MY BENEFIT ADVISOR

IRS Issues Proposed Rule Expanding Medical Expenses

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Under a proposed rule issued by the Internal Revenue Service ("IRS"), certain direct primary care fees and health care sharing ministries membership expenses may be considered eligible medical expenses under Code Section 213(d).

The rule is in proposed format and would not take effect until taxable years beginning on or after the date final regulations are published. Taxpayers may not rely upon the proposed rule.

Briefly, the proposed rule (if finalized):

- would recognize direct primary care fees and health care sharing ministry membership expenses as expenses for medical care under IRC section 213(d); and
- permit for reimbursement of applicable fees and membership expenses through certain employer-sponsored health reimbursement arrangements ("HRAs").

The proposed rule acknowledges there may be an impact on eligibility to contribute to a Health Savings Account ("HSA") when an individual (a) has coverage in a direct primary care arrangement that provides medical items and services before satisfaction of the minimum required deductible, or (b) is a member of a health care sharing ministry.

The proposed rule describes how these fees and membership expenses may be treated in an HRA sponsored by an employer. However, it does not address whether they would be reimbursable through a health flexible spending account ("Health FSA"). Under existing rules, to the extent the fees or membership expenses are viewed as insurance premiums, they would not be eligible Health FSA expenses. Further clarification on this point would be helpful.

As described below, the IRS is requesting comments on various aspects of the proposed rule.

Direct Primary Care Arrangements

Under the proposed rule, a direct primary care 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.

For this purpose, a "primary care physician" is an individual who is a physician who has a primary specialty designation of family medicine, internal medicine, geriatric medicine, or pediatric medicine.

The IRS seeks comments on various issues, including whether:

- to expand the definition of direct primary care arrangement to include contracts between an individual and nurse practitioner, clinical nurse specialist or physician's assistant providing primary care services; and
- clarification is needed as to arrangements that would not fall within the definition of direct primary care under the proposed rule (for example, a contract between a dentist and patient to provide dental care would not be direct primary care under this definition).

Health Care Sharing Ministries

Briefly, membership in a health care sharing ministry entitles members to share their medical bills through the ministry and potentially receive payments from other members to help with their medical bills.

Under the proposed rule, amounts paid for membership in a health care sharing ministry that shares expenses for medical care may be payments for medical insurance under section 213(d)(1)(D). They are not payments for medical care.

As defined by the proposed rule, a health care sharing ministry is an organization:

- which is described in section 501(c)(3) and is exempt from taxation under section 501(a);
- members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the state in which a member resides or is employed;
- members of which retain membership even after they develop a medical condition;
- which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
- which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

The IRS requests comments on the definition of a health care sharing ministry.

How Could these Fees be Reimbursed Through an HRA?

Under the proposed rule an HRA, including an HRA integrated with traditional group health plan coverage, an individual coverage HRA (ICHRA), a qualified small employer HRA (QSEHRA) or an excepted benefit HRA, may be designed to:

- reimburse expenses for medical care including reimbursements for direct primary care arrangement fees; and/or.
- reimburse for a membership in a health care sharing ministry.

Issues for Employers Sponsoring High Deductible Health Plans with HSAs

The proposed rule highlights that in many instances, a direct primary care arrangement would constitute a health plan or insurance that provides coverage before satisfaction of the minimum deductible is met and provides coverage that is not limited to preventive care. Therefore, an individual generally may not be eligible to contribute to an HSA when covered by a direct primary care arrangement. There may be limited circumstances where the direct primary care arrangements will not be disqualifying (e.g., only provides preventive care).

In addition, because a health care sharing ministry is considered medical insurance that is not permitted insurance, membership in the health care sharing ministry would make an individual ineligible for purposes of contributing to an HSA.

Employer Action

The rules are in proposed format and will not take effect until a final rule is issued. For now, employers should await release of final regulations and review for any changes from the proposed regulations. Employers may begin considering whether, once final regulations are issued, to permit reimbursement of these fees or membership expenses through HRAs.

While not specifically addressed in the IRS guidance, there are ERISA issues that arise if employers are contributing, through HRA dollars, toward direct primary care services or health care sharing ministries and whether funding such contributions create an ERISA covered plan. Further guidance from the Department of Labor would be helpful to address this issue.