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August 10, 2020

VIA ELECTRONIC SUBMISSION

RE: RIN 1545-BP31: Certain Medical Care Arrangements

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the Internal Revenue Service's proposed rule on Certain Medical Care Arrangements. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to nearly three million people with Medicare, family caregivers, and professionals.

General comments

Medicare Rights opposes the proposed rule change by the Internal Revenue Service (IRS) that would incentivize participation in health care sharing ministries (HCSMs) by giving such arrangements tax-advantaged status. Since HCSMs do not have to comply with federal and state health insurance consumer protections, people who participate in these arrangements can find themselves without comprehensive coverage and facing high medical bills.

Expanding the availability of HCSMs would expose more people to these harms. This is bad policy in general, and in the middle of a pandemic in particular. As the current COVID-19 public health emergency reveals, the need for health care can arise at any moment and may be the difference between life and death. People without health coverage may avoid care or face extreme financial hardship when they obtain it. These are outcomes we must try to avoid for reasons of public health and economic stability.

Ensuring access to affordable, comprehensive health coverage helps individuals and the system as a whole. The Medicare program benefits when incoming beneficiaries have insurance

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coverage. As individuals approach Medicare eligibility, their health is often compromised. This is especially true for those who have unmet health care needs from being un- or underinsured. The absence of quality coverage can lead to reduced well-being for entire families;¹ poorer health;² lack of access to care;³ economic devastation;⁴ and higher Medicare costs when they are ultimately eligible.⁵

Because HCSMs do not provide the financial and health security of medical insurance coverage, increasing membership in HCSMs would put the Medicare program at risk for higher costs and jeopardize the well-being of beneficiaries and their families.

3. Definition of Medical Care under Section 213(d)(1)

B. Medical Insurance under Section 213(d)(1)(D)

Current law allows taxpayers to deduct certain medical expenses from their incomes. This includes amounts paid for medical insurance and has traditionally excluded HCSM costs.

The IRS proposes to change this, by making expenditures for HCSM memberships deductible medical expenses. We strongly disagree with this proposal because HCSMs do not provide actual medical insurance. HCSMs allow people who share religious beliefs to pool funds to pay for the medical expenses of members, but are largely unregulated and of limited benefit to participants.⁶ The arrangements usually involve members making monthly payments—which can easily reach thousands of dollars per year—in the hopes that, if that member incurs medical bills, the HCSM will choose to pay. But this is simply that—a hope. Unlike insurance, HCSMs do not guarantee payment or reimbursement and do not typically notify participants up front which costs will be covered, if any. Members often have no legal recourse when claims are denied.

¹ Committee on the Consequences of Uninsurance, Board on Health Care Services, “Health Insurance is a Family Matter,” INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, Chapter 5 (2002), https://www.ncbi.nlm.nih.gov/books/NBK221016/pdf/Bookshelf_NBK221016.pdf.

² David W Baker, et al., “Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare,” J GEN INTERN MED. 2006 Nov; 21(11): 1144–1149 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/>.

³ Committee on the Consequences of Uninsurance, Board on Health Care Services, “Health Insurance is a Family Matter,” INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, pp 91-106 (2002), https://www.ncbi.nlm.nih.gov/books/NBK221016/pdf/Bookshelf_NBK221016.pdf.

⁴ Rohan Khera, et al., “Burden of Catastrophic Health Expenditures for Acute Myocardial Infarction and Stroke Among Uninsured in the United States,” CIRCULATION, 2018;137:00–00 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5780190/>.

⁵ David W Baker, et al., “Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare,” J Gen Intern Med. 2006 Nov; 21(11): 1144–1149 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/>.

⁶ JoAnn Volk, Emily Curran & Justin Giovannelli, “Health Care Sharing Ministries: What Are the Risks to Consumers and Insurance Markets?” COMMONWEALTH FUND (August 8, 2018), <https://www.commonwealthfund.org/publications/fund-reports/2018/aug/health-care-sharing-ministries>.

