

115TH CONGRESS
1ST SESSION

S. 403

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2017

Mr. HATCH (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Health Savings Act of 2017”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents is
 4 as follows:

Sec. 1. Short title, etc.

TITLE I—RENAMING HIGH DEDUCTIBLE HEALTH PLANS

Sec. 101. High deductible health plans renamed HSA-qualified health plans.

TITLE II—ENHANCING ACCESS TO TAX-PREFERRED HEALTH ACCOUNTS

Sec. 201. Allow both spouses to make catch-up contributions to the same HSA account.

Sec. 202. Provisions relating to Medicare.

Sec. 203. Individuals eligible for Indian Health Service assistance.

Sec. 204. Members of health care sharing ministries eligible to establish health savings accounts.

Sec. 205. Treatment of direct primary care service arrangements.

Sec. 206. Individuals eligible for on-site medical clinic coverage.

Sec. 207. Treatment of embedded deductibles.

TITLE III—IMPROVING COVERAGE UNDER TAX-PREFERRED HEALTH ACCOUNTS

Sec. 301. Allowance of distributions for prescription and over-the-counter medicines and drugs.

Sec. 302. Purchase of health insurance from HSA account.

Sec. 303. Special rule for certain medical expenses incurred before establishment of account.

Sec. 304. Preventive care prescription drug clarification.

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO TAX-PREFERRED HEALTH ACCOUNTS

Sec. 401. FSA and HRA interaction with HSAs.

Sec. 402. Equivalent bankruptcy protections for health savings accounts as retirement funds.

Sec. 403. Administrative error correction before due date of return.

Sec. 404. Reauthorization of Medicaid health opportunity accounts.

Sec. 405. Maximum contribution limit to health savings account increased to amount of deductible and out-of-pocket limitation.

TITLE V—OTHER PROVISIONS

Sec. 501. Certain exercise equipment and physical fitness programs treated as medical care.

Sec. 502. Certain nutritional and dietary supplements to be treated as medical care.

Sec. 503. Certain provider fees to be treated as medical care.

1 **TITLE I—RENAMING HIGH**
 2 **DEDUCTIBLE HEALTH PLANS**

3 **SEC. 101. HIGH DEDUCTIBLE HEALTH PLANS RENAMED**
 4 **HSA-QUALIFIED HEALTH PLANS.**

5 (a) IN GENERAL.—Section 223 is amended by striking
 6 ing “high deductible health plan” each place it appears
 7 and inserting “HSA-qualified health plan”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) The heading for paragraph (2) of section
 10 223(c) is amended by striking “HIGH DEDUCTIBLE
 11 HEALTH PLAN” and inserting “HSA-QUALIFIED
 12 HEALTH PLAN”.

13 (2) Section 408(d)(9) is amended—

14 (A) by striking “high deductible health
 15 plan” each place it appears in subparagraph
 16 (C) and inserting “HSA-qualified health plan”,
 17 and

18 (B) by striking “HIGH DEDUCTIBLE
 19 HEALTH PLAN” in the heading of subparagraph
 20 (D) and inserting “HSA-QUALIFIED HEALTH
 21 PLAN”.

1 **TITLE II—ENHANCING ACCESS**
 2 **TO TAX-PREFERRED HEALTH**
 3 **ACCOUNTS**

4 **SEC. 201. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**
 5 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

6 (a) IN GENERAL.—Paragraph (5) of section 223(b)
 7 is amended to read as follows:

8 “(5) SPECIAL RULE FOR MARRIED INDIVIDUALS
 9 WITH FAMILY COVERAGE.—

10 “(A) IN GENERAL.—In the case of individ-
 11 uals who are married to each other, if both
 12 spouses are eligible individuals and either
 13 spouse has family coverage under an HSA-
 14 qualified health plan as of the first day of any
 15 month—

16 “(i) the limitation under paragraph
 17 (1) shall be applied by not taking into ac-
 18 count any other HSA-qualified health plan
 19 coverage of either spouse (and if such
 20 spouses both have family coverage under
 21 separate HSA-qualified health plans, only
 22 one such coverage shall be taken into ac-
 23 count),

24 “(ii) such limitation (after application
 25 of clause (i)) shall be reduced by the ag-

1 gregate amount paid to Archer MSAs of
 2 such spouses for the taxable year, and

3 “(iii) such limitation (after application
 4 of clauses (i) and (ii)) shall be divided
 5 equally between such spouses unless they
 6 agree on a different division.

