Comments of the Alliance of Health Care Sharing Ministries
IRS Proposed Rule:
Certain Medical Care Arrangements (RIN 1545-BP31)
Department of the Treasury, Internal Revenue Service 26 CFR Part 1 [REG-109755-19]

The Alliance of Health Care Sharing Ministries (the Alliance) is a §501(c)(6) nonprofit organization devoted to advocating for the interests of Health Care Sharing Ministries (HCSMs) and their members. We work with most of the nine large, open-membership, national HCSMs that meet the definition in §5000A(d)(2)(B)(ii) of the Internal Revenue Code,[1] as recognized by certification letters issued by the Centers for Medicare and Medicaid Services (CMS). Approximately 1.5 million Americans are members of HCSMs, and the members of the ministries that we work with shared $1.3 billion in medical expenses in 2019.

HCSMs are communities of like-minded individuals and families who exercise their common religious beliefs by choosing to share medical expenses with each other instead of buying insurance. Members commit to maintaining healthy behaviors and reducing their health risks, and to making monthly contributions to share the medical expenses of other members. When they need health care, they choose a doctor and the ministry helps them negotiate a fair price with the health care provider. When they receive the bill, they submit it to the ministry for sharing by other members in accordance with the ministry's sharing guidelines. Other members are then asked to share in the bill, and the ministry facilitates the payment by other members, either to the member in need or directly to the health care provider. Along with the financial support, the member in need often receives prayers and notes of encouragement. In addition, members may call their HCSM for prayer or other spiritual support. This integration of the body and soul is a critical part of HCSMs' more human approach to health care and is one of the reasons so many Americans have chosen HCSMs as their solution to paying for health care, instead of buying health insurance.

A critical issue, which made the enactment of §5000A(d)(2)(B)(ii) necessary, is that HCSMs are not insurance companies, and the service they provide is not insurance. Nearly all states have recognized this, and no state treats an HCSM, as defined in §5000A(d)(2)(B)(ii), as providing insurance.

Although the specific procedures and infrastructures differ, all of the HCSMs who work with the Alliance have a long history of faithfully sharing eligible medical expenses.

[1] Unless otherwise noted, all section references are to the Internal Revenue Code, as amended to date.

The Proposed Regulations

In accordance with Section 6(b) of Executive Order 13877, the Proposed Regulations correctly include payments for membership in an HCSM (as defined in §5000A(d)(2)(B)(ii)) as medical expenses deductible under §213. However, they do so by incorrectly treating such payments as payments for medical insurance under §213(d)(1)(D).

The Alliance Supports the Definition of Health Care Sharing Ministry in the Proposed Regulation

The Department proposes to define HCSMs for purposes of §213 by adopting the definition in §5000A(d)(2)(B)(ii) of the Code.

The Alliance strongly supports this definition of HCSMs for the following reasons:

1) Consistency in definitions reduces regulatory complexity and its associated burdens.

2) The requirement that an HCSM be exempt from federal income tax under §501(c)(3) reserves the §213 deduction for monthly contributions to charitable organizations enabling members to fulfill their religious purposes. In particular, the requirement that such tax-exempt organizations not substantially benefit any affiliated for-profit interests will help prevent consumer confusion about whether they are joining a religious ministry or merely an insurance company gussied up to look like a ministry.[2]

3) Although newer HCSMs may be financially stable and operationally reliable, the proposed definition's requirement that HCSMs have been in operation since December 31, 1999 (aside from consistency with §5000A) will reassure consumers and concerned policy makers that tax-deductibility under §213 is reserved for contributions to only the most well-established organizations with a long history of faithfully facilitating the sharing of medical expenses of their members.[3]

[2] See, e.g., http://www.insurance.ca.gov/0400-news/0100-press-releases/2020/upload/nr026AlieraCEASE_AND_DESIST.PDF

[3] The Alliance is developing a robust, independent accreditation process for HCSMs that would require post-1999 organizations to demonstrate a substantial record of operational stability and financial integrity as a condition of receiving accreditation. Once the accreditation process is fully developed, the Alliance may change its view about including newer, accredited HCSMs in the definition. However, until the accreditation process is established, the Alliance supports retaining the tenure requirement for consistency and as the only viable proxy for longstanding reliability.

4) A number of State laws reference the ACA definition, including those that exclude HCSMs from state law definitions of "insurance," and consistency among the definitions in federal law provides clarity and consistency for State lawmakers who wish to minimize confusion, complexity, or compliance burdens on both regulators and HCSMs.

5) The requirement that tax-deductible monthly contributions to HCSMs be paid to charities with a clear religious identity recognizes the public benefits of religious practice, and government's duty to respect and accommodate the free exercise of religion by its citizens.

