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 ac-
count 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 arrange-
ments as medical care, to provide that such arrange-
ments do not disqualify deductible health savings account
contributions, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Primary Care En-

hancement Act of 2021”.
SEC. 2. TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.

(a) AMOUNT TREATED AS MEDICAL CARE.—

(1) IN GENERAL.—Section 213(d)(1) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “, or”, and by adding at the end the following new subparagraph:

“(E) for direct primary care service arrangements.”.

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

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

“(12) DIRECT PRIMARY CARE SERVICE ARRANGEMENT.—

“(A) IN GENERAL.—The term ‘direct primary care service arrangement’ means, with respect to any individual, an arrangement under
which such individual is provided medical care
(as defined in paragraph (1), determined with-
out regard to subparagraph (E) thereof) con-
sisting solely of primary care services provided
by primary care practitioners (as defined in sec-
tion 1833(x)(2)(A) of the Social Security Act,
determined without regard to clause (ii) there-
of), if the sole compensation for such care is a
fixed periodic fee.

“(B) Certain services specifically
excluded from treatment as primary
care services.—For purposes of this para-
graph, the term ‘primary care services’ shall not
include—

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

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

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

“(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.
If any increase under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.”.

(b) Health Savings Accounts.—Section 223(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(6) Treatment of Direct Primary Care Service Arrangements.—A direct care primary service arrangement (as defined in section 213(d)(12))—

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

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

(c) Reporting of Direct Primary Care Service Arrangement Fees on W–2.—Section 6051(a) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “, and”, and by inserting after paragraph (17) the following new paragraph:

“(18) in the case of a direct primary care service arrangement (as defined in section 213(d)(12)) which is provided in connection with employment,
the aggregate fees for such arrangement for such employee.”.

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