

2007 Instructions for Form 8853
Archer MSAs and Long-Term Care Insurance Contracts

- Purpose:** This is the first circulated draft of the 2007 Instructions for Form 8853, Archer MSAs and Long-Term Care Insurance Contracts. The major changes are discussed below.
- TPCC Meeting:** None scheduled, but may be arranged if requested.
- Instructions:** The 2007 Form 8853 was circulated earlier.
- Prior Revisions:** The 2006 Instructions for Form 8853 and its instructions can be viewed by clicking on the following link:

<http://www.irs.gov/pub/irs-pdf/i8853.pdf>
- Other Products:** Circulations of draft tax forms, instructions, notices, and publications are posted at http://taxforms.web.irs.gov/draft_products.html.
- Comments:** Please call, mail, email, or fax any comments by Friday, July 23, 2007.

Major Changes

1. All year references have been changed.
2. Inflationary adjustments affecting Archer MSAs have been made.
(Rev. Proc. 2006-53, section 3.22)
3. Inflationary adjustments for periodic payment amounts under qualified long-term care insurance contracts have been made.
(Rev. Proc. 2006-53, section 3.41)

Changes are also being made to the Line 5 Limitation Chart and Worksheet on page 3 and the Filing Requirements for Section C chart on page 6. These changes are shown as Adobe Notes on the pdf document. For those unable to read "Adobe Notes" the changes on the draft are:

Page 3 – 2006 is being changed to 2007 under the heading and on the first line of the worksheet. The dollar amounts under "Self-only coverage" are changing to \$1,900 and \$2,850. The dollar amounts under "Family coverage" are changing to \$3,750 and \$5,650.

Page 6 – 2006 is being changed to 2007 in the two large boxes in the left column and the large box in the center of the 2nd column.

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2007



Department of the Treasury
Internal Revenue Service

Instructions for Form 8853

Archer MSAs and Long-Term Care Insurance Contracts

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Form

Use Form 8853 to:

- Report Archer MSA contributions (including employer contributions),
- Figure your Archer MSA deduction,
- Report distributions from Archer MSAs or Medicare Advantage MSAs,
- Report taxable payments from long-term care (LTC) insurance contracts, or
- Report taxable accelerated death benefits from a life insurance policy.

Additional information. See Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans, for more details on MSAs.

Who Must File

You must file Form 8853 if any of the following applies.

- You (or your employer) made contributions for 2007 to your Archer MSA.
- You are filing a joint return and your spouse (or his or her employer) made contributions for 2007 to your spouse's Archer MSA.
- You (or your spouse, if filing jointly) received Archer MSA or Medicare Advantage MSA distributions in 2007.
- You (or your spouse, if filing jointly) acquired an interest in an Archer MSA or a Medicare Advantage MSA because of the death of the account holder. See *Death of Account Holder* that begins on this page.
- You (or your spouse, if filing jointly) were a policyholder who received payments under an LTC insurance contract or received any accelerated death benefits from a life insurance policy on a per diem or other periodic basis in 2007. See the instructions for Section C, that begin on page 5.

Specific Instructions

Name and social security number (SSN). Enter your name(s) and SSN as shown on your tax return. If filing jointly and both you and your spouse each have an Archer MSA or each have a Medicare Advantage MSA, enter the SSN shown first on your tax return.

Section A—Archer MSAs

Eligible Individual

To be eligible for an Archer MSA, you (or your spouse) must be an employee of a small employer or be self-employed. You (or your spouse) must be covered under a high deductible health plan (HDHP) and have no other health coverage except permitted coverage. You must not be enrolled in Medicare and cannot be claimed as a dependent on someone else's 2007 tax return. You must be an eligible individual on the first day of a month to take an Archer MSA deduction for that month.

Small Employer

A small employer is generally an employer who had an average of 50 or fewer employees during either of the last 2 calendar years. See Pub. 969 for details.

Archer MSA

Generally, an Archer MSA is a medical savings account set up exclusively for paying the qualified medical expenses of the account holder.

Qualified Medical Expenses

Generally, qualified medical expenses for Archer MSA purposes are unreimbursed medical expenses that could otherwise be deducted on Schedule A (Form 1040). See the Instructions for Schedule A and Pub. 502, Medical and Dental Expenses (Including the Health Coverage Tax Credit). Qualified medical expenses are those incurred by the account holder or the account holder's spouse or dependent(s). (See the instructions for line 9). However, you cannot treat insurance premiums as qualified medical expenses unless the premiums are for:

- Long-term care (LTC) insurance,
- Health care continuation coverage, or
- Health care coverage while receiving unemployment compensation under federal or state law.

High Deductible Health Plan

An HDHP is a health plan that meets the following requirements.

	Self-only coverage	Family coverage
Minimum annual deductible	\$1,900	\$3,750
Maximum annual deductible	\$2,850	\$5,650
Maximum annual out-of-pocket expenses (other than for premiums)	\$3,750	\$6,900

Other Health Coverage

If you have an Archer MSA, you (and your spouse, if you have family coverage) cannot have any health coverage other than an HDHP. But your spouse can have health coverage other than an HDHP if you are not covered by that plan.