The Alliance Strongly Supports the Tax Deductibility of Membership Contributions to HCSMs Under Section 213(d).

Health Care Sharing Ministries serve an important role for the many Americans whose religious convictions are the primary driver in the search for options to pay for extraordinary or unexpected medical treatment. HCSMs have long advocated for the equalized tax treatment for payments of medical bills made through an HCSM compared to those made by those who use health insurance and those who pay for health care directly. We appreciate the Department's proposal to remedy the unfair non-deductibility under §213 of payments for HCSM membership payments by religious Americans who, as an expression and exercise of their sincerely held religious beliefs, pay for health care through their membership in an HCSM. Indeed, the Alliance contends that denying tax deductibility for membership payments made by HCSM members is an impermissible and unfair provision of a tax benefit to those who choose only a secular approach to paying for medical bills.

The Religious Freedom Restoration Act

The Religious Freedom Restoration Act prohibits the federal government from substantially burdening an individual's exercise of his or her religion, even if the burden results from a rule of general applicability, unless the government demonstrates that the application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. §2000bb-1.

Here, the government's compelling interest is maximizing the likelihood that individuals and families will be able to bear the expense of extraordinary and unexpected medical expenses. For most people, that means health insurance providing minimum essential coverage. §5000A. However, Congress recognized that many Americans have religious objections to participating in health insurance, and that those people should not be subject to the individual mandate because they have non-insurance means of fulfilling the government's interest.

With respect to §213, the government's interest is in ensuring that payments deductible under §213 are paid for medical care—and for religious people who object to participating in health insurance, the least restrictive means of accomplishing that purpose includes treating HCSM membership payments as payments for medical care.

The Proposed Regulations Should Not Treat Payments for Membership in an HCSM as Payments for Insurance.

The Department's proposal to allow HCSM members to deduct certain expenditures toward their monthly contributions is an important first step in righting the exclusion of payments to HCSMs from §213. However, the Proposed Regulations incorrectly treat payments for membership in an HCSM as payments for insurance.

The proposed regulation categorizes health care sharing ministry payments as payments for medical insurance under §213(d)(1)(D). As stated above, Health Care Sharing Ministries are not insurance companies, and the sharing of health care expenses by their members is not insurance. The contrasts between the two categories are so extreme that any regulation that lumps health care sharing ministries in with insurance companies is deeply flawed and must be corrected to recognize the clear distinction between the two.

First, an HCSM is not an insurance company, and its medical expense sharing arrangement is not insurance. No state treats an HCSM, as defined in §5000A(d)(2)(B)(ii), as an insurance company, or an HCSM's health care expense sharing program as insurance. Although the HCSM programs reduce the financial burden of medical expenses, they accomplish this—not through an enforceable contract between the members and the HCSM—but through the voluntary sharing of expenses. The HCSM *facilitates* this sharing, but does not financially participate in it, and cannot lose money because of any contractually required payments, because, *unlike an insurance contract*, there are no contractually required payments by the HCSM.

Consistent with this, HCSMs explicitly disclose to prospective new members that their sharing programs are *not* insurance, and that there is no promise to pay or contract involved in membership. Some even require the prospective member to attest in writing that they have received the disclosure. To avoid misleading people, HCSMs do not "bundle" their membership with insurance products as a packaged product, unlike other organizations that are not defined in §5000A(d)(2)(B)(ii).

Second, and consequently, members do not pay "premiums" or submit "claims." Instead, they pay a monthly "share" amount as their part of their mutual agreement to share each other's medical expenses, and submit their eligible expenses to be voluntarily shared by other members.

Third, and perhaps most importantly, unlike insurance policyholders or participants in the typical employer-provided group insurance plan, members of an HCSM are bound by common religious beliefs that, e.g., for Christians, compel them to "bear one another's burdens, and so fulfill the law of Christ."[4] This moral, but not legal, obligation is the genius underlying the success of HCSMs.

In fact, HCSMs are *dominated* by the religious beliefs of their members in ways that *preclude* them from being treated as insurance companies:

The guidelines that govern the determination of which expenses are eligible to be shared are based on religious beliefs to which members are required to attest, and in some cases, re-attest annually. Some ministries also require an attestation by a pastor or other church religious leader regarding the member's membership or regular participation in a local church.

In recognition of the mutuality of the sharing of burdens, the sharing guidelines that govern the eligibility of expenses that may be shared are developed with member participation and in some cases, members directly vote on the guidelines and proposed changes.

Those religious beliefs and guidelines often require abstention from unhealthy behavior, e.g., smoking, or excessive consumption of alcoholic beverages.

For religious reasons, HCSMs exclude coverage for abortions, and in some cases for artificial reproductive procedures, such as *in vitro* fertilization.

