

IRS Guidance: COVID-19 PPE May be Eligible to be Reimbursed from Health FSAs, HRAs, and HSAs

On March 26, 2021, the Internal Revenue Service ("IRS") published Announcement 2021-7, which notifies taxpayers that certain amounts paid for personal protective equipment (such as masks, hand sanitizer, and sanitizing wipes) for the primary purpose of preventing the spread of COVID-19 ("COVID-19 PPE") may be an eligible expense that can be reimbursed from certain health care account based plans.

The IRS Announcement treats amounts paid for COVID-19 PPE as amounts paid for medical care under 213(d) of the Internal Revenue Code (the "Code"). Therefore, amounts paid for by an individual for COVID-19 PPE for the individual's (or an eligible family member's) use that are not covered by insurance can be eligible to be reimbursed under health flexible spending accounts ("Health FSAs"), health reimbursement arrangements ("HRAs"), Archer medical savings accounts ("Archer MSAs"), or health savings accounts ("HSAs").¹

To the extent the terms of group health plans, such as Health FSAs and HRAs, currently do not permit the reimbursement of COVID-19 PPE expenses,² the IRS Announcement permits those plans to be amended retroactively to provide for reimbursements of COVID-19 PPE expenses incurred for any period beginning on or after January 1, 2020. The deadline to adopt such a plan amendment is the last day of the first calendar year beginning after the calendar year in which the amendment is effective so long as the plan is operated consistent with the terms of the amendment, except that no amendment with retroactive effect may be adopted after December 31, 2022.

¹ Alternatively, if such expenses for COVID-19 PPE are not reimbursed under a Health FSA, HRA, Archer MSA, or HSA, those expenses may instead be deductible by an employee under Code Section 213(a), if certain requirements are met.

² Generally, if a plan already defines eligible medical expenses by reference to Code Section 213(d) (as many do), without an exclusion that would cover COVID-19 PPE, an amendment to the Plan may not be needed to be made in order for the COVID-19 PPE to be treated as an eligible expense.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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