Exceptions. You can have additional insurance that provides benefits only for:

- Liabilities under workers' compensation laws, tort liabilities, or liabilities arising from the ownership or use of property,
- A specific disease or illness, or
- A fixed amount per day (or other period) of hospitalization.

You can also have coverage (either through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

Disabled

An individual generally is considered disabled if he or she is unable to engage in any substantial gainful activity due to a physical or mental impairment which can be expected to result in death or to continue indefinitely.

Death of Account Holder

If the account holder's surviving spouse is the designated beneficiary, the Archer MSA is treated as if the surviving spouse were the account holder. The surviving spouse completes Form 8853 as though the Archer MSA belonged to him or her.

If the designated beneficiary is not the account holder's surviving spouse, or there is no designated beneficiary, the account ceases to be an Archer MSA as of the date of death. The beneficiary completes Form 8853 as follows.

- Enter "Death of Archer MSA account holder" across the top of Form 8853.
- Enter the name(s) shown on your tax return and your SSN in the spaces provided at the top of the form and skip Part II.
- On lines 8a and 8c, enter the fair market value of the Archer MSA as of the date of death.

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- On line 9, for a beneficiary other than the estate, enter qualified medical expenses incurred by the account holder before the date of death that you paid within 1 year after the date of death.
- Complete the rest of Part III.

If the account holder's estate is the beneficiary, the value of the Archer MSA as of the date of death is included in the account holder's final income tax return. Complete Form 8853 as described above, except you should complete Part II, if applicable.

The distribution is not subject to the additional 15% tax. Report any earnings on the account after the date of death as income on your tax return.

Deemed Distributions From Archer MSAs

The following situations result in deemed distributions from your Archer MSA.

- You engaged in any transaction prohibited by section 4975 with respect to any of your Archer MSAs, at any time in 2007. Your account ceases to be an Archer MSA as of January 1, 2007, and you must include the fair market value of all assets in the account as of January 1, 2007, on line 8a.
- You used any portion of any of your Archer MSAs as security for a loan at any time in 2007. You must include the fair market value of the assets used as security for the loan as income on Form 1040, line 21; or Form 1040NR, line 21.

Any deemed distribution will not be treated as used to pay qualified medical expenses. Generally, these distributions are subject to the additional 15% tax.

Part I—General Information

Complete this part if contributions were made for 2007 by:

- You (or your employer) to your Archer MSA, or
- Your spouse (or his or her employer) to your spouse's Archer MSA (if you are filing a joint return).

Lines 1a and 2a

Check "Yes" on line 1a if you or your employer made contributions to your Archer MSA for 2007, including contributions for 2007 made from January 1, 2008, through April 15, 2008. Otherwise, check the "No" box on line 1a.

Check "Yes" on line 2a if you are filing a joint return and your spouse (or your spouse's employer) made contributions to your spouse's Archer MSA for 2007, including contributions for 2007 made from January 1, 2008, through April 15, 2008. Otherwise, check the "No" box on line 2a.

Lines 1b and 2b

Check "Yes" on line 1b or 2b only if the account holder is considered previously uninsured.

An account holder is considered previously uninsured if the HDHP

coverage began after June 30, 1996, and the account holder has:

1. Self-only coverage under an HDHP and did not have any health plan coverage at any time during the 6-month period before coverage under the HDHP began, or

2. Family coverage under an HDHP and neither the account holder nor the account holder's spouse had any health plan coverage at any time during the 6-month period before coverage under the HDHP began.

In determining whether an account holder is previously uninsured, disregard any health insurance that is permitted in addition to the HDHP. See *Other Health Coverage* on page 1.

Lines 1c and 2c

If covered by a self-only HDHP and a family HDHP, indicate which plan was in effect longer during the year.

Part II—Archer MSA Contributions and Deductions

Use Part II to figure:

- Your Archer MSA deduction,
- Any excess contributions you made, and
- Any excess contributions made by an employer (see *Excess Employer Contributions* on page 4).

Figuring Your Archer MSA Deduction

The amount you can deduct for Archer MSA contributions is limited by:

- The applicable portion of the HDHP's annual deductible (line 5), and
- Your compensation from the employer maintaining the HDHP (line 6).

Any employer contributions made to your Archer MSA prevent you from making deductible contributions. See *Employer Contributions to an Archer MSA* below. Also, if you or your spouse made contributions in addition to any employer contributions, you may have to pay an additional tax. See *Excess Contributions You Make* on page 3.

You cannot deduct any contributions you made after you became enrolled in Medicare. Also, you cannot deduct contributions if you can be claimed as a dependent on someone else's 2007 tax return.

Employer Contributions to an Archer MSA

If an employer made contributions to your Archer MSA, you are not entitled to a deduction. If you and your spouse are covered under an HDHP with family coverage and an employer made contributions to either of your Archer MSAs, neither you nor your spouse are allowed to make deductible contributions to an Archer MSA. If you and your spouse each have an HDHP with self-only coverage and only one of you received

employer contributions to an Archer MSA, the other spouse is allowed to make deductible contributions to an Archer MSA.

How To Complete Part II

Complete lines 3 through 7 as instructed on the form unless 1 or 2 below applies.