7 “(B) TREATMENT OF ADDITIONAL CON-
 8 TRIBUTION AMOUNTS.—If both spouses referred
 9 to in subparagraph (A) have attained age 55
 10 before the close of the taxable year, the limita-
 11 tion referred to in subparagraph (A)(iii) which
 12 is subject to division between the spouses shall
 13 include the additional contribution amounts de-
 14 termined under paragraph (3) for both spouses.
 15 In any other case, any additional contribution
 16 amount determined under paragraph (3) shall
 17 not be taken into account under subparagraph
 18 (A)(iii) and shall not be subject to division be-
 19 tween the spouses.”.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 this section shall apply to taxable years beginning after
 22 the date of the enactment of this Act.

23 **SEC. 202. PROVISIONS RELATING TO MEDICARE.**

24 (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN
 25 MEDICARE PART A.—Paragraph (7) of section 223(b) is

1 amended by adding at the end the following: “This para-
 2 graph shall not apply to any individual during any period
 3 for which the individual’s only entitlement to such benefits
 4 is an entitlement to hospital insurance benefits under part
 5 A of title XVIII of such Act pursuant to an enrollment
 6 for such hospital insurance benefits under section 226(a)
 7 of such Act.”.

8 (b) MEDICARE BENEFICIARIES PARTICIPATING IN
 9 MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR
 10 OWN MONEY TO THEIR MSA.—

11 (1) IN GENERAL.—Subsection (b) of section
 12 138 is amended by striking paragraph (2) and by re-
 13 designating paragraphs (3) and (4) as paragraphs
 14 (2) and (3), respectively.

15 (2) CONFORMING AMENDMENT.—Paragraph (4)
 16 of section 138(c) is amended by striking “and para-
 17 graph (2)”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 the date of the enactment of this Act.

21 **SEC. 203. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH**
 22 **SERVICE ASSISTANCE.**

23 (a) IN GENERAL.—Paragraph (1) of section 223(c)
 24 is amended by adding at the end the following new sub-
 25 paragraph:

1 “(D) SPECIAL RULE FOR INDIVIDUALS EL-
 2 IGIBLE FOR ASSISTANCE UNDER INDIAN
 3 HEALTH SERVICE PROGRAMS.—For purposes of
 4 subparagraph (A)(ii), an individual shall not be
 5 treated as covered under a health plan de-
 6 scribed in such subparagraph merely because
 7 the individual receives hospital care or medical
 8 services under a medical care program of the
 9 Indian Health Service or of a tribal organiza-
 10 tion.”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply to taxable years beginning after
 13 the date of the enactment of this Act.

14 **SEC. 204. MEMBERS OF HEALTH CARE SHARING MIN-**
 15 **ISTRIES ELIGIBLE TO ESTABLISH HEALTH**
 16 **SAVINGS ACCOUNTS.**

17 (a) IN GENERAL.—Section 223 is amended by adding
 18 at the end the following new subsection:

19 “(i) APPLICATION TO HEALTH CARE SHARING MIN-
 20 ISTRIES.—For purposes of this section, membership in a
 21 health care sharing ministry (as defined in section
 22 5000A(d)(2)(B)(ii)) shall be treated as coverage under an
 23 HSA-qualified health plan.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to taxable years beginning after
 3 the date of the enactment of this Act.

