

May 1, 2024

Attn: Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

***Sent electronically only to pra.comments@irs.gov

Re: Revenue Procedure 99-21

Dear Andres Garcia:

The following comments were composed by the Director of the University of Minnesota Law School Tax Clinic (Minnesota Tax Clinic), with student contributions from Cierra Dinsmore Johnson and Chris Lorimer at the University of Minnesota Law School. These comments reflect the opinions of the Minnesota Tax Clinic, but not necessarily of the University of Minnesota or the University of Minnesota Law School.

On March 6, 2024, the Internal Revenue Service (IRS) solicited comments concerning “financial disability,” applicable to Internal Revenue Code (IRC) section 6511(h) and IRS Revenue Procedure (Rev. Proc.) 99-21. The request for comments specifically asked for proposals that “enhance the quality, utility, and clarity” of the information to be collected under Rev. Proc. 99-21.

We are limiting our comments to two narrow issues: (1) expanding the definition of “physician,” to include nurse practitioners and physician assistants, and (2) making an IRS “financial disability” form publicly available to taxpayers. We provide our comments below.

Recommendation One:

Expand the Definition of Physician to Include Nurse Practitioners and Physician’s Assistants

Under the current language of Rev. Proc. 99-21 only certain individuals are eligible to determine that a taxpayer was “financially disabled.” To wit, such individuals must be a “physician (as defined in § 1861(r)(1) of the Social Security Act, 42 U.S.C. § 1395x(r)).” That definition includes, *inter alia*, a doctor of medicine or osteopathy, of dental surgery or of dental medicine, of podiatric medicine, of optometry, or a chiropractor. 42 U.S.C. § 1395x(r).

We believe that this definition is flawed for failing to include medical professionals that are the most likely to have firsthand observational knowledge and experience with the taxpayers. Specifically, we believe that the definition should be expanded to include nurse practitioners and physician's assistants.

In the Tax Clinic's experience, taxpayers that are most often "financially disabled" are also most often financially stressed, without access to regular doctor's visits. We have seen financially disabled taxpayers that rely on social workers and live in group homes where their care is almost always administered by nurse practitioners and physician's assistants. We believe this is in line with national trends.

Increasingly, patients are receiving primary care from nurse practitioners and physician's assistants. Indeed, one study found that from 2013 to 2019 the proportion of patients seen solely by nurse practitioners and physician's assistants for Medicare visits increased from 14% to 25.6%.¹ This study also found that the *increase* in primary care visits from nurse practitioner and physician's assistants resulted in a *decrease* of primary care physician visits per patient by 18%. *Id.* This suggests that increasingly the medical professionals with the most direct observations of financially disabled taxpayers are likely to be nurse practitioners and physician's assistants.

Furthermore, precluding nurse practitioners and physician's assistants from making financial disability determinations produces inequitable results. The same study that noted the increase in primary care visits from nurse practitioner and physician's assistants also found that those most likely to receive such care were low-income, reside in rural areas, and are disabled.²

This finding is bolstered by other studies and statistics. For example, the Kaiser Family Foundation found that as of November 1, 2023, as many as 100,985,760 Americans live in areas designated Health Professional Shortage Areas (HPSAs).³ HPSAs are defined as a region experiencing a physician shortage in primary medical care, dental care, and mental health care. Under the current, restricted definition of "physician," Rev. Proc. 99-21 may create significantly more burdens for rural and low-income taxpayers than for the wealthy.

Finally, we'd note that "financially disabled" is not a medical term of art, such that it isn't immediately clear why only limited types of physicians would be qualified to make the determination. Because of this many physicians may feel uncertainty about what exactly they are rendering an opinion on, making them uncomfortable in providing a determination -especially if they have not directly observed the individual. This issue would be obviated by including those professionals that are most likely to have directly observed the individual: increasingly, nurse practitioners and physician's assistants.

¹ *Provision Of Evaluation And Management Visits By Nurse Practitioners And Physician Assistants In The USA From 2013 To 2019: Cross-Sectional Time Series Study*, BMJ 2023, Sadiq Y. Patel et al., 382:e073933 (2023).

² *Id.*

³ Primary Care Health Professional Shortage Areas, KFF (Nov. 1, 2023) <https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/> [last retrieved 4/29/2024]

Recommended Language

We recommend that Rev. Proc. 99-21 Section 4(1) be amended to read (changes in bold and underlined):

- (1) a written statement by a healthcare professional, including a physician (as defined in § 1861(r)(1) of the Social Security Act, 42 U.S.C. § 1395x(r)), **a certified nurse practitioner, or a certified physician's assistant** qualified to make the determination, that sets forth: [...]

Recommendation Two:

The IRS Should Provide a Specific Form to Taxpayers Claiming Financial Disability

The Tax Clinic has seen that two of the biggest barriers to individuals receiving relief under IRC § 6511(h) are (1) the lack of knowledge that such relief exists, and (2) as noted above, the lack of understanding among medical professionals about what constitutes “financial disability.” Both these issues may be ameliorated with the creation of a standardized and publicly available form.

A publicly available form could provide many benefits to both the IRS and taxpayers. It could help publicize the relief available to deserving taxpayers; help taxpayers determine if they are eligible for the relief; and guide medical professionals in determining if a taxpayer was financially disabled. On the latter point, a form modeled after the Social Security Administration Form SSA-604 “Certificate of Incapacity” may be particularly helpful for medical professionals, as they may already be familiar with it.

At a minimum, we recommend that any final IRS form for claiming financial disability should include fields for diagnosis underlying the determination, the date the condition began, how long it is expected to continue, and whether the taxpayer was able to manage their own financial affairs during the period in question. Medical professionals fill out various health forms on a regular basis and are much more comfortable with this model than a freeform letter as is currently required. It also may be easier for a taxpayer to make an appointment with their healthcare provider if they have a specific form that needs to be filled out, just as they would for a disability determination.

Conclusion: Increasing the Quality, Utility, and Clarity of Financial Disability Information

In accordance with the request for comments, we believe that both of our recommendations would significantly “enhance the quality, utility, and clarity of the information to be collected” with regards to a financial disability determination. Our recommendation on allowing nurse practitioners and physician’s assistants to make determinations about financial disability would enhance the quality of the information collected by the IRS by allowing for more information from healthcare professionals with first-hand knowledge of the taxpayers. Our recommendation on providing a standardized form would enhance both the utility and clarity of the information collected, by giving healthcare professionals more detail and direction on what is being asked of them.

We appreciate your attention to our comments, and hope that you will take seriously our concerns about the present Rev. Proc. 99-21 language. We believe our recommendations are both administratively workable and in-line with the Congressional purpose and policy underlying IRC § 6511(h). We are happy to address any questions or concerns about our recommendations.



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