

Health Savings Accounts & Direct Primary Care: Rules, Regulations, and Implications

Health Savings Accounts & Qualified High Deductible Health Plans

Health Savings Accounts (HSAs) are a vehicle patients may use (the employer may contribute) to save for healthcare expenses on a pre-tax basis. A Qualified High Deductible Health Plan (HDHP) is the type of plan design that a patient/participant **MUST** be enrolled in to be able to contribute to an HSA. Many in our free market space promote use of HDHPs in conjunction with Health Savings Accounts.

Remember: The **ONLY health plan** that is authorized for use with a Health Savings Account is a *Qualified High Deductible Health Plan*. (more information on HDHPs can be found here: <https://www.irs.gov/publications/p969/ar02.html>).

*To be an eligible individual and qualify for an HSA, you must meet the following requirements. You are covered under a **high deductible health plan (HDHP)**...on the first day of the month. You have **no other health coverage** except what is permitted under other health coverage. You aren't enrolled in Medicare. You can't be claimed as a dependent on someone else's 2016 tax return. -IRS.gov <https://www.irs.gov/publications/p969/ar02.html>*

Letter from Commissioner – DPC is “Other Health Coverage”

It is a commonly held belief that DPCs, HDHPs, and HSAs, seem like a perfect fit, so it seems illogical that the IRS would see it otherwise. Additionally, many states have passed legislation stating that DPC is not a health plan. However, these state rules are for purposes of State Insurance Department regulation and have NO impact on Federal IRS rules.

However, everyone enrolled in, and promoting, the use of DPC with an HSA should be very careful. In a letter from IRS Commissioner Patty Murry on June 30, 2014 (copy attached), it is stated quite clearly that:

*"For an individual to be eligible to make tax-deductible contributions to an HSA, however, the individual must be covered by an HDHP and **no other plan** that is not an HDHP, unless the other plan is disregarded coverage under section 223(c)(1)(B) or preventive care. A **DPC medical home plan appears not to be one of the listed disregarded coverage plans** in section 223(c)(1)(B). When that is the case, **an individual would not be eligible to make tax-deductible contributions to an HSA while covered by both an HDHP and a DPC medical home plan, unless the DPC medical home plan provided only preventive care.**"*

Takeaways

1. It is **very important** for anyone who is **contributing** to an HSA and is enrolled in DPC to speak to their tax advisors on any potential for tax liability.
2. Those individuals who are **promoting** the use of DPCs with HDHPs or HSAs should also be very careful. You may be **advising a patient or employee to put themselves in an adverse tax liability** situation. Additionally, many states have strict rules regarding non-licensed individuals giving advice on health insurance, a health plan, or what could be construed as tax advice.

Disclaimer

This document provides information of a general nature. None of the information contained herein is intended as legal or tax advice relative to specific matters, facts, situations, or issues. You should consult with your healthcare and/or tax attorney about your particular circumstances before acting on any of this information.



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

June 30, 2014

The Honorable Patty Murray
United States Senate
Washington, DC 20510

Attention: Charlene MacDonald

Dear Senator Murray:

I am responding to your letter of June 17, 2014, regarding direct primary care (DPC) medical home plans. As you noted, DPC medical home plans can be offered in state marketplaces in combination with qualified health plans as long as the two plans together fully satisfy plan standards under the Affordable Care Act (ACA). You asked that the IRS and the Treasury Department review our policy and guidance in light of the ACA provision on DPC home plans.

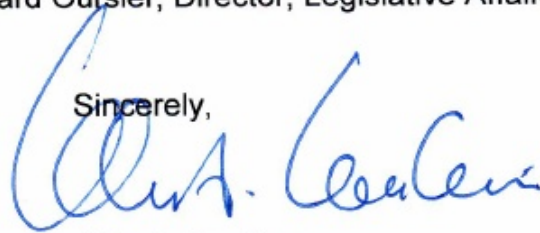
The IRS and the Treasury Department are in fact reviewing the rules regarding what constitutes medical care expenses under section 213(d) of the Internal Revenue Code (the Code). That project is on the 2013-14 Treasury and IRS Priority Guidance Plan. We will consider your input as part of the process of promulgating that guidance.

You also commented on the fact that a DPC medical home plan constitutes a second health plan under section 223 of the Code relating to health savings accounts (HSAs). We recognize that the preamble to the proposed Health and Human Services regulations indicated that DPC medical home plans are not insurance, as you noted in your letter. However, the concept of a second plan under section 223(c)(1)(A)(ii) is not restricted to insurance.

Of course, coverage under a DPC medical home plan can still be paired with an insurance plan that covers more expensive care and hospitalization, such as a high deductible health plan (HDHP). For an individual to be eligible to make tax-deductible contributions to an HSA, however, the individual must be covered by an HDHP and no other plan that is not an HDHP, unless the other plan is disregarded coverage under section 223(c)(1)(B) or preventive care. A DPC medical home plan appears not to be one of the listed disregarded coverage plans in section 223(c)(1)(B). When that is the case, an individual would not be eligible to make tax-deductible contributions to an HSA while covered by both an HDHP and a DPC medical home plan, unless the DPC medical home plan provided only preventive care.

I hope this information is helpful. If you have any questions, please contact me or a member of your staff can contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-6985.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Koskinen". The signature is fluid and cursive, with a large initial "J" and "K".

John A. Koskinen