



December 22, 2010

The Honorable Timothy F. Geithner  
Secretary  
U.S. Department of the Treasury  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Room 5203  
Washington, DC 20044

Re: PA: LPD:PR request for comment on Internal Revenue Service (IRS) Notice 2010-59, health debit card system for over-the-counter (OTC) drugs the Patient Protection and Affordable Care Act (Affordable Care Act)

Dear Secretary Geithner:

The National Business Group on Health respectfully submits the following recommendations in response to the IRS' request for comments on the use of health debit cards for OTC medicines under IRS guidelines notice 2010-59 on the Patient Protection and Affordable Care Act. We recommend that the IRS permit the use of flexible spending account (FSA) and health reimbursement account (HRA) debit cards for all qualified medical expenses, and not ban their use for qualified OTC medicine expenses, i.e., those with prescriptions.

The National Business Group on Health represents approximately 310, primarily large, employers (including 64 of the Fortune 100) who voluntarily provide health benefits and other health programs to over 50 million American employees, retirees, and their families.

FSA and HRA health accounts help people purchase required health services and supplies on a tax-favored basis. The debit cards connected to these accounts increase the convenience and reduce the hassle for people because they eliminate the need to pay in advance and then subsequently seek and wait for reimbursement. The majority of people use debit cards for qualified health services, medicines, drugs, and supplies at medical offices, hospitals, pharmacies and other retailers. IRS Notice 2010-59 proposes to restrict the use of debit cards for OTC medicines purchased at most retailers after January 15, 2011. This change will reduce the convenience associated with the use of health accounts. Moreover, it creates a situation of inequitable treatment of OTC medicines compared to other medical expenses. Since OTC medicines are often less expensive for patients and we need to control health care costs, this requirement would work exactly against the goals of the Affordable Care Act. In addition, employers had been encouraging employees, where clinically appropriate, to move to OTC drugs because they were generally less expensive, so now employees will be further inconvenienced. While people can still use debit cards at the point of sale for other

health care expenses, including those requiring substantiation after the sale, they will no longer be able to do so for OTC medicines even if they have prescriptions to substantiate the expenses. The proposed rule would now require people to pay up front with after tax dollars and seek reimbursement for OTC medicines after they purchase them. We recommend that the IRS reconsider its proposal and continue to allow people to use debit cards for OTC medicines as long as they substantiate the expenses with appropriate documentation.

Technology is advancing to the point where we can reasonably assume that payment systems will soon be able to verify and substantiate prescriptions for OTC medicines at the point of sale. Until that time, as a fall back, we recommend that the IRS permit a grace period of 2 years to continue to allow people to use debit cards with substantiation afterwards to enable all retailers time to establish point-of-sale validation systems.

Thank you for considering our comments and recommendations on IRS guidelines 2010-59 under the Affordable Care Act. We look forward to continuing to work with you as you implement the various provisions of the new law. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in cursive script that reads "Helen Darling".

Helen Darling  
President