4 **SEC. 205. TREATMENT OF DIRECT PRIMARY CARE SERVICE**
 5 **ARRANGEMENTS.**

6 (a) IN GENERAL.—Section 223(c) is amended by
 7 adding at the end the following new paragraph:

8 “(6) TREATMENT OF DIRECT PRIMARY CARE
 9 SERVICE ARRANGEMENTS.—An arrangement under
 10 which an individual is provided coverage restricted to
 11 primary care services in exchange for a fixed peri-
 12 odic fee or payment for primary care services—

13 “(A) shall not be treated as a health plan
 14 for purposes of paragraph (1)(A)(ii), and

15 “(B) shall not be treated as insurance for
 16 purposes of subsection (d)(2)(B).”.

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to taxable years beginning after
 19 the date of the enactment of this Act.

20 **SEC. 206. INDIVIDUALS ELIGIBLE FOR ON-SITE MEDICAL**
 21 **CLINIC COVERAGE.**

22 (a) IN GENERAL.—Paragraph (1) of section 223(c),
 23 as amended by sections 203, is amended by adding at the
 24 end the following new subparagraph:

1 “(E) SPECIAL RULE FOR INDIVIDUALS EL-
 2 IGIBLE FOR ON-SITE MEDICAL CLINIC COV-
 3 ERAGE.—

4 “(i) IN GENERAL.—For purposes of
 5 subparagraph (A)(ii), an individual shall
 6 not be treated as covered under a health
 7 plan described in such subparagraph mere-
 8 ly because the individual is eligible to re-
 9 ceive health care benefits from an onsite-
 10 medical clinic of employer of the individual
 11 or the individual’s spouse if such health
 12 care benefits are not significant benefits.

13 “(ii) INCLUDED BENEFITS.—For pur-
 14 poses of clause (i), the following health
 15 care benefits shall be considered to be ben-
 16 efits which are not significant benefits:

17 “(I) Physicals and immuniza-
 18 tions.

19 “(II) Injecting antigens provided
 20 by employees.

21 “(III) Medications available with-
 22 out a prescription, such as pain reliev-
 23 ers and antihistamines.

24 “(IV) Treatment for injuries oc-
 25 curring at the employer’s place of em-

1 ployment or otherwise in the course of
2 employment.

3 “(V) Tests for infectious diseases
4 and conditions, such as streptococcal
5 sore throat.

6 “(VI) Monitoring of chronic con-
7 ditions, such as diabetes.

8 “(VII) Drug testing.

9 “(VIII) Hearing or vision
10 screenings and related services.

11 “(IX) Other services and treat-
12 ments of a similar nature to the serv-
13 ices described in subclauses (I)
14 through (VIII).

15 “(iii) AGGREGATION RULES.—For
16 purposes of clause (i), all persons treated
17 as a single employer under subsection (b),
18 (c), (m), or (o) of section 414 shall be
19 treated as a single employer.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 207. TREATMENT OF EMBEDDED DEDUCTIBLES.**

2 (a) IN GENERAL.—Paragraph (2) of section 223(c)
3 is amended by adding at the end the following new sub-
4 paragraph:

5 “(E) TREATMENT OF EMBEDDED DEDUCT-
6 IBLE.—A health plan providing family coverage
7 that has an annual deductible for all covered in-
8 dividuals under the plan of at least the amount
9 described in subparagraph (A)(i)(II) shall not
10 fail to be treated as an HSA-qualified health
11 plan solely because it covers expenses with re-
12 spect to an individual under that plan that ex-
13 ceed an embedded deductible which is equal to
14 or in excess of the amount described in sub-
15 paragraph (A)(i)(I).”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to taxable years beginning after
18 the date of the enactment of this Act.