The IRS agrees that there is no payment guarantee: “[M]embership in a health care sharing ministry entitles members to share their medical bills through the ministry and *potentially receive payments from other members to help with their medical bills*” (emphasis added).⁷ And later: “Members assist in the payment of other members’ medical bills, *and possibly receive reimbursement for their own medical bills in return*” (emphasis added).⁸ The agency claims this is “similar to traditional medical insurance premiums” despite the member payments being merely possible or potential.⁹ We strongly disagree that this is similar to traditional medical insurance. HCSMs do too. Many have long maintained that they are not health insurance companies for the purposes of compliance with federal and state regulations, including the Affordable Care Act’s consumer protections.¹⁰

In addition, HCSMs embrace this role, and their ability to operate outside of the rules. They are not required to have sufficient funds to pay any claims and are permitted to deny payment for pre-existing conditions. Worse, HCSMs are rife with fraud and abuse. Many states have had to take action based on misleading marketing¹¹ and deceptive business practices¹² where HCSMs attempt to lure unsuspecting members¹³ by illegally advertising their plans as health insurance.¹⁴ By claiming HCSM payments “are payments for medical insurance,”¹⁵ the IRS seeks to further blur the line between the products. This would likely lead to even greater confusion, more financial devastation, and worse health outcomes.

6. Health Care Sharing Ministries, HRAs, and HSAs

The IRS proposes to allow Health Reimbursement Arrangements (HRAs) to reimburse payments for membership in a HCSM as a medical care expense. For the reasons outlined above, we also strongly oppose this proposal. It would likely incentivize participation in HCSMs, leading to financial crisis and poorer health for even more families.

⁷ 85 Fed. Reg. 35398, 35400.

⁸ 85 Fed. Reg. 35398, 53401.

⁹ 85 Fed. Reg. 35398, 53401.

¹⁰ JoAnn Volk, Emily Curran & Justin Giovannelli, “Health Care Sharing Ministries: What Are the Risks to Consumers and Insurance Markets?” COMMONWEALTH FUND (August 8, 2018), <https://www.commonwealthfund.org/publications/fund-reports/2018/aug/health-care-sharing-ministries>.

¹¹ JoAnn Volk, Justin Giovannelli & Christina L. Goe “States Take Action on Health Care Sharing Ministries, But More Could Be Done to Protect Consumers,” COMMONWEALTH FUND (February 19, 2020), <https://www.commonwealthfund.org/blog/2020/states-take-action-health-care-sharing-ministries-more-could-be-done-protect-consumers>.

¹² John Tozzi & Emma Court, “Health-Care Ministry Alieria Subpoenaed by New York Regulator” (January 8, 2020), <https://www.bloomberg.com/news/articles/2020-01-08/health-care-ministry-aliera-subpoenaed-by-new-york-regulators>.

¹³ Jenna Carlesso, “‘I’m relying on prayer.’ Complaints pile up against health care sharing ministries as state mounts a defense” (March 2, 2020), <https://ctmirror.org/2020/03/02/im-relying-on-prayer-complaints-pile-up-against-health-care-sharing-ministries-as-state-mounts-a-defense/>.

¹⁴ Rebecca Pifer, “California accuses healthcare sharing ministry of misleading consumers” (March 11, 2020), <https://www.healthcarediver.com/news/california-accuses-healthcare-sharing-ministry-of-misleading-consumers/573900/>.

¹⁵ 85 Fed. Reg. 35398, 35400.

Conclusion

HCSMs are not insurance. They are not held to the same standards as insurance. By facilitating greater enrollment into HCSMs, creating tax advantages for HCSM enrollment, and blurring the lines between true insurance and HCSMs, the IRS proposal would imperil the health and financial security of American families. For these reasons, we oppose the proposal to consider payments to HCSMs as payments for medical insurance and urge its immediate withdrawal. Thank you again for the opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Senior Federal Policy Associate at JCarter@medicarerights.org or 202-637-0962.

Sincerely,

A handwritten signature in cursive script that reads "Fred Riccardi".

Fred Riccardi
President
Medicare Rights Center