1. If employer contributions to an Archer MSA prevent you from taking a deduction for amounts you contributed to your Archer MSA, complete Part II as follows.

- Complete lines 3 and 4.
- Skip lines 5 and 6.
- Enter -0- on line 7.
- If line 4 is more than zero, see

Excess Contributions You Make on page 3.

2. If you and your spouse have more than one Archer MSA, complete Part II as follows.

a. If either spouse has an HDHP with family coverage, you both are treated as having only the family coverage plan. Disregard any plans with self-only coverage.

b. If both spouses have HDHPs with family coverage, you both are treated as having only the family coverage plan with the lowest annual deductible.

c. If both spouses have HDHPs with self-only coverage, complete a separate Form 8853, Section A, Part II, for each spouse. Enter "statement" across the top of each Form 8853, fill in the name and SSN, and complete Part II. Next, add lines 3, 4, and 7 from the two statement Forms 8853 and enter those totals on the respective lines of the controlling Form 8853 (the combined Form 8853 for both spouses). Do not complete lines 5 and 6 of the controlling Form 8853. Attach the two statement Forms 8853 to your tax return after the controlling Form 8853.

Line 3

Employer Contributions

Employer contributions include any amount an employer contributes to any Archer MSA for you or your spouse for 2007. These contributions should be shown in box 12 of Form W-2 with code R. If your employer made excess contributions, you may have to report the excess as income. See *Excess Employer Contributions* on page 4 for details.

Line 4

Do not include amounts rolled over from another Archer MSA. See *Rollovers* on page 4.

Line 5

Go through the chart at the top of the *Line 5 Limitation Chart and Worksheet* on page 3 for each month of 2007. Enter the result on the worksheet next to the corresponding month.

TIP If eligibility and coverage of both you and your spouse did not change from one month to the next, enter the same number you entered

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for the previous month. If eligibility and coverage did not change during the entire year, figure the number for January only, and enter this amount on Form 8853, line 5.

More than one HDHP. If you and your spouse had more than one HDHP on the first of the month and one of the plans provides family coverage, use the *Family coverage* rules on the chart and disregard any plans with self-only coverage. If you and your spouse both have HDHPs with family coverage on the first of the month, you both are treated as having only the family coverage plan with the lowest annual deductible.

Married filing separately. If you have an HDHP with family coverage and are married filing separately, enter only 37.5% (.375) (one-half of 75%) of the annual deductible on the worksheet; or, if you and your spouse agree to divide the 75% of the annual deductible in a different manner, enter your share.

Line 6

Compensation

Compensation includes wages, salaries, professional fees, and other pay you receive for services you perform. It also includes sales commissions, commissions on insurance premiums, pay based on a percentage of profits, tips, and bonuses. Generally, these amounts are included on the Form(s) W-2 you receive from your employer(s). Compensation also includes net earnings from self-employment, but only for a trade or business in which your personal services are a material income-producing factor. This is your income from self-employment minus expenses (including the one-half of self-employment tax deduction). Generally, net earnings and self-employment tax deduction are shown on the Schedule SE (Form 1040) you complete for your business or farm. Compensation does not include any amounts received as a pension or annuity and does not include any amount received as deferred compensation.

Line 7

If you (or your employer) contributed more to your Archer MSA than is allowable, you may have to pay an additional tax on the excess contributions. Figure the excess contributions using the instructions below. See Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, to figure the additional tax.

