

## TAX DEDUCTIBILITY OF LONG-TERM CARE SERVICES & ASSISTED LIVING

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) gave rise to the favorable tax provisions relating to long-term care services as an incentive for individuals to take financial responsibility for their long-term care needs. These incentives broadened the medical expense deduction on Schedule A to include unreimbursed expenses for qualified long-term care services.

Qualified long-term care services are deductible from gross income as an itemized deduction to the extent the taxpayer's total of unreimbursed medical expenses exceeds 7.5% of adjusted gross income.

Qualified long-term care services means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services that are required by a *chronically ill* individual and that are provided pursuant to a plan of care prescribed by a *licensed health care practitioner*.

A chronically ill individual as defined by the Committee Report is an individual who has been certified within the previous 12 months by a licensed health care practitioner as (1) being unable to perform (without substantial assistance) at least two activities of daily living (ADL) for at least 90 days due to a loss of functional capacity; (2) having a similar level of disability as determined under regulations prescribed by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services, or (3) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment. Activities of daily living (ADL) are eating, toileting, transferring, bathing, dressing and continence.

A licensed health care practitioner is a physician (as defined in Sec. 1861(r)(1) of the Social Security Act) and any registered professional nurse, licensed social worker or other individual who meets such requirements as may be prescribed by the Secretary of the Treasury.

The HIPAA Act cleared up many of the uncertainties as to whether various expenditures for home care qualified for the medical expense deduction. Now, qualified long-term care services include *maintenance or personal care services*.

Maintenance and personal care services are defined as care for which its primary purpose is providing a chronically ill individual with needed assistance with his or her disabilities (including protection from threats to health and safety due to severe cognitive impairment).

These services include meal preparation, household cleaning, and similar services that a chronically ill person is unable to perform. The services do not have to be performed in a nursing home, nor must they be performed by a licensed medical professional. As long as the services are provided under a plan of care prescribed by a licensed healthcare practitioner, the cost of an attendant to assist a chronically ill person in his or her daily living activities qualifies.

The Committee Report further clarifies that those individuals who are physically able but have a cognitive impairment such as Alzheimer's disease or another form of irreversible loss of mental capacity is treated similarly to an individual who is unable to perform (without substantial assistance) at least 2 activities of daily living.

Because eligibility for the medical expense deduction should not be diagnosis driven, the provision requires the cognitive impairment must be severe. Severe cognitive impairment means a deterioration or loss in intellectual capacity measured by clinical evidence and tests. These tests should reliably measure impairment in short or long term memory; orientation to people, place and/or time; and deductive or abstract reasoning. In addition, it is intended that such deterioration or loss place the individual in jeopardy of harming self or others and, therefore, require substantial supervision by another individual.

In the past, amounts paid to nursing homes qualified as medical expenses only if medical care was the principle reason for the stay, or if not the principle reason, only that part of the cost of care attributable to medical care qualified (not meals and lodging) (Reg.1.213-1(e)(1)(v)). The enactment of Internal Revenue Code Sec. 213(d)(1) included qualified long-term care within the definition of "medical care". This means that amounts paid to nursing homes as well as other long-term care facilities and assisted living facilities can qualify as medical expenses. Provided the person meets either the activities of daily living (ADL) or cognitive impairment requirements and the costs are pursuant to a plan of care prescribed by a health care practitioner, the amounts paid will qualify as medical expenses.

For residents that are not chronically ill, fees paid to retirement communities and assisted living facilities are deductible as medical expenses to the extent they are attributable to medical care. The deduction applies to entrance or initiation fees if a portion of the fee is attributable to providing medical services. The facility is responsible for determining the portion of fees allocated to medical care and should provide this information to the residents annually.

Reg. 1.213-1(e)(v) provides for determining the extent to which expenses for care in an institution other than a hospital constitute

medical care. It has not been revised since the Health Insurance Portability and Accountability Act of 1996 (HIPPA) was created. The interpretation above is based on our reading of the law and the Congressional Conference Committee Reports. Any resident or potential resident should always be advised to check with his or her income tax advisor.

If you have any questions, please contact Douglas P. Fiebelkorn, CPA, MST, JD or Barbara J. Morrison, CPA, MST.

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