19 **TITLE III—IMPROVING COV-**
20 **ERAGE UNDER TAX-PRE-**
21 **FERRED HEALTH ACCOUNTS**

22 **SEC. 301. ALLOWANCE OF DISTRIBUTIONS FOR PRESCRIP-**
23 **TION AND OVER-THE-COUNTER MEDICINES**
24 **AND DRUGS.**

25 (a) HSAs.—Section 223(d)(2)(A) is amended by
26 striking the last sentence thereof and inserting the fol-

1 lowing: “Such term shall include an amount paid for any
 2 prescription or over-the-counter medicine or drug.”.

3 (b) ARCHER MSAs.—Section 220(d)(2)(A) is amend-
 4 ed by striking the last sentence thereof and inserting the
 5 following: “Such term shall include an amount paid for
 6 any prescription or over-the-counter medicine or drug.”.

7 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
 8 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sub-
 9 section (f) of section 106 is amended to read as follows:
 10 “(f) REIMBURSEMENTS FOR ALL MEDICINES AND
 11 DRUGS.—For purposes of this section and section 105,
 12 reimbursement for expenses incurred for any prescription
 13 or over-the-counter medicine or drug shall be treated as
 14 a reimbursement for medical expenses.”.

15 (d) EFFECTIVE DATES.—

16 (1) DISTRIBUTIONS FROM SAVINGS AC-
 17 COUNTS.—The amendments made by subsections (a)
 18 and (b) shall apply to amounts paid in taxable years
 19 beginning after December 31, 2017.

20 (2) REIMBURSEMENTS.—The amendment made
 21 by subsection (c) shall apply to expenses incurred in
 22 plan years beginning after December 31, 2017.

1 **SEC. 302. PURCHASE OF HEALTH INSURANCE FROM HSA**
 2 **ACCOUNT.**

3 (a) IN GENERAL.—Paragraph (2) of section 223(d),
 4 as amended by section 301, is amended—

5 (1) by striking “and any dependent (as defined
 6 in section 152, determined without regard to sub-
 7 sections (b)(1), (b)(2), and (d)(1)(B) thereof) of
 8 such individual” in subparagraph (A) and inserting
 9 “any dependent (as defined in section 152, deter-
 10 mined without regard to subsections (b)(1), (b)(2),
 11 and (d)(1)(B) thereof) of such individual, and any
 12 child (as defined in section 152(f)(1)) of such indi-
 13 vidual who has not attained the age of 27 before the
 14 end of such individual’s taxable year”,

15 (2) by striking subparagraph (B) and inserting
 16 the following:

17 “(B) HEALTH INSURANCE MAY NOT BE
 18 PURCHASED FROM ACCOUNT.—Except as pro-
 19 vided in subparagraph (C), subparagraph (A)
 20 shall not apply to any payment for insurance.”,
 21 and

22 (3) by striking “or” at the end of subparagraph
 23 (C)(iii) and by striking subparagraph (C)(iv) and in-
 24 serting the following:

25 “(iv) an HSA-qualified health plan, or

1 “(v) any health insurance under title
 2 XVIII of the Social Security Act, other
 3 than a Medicare supplemental policy (as
 4 defined in section 1882 of such Act).”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
 6 this section shall apply with respect to insurance pur-
 7 chased after the date of the enactment of this Act in tax-
 8 able years beginning after such date.

9 **SEC. 303. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**
 10 **INCURRED BEFORE ESTABLISHMENT OF AC-**
 11 **COUNT.**

12 (a) **IN GENERAL.**—Paragraph (2) of section 223(d)
 13 is amended by adding at the end the following new sub-
 14 paragraph:

15 “(D) **TREATMENT OF CERTAIN MEDICAL**
 16 **EXPENSES INCURRED BEFORE ESTABLISHMENT**
 17 **OF ACCOUNT.**—If a health savings account is
 18 established during the 60-day period beginning
 19 on the date that coverage of the account bene-
 20 ficiary under an HSA-qualified health plan be-
 21 gins, then, solely for purposes of determining
 22 whether an amount paid is used for a qualified
 23 medical expense, such account shall be treated
 24 as having been established on the date that
 25 such coverage begins.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply with respect to coverage beginning
 3 after the date of the enactment of this Act.

