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On March 26, 2021, the IRS issued IRS Announcement 2021-7, which clarifies that amounts paid for certain personal protective equipment (“COVID-19 PPE”) used to prevent the spread of COVID-19, including masks, hand sanitizer and sanitizing wipes can be treated as amounts paid for medical care under § 213(d) of the Internal Revenue Code.

Accordingly, because these amounts are expenses for medical care under § 213(d) of the Internal Revenue Code, these amounts can also be eligible expenses under a health flexible spending account (health FSA), health savings accounts (HSAs), health reimbursement arrangements (HRAs) and Archer medical savings accounts (Archer MSAs). Note, that if the amount is paid or reimbursed under one of these accounts, it is not deductible under § 213.

The IRS announcement also provides relief for group health plans, including health FSAs and HRAs, to amend their plans pursuant to provide for reimbursements of expenses for COVID-19 PPE incurred for any period on or after January 1, 2020.

Consistent with prior guidance, group health plans may amend their plans by the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective. No amendment with retroactive effect can be adopted after December 31, 2022. Further, the plan must operate consistently with the terms of the amendment, including during the period beginning on the effective date of the amendment through the date in which the amendment is adopted.

## Employer Action

Employers should review their plan documents. For plans that use a broad definition under 213(d) for eligible medical expenses, an amendment is not necessary. However, for plans with a narrower definition of 213(d), the definition of eligible medical expenses may need to be amended.