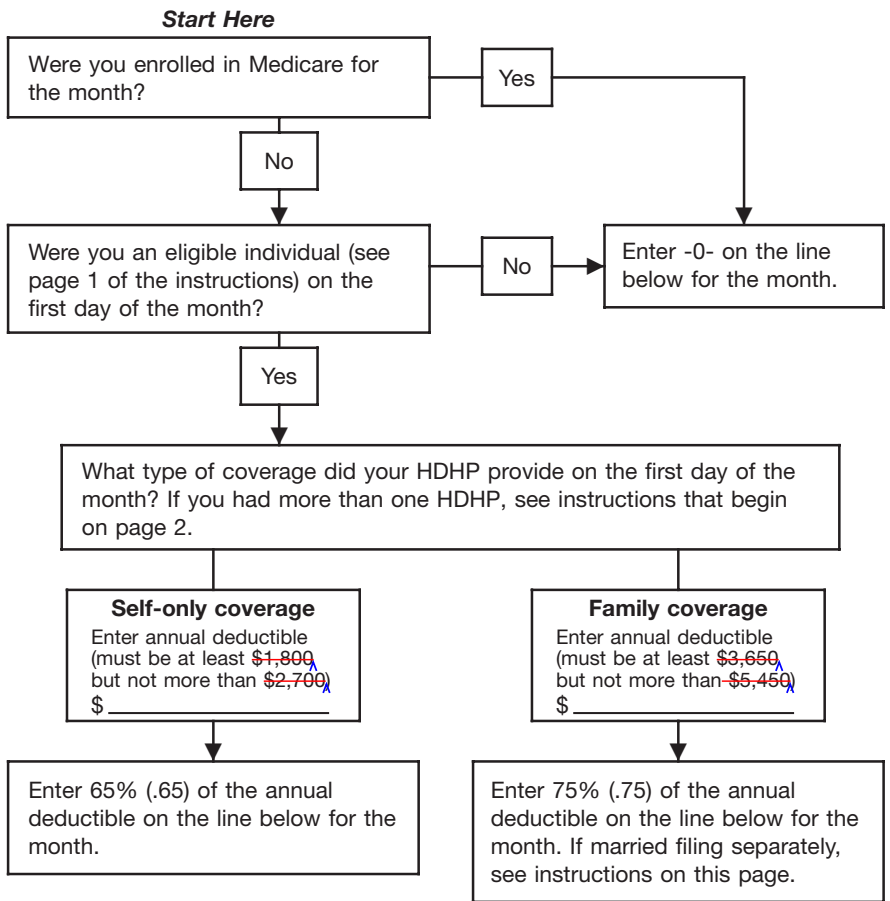
Excess Contributions You Make

To figure your excess contributions, subtract your deductible contributions (line 7) from your actual contributions (line 4). However, you can withdraw some or all of your excess contributions for 2007 and they will be treated as if they had not been contributed if:

- You make the withdrawal by the due date, including extensions, of your 2007

Line 5 Limitation Chart and Worksheet

Go through this chart for each month of 2006. See the instructions for line 5 that begin on page 2. (Keep for your records)



Month in 2006	Amount from chart above
January	_____
February	_____
March	_____
April	_____
May	_____
June	_____
July	_____
August	_____
September	_____
October	_____
November	_____
December	_____
Total for all months	_____
Limitation. Divide the total by 12. Enter here and on line 5	_____

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tax return (but see the *Note* under *Excess Employer Contributions* on page 4),

- You do not claim a deduction for the amount of the withdrawn contributions, and
- You also withdraw any income earned on the withdrawn contributions and include the earnings in "Other income" on your tax return for the year you withdraw the contributions and earnings.

Excess Employer Contributions

Excess employer contributions are the excess, if any, of your employer's contributions over the smaller of (a) your limitation on line 5, or (b) your compensation from the employer(s) who maintained your HDHP (line 6). If the excess was not included in income on Form W-2, you must report it as "Other income" on your tax return. However, you can withdraw some or all of the excess employer contributions for 2007 and they will be treated as if they had not been contributed if:

- You make the withdrawal by the due date, including extensions, of your 2007 tax return (but see the *Note* below),
- You do not claim an exclusion from income for the amount of the withdrawn contributions, and
- You also withdraw any income earned on the withdrawn contributions and include the earnings in "Other income" on your tax return for the year you withdraw the contributions and earnings.

Note. If you timely filed your return without withdrawing the excess contributions, you can still make the withdrawal no later than 6 months after the due date of your tax return, excluding extensions. If you do, file an amended return with "Filed pursuant to section 301.9100-2" written at the top. Include an explanation of the withdrawal. Make all necessary changes on the amended return (for example, if you reported the contributions as excess contributions on your original return, include an amended Form 5329 reflecting that the withdrawn contributions are no longer treated as having been contributed).

Part III—Archer MSA Distributions

Line 8a

Enter the total distributions you and your spouse received in 2007 from all Archer MSAs. These amounts should be shown in box 1 of Form 1099-SA.

Line 8b

Include on line 8b any distributions you received in 2007 that were rolled over. See *Rollovers* below. Also include any excess contributions (and the earnings on those excess contributions) included on line 8a that were withdrawn by the due date, including extensions, of your return. See the instructions for line 7 beginning on page 3.

Rollovers

A rollover is a tax-free distribution (withdrawal) of assets from one Archer MSA that is reinvested in another Archer MSA or a health savings account. Generally, you must complete the rollover within 60 days following the distribution. You can make only one rollover contribution to an Archer MSA during a 1-year period. See Pub. 590, Individual Retirement Arrangements (IRAs), for more details and additional requirements regarding rollovers.

Note. If you instruct the trustee of your Archer MSA to transfer funds directly to the trustee of another Archer MSA, the transfer is not considered a rollover. There is no limit on the number of these transfers. Do not include the amount transferred in income, deduct it as a contribution, or include it as a distribution on line 8a.

Line 9

In general, include on line 9 distributions from all Archer MSAs in 2007 that were used for the qualified medical expenses (see page 1) of:

1. Yourself and your spouse.
2. All dependents you claim on your tax return.
3. Any person you could have claimed as a dependent on your return except that:
 - a. The person filed a joint return,
 - b. The person had gross income of \$3,400 or more, or
 - c. You, or your spouse if filing jointly, could be claimed as a dependent on someone else's return.

However, if a contribution was made to an Archer MSA in 2007 (by you or your employer), do not include on line 9 withdrawals from an Archer MSA if the individual for whom the expenses were incurred was not covered by an HDHP or was covered by a plan that was not an HDHP (other than the exceptions listed on page 1) at the time the expenses were incurred.

Example. In 2007, you were covered by an HDHP with self-only coverage and your spouse was covered by a health plan that was not an HDHP. You made contributions to an Archer MSA for 2007. You cannot include on line 9 withdrawals made from the Archer MSA to pay your spouse's medical expenses incurred in 2007 because your spouse was covered by a plan that was not an HDHP.



