debit Card Program

Dear Ms. Vassar:

On behalf of the National Community Pharmacists Association (NCPA), I am writing to bring your attention to an IRS policy that is unfairly impacting independent community pharmacies. Specifically, IRS guidance regarding “90 Percent Rule” Pharmacies has resulted in employers and third party administrators steering customers away from small business to large chain stores—putting independent community pharmacies at an unfair disadvantage.

We applaud the IRS for creating the “90 Percent Rule” exemption to the requirement that IIAS (Inventory Information Approval System) systems be used by pharmacies to substantiate purchases made with an FSA card, but unfortunately the practical application of the rule has not leveled the playing field as IRS sought to achieve when they issued the guidance. Instead, FSA debit card holders are going to community pharmacies looking to spend their remaining pre-tax dollars before they lose them altogether and are being turned away or redirected to larger chains by plan sponsors and third party administrators. Time is of the essence as we head toward the end of the benefit year, and we are seeking your assistance in working with Treasury to address this critical issue.

If certified “90 Percent Rule” Pharmacies continue to be disadvantaged in the implementation of the FSA debit card program, the impact on these small businesses will be devastating. Because the IRS and the Department of Treasury have the ability to fix the problem, I ask that you help us ask Administration officials for swift action.

Specifically, we ask you to request the IRS to state publicly the following, which we believe are consistent with the intent and purpose of the “90 Percent Rule”:

1) Purchases from “90 Percent Rule” Pharmacies shall be considered substantiated in the same way IIAS-compliant purchases are substantiated, which means that all purchases are automatically substantiated and no further documentation is required.

2) If an IRS audit were to occur, electronic records tracing the merchant code back to “90 Percent Rule” Pharmacies registered with SIGIS are sufficient to meet the burden of proof and show that the purchases are completely substantiated.
The IRS chose 90 percent of prior year gross receipts having been from the sale of items which qualify as expenses for medical care because they felt comfortable that the ability of cardholders to purchase non-qualified products was very limited. “90 Percent Rule” Pharmacies, by definition, drastically lower any risk of a FSA debit card being used to purchase non-qualified items—preventing fraud and abuse in the system. Additionally, each time a cardholder uses their FSA debit card they are reaffirming that the purchases are for qualified medical expenses. These two systemic safeguards should be sufficient to ensure the integrity of the program.

Thank you for your timely response to our request, and we appreciate your interest in this issue.

Sincerely,

Bruce Roberts, R.Ph.
Executive Vice President & CEO