How to Deduct Assisted Living Facility Costs

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The Internal Revenue Code provides an income tax deduction for medical expenses which include “qualified long-term services”¹. IRC § 7702B provides special rules on deducting qualified long-term care costs as medical expenses under IRC § 213(d)². While the costs of a skilled nursing home should be deductible, the deductibility of the costs of an Assisted Living Facility (ALF) is less certain.

Deductible qualified long-term care costs in an ALF are defined as necessary rehabilitative services, maintenance or personal care services (defined later) that are:

1. Required by a chronically ill individual and

2. Provided pursuant to a plan of care prescribed by a licensed health care practitioner.

Chronic Illness Test

Not all residents of ALFs can qualify as a chronically ill individual for medical expense deduction purposes. Under Section 7702B(c)(2), an individual is chronically ill if, within the previous 12 months, a licensed health care practitioner has certified that the individual meets either of the following descriptions:

1. He or she is unable to perform at least two activities of daily living (ADLs) without substantial assistance from another individual for at least 90 days due to a loss of functional capacity. Activities of daily living are eating, toileting, transferring, bathing, dressing, and continence.

2. He or she requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

The Congressional Conference Report for Section 7702B states: “It is intended that an individual who is physically able, but has a cognitive impairment such as Alzheimer’s disease or other form of irreversible loss of mental capacity, be treated similarly to a person who is unable to perform at least two activities of daily living.”³

Maintenance or personal care services are care which has as its primary purpose the providing of needed assistance for a chronically ill individual with his or her disabilities (including protection from threats to health and safety due to severe cognitive impairments). Thus, if an ALF resident needs substantial help with bathing and dressing
(two ADLs), then the ALF’s provision of such assistance qualifies as personal care services.

There is a potential trap in that certification of the chronic illness requirement must have been accomplished at some time within the preceding 12 months.

Under Section 7702B(c)(4) the “licensed health care practitioner” who can perform the certification requirement includes any physician, registered professional nurse, or licensed social worker. There is no requirement that the licensed health care practitioner be an employee of the ALF, although the licensed practitioner could be. The licensed practitioner certainly must personally examine the taxpayer and prepare a written opinion. An acceptable licensed practitioner could be the taxpayer’s primary care physician or a registered nurse or licensed social worker on staff with an Elder Law Firm or on contract with such Firm.

**Plan of Care Test**

The Code does not define what a “plan of care” is. For skilled nursing facilities, a written plan of care for each patient is a federal statutory requirement. Although there is no similar federal requirement mandating that ALFs prepare a written plan of care, most ALFs do prepare such plans. As with the certification of chronic illness test, a plan of care must be prescribed by a licensed health care practitioner which includes a physician, registered nurse or licensed social worker.

**Summary**

In summary, Section 7702B’s test for the deduction requires the following:

1. There must be a plan of care prescribed by a licensed health care practitioner.
2. The patient must be a chronically ill person who either needs substantial assistance with two or more ADL’s or requires substantial supervision due to severe cognitive impairment.

If these requirements are satisfied, then 100% of the costs (including room and board) of the ALF are deductible under Section 7702B on Schedule A of Form 1040 to the extent such costs are not reimbursed by insurance or government benefits.

If a patient cannot satisfy Section 7702B’s test, the patient can still deduct under Section 213 the percent of the ALF costs which are attributed to nursing services but not the percent attributed to room and board and personal services. Nursing services are of a kind generally performed by a nurse in connection with caring for the patient’s condition and include bathing and grooming the patient. The ALF in question should provide its estimate of the deductible nursing services portion of the bill and that statement should be
attached to Schedule A. A typical percent range attributed to deductible nursing services in an ALF is 30% to 40%.

In order to prospectively secure the deduction, the opinion of a doctor, nurse or social worker on the chronic illness issue should be obtained before admission and a written plan of care should be prepared at or soon after admission by a doctor, nurse or social worker.

A taxpayer can claim an itemized deduction for unreimbursed medical expenses to the extent such expenses exceed 7.5% of adjusted gross income (AGI). Quality long-term care services, insurance premiums, and other eligible medical expenses may be aggregated together to exceed 7.5% of AGI.

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* Certified Elder Law Attorney is a designation earned through the National Elder Law Foundation, accredited by the ABA.

1 I.R.C. §213(d).
2 Competent tax practitioners, such as NAELA member, David L. Rice, LL.M. Taxation, point out that the Treasury Regulations under IRC §213(d) do not mention the ability to deduct long-term care costs as medical expenses, and as a result taxpayers may be unable to deduct ALF expenses. The author of this article, on the other hand, believes the express provisions of IRC §7702B, which authorize the deduction of qualified long-term care costs, trump this regulatory defect.
3 I.R.C. §7702B.
4 IRS Publication 502, page 12 (2007); such expenses would not be deductible under IRC §7702B but rather under IRC §213. See also Treas. Reg. §1.213-1(e)(1)(v) which provides that when a patient’s condition is such that the availability of medical care in the institution is not a “principal reason for his presence there, only that part of the cost of care in the institution as is attributable to medical care shall be considered as a cost of medical care.”
5 I.R.C. §213(a).
6 I.R.C. §213.