

117TH CONGRESS
1ST SESSION

S. 128

To amend the Internal Revenue Code of 1986 to provide for the treatment of direct primary care service arrangements as medical care, to provide that such arrangements do not disqualify deductible health savings account contributions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. CASSIDY (for himself, Mr. KELLY, Mr. SCOTT of South Carolina, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the treatment of direct primary care service arrangements as medical care, to provide that such arrangements do not disqualify deductible health savings account contributions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Primary Care En-
5 hancement Act of 2021”.

1 **SEC. 2. TREATMENT OF DIRECT PRIMARY CARE SERVICE**
 2 **ARRANGEMENTS.**

3 (a) AMOUNT TREATED AS MEDICAL CARE.—

4 (1) IN GENERAL.—Section 213(d)(1) of the In-
 5 ternal Revenue Code of 1986 is amended by striking
 6 “or” at the end of subparagraph (C), by striking the
 7 period at the end of subparagraph (D) and inserting
 8 “, or”, and by adding at the end the following new
 9 subparagraph:

10 “(E) for direct primary care service ar-
 11 rangements.”.

12 (2) LIMITATION.—Section 213(d)(1) of such
 13 Code, as amended by paragraph (1), is further
 14 amended by adding at the end the following: “In the
 15 case of a direct care primary service arrangement,
 16 only eligible fee amounts (as defined in paragraph
 17 (13)) shall be taken into account under subpara-
 18 graph (E).”.

19 (3) DEFINITIONS.—Section 213(d) of such
 20 Code is amended by adding at the end the following
 21 new paragraphs:

22 “(12) DIRECT PRIMARY CARE SERVICE AR-
 23 RANGEMENT.—

24 “(A) IN GENERAL.—The term ‘direct pri-
 25 mary care service arrangement’ means, with re-
 26 spect to any individual, an arrangement under

1 which such individual is provided medical care
 2 (as defined in paragraph (1), determined with-
 3 out regard to subparagraph (E) thereof) con-
 4 sisting solely of primary care services provided
 5 by primary care practitioners (as defined in sec-
 6 tion 1833(x)(2)(A) of the Social Security Act,
 7 determined without regard to clause (ii) there-
 8 of), if the sole compensation for such care is a
 9 fixed periodic fee.

10 “(B) CERTAIN SERVICES SPECIFICALLY
 11 EXCLUDED FROM TREATMENT AS PRIMARY
 12 CARE SERVICES.—For purposes of this para-
 13 graph, the term ‘primary care services’ shall not
 14 include—

15 “(i) procedures that require the use of
 16 general anesthesia, and

17 “(ii) laboratory services not typically
 18 administered in an ambulatory primary
 19 care setting.

20 The Secretary, after consultation with the Sec-
 21 retary of Health and Human Services, shall
 22 issue regulations or other guidance regarding
 23 the application of this subparagraph.

24 “(13) ELIGIBLE FEE AMOUNT.—

“(A) IN GENERAL.—The term ‘eligible fee amount’ means, with respect to any individual for any month, the amount of fixed periodic fees paid for a direct care primary service arrangement, to the extent that the aggregate fees for all direct primary care service arrangements with respect to such individual for such month do not exceed \$150 (twice such dollar amount in the case of an individual with any direct primary care service arrangement that covers more than one individual).

“(B) INDEXING.—In the case of any taxable year beginning in a calendar year after 2022, the \$150 amount contained in subparagraph (A) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting ‘calendar year 2021’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

1 If any increase under the preceding sentence is
 2 not a multiple of \$10, such increase shall be
 3 rounded to the nearest multiple of \$10.”.

4 (b) HEALTH SAVINGS ACCOUNTS.—Section 223(c) of
 5 the Internal Revenue Code of 1986 is amended by adding
 6 at the end the following new paragraph:

7 “(6) TREATMENT OF DIRECT PRIMARY CARE
 8 SERVICE ARRANGEMENTS.—A direct care primary
 9 service arrangement (as defined in section
 10 213(d)(12))—

11 “(A) shall not be treated as a health plan
 12 for purposes of paragraph (1)(A)(ii), and

13 “(B) shall not be treated as insurance for
 14 purposes of subsection (d)(2)(B).”.

15 (c) REPORTING OF DIRECT PRIMARY CARE SERVICE
 16 ARRANGEMENT FEES ON W-2.—Section 6051(a) of the
 17 Internal Revenue Code of 1986 is amended by striking
 18 “and” at the end of paragraph (16), by striking the period
 19 at the end of paragraph (17) and inserting “, and”, and
 20 by inserting after paragraph (17) the following new para-
 21 graph:

22 “(18) in the case of a direct primary care serv-
 23 ice arrangement (as defined in section 213(d)(12))
 24 which is provided in connection with employment,

1 the aggregate fees for such arrangement for such
2 employee.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to months beginning after Decem-
5 ber 31, 2021, in taxable years ending after such date.

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