You cannot take a deduction on Schedule A (Form 1040) for any amount you include on line 9.

Lines 11a and 11b

Additional 15% Tax

Archer MSA distributions included in income (line 10) are subject to an additional 15% tax unless one of the following exceptions apply.

Exceptions to the Additional 15% Tax

The additional 15% tax does not apply to distributions made after the date that the account holder—

- Dies,
- Becomes disabled (see page 1), or
- Turns age 65.

If any of the exceptions apply to any of the distributions included on line 10, check the box on line 11a. Enter on line 11b only 15% (.15) of any amount included on line 10 that does not meet any of the exceptions.

Example 1. You turned age 66 in 2007 and had no Archer MSA during 2007. Your spouse turned age 63 in 2007 and received a distribution from an Archer MSA that is included in income. Do not check the box on line 11a because your spouse (the account holder) did not meet the age exception for the distribution. Enter 15% of the amount from line 10 on line 11b.

Example 2. Both you and your spouse received distributions from your Archer MSAs in 2007 that are included in income. You were age 65 at the time you received the distributions and your spouse was age 63 when he or she received the distributions. Check the box on line 11a because the additional 15% tax does not apply to the distributions you received (because you met the age exception). However, the additional 15% tax does apply to your spouse's distributions. Enter on line 11b only 15% of the amount of your spouse's distributions included in line 10.

Example 3. You turned age 65 in 2007. You received distributions that are included in income both before and after you turned age 65. Check the box on line 11a because the additional 15% tax does not apply to the distributions made after the date you turned age 65. However, the additional 15% tax does apply to the distributions made on or before the date you turned age 65. Enter on line 11b, 15% of the amount of these distributions included in line 10.

Section B—Medicare Advantage MSA Distributions

Complete Section B if you (or your spouse, if filing jointly) received distributions from a Medicare Advantage MSA in 2007. If both you and your spouse received distributions, complete a separate Form 8853, Section B, for each spouse. Enter "statement" across the top of each Form 8853, fill in the name and SSN, and complete Section B. Next, add lines 12, 13, 14, and 15b from the two statement Forms 8853 and enter those totals on the respective lines of the controlling Form 8853 (the combined Form 8853 for both spouses). If either spouse checked the box on line 15a of the statement Form 8853, check the box on the controlling Form 8853. Attach the

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two statement Forms 8853 to your tax return after the controlling Form 8853.

Medicare Advantage MSA

A Medicare Advantage MSA is an Archer MSA designated as a Medicare Advantage MSA to be used solely to pay the qualified medical expenses of the account holder. To be eligible for a Medicare Advantage MSA, you must be enrolled in Medicare and have an HDHP that meets the Medicare guidelines. Contributions to the account can be made only by Medicare. The contributions and any earnings, while in the account, are not taxable to the account holder. A distribution used exclusively to pay for the qualified medical expenses of the account holder is not taxable. Distributions that are not used for qualified medical expenses of the account holder are included in income and also may be subject to a penalty.

Death of Account Holder

If the account holder's surviving spouse is the designated beneficiary, the Medicare Advantage MSA is treated as a regular Archer MSA (not a Medicare Advantage MSA) of the surviving spouse for distribution purposes. Follow the instructions in Section A for *Death of Account Holder* that begin on page 1.

If the designated beneficiary is not the account holder's surviving spouse, or there is no designated beneficiary, the account ceases to be an MSA as of the date of death. The beneficiary completes Form 8853 as follows.

- Enter "Death of Medicare Advantage MSA account holder" across the top of Form 8853.
- Enter the name(s) shown on your tax return and your SSN in the spaces provided at the top of the form. Skip Section A.

- On line 12, enter the fair market value of the Medicare Advantage MSA as of the date of death.
- On line 13, for a beneficiary other than the estate, enter qualified medical expenses incurred by the account holder before the date of death that you paid within 1 year after the date of death.
- Complete the rest of Section B.

If the account holder's estate is the beneficiary, the value of the Medicare Advantage MSA as of the date of death is included in the account holder's final income tax return.


The distribution is not subject to the additional 50% tax. Report any earnings on the account after the date of death as income on your tax return.

Line 12

Enter the total distributions you received in 2007 from all Medicare Advantage MSAs. These amounts should be shown in box 1 of Form 1099-SA. This amount should not include any erroneous contributions made by Medicare (or any earnings on the erroneous contributions) or any amounts from a trustee-to-trustee transfer from one Medicare Advantage MSA to another Medicare Advantage MSA of the same account holder.

Line 13

Enter the total distributions from all Medicare Advantage MSAs in 2007 that were used only for the account holder's qualified medical expenses (see page 1).

 *You cannot take a deduction on Schedule A (Form 1040) for any amount you include on line 13.*

Lines 15a and 15b

Additional 50% Tax

Medicare Advantage MSA distributions included in income (line 14) may be

subject to an additional 50% tax unless one of the following exceptions applies.

Exceptions to the Additional 50% Tax

The additional 50% tax does not apply to distributions made on or after the date that the account holder—

- Dies, or
- Becomes disabled (see page 1).

