

COVID-19, Publications

Direct Primary Care Arrangements and Health Care Sharing Ministries Receive Favorable Tax Treatment Under Proposed Regulations

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Amin

kamin@groom.com

202-861-2604

Lisa Campbell

lcampbell@groom.com

202-861-6612

Christine Keller

ckeller@groom.com

202-861-9371

PUBLISHED

06/16/2020

SOURCE

Benefits Brief

SERVICES

Employers & Sponsors

Health & Welfare Programs

On Monday, June 8, 2020, the Treasury Department (“Treasury”) and the Internal Revenue Service (“IRS”) released Proposed Regulations addressing the tax treatment of amounts paid for two unique types of medical arrangements – Direct Primary Care (“DPC”) arrangements and Health Care Sharing Ministries (“HCSMs”) – as well as for certain government health plans. The Proposed Regulations were issued in response to the June 2019 Executive Order 13877, “Improving Price and Quality Transparency in American Healthcare to Put Patients First,” which directed Treasury to propose regulations to treat expenses related to certain types of arrangements, including DPC arrangements and HCSMs, as eligible medical care under Internal Revenue Code (“Code”) Section 213(d).

Subject to certain conditions, the Proposed Regulations generally treat payments for both DPC arrangements and HCSMs as tax-favored “medical care” under Code Section 213(d), either as a payment for medical care or as medical insurance. The Proposed Regulations also clarify that amounts paid for health maintenance organizations (“HMOs”) and certain government-sponsored health care programs are amounts paid for medical insurance under Code section 213(d).

Comments on the Proposed Regulations are due by August 10, 2020. Treasury and IRS “strongly encourage” stakeholders to submit comments electronically, due to COVID-19 related concerns with processing paper comments.

Background

Code Section 213(a) allows individuals to take a deduction for expenses for medical care to the extent the expenses exceed a certain percentage of adjusted gross income (generally, 7.5% for 2020 and 10% for taxable years beginning on or after January 1, 2021). Expenses for “medical care” are broadly defined in Code Section 213(d) as amounts paid “for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.” Medical care includes insurance covering medical care.

The definition of medical care under Code Section 213(d) is cross referenced in numerous other sections of the Code and in Treasury guidance. For example, employees may use funds in health flexible spending arrangements (“health FSAs”), Health Reimbursement Arrangements (“HRAs”), and Health Savings Accounts (“HSAs”) to reimburse medical care as defined in Code Section 213(d) (note, however, that FSAs and HSAs may generally not reimburse health insurance premiums).

Proposed Regulations

Direct Primary Care Arrangements

A. In General

The Proposed Regulations provide that amounts paid for certain DPC arrangements are considered to be paid for medical care under Code Section 213(d). The Proposed Regulations define a DPC arrangement as a “contract between an individual and one or more primary care physicians under which the physician or physicians agree to provide medical care (as defined in section 213(d)(1)(A)) for a fixed annual or periodic fee without billing a third party.” The Proposed Regulations define a primary care physician as an individual who is a physician (as defined by the Social Security Act) who has a primary specialty designation of family medicine, internal medicine, geriatric medicine, or pediatric medicine.