Because HCSM members in the Jewish and Christian traditions believe that people created in God's image are *body and soul*, most HCSMs provide opportunities for members to pray with each other individually and in groups, and provide pastoral and faith-based mental health counseling.

Unlike insurance companies, which *strictly* limit the claims they pay to those covered under their policies, some HCSMs, because they recognize that *all people* need the grace and mercy of God, have newsletters that request prayer and additional financial support for extraordinary needs of members *and non-members* who have needs outside the sharing guidelines.

[4] Galatians 6:2.

Unlike an insurance company, most HCSMs also provide some direct medical services and not just sharing of health care expenses, such as telemedicine visits, pastoral and faith-based mental health counseling, and direct health coaching.

The exclusion of members of an HCSM from the otherwise mandatory individual shared responsibility payment required by §5000A was necessary *precisely* because members in an HCSM are not "insured," because they had a long history of providing for medical expenses another way, and that their members may also have sincerely held religious objections to participating in health insurance. For that reason, Congress recognized that although HCSM members *are not* insured, the government's interest would be furthered by a less restrictive alternative—the sharing programs' historical and continuing operations provide substantial assurance that members' extraordinary expenses for medical care will be provided for through the voluntary mutual sharing arrangement, and so their members should, for purposes of the shared responsibility payment, be treated in the same manner as those who *are* insured.

The same considerations should be recognized in the regulations under §213.

The Proposed Regulation should treat HCSM membership payments as amounts paid for medical care described in regulation section 1.213(e).

HCSM membership payments satisfy some of the elements of each of Sections 213(d)(1)(A), (B), and (D), and when viewed as a whole, are payments described in Section 213(d)(1).

HCSM membership payments satisfy §213(d)(1)(A) because they pay (through the sharing process) for medical care received by the member and spouse and dependents, some of which, including health coaching, which helps with both prevention of, and recovery from, injury and disease, and pastoral, faith-based mental health counseling, are provided directly by the HCSM.

In addition, HCSMs facilitate access to health care described in §213(d)(1)(A) by sharing expenses for transportation described in §213(d)(1)(B).

Finally, although HCSM membership is not an insurance policy described in §213(d)(1)(D), members join primarily to obtain a result similar to insurance[5] by providing a means to provide for medical treatment for themselves and their families, but without the existence of an insurance company or insurance contract. HCSM members' medical expenses are paid for through sharing by other members, facilitated by their HCSM.

Because HCSM membership fees can neither be excluded from nor exclusively confined to any of Section 213(d)(1)(A), (B), or (D), or the other paragraphs in proposed section 1.213-1(e), and because treating HCSM payments as insurance is both legally incorrect and could contribute to

unnecessary consumer confusion of concern to state and federal policymakers, we recommend that Congress' intent be effected by adding new paragraph (5) to proposed regulation section 1.213-1(e).

Requested Changes to the Proposed Regulations

To properly recognize the distinction between health insurance and HCSMs, in the Proposed Regulations, §1.213-1(e)(4)(i)(A)(*2*) should be deleted, paragraphs (e)(4)(i)(A)(*3*) and (*4*) should be redesignated as paragraphs (e)(4)(i)(A)(*2*) and (*3*), and a new §1.213-1(e)(5) added, to read as follows:

> (5) *Health care sharing ministries*.—Amounts paid for membership in a health care sharing ministry that shares expenses for medical care, as defined in section 213(d)(1)(A) and (B), are not payments for medical insurance. However, they are payments to participate in an arrangement similar to insurance, under which members undertake to provide, for themselves and fellow members, financial resources for medical care, but (unlike insurance) without the HCSM assuming any obligation to indemnify its members. Accordingly, they are treated as payments for medical care. For this purpose, a health care sharing ministry is an organization:
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> (i) Which is described in section 501(c)(3) and is exempt from taxation under section 501(a);
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> (ii) Members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed;
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> (iii) Members of which retain membership even after they develop a medical condition;
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> (iv) Which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
>
> (v) Which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

Additional redesignations

Because current §1.213-1(d)(4)(ii) is rendered obsolete by new §1.213-1(d)(4)(i)(A)(*1*), §1.213-1(d)(4)(ii) should be removed, which will require additional redesignations within §1.213-1(d)(4).

Typographical error

Subject to any changes due to the additional redesignations described above, in proposed §1.213-1(e)(4)(i)(A)(*4*), "(e)(4)(i)(*a*)" should be "(e)(4)(i)(A)."

Conclusion

Thank you for your consideration. Please contact our legal counsel, Alan P. Dye, if you have any questions or would like to discuss these issues. Although the Alliance is not requesting that a hearing be held with respect to the Proposed Regulations, if a hearing is held, we request the opportunity to testify. Mr. Dye can be contacted at adye@wc-b.com and (202) 785-9500, ext. 112.