

# United States Senate

WASHINGTON, DC 20510

April 17, 2018

The Honorable Steven Mnuchin  
Secretary  
United States Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Dear Secretary Mnuchin:

As part of this Administration's efforts to repair our healthcare system and reduce medical costs, we write to urge the United States Department of the Treasury (Treasury) to reconsider its current interpretation of direct primary care as a form of health plan and to recognize it instead as a qualified medical expense for health savings accounts under the Internal Revenue Code.

Direct primary care is an innovative model for healthcare providers to deliver primary healthcare whereby practitioners provide patients a full range of primary care services in exchange for a periodic fee, rather than using a pay-per-service model. Under a direct primary care model, practitioners neither contract with third-party insurance carriers nor act as risk-bearing entities themselves. This service model has been shown to create better doctor-patient interactions, improve patient outcomes, reduce the regulatory burden on healthcare providers, and lower healthcare costs.

Despite this, Treasury currently mislabels direct primary care as a kind of insurance under the Internal Revenue Code. Specifically, Treasury has reached the questionable interpretation that direct primary care qualifies as a "health plan" that is not a high-deductible plan under 26 U.S.C. § 223(c)(1)(A)(ii). As a consequence of Treasury's interpretation, every individual who uses direct primary care is deemed ineligible for a health savings account under 26 U.S.C. § 223, shut out from the tax benefits many Americans rely on to pay for their healthcare.

Therefore, we request that the Department of Treasury reconsider this classification of direct primary care as a "health plan" and cease forcing individuals to choose between their health savings accounts and their healthcare providers. Because direct primary care involves no third-party insurers or risk pooling, it has none of the features of the typical payment-coverage insurance plans that one would call "health plans." This is reinforced by the fact that other bodies of federal regulations more directly define "health plan" to include only various forms of insurance—not direct primary care. *See* 45 C.F.R. § 160.103 (defining a health plan and listing various types of private and government health insurance).

Rather than a "health plan," Treasury should instead recognize payments for direct primary care for what they are—expenses for medical care under 26 U.S.C. § 213(d). A direct primary care model is not meaningfully different than one where patients simply pay their physicians per service out of pocket. Just as one would not describe a monthly gym membership as "gym insurance," patients who visit health practitioners under direct primary care are not buying health insurance, but merely paying for healthcare services. It is inconsistent with the letter and the spirit of the IRS

# United States Senate

WASHINGTON, DC 20510

Code to categorize one service model as a medical expense and the other as a form of health insurance.

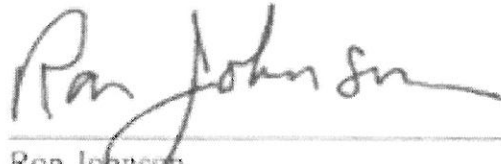
This interpretation not only comports more closely with the actual characteristics of direct primary care, but it will also promote innovations that restore direct provider-patient relationships and reduce the ever-growing cost of healthcare. Accordingly, we urge you to reconsider Treasury's interpretation of direct primary care as a health plan and to help improve patient outcomes and reduce healthcare costs for more Americans.

Sincerely,



---

Ted Cruz  
U.S. Senator



---

Ron Johnson  
U.S. Senator