FSA programs allow expenses to be paid with pretax dollars. Consequently, these plans are strictly regulated by the IRS and the IRS sets the substantiation rules. Failure of the plan administrator to strictly comply with these rules can lead to adverse tax consequences for the member. The GIC charge our vendor with fully complying with the IRS rules to protect our members and the plan. We are confident that ASIFlex is complying with the letter of the law and not asking for documentation that is in excess of the IRS rules.

**A brief summary of the IRS requirements follows:**

**Debit and credit card reimbursements**

Consistent with current FSA rules, all debit and credit card claims reimbursements, without exception, must be substantiated. This substantiation rule for debit or credit card funding is met when the following requirements are met:

* *Copayment* — the dollar amount of the charge from the health care provider is the same as the dollar amount of the copayment for that service under the employee's health plan (for example, a $15 charge at a physician's office where there is a $15 copay required for such visits).
* *Recurring expenses* — the employee charges an expense that matches the amount of a previously approved expense as well as the provider and time period (for example, an employee who refills a prescription on a regular basis using the same pharmacy).
* *Real-time substantiation* — the merchant, service provider or other independent third party at the time and point of sale provides information to the employer verifying that the charge is for an eligible medical expense (for example, the physician's office is prompted to enter a code for the type of treatment when charges in excess of the copayment amount are authorized).

Items purchased for medical use from non-health-care providers, such as general merchants, may be reimbursed electronically by comparing the inventory control information for the items purchased against those that qualify as Section 213 medical care expenses. (This happens automatically in most cases.)

**All other charges**

The employer (ASIFlex) must require that all other charges be treated as conditional, pending confirmation of the charge. Additional information must be submitted for review and substantiation of these charges, describing the service or product, the date of the service or sale and the amount of the charge.

**Claims not charged**

The employer may allow employees to submit claims for reimbursement under their FSAs without the use of the credit or debit card if the employee submits either an Explanation of Benefits received from a health insurance provider or a receipt from a merchant or service provider showing that the employee is responsible for eligible medical expenses. The employer may either pay the merchant or service provider directly or, when the employee supplies documentation that he or she has paid the charge, may reimburse the employee.

**Inadequate substantiation methods**

The IRS also has said that two substantiation methods are specifically disallowed because they are inadequate to meet the claim substantiation requirement under Sections 125 and 105:

1. “sampling” methods, through which an employer reviews a certain percentage of claims based upon amount or provider type, are not sufficient because the tax code requires that each reimbursed claim be substantiated; and
2. amount-based methods, which do not meet the substantiation requirement when claims under a certain dollar amount or for a multiple of a specified whole-dollar amount are not reviewed under the assumption that all such amounts are copayments.

An FSA participant's self-substantiation or self-certification is never adequate substantiation.

**Auto substantiation**

Automatic substantiation of health FSA claims is permissible, the IRS said in guidance that it issued in 2003, and has since revisited. This guidance includes:

* Rev. Rul. 2003-43, which allows automatic substantiation for matching copayments and recurring expenses;
* Notice 2006-69, which expanded auto substantion to include copayment multiples and the inventory information approval system;
* Notice 2007-2, which provided an additional year to develop the IIAS and introduced the “90-percent Rule,” which is an exception to the IIAS requirements that are available to drug stores and pharmacies whose gross receipts for the most recently ended tax year are 90 percent or more from eligible medical expenses as defined by Code Section 213(d); and
* Notice 2008-104, which says that transactions at drug stores and pharmacies to which the 90-percent Rule applies can be auto-substantiated without a receipt or conditionally approved before a receipt is provided.

Medical expenses may be auto-substantiated if incurred at physician, dentist and, vision care offices; hospitals; other qualified medical care providers; and at stores with the merchant category code assigned to drug stores and pharmacies and to which the 90-percent Rule applies.