4 **SEC. 304. PREVENTIVE CARE PRESCRIPTION DRUG CLARI-**
 5 **FICATION.**

6 (a) CLARIFY USE OF DRUGS IN PREVENTIVE
 7 CARE.—Subparagraph (C) of section 223(c)(2) is amend-
 8 ed by adding at the end the following: “Preventive care
 9 shall include prescription and over-the-counter drugs and
 10 medicines which have the primary purpose of preventing
 11 the onset of, further deterioration from, or complications
 12 associated with chronic conditions, illnesses, or diseases.”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2017.

16 **TITLE IV—MISCELLANEOUS**
 17 **PROVISIONS RELATING TO**
 18 **TAX-PREFERRED HEALTH AC-**
 19 **COUNTS**

20 **SEC. 401. FSA AND HRA INTERACTION WITH HSAS.**

21 (a) ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA
 22 PARTICIPANTS.—Subparagraph (B) of section 223(c)(1)
 23 is amended—

24 (1) by striking “and” at the end of clause (ii),

1 (2) by striking the period at the end of clause
2 (iii) and inserting “, and”, and

3 (3) by inserting after clause (iii) the following
4 new clause:

5 “(iv) coverage under a health flexible
6 spending arrangement or a health reim-
7 bursement arrangement in the plan year a
8 qualified HSA distribution as described in
9 section 106(e) is made on behalf of the in-
10 dividual if, after the qualified HSA dis-
11 tribution is made and for the remaining
12 duration of the plan year, the coverage
13 provided under the arrangement is con-
14 verted solely to one or more of the fol-
15 lowing:

16 “(I) POST-DEDUCTIBLE FSA OR
17 HRA.—A health flexible spending ar-
18 rangement or a health reimbursement
19 arrangement that does not pay or re-
20 imburse any medical expense incurred
21 before the minimum annual deductible
22 under paragraph (2)(A)(i) (prorated
23 for the period occurring after the
24 qualified HSA distribution is made) is
25 satisfied.

1 “(II) PREVENTATIVE CARE.—A
2 health flexible spending arrangement
3 or a health reimbursement arrange-
4 ment that, after the qualified HSA
5 distribution is made, does not pay or
6 reimburse any medical expense in-
7 curred after the qualified HSA dis-
8 tribution is made other than preven-
9 tive care as defined in paragraph
10 (2)(C).

11 “(III) LIMITED PURPOSE
12 HEALTH FSA.—A health flexible
13 spending arrangement that, after the
14 qualified HSA distribution is made,
15 pays or reimburses benefits for cov-
16 erage described in clause (ii) (but not
17 through insurance or for long-term
18 care services).

19 “(IV) LIMITED PURPOSE HRA.—
20 A health reimbursement arrangement
21 that, after the qualified HSA distribu-
22 tion is made, pays or reimburses bene-
23 fits for permitted insurance or cov-
24 erage described in clause (ii) (but not
25 for long-term care services).

1 “(V) RETIREMENT HRA.—A
 2 health reimbursement arrangement
 3 that, after the qualified HSA distribu-
 4 tion is made, pays or reimburses only
 5 those medical expenses incurred after
 6 an individual’s retirement (and no ex-
 7 penses incurred before retirement).

8 “(VI) SUSPENDED HRA.—A
 9 health reimbursement arrangement
 10 that, after the qualified HSA distribu-
 11 tion is made, is suspended, pursuant
 12 to an election made on or before the
 13 date the individual elects a qualified
 14 HSA distribution or, if later, on the
 15 date of the individual enrolls in an
 16 HSA-qualified health plan, that does
 17 not pay or reimburse, at any time,
 18 any medical expense incurred during
 19 the suspension period except as de-
 20 scribed in the preceding subclauses of
 21 this clause.”.