If either of the exceptions applies to any of the distributions included on line 14, check the box on line 15a. Next, if either of the exceptions applies to all the distributions included on line 14, enter -0- on line 15b. Otherwise, complete the worksheet below to figure the amount of the additional 50% tax to enter on line 15b.

Section C—Long-Term Care (LTC) Insurance Contracts

See *Filing Requirements for Section C* on page 6.


Definitions

Policyholder

The policyholder is the person who owns the proceeds of the LTC insurance contract, life insurance contract, or viatical settlement, and also can be the insured individual. The policyholder is required to report the income, even if payment is assigned to a third party or parties. In the case of a group contract, the certificate holder is considered to be the policyholder.

Additional 50% Tax Worksheet—Line 15b

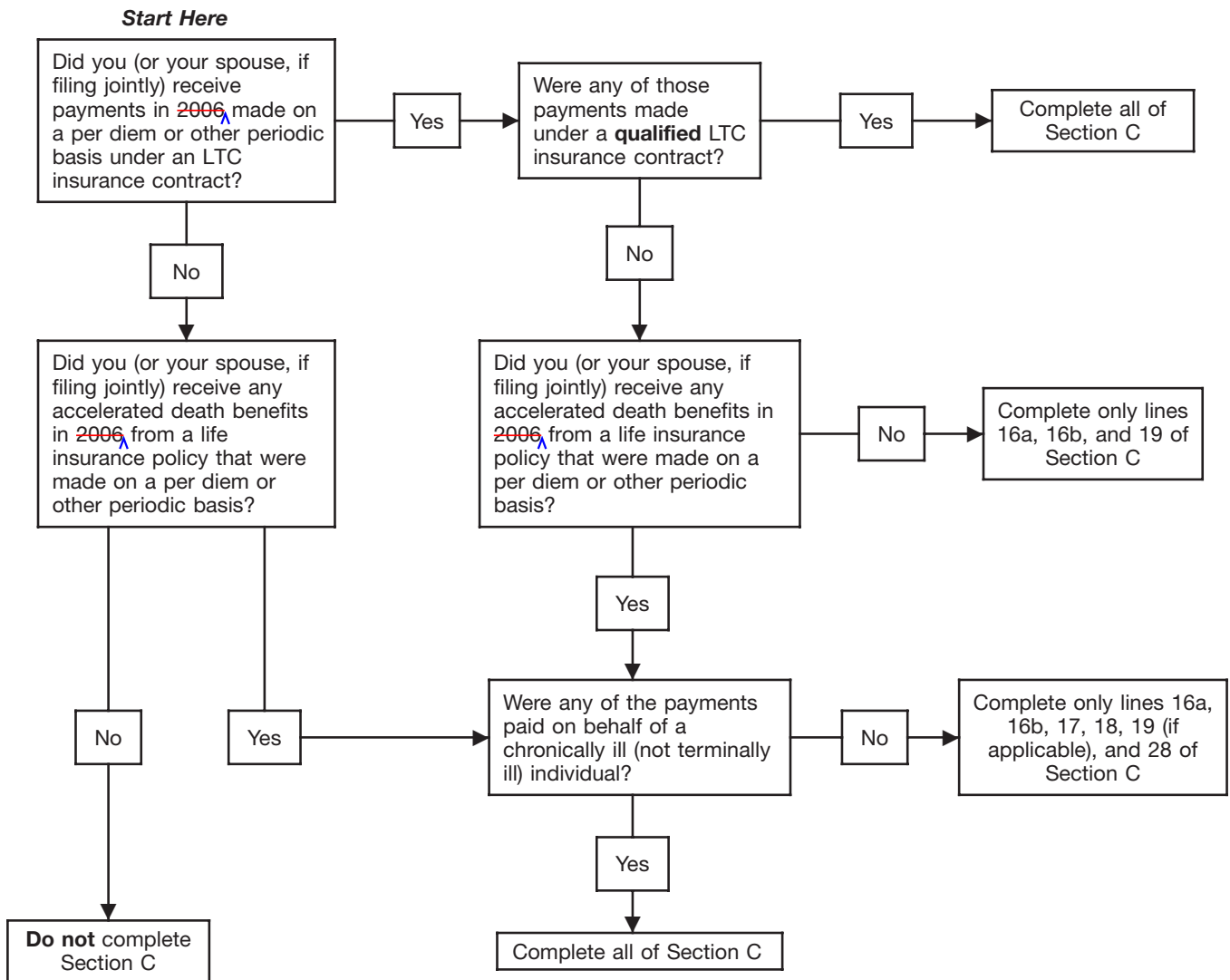
Keep for Your Records 

1. Enter the total distributions included on Form 8853, line 14, that do not meet either of the exceptions to the additional 50% tax	1. _____
2. Did you have a Medicare Advantage MSA on December 31, 2006? <input type="checkbox"/> No.  Enter one-half of line 1 on Form 8853, line 15b <input type="checkbox"/> Yes. Enter the value of your Medicare Advantage MSA on December 31, 2006	2. _____
3. Enter the amount of the annual deductible for your HDHP policy on January 1, 2007	3. _____
4. Multiply line 3 by 60% (.60)	4. _____
5. Subtract line 4 from line 2. If zero or less, enter -0-	5. _____
6. Subtract line 5 from line 1. If zero or less, enter -0-	6. _____
7. Enter one-half of line 6 here and on Form 8853, line 15b	7. _____

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Filing Requirements for Section C

Go through this chart for each insured person for whom you received long-term care (LTC) payments. See **Definitions** that begin on page 5.



