

Congress of the United States
Washington, DC 20510

June 17, 2014

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, D.C. 20224

Dear Commissioner Koskinen:

We appreciate the time and effort the Internal Revenue Service (IRS) has dedicated to the implementation and enforcement of the Affordable Care Act (ACA) (P.L. 111-148). As you may know, one provision of the ACA, Section 1301 (a) (3), would allow direct primary care (DPC) medical homes to be offered in state marketplaces in combination with qualified health plans, as long as the two plans together fully satisfy plan standards under ACA. The Washington Health Benefit Exchange currently provides such an offering in the Seattle area.

Washington has long been an innovator in health care, and we are proud that our state has pioneered the development of direct primary care medical homes. In DPC medical homes, there are no pre-existing condition exclusions, no disagreements over covered treatments or insurance forms to be filled out, and no deductibles or co-pays. Instead, a single low monthly fee covers all primary care services. Additionally, Section 1301 (a) (3) is based on the precedent of a Washington state law, the Washington state Direct Practice Act, which defined direct practice standards and created appropriate consumer protections for patients in DPC medical homes. This state legislation, along with similar laws in other states, also makes it clear that while an employer may offer a DPC medical home as a health benefit, it is not an insurance product, and is not subject to insurance regulations.

On July 15, 2011, the Department of Health and Human Services (HHS) proposed federal regulations on ACA provisions relating to the treatment of direct primary care medical homes in affordable health insurance exchanges, (CMS-9989-F). The regulations clearly state in Sec. B, Part 156 (g) § 156.245: "direct primary care medical homes are not insurance." That rule became final without modification on March 12, 2012. The adoption of this rule makes it clear that a DPC medical home is a benefit that can be offered within an exchange, but on its own is not a health plan or insurance product subject to risk or capitalization requirements as insurers and HMOs.

Employers in our state, both small and large, see the value in this model and want to offer the DPC medical home as a benefit, often paired with an insurance plan that covers more expensive care and hospitalization. High deductible health plans (HDHP) are often well suited for a match with a DPC medical home. As noted above, ACA regulations promulgated by HHS have specified that DPC medical homes are not health insurance products. We have been

informed, however, that the IRS consistently gives guidance to employers, brokers, patients, and providers that an arrangement with a DPC practice constitutes a second health plan, which disqualifies an individual from having a Health Savings Account paired with an HDHP.

We understand that Section 223(c) of the Internal Revenue Code (IRC) does prohibit HSA holders from having a second health plan. However, it appears that the IRS has not updated policy to inform employers that DPC medical homes, as noted in the ACA, are not health plans. We would like to understand if this is a simple case of two very different parts of a large agency not having coordinated a complicated area of public policy and would like to ask you for clarification on whether the IRS contends that DPC medical homes constitute health insurance plans under the IRC.

We also understand that the IRS has been unwilling to recognize periodic payments to primary care physicians as a qualified medical expense under Sec. 213 (d) of the IRC. While Congress considers legislation to address this issue, we seek clarification on your ability to address this matter under current legislative authority. We believe that paying for a primary care physician is ultimately one of the most important "qualified medical expenses" that a patient with or without an HSA can make. Allowing payments to such providers to be treated as qualified medical expenses under Sec.213 (d) of the IRC would encourage patients with HSAs to get their care from a personal physician, rather than in the hospital ER. It would also encourage physicians to practice in this innovative and consumer friendly model.

We respectfully ask the IRS to review its policy and guidance to employers, insurers, brokers and healthcare providers to update the IRS definition of a DPC medical home so that it is consistent with HHS's previous interpretation of Sec. 1301 (a) (3) of the Affordable Care Act.

We look forward to your consideration of these issues. If you have any further questions, please contact Nico Janssen of Senator Cantwell's staff at nico_janssen@cantwell.senate.gov, Charlene MacDonald of Senator Murray's staff at charlene_macdonald@budget.senate.gov, or Daniel Foster of Congressman McDermott's staff at daniel.foster@mail.house.gov.

Sincerely,



Maria Cantwell
United States Senator



Patty Murray
United States Senator



Jim McDermott
Member of Congress