22 (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-
 23 FECT FLEXIBLE SPENDING ARRANGEMENT.—Paragraph
 24 (1) of section 106(e) is amended to read as follows:

1 “(1) IN GENERAL.—A plan shall not fail to be
2 treated as—

3 “(A) a health flexible spending arrange-
4 ment under this section, section 105, or section
5 125,

6 “(B) a health reimbursement arrangement
7 under this section or section 105, or

8 “(C) an accident or health plan,
9 merely because such plan provides for a qualified
10 HSA distribution.”.

11 (c) FSA BALANCES AT YEAR END SHALL NOT FOR-
12 FEIT.—Paragraph (2) of section 125(d) is amended by
13 adding at the end the following new subparagraph:

14 “(E) EXCEPTION FOR QUALIFIED HSA DIS-
15 TRIBUTIONS.—Subparagraph (A) shall not
16 apply to the extent that there is an amount re-
17 maining in a health flexible spending account at
18 the end of a plan year that an individual elects
19 to contribute to a health savings account pursu-
20 ant to a qualified HSA distribution (as defined
21 in section 106(e)(2)).”.

22 (d) SIMPLIFICATION OF LIMITATIONS ON FSA AND
23 HRA ROLLOVERS.—Paragraph (2) of section 106(e) is
24 amended to read as follows:

25 “(2) QUALIFIED HSA DISTRIBUTION.—

“(A) IN GENERAL.—The term ‘qualified HSA distribution’ means a distribution from a health flexible spending arrangement or health reimbursement arrangement directly to a health savings account of the employee to the extent that such distribution does not exceed the lesser of—

“(i) the balance in such arrangement as of the date of such distribution, or

“(ii) the amount determined under subparagraph (B).

Such term shall not include more than 1 distribution with respect to any arrangement.

“(B) DOLLAR LIMITATIONS.—

“(i) DISTRIBUTIONS FROM A HEALTH FLEXIBLE SPENDING ARRANGEMENT.—A qualified HSA distribution from a health flexible spending arrangement shall not exceed the applicable amount.

“(ii) DISTRIBUTIONS FROM A HEALTH REIMBURSEMENT ARRANGEMENT.—A qualified HSA distribution from a health reimbursement arrangement shall not exceed—

1 “(I) the applicable amount di-
2 vided by 12, multiplied by

3 “(II) the number of months dur-
4 ing which the individual is a partici-
5 pant in the health reimbursement ar-
6 rangement.

7 “(iii) APPLICABLE AMOUNT.—For
8 purposes of this subparagraph, the applica-
9 ble amount is—

10 “(I) \$2,250 in the case of an eli-
11 gible individual who has self-only cov-
12 erage under an HSA-qualified health
13 plan at the time of such distribution,
14 and

15 “(II) \$4,500 in the case of an eli-
16 gible individual who has family cov-
17 erage under an HSA-qualified health
18 plan at the time of such distribu-
19 tion.”.

20 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE
21 TO MAINTAIN HSA-QUALIFIED HEALTH PLAN COV-
22 ERAGE.—Subsection (e) of section 106 is amended—

23 (1) by striking paragraph (3) and redesignating
24 paragraphs (4) and (5) as paragraphs (3) and (4),
25 respectively, and

1 (2) by striking subparagraph (A) of paragraph
 2 (3), as so redesignated, and redesignating subpara-
 3 graphs (B) and (C) of such paragraph as subpara-
 4 graphs (A) and (B) thereof, respectively.