Qualified LTC Insurance Contract

A qualified LTC insurance contract is a contract issued:

- After December 31, 1996, that meets the requirements of section 7702B, including the requirement that the insured must be a chronically ill individual (defined on this page), or
- Before January 1, 1997, that met state law requirements for LTC insurance contracts at the time the contract was issued and has not been changed materially.

In general, amounts paid under a qualified LTC insurance contract are excluded from your income. However, if you receive per diem payments (defined below), the amount you can exclude is limited.

Per Diem Payments

Per diem payments are payments of a fixed amount made on a periodic basis without regard to actual expenses

incurred. Box 3 of Form 1099-LTC should indicate whether payments were per diem payments.

Chronically Ill Individual

A chronically ill individual is someone who has been certified (at least annually) by a licensed health care practitioner as—

- Being unable to perform at least two activities of daily living (eating, toileting, transferring, bathing, dressing, and continence), without substantial assistance from another individual, for at least 90 days, due to a loss of functional capacity, or
- Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

Accelerated Death Benefits

Generally, amounts paid as accelerated death benefits under a life insurance contract or under certain viatical

settlements are fully excludable from your gross income if the insured is a terminally ill individual (defined below). Accelerated death benefits paid with respect to an insured individual who is chronically ill generally are excludable from your gross income to the same extent as they would be under a qualified LTC insurance contract.

Terminally Ill Individual

A terminally ill individual is any individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death within 24 months.


Line 17

Special rules apply in determining the taxable payments if other individuals received per diem payments under a qualified LTC insurance contract or as accelerated death benefits with respect to

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the insured listed on line 16a. See *Multiple Payees* on this page for details.

Line 20

 *If you have more than one LTC period, you must separately calculate the taxable amount of the payments received during each LTC period. To do this, complete lines 20 through 28 on separate Sections C for each LTC period. Enter the total on line 28 from each separate Section C on the Form 8853 that you attach to your tax return. See the instructions for line 23 below for the LTC period.*

Line 21


Enter the total accelerated death benefits you received with respect to the insured listed on line 16a. These amounts generally are shown in box 2 of Form 1099-LTC. Include only amounts you received while the insured was a chronically ill individual. Do not include amounts you received while the insured was a terminally ill individual. If the insured was redesignated from chronically ill to terminally ill in 2007, only include on line 21 payments received before the insured was certified as terminally ill.

Line 23

The number of days in your LTC period depends on which method you choose to define the LTC period. Generally, you can choose either the *Contract Period* method or the *Equal Payment Rate* method. However, special rules apply if other persons also received per diem payments in 2007 under a qualified LTC insurance contract or as accelerated death benefits with respect to the insured listed on line 16a. See *Multiple Payees* on this page for details.

Method 1—Contract Period

Under this method your LTC period is the same period as that used by the insurance company under the contract to compute the benefits it pays you. For example, if the insurance company computes your benefits on a daily basis, your LTC period is 1 day.

 *If you choose this method for defining the LTC period(s) and different LTC insurance contracts for the same insured use different contract periods, then all such LTC contracts must be treated as computing benefits on a daily basis.*

Method 2—Equal Payment Rate

Under this method, your LTC period is the period during which the insurance company uses the same payment rate to compute your benefits. For example, you have two LTC periods if the insurance contract computes payments at a rate of \$175 per day from March 1, 2007, through May 31, 2007, and then at a rate of \$195 per day from June 1, 2007, through December 31, 2007. The first LTC period is 92 days (from March 1 through May 31) and the second LTC

period is 214 days (from June 1 through December 31).


You can choose this method even if you have more than one qualified LTC insurance contract covering the same period. For example, you have one insurance contract that pays \$100 per day from March 1, 2007, through December 31, 2007, and you have a second insurance contract that pays \$1,500 per month from March 1, 2007, through December 31, 2007. You have one LTC period because each payment rate does not vary during the LTC period of March 1 through December 31. However, you have two LTC periods if the facts are the same except that the second insurance contract did not begin making payments until May 1, 2007. The first LTC period is 61 days (from March 1 through April 30) and the second LTC period is 245 days (from May 1 through December 31).

Line 24

Qualified LTC services are necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services required to treat a chronically ill individual under a plan of care prescribed by a licensed health care practitioner.

Line 26

Enter the reimbursements you received or expect to receive through insurance or otherwise for qualified LTC services provided for the insured for LTC periods in 2007. Box 3 of Form 1099-LTC should indicate whether the payments were made on a reimbursement basis.

 *Generally, do not include on line 26 any reimbursements for qualified LTC services you received under a contract issued before August 1, 1996. However, you must include reimbursements if the contract was exchanged or modified after July 31, 1996, to increase per diem payments or reimbursements.*

Multiple Payees

If you checked “Yes” on lines 17 and 18 and the only payments you received were accelerated death benefits that were paid because the insured was terminally ill, skip lines 19 through 27 and enter -0- on line 28.

