



August 10, 2020

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

RE: REG-109755-19 (RIN: 1545-BP31)

Dear Commissioner Rettig:

On behalf of the American Academy of Family Physicians (AAFP), which represents 136,700 family physicians and medical students across the country, I write in response to the [proposed rule](#) titled, “Certain Medical Care Arrangements” related to section 213 of the Internal Revenue Code regarding the treatment of amounts paid for certain medical care arrangements including direct primary care arrangements, as published by the Internal Revenue Service (IRS) in the June 10, 2020 *Federal Register*.

The IRS proposed rule would treat expenses related to direct primary care (DPC) arrangements as eligible medical expenses under section 213(d) of the Internal Revenue Code, 26 USC (IRC) pursuant to Executive Order 13877 “Improving Price and Quality Transparency to Put Patients First”.

The AAFP strongly supports the advancement of policies that would create greater utilization of comprehensive, coordinated and continuous primary care, and DPC is one model of care that can achieve that goal. One of the approaches supported by the AAFP is the direct primary care (DPC) model. The AAFP has been a strong supporter of the DPC model for more than a decade and views it as a practice model that is consistent with our goals of expanding access to primary care for all Americans. DPC and other direct care models are increasing in popularity among our members and a growing number of family physicians are expressing an interest in the DPC model.

However, there are identified barriers that may prevent some patients from realizing the full potential of the DPC model. One of those barriers is the prohibition on the permissible use of health savings accounts (HSAs) funds to pay for participation in a DPC practice. Under previous interpretation of the Internal Revenue Code, patients with HSAs are prohibited from engaging in DPC arrangements with a family physician or other primary-care physician.

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,

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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 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.

The AAFP encourages the Treasury Department to adopt the same definition of a direct primary care arrangement that is used in over [30 state laws and regulations](#). This is consistent with **Section. 1301 (a) (3) of the Affordable Care Act** (PL-111-148) by the U.S. Department of Health and Human Services (HHS) says that DPC practices are “**providers, not insurance companies.**” Treatment of Direct Primary Care Medical Homes, 77 Fed. Reg. 18423 (Mar. 27, 2012) states that a DPC arrangement is “an arrangement where a fee is paid by an individual, or on behalf of an individual, directly to a medical home for primary care services, **consistent with the program established in Washington.**” (WA 48.150 RCW).

The rule also requests comments on whether to “expand the definition of a direct primary care arrangement to include a contract between an individual and a nurse practitioner, clinical nurse specialist, or physician assistant or other non-physician practitioners.” We would ask that the rule not address these as issues, which are already the subject of many state and federal laws in addition to primary care services as defined in section 1833(x)(2)(B) of the Social Security Act.

While the AAFP supports treating DPC arrangements as eligible medical expenses, the HSA eligibility rules under Section 223(c) of the Internal Revenue Code are a more significant barrier for patients enrolled in high-deductible health plans to access DPC. We urge the IRS to work with Congress to enact legislation, such as the *Primary Care Enhancement Act of 2019* ([H.R. 3708/S.2999](#)) to allow the use of HSA funds to pay for participation in DPC arrangement. This change is critical for ensuring that high-deductible health plan participants can receive care from family physicians practicing in a DPC model.

A growing number of family physicians are choosing to practice in the DPC model and patient demand for DPC practices is growing. Additionally, employers and labor unions are driving growth in the model, further necessitating changes in law that allow patients and physicians to benefit from this emerging primary care delivery model.

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We appreciate the opportunity to comment. Please contact Erica Cischke, Senior Manager, Legislative and Regulatory Affairs at [ecischke@aafp.org](mailto:ecischke@aafp.org) with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "John S. Cullen". The signature is fluid and cursive, with a long horizontal stroke at the end.

John S. Cullen, MD, FAAFP  
Board Chair