5 (f) LIMITED PURPOSE FSAS AND HRAS.—Sub-
 6 section (e) of section 106, as amended by this section, is
 7 amended by adding at the end the following new para-
 8 graph:

9 “(5) LIMITED PURPOSE FSAS AND HRAS.—A
 10 plan shall not fail to be a health flexible spending
 11 arrangement, a health reimbursement arrangement,
 12 or an accident or health plan under this section or
 13 section 105 merely because the plan converts cov-
 14 erage for individuals who enroll in an HSA-qualified
 15 health plan described in section 223(c)(2) to cov-
 16 erage described in subclause (I), (II), (III), (IV),
 17 (V), or (VI) of section 223(c)(1)(B)(iv). Coverage
 18 for such individuals may be converted as of the date
 19 of enrollment in the HSA-qualified health plan,
 20 without regard to the period of coverage under the
 21 health flexible spending arrangement or health reim-
 22 bursement arrangement, and without requiring any
 23 change in coverage to individuals who do not enroll
 24 in an HSA-qualified health plan.”.

1 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-
 2 OF-LIVING.—Subsection (e) of section 106, as amended
 3 by this section, is amended by adding at the end the fol-
 4 lowing new paragraph:

5 “(6) COST-OF-LIVING ADJUSTMENT.—

6 “(A) IN GENERAL.—In the case of any
 7 taxable year beginning in a calendar year after
 8 2017, each of the dollar amounts in paragraph
 9 (2)(B)(iii) shall be increased by an amount
 10 equal to such dollar amount, multiplied by the
 11 cost-of-living adjustment determined under sec-
 12 tion 1(f)(3) for the calendar year in which such
 13 taxable year begins by substituting ‘calendar
 14 year 2016’ for ‘calendar year 1992’ in subpara-
 15 graph (B) thereof.

16 “(B) ROUNDING.—If any increase under
 17 paragraph (1) is not a multiple of \$50, such in-
 18 crease shall be rounded to the nearest multiple
 19 of \$50.”.

20 (h) DISCLAIMER OF DISQUALIFYING COVERAGE.—
 21 Subparagraph (B) of section 223(c)(1), as amended by
 22 this section, is amended—

23 (1) by striking “and” at the end of clause (iii),

24 (2) by striking the period at the end of clause

25 (iv) and inserting “, and”, and

1 (3) by inserting after clause (iv) the following
2 new clause:

3 “(v) any coverage (including prospec-
4 tive coverage) under a health plan that is
5 not an HSA-qualified health plan which is
6 disclaimed in writing, at the time of the
7 creation or organization of the health sav-
8 ings account, including by execution of a
9 trust described in subsection (d)(1)
10 through a governing instrument that in-
11 cludes such a disclaimer, or by acceptance
12 of an amendment to such a trust that in-
13 cludes such a disclaimer.”.

14 (i) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

17 **SEC. 402. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**
18 **HEALTH SAVINGS ACCOUNTS AS RETIRE-**
19 **MENT FUNDS.**

20 (a) IN GENERAL.—Section 522 of title 11, United
21 States Code, is amended by adding at the end the fol-
22 lowing new subsection:

23 “(r) TREATMENT OF HEALTH SAVINGS AC-
24 COUNTS.—For purposes of this section, any health savings
25 account (as described in section 223 of the Internal Rev-

1 enue Code of 1986) shall be treated in the same manner
 2 as an individual retirement account described in section
 3 408 of such Code.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall apply to cases commencing under title
 6 11, United States Code, after the date of the enactment
 7 of this Act.

8 **SEC. 403. ADMINISTRATIVE ERROR CORRECTION BEFORE**
 9 **DUE DATE OF RETURN.**

10 (a) IN GENERAL.—Paragraph (4) of section 223(f)
 11 is amended by adding at the end the following new sub-
 12 paragraph:

13 “(D) EXCEPTION FOR ADMINISTRATIVE
 14 ERRORS CORRECTED BEFORE DUE DATE OF RE-
 15 TURN.—Subparagraph (A) shall not apply if
 16 any payment or distribution is made to correct
 17 an administrative, clerical, or payroll contribu-
 18 tion error and if—

19 “(i) such distribution is received by
 20 the individual on or before the last day
 21 prescribed by law (including extensions of
 22 time) for filing such individual’s return for
 23 such taxable year, and

1 “(ii) such distribution is accompanied
 2 by the amount of net income attributable
 3 to such contribution.

