

August 7, 2020

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

Re: Internal Revenue Service (IRS), Certain Medical Care Arrangements, REG–109755–19

Dear Commissioner Rettig:

On behalf of the American Dental Association (ADA) and our more than 163,000 members nationwide, we appreciate the opportunity to comment on the proposed rule for Certain Medical Care Arrangements. Specifically, the ADA's comments focus on the definition of a "direct primary care arrangement".

As stated in the proposed rule:

"...the Treasury Department and the IRS understand that other types of medical arrangements between health practitioners and individuals exist that do not fall within the definition of direct primary care. For example, an agreement between a dentist and a patient to provide dental care, or an agreement between a physician and a patient to provide specialty care, would not be a direct primary care arrangement but nonetheless may be the provision of medical care under section 213(d). The Treasury Department and the IRS request comments on whether the final regulations should clarify the treatment of other types of arrangements that are similar to direct primary care arrangements but do not meet the definition in the proposed regulations."

The ADA supports the inclusion of an agreement between dentists and patients as a direct primary care arrangement. Indeed, most state laws use 'direct primary care agreements' in their statutory language, though they are also commonly referred to as 'in-office plans' or 'membership savings plans'. States are trending in the last few years toward having dental practices included as part of in office plans. Including

dental care in the final rule as being a service eligible towards a tax benefit would categorize services performed by dentists in line with state statutes.

While there are many variants of direct primary care agreements, in general the patient pays the doctor or dental office a fixed amount of money on a monthly or annual basis. Preventive services may be covered at no charge. Procedures other than preventive are then offered at a discounted fee. These plans provide flexibility to both patients and dentists as the plan design is up to the dental office, and the dental office then determines the cost to the patient for participating in the plan.

More than half of the states have enacted direct primary care agreement laws within the last few years and at least sixteen of them include dental. While state laws vary a bit in their particulars almost all of them include a provision that allows the ability to establish these plans without health care providers having to register with the state insurance commissioner. Most laws include provisions ensuring patients are aware that these agreements are not insurance. States also provide direction on how to properly terminate the agreement and how unused funds are to be refunded to patients. The laws are consistent in establishing protections that ensure patients' care is maximized under plans that help manage expenses.

Thank you again for proposing the rule on Certain Medical Arrangements and for including dental. We look forward to continuing to work with the IRS, and would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments. Please contact Mr. David Linn, ADA manager of legislative and regulatory policy, at 202-789-5170 or linnd@ada.org to facilitate further discussions.

Sincerely,

Chad P. Gehani, D.D.S.
President

Kathleen T. O'Loughlin, D.M.D., M.P.H.
Executive Director

CPG:KTO:dnl