IRS Addresses Direct Primary Care and Health Care Sharing Ministries

Payments for Direct Primary Care and Health Care Sharing Ministries can be Qualified Medical Expenses

On June 8, 2020, the Internal Revenue Service (IRS) issued proposed regulations addressing when amounts paid for direct primary care arrangements and health care sharing ministry expenses are "qualified medical expenses" under Internal Revenue Code (the "Code") Section 213(d). A 2019 Presidential Executive Order directed the Treasury Department to "propose regulations to treat expenses related to certain types of arrangements, potentially including direct primary care arrangements and health care sharing ministries, as eligible medical expenses under [Code] Section 213(d)."[1]

When, Exactly?

For now, the proposed regulations operate as a safe harbor. Final regulations will ultimately specify an effective date applicable to tax years that end on or after their publication date. We believe this is unlikely to occur before spring 2021 at the earliest.

What are these?

The proposed regulations define direct primary care arrangements and health care sharing ministries for qualified medical expense purposes.

Direct Primary Care (DPC) Arrangements

A DPC arrangement is "a contract between an individual and one or more primary care physicians under which the physician or physicians agree to provide medical care…for a fixed annual or periodic fee without billing a third party." A "primary care physician" is a legally authorized doctor of medicine or osteopathy who has a primary specialty designation of family medicine, internal medicine, geriatric medicine, or pediatric medicine.

The IRS requested comments about whether DPCs should include arrangements with other medical specialists such as nurse practitioners, clinical nurse specialists, and/or physician assistants who provide primary care services.

Health Care Sharing Ministries (HCSM)

An HCSM that satisfies all of the following criteria will be considered medical insurance for Code Section 213(d) purposes:

[1] June 2019 Executive Order

1. It is a Code Section 501(c)(3) tax exempt entity.
2. The members share a common set of ethical or religious beliefs and share medical expenses without regard to the State in which a member lives or works.
3. A member cannot lose membership due to a medical condition.
4. The HCSM (or its predecessor) has existed at all times since December 31, 1999, sharing member medical expenses continuously and without interruption.
5. An independent certified public accounting firm annually audits the HCSM in accordance with generally accepted accounting principles, and the audit is available to the public upon request.

Why Does this Matter?

Code Section 213 allows taxpayers to claim an itemized deduction for medical care expenses if the expenses exceed a certain percentage of adjusted gross income.[2] Eligible "medical care" expenses include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease…" or for insurance covering the same.

Currently, payments made for coverage under DPC arrangements and HCSM are not Code Section 213 eligible medical care expenses. Under the proposed rules, direct primary care arrangements would qualify as either medical care or insurance for medical care; health care sharing ministries would qualify as insurance. This will be welcome relief to many taxpayers who rely on these arrangements.

Spending Accounts

A health reimbursement arrangement (HRA) generally reimburses allowable expenses under Code Section 213 medical care. Under the proposed regulations, an HRA may reimburse direct primary care arrangement fees and health care sharing ministry memberships, should the employer choose to structure the HRA that way.

The IRS did not go so far as to issue blanket protection for health savings account (HSA) eligibility. HSA-eligible individuals must have qualifying High Deductible Health Plan (HDHP) coverage and no disqualifying coverage, which is generally other health coverage that provides benefits before an individual satisfies the minimum annual statutory HDHP deductible.[3]

Although HCSM membership fees can be qualified medical expenses, the HCSM coverage itself is disqualifying other coverage that affects HSA eligibility. Similarly, participation in a DPC arrangement will usually be disqualifying other coverage affecting HSA eligibility.

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[2] The threshold is 7.5% of adjusted gross income for 2020 and 10% for 2021.
[3] There are exceptions for preventive services, disease management, and wellness services.

Note: The IRS indicated that a DPC is a group health plan if the employer pays for some or all of the DPC membership fees for its employees. We agree and believe other employer actions could lead to this result such as including a description of the DPC as a benefit in employer-branded materials.

In the limited situation where the DPC arrangement only provides treatment for a particular condition or preventive care, a DPC member may still be eligible to contribute to an HSA. This exception does not apply if the DPC is considered an employer-sponsored group health plan.

About the Author

***Andie Schieler, J.D., CEBS** is a Compliance Consultant in the Employee Health & Benefits Compliance Center of Excellence for Marsh & McLennan Agency.*