4 Any net income described in clause (ii) shall be
 5 included in the gross income of the individual
 6 for the taxable year in which it is received.”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 this section shall take effect on the date of the enactment
 9 of this Act.

10 **SEC. 404. REAUTHORIZATION OF MEDICAID HEALTH OP-**
 11 **PORTUNITY ACCOUNTS.**

12 (a) IN GENERAL.—Section 1938 of the Social Secu-
 13 rity Act (42 U.S.C. 1396u–8) is amended—

14 (1) in subsection (a)—

15 (A) by striking paragraph (2) and insert-
 16 ing the following:

17 “(2) INITIAL DEMONSTRATION.—The Secretary
 18 shall approve States to conduct demonstration pro-
 19 grams under this section for a 5-year period, with
 20 each State demonstration program covering one or
 21 more geographic areas specified by the State. With
 22 respect to a State, after the initial 5-year period of
 23 any demonstration program conducted under this
 24 section by the State, unless the Secretary finds, tak-
 25 ing into account cost-effectiveness and quality of

care, that the State demonstration program has been unsuccessful, the demonstration program may be extended or made permanent in the State.”; and

(B) in paragraph (3), in the matter preceding subparagraph (A)—

(i) by striking “not”; and

(ii) by striking “unless” and inserting “if”;

(2) in subsection (b)—

(A) in paragraph (3), by inserting “clause (i) through (vii), (viii) (without regard to the amendment made by section 2004(c)(2) of Public Law 111–148), (x), or (xi) of” after “described in”; and

(B) by striking paragraphs (4), (5), and (6);

(3) in subsection (c)—

(A) by striking paragraphs (3) and (4);

(B) by redesignating paragraphs (5) through (8) as paragraphs (3) through (6), respectively; and

(C) in paragraph (4) (as redesignated by subparagraph (B)), by striking “Subject to subparagraphs (D) and (E)” and inserting “Subject to subparagraph (D)”; and

1 (4) in subsection (d)—

2 (A) in paragraph (2), by striking subpara-
3 graph (E); and

4 (B) in paragraph (3)—

5 (i) in subparagraph (A)(ii), by strik-
6 ing “Subject to subparagraph (B)(ii), in”
7 and inserting “In”; and

8 (ii) by striking subparagraph (B) and
9 inserting the following:

10 “(B) MAINTENANCE OF HEALTH OPPOR-
11 TUNITY ACCOUNT AFTER BECOMING INELI-
12 GIBLE FOR PUBLIC BENEFIT.—Notwithstanding
13 any other provision of law, if an account holder
14 of a health opportunity account becomes ineli-
15 gible for benefits under this title because of an
16 increase in income or assets—

17 “(i) no additional contribution shall be
18 made into the account under paragraph
19 (2)(A)(i); and

20 “(ii) the account shall remain avail-
21 able to the account holder for 3 years after
22 the date on which the individual becomes
23 ineligible for such benefits for withdrawals
24 under the same terms and conditions as if
25 the account holder remained eligible for

1 such benefits, and such withdrawals shall
 2 be treated as medical assistance in accord-
 3 ance with subsection (c)(4).”.

4 (b) CONFORMING AMENDMENT.—Section 613 of
 5 Public Law 111–3 is repealed.

6 **SEC. 405. MAXIMUM CONTRIBUTION LIMIT TO HEALTH SAV-**
 7 **INGS ACCOUNT INCREASED TO AMOUNT OF**
 8 **DEDUCTIBLE AND OUT-OF-POCKET LIMITA-**
 9 **TION.**

10 (a) SELF-ONLY COVERAGE.—Section 223(b)(2)(A) is
 11 amended by striking “\