In all other cases in which you checked “Yes” on line 17, attach a statement duplicating lines 20 through 28 of the form. This statement should show the aggregate computation for all persons who received per diem payments under a qualified LTC insurance contract or as accelerated death benefits because the insured was chronically ill. Each person must use the same LTC period. If all the recipients of payments do not agree on which LTC period to use, the contract period method must be used.

After completing the statement, determine your share of the per diem limitation and any taxable payments. The

per diem limitation is allocated first to the insured to the extent of the total payments the insured received. If the insured files a joint return and the insured’s spouse is one of the policyholders, the per diem limitation is allocated first to them to the extent of the payments they both received. Any remaining limitation is allocated among the other policyholders pro rata based on the payments they received in 2007. The statement showing the aggregate computation must be attached to the Form 8853 for each person who received a payment.

Enter your share of the per diem limitation and the taxable payments on lines 27 and 28 of your individual Form 8853. Leave lines 23 through 26 blank.

Example 1

Mrs. Smith was chronically ill throughout 2007 and received 12 monthly payments on a per diem basis from a qualified LTC insurance contract. She was paid \$2,000 per month (\$24,000 total). Mrs. Smith incurred expenses for qualified LTC services of \$100 per day (\$36,500) and was reimbursed for one-half of those expenses (\$18,250). She uses the equal payment rate method and therefore has a single benefit period for 2007 (January 1–December 31). Mrs. Smith completes Form 8853, lines 22 through 28, as follows.

Line	Amount
22	\$24,000 (\$2,000 x 12 mos.)
23	\$94,900 (\$260 x 365 days)
24	\$36,500 (\$100 x 365 days)
25	\$94,900
26	\$18,250 (\$50 x 365 days)
27	\$76,650
28	-\$0-

Example 2

The facts are the same as in Example 1, except Mrs. Smith’s son, Sam, and daughter, Deborah, each also own a qualified LTC insurance contract under which Mrs. Smith is the insured. Neither Sam nor Deborah incurred any costs for qualified LTC services for Mrs. Smith in 2007. From July 1, 2007, through December 31, 2007, Sam received per diem payments of \$2,700 per month (\$16,200 total) and Deborah received per diem payments of \$1,800 per month (\$10,800 total). Mrs. Smith, Sam, and Deborah agree to use the equal payment rate method to determine their LTC periods.

There are two LTC periods. The first is 181 days (from January 1 through June 30) during which the per diem payments were \$2,000 per month. The second is 184 days (from July 1 through December 31) during which the aggregate per diem payments were \$6,500 per month (\$2,000 under Mrs. Smith’s contract + \$2,700

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under Sam's contract + \$1,800 under Deborah's contract).

An aggregate statement must be completed for the second LTC period and attached to Mrs. Smith's, Sam's, and Deborah's forms.

Step 1. They complete a statement for Mrs. Smith for the first LTC period as follows.

Line	Amount
22	\$12,000 (\$2,000 x 6 mos.)
23	\$47,060 (\$260 x 181 days)
24	\$18,100 (\$100 x 181 days)
25	\$47,060
26	\$9,050 (\$50 x 181 days)
27	\$38,010
28	\$-0-

Step 2. They complete the aggregate statement for the second LTC period as follows.

Line	Amount
22	\$39,000 (\$6,500 x 6 mos.)
23	\$47,840 (\$260 x 184 days)
24	\$18,400 (\$100 x 184 days)
25	\$47,840
26	\$9,200 (\$50 x 184 days)
27	\$38,640
28	\$360

Step 3. They allocate the aggregate per diem limitation of \$38,640 on line 27 among Mrs. Smith, Sam, and Deborah. Because Mrs. Smith is the insured, the per diem limitation is allocated first to her to the extent of the per diem payments she received during the second LTC period (\$12,000). The remaining per diem

limitation of \$26,640 is allocated between Sam and Deborah.

Allocation ratio to Sam: 60% of the remaining limitation (\$15,984) is allocated to Sam because the \$16,200 he received during the second LTC period is 60% of the \$27,000 received by both Sam and Deborah during the second LTC period.

Allocation ratio to Deborah: 40% of the remaining limitation (\$10,656) is allocated to Deborah because the \$10,800 she received during the second LTC period is 40% of the \$27,000 received by both Sam and Deborah during the second LTC period.

Step 4. Mrs. Smith, Sam, and Deborah each complete Form 8853 as follows.

Mrs. Smith's Form 8853:

Line	1st LTC Period	2nd LTC Period	Form 8853
22	\$12,000	\$12,000	\$24,000
27	\$38,010	\$12,000	\$50,010
28	\$-0-	\$-0-	\$-0-

Sam's Form 8853:

Line	1st LTC Period	2nd LTC Period	Form 8853
22	\$-0-	\$16,200	\$16,200
27	\$-0-	\$15,984	\$15,984
28	\$-0-	\$216	\$216

Deborah's Form 8853:

Line	1st LTC Period	2nd LTC Period	Form 8853
22	\$-0-	\$10,800	\$10,800
27	\$-0-	\$10,656	\$10,656
28	\$-0-	\$144	\$144

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If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.