

MEDICAL EXPENSE DEDUCTIONS FOR ASSISTED LIVING FEES

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Assisted living fees are likely to be tax deductible, under federal law, as a medical expense in most cases where the primary reason for the resident's presence at the community is to receive care. Historically, there has been some confusion regarding the status of assisted living as "medical" in nature, due to the fact that it is often grouped with "social service" models of care and, at least in California, is not licensed as a "health facility." This article discusses the legal basis for claiming a medical deduction for assisted living fees.

The Internal Revenue Code permits a deduction from income tax for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse or a dependent, to the extent that such expenses exceed 7.5% of adjusted gross income.¹

Medical care is defined as "amounts paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure of the body."² Expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness, and specifically nursing services, are covered.³ The extent to which care at a place other than a hospital constitutes deductible medical care is primarily a question of fact, which depends upon the condition of the individual and the nature of the services received.

Medical care includes skilled nursing and assisted nursing services when rendered in a licensed setting, such as an assisted living facility or skilled nursing facility, where the primary purpose of the resident's presence there is to receive such services. Rulings pertaining to the deductibility of fees in lifetime care facilities seem to make it clear that both nursing and assisted living services are potentially eligible for the medical expense deduction. For example, in one ruling, fees paid for personal care, such as assistance with bathing, dressing and grooming, was found to be deductible, whereas fees paid for mere household assistance (e.g., assistance with shopping) are not deductible.⁴

Where the availability of medical care is the principal reason for person's presence at a facility, and meals and lodging are furnished as a necessary incident of such care, the entire cost of medical care and meals and lodging constitutes an expense for medical care. If the availability of medical care is not a principal reason for the person's presence there,

only that part of the cost attributable to medical care is deductible, and meals and lodging are not considered a cost of medical care. IRS regulations specifically mention that if an individual is in a "home for the aged" for personal or family reasons, and not because he or she requires medical or nursing attention, meals and lodging at the home are not considered a cost of medical care. One common situation that probably would not result in medical expense deduction eligibility, is where the spouse of a resident who moves to assisted living enters the assisted living facility for the primary purpose of residing with the spouse needing care, and not for the purpose of receiving care himself or herself.

In 1996, the Internal Revenue Code⁵ was amended by the Health Insurance Portability and Accountability Act (HIPAA) to specify that deductible medical expenses include "qualified long-term care services." Such services include, among other things, maintenance or personal care services that are required by a "chronically ill individual" pursuant to a plan of care prescribed by a licensed health care practitioner (including physicians, nurses and social workers). A "chronically ill individual" is one whom the health care practitioner has certified as being unable to perform at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity or who requires substantial supervision from threats to health and safety due to severe cognitive impairment.

After HIPAA's adoption, there was debate as to whether HIPAA limited the deductibility of assisted living services to people who are "chronically ill individuals." More likely, however, HIPAA creates a "safe harbor" with specific criteria that would assure deductibility of the expense (supplementing the case-by-case method of the prior law). A principal purpose of HIPAA's long-term care provisions was to establish the deductibility of certain long-term care insurance premiums. HIPAA did not amend or supersede the existing general provisions governing medical deductions, and therefore the pre-HIPAA rulings establishing the deductibility of expenses paid for assisted living and nursing services should still be valid, even where the taxpayer does not meet the "chronically ill individual" criteria.

Assisted living providers should be careful not to give tax advice to their residents and resident prospects, and should recommend that they consult with their accountant or lawyer regarding the appropriateness of any tax deduction.

1 I.R.C. § 213(a)
2 I.R.C. § 213(g)(1)(A)
3 26 CFR § 213(e)(1)(ii)
4 Revenue Ruling 76-106

5 IRC § 213(d)

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CALA Spring Conference & Trade Show

June 8 – 10, 2009
Radisson Hotel, Sacramento
Advancing Our Collective Vision

As we prepare to enter a new political era amidst trying economic times, Assisted Living providers are challenged to continue to provide the highest quality resident care, maintain strong teams and stay in the know. Join us at the CALA Spring Conference to find out how to shape and broaden the vision of Assisted Living, strengthen the profession from within, and learn about these critical topics:

- ✓ Sales & marketing strategies, from online, to in-person and everything in between
- ✓ The political and regulatory climates and their impact on Assisted Living operations
- ✓ Resident care, to include pain management, risk reduction in medication management, palliative care and more
- ✓ Legal and operational support, and so much more

In addition, visit CALA associates and exhibitors as they introduce all the latest products and services available to Assisted Living providers. Exhibitors will welcome attendees at the Exhibit Hall Wine Tasting on Monday and lunch on Tuesday. Come support our partner members!

Conference registration will go live on the CALA website in late March. In the meantime, reserve your room at the Radisson Hotel Sacramento at the special CALA group rate of \$130. Call (800) 333-3333.

Do You Know Your Legislator?

Knowing who represents you at the Capitol is paramount to ensuring your voice is heard! Do you know which legislators represent your communities? If not, let CALA help you invite your legislators to visit you, your residents and your staff.

Hosting a legislative event or tour is easier than it sounds, and CALA will help you every step of the way! Are you hosting a special event for St. Patrick's Day next month? Invite your representatives to join you in celebration!

Contact Cassandra Opiela at clo@CAassistedliving.org or (916) 448-1900 for more information on who your legislators are and how to host a tour or event with them.

CALA Calendar of Events

2009

March 3 & 4

Hospice Providers in Assisted Living Workshop
Sacramento, CA & San Jose, CA

April 1

Assisted Living Advocacy Day
Sacramento, CA

June 8-10

Spring Conference & Trade Show
Advancing Our Collective Vision
Sacramento, CA

September 13-19

National Assisted Living Week

October 26-28

Fall Conference & Trade Show
Costa Mesa, CA

State Budget Cuts SSI/SSP

On January 1, 2009, recipients' maximum monthly SSI grant increased slightly due to a federal cost-of-living-adjustment (COLA). Effective May 1, 2009, the SSP portion of the combined grant will be reduced by the amount of that increase, effectively returning the maximum combined SSI/SSP grants for individuals and couples to their December 2008 levels and leaving these grant levels unchanged through the end of the 2009-10 fiscal year.

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However, providers should feel comfortable saying that, in many cases, fees paid for assisted living should be eligible for a medical expense deduction under federal tax law, if all the requirements for deduction are met.

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.