

118TH CONGRESS  
1ST SESSION

# S. 628

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 2, 2023

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

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## 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 2023”.

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 inserting after subparagraph (D) the  
9 following new 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 inserting after paragraph (11)  
21 the following 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.—

1           “(A) IN GENERAL.—The term ‘eligible fee  
2 amount’ means, with respect to any individual  
3 for any month, the amount of fixed periodic  
4 fees paid for a direct care primary service ar-  
5 rangement, to the extent that the aggregate  
6 fees for all direct primary care service arrange-  
7 ments with respect to such individual for such  
8 month do not exceed \$150 (twice such dollar  
9 amount in the case of an individual with any di-  
10 rect primary care service arrangement that cov-  
11 ers more than one individual).

12           “(B) INDEXING.—In the case of any tax-  
13 able year beginning in a calendar year after  
14 2024, the \$150 amount contained in subpara-  
15 graph (A) shall be increased by an amount  
16 equal to—

17                   “(i) such dollar amount, multiplied by

18                   “(ii) the cost-of-living adjustment de-  
19 termined under section 1(f)(3) for the cal-  
20 endar year in which such taxable year be-  
21 gins determined by substituting ‘calendar  
22 year 2023’ for ‘calendar year 2016’ in sub-  
23 paragraph (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, 2023, in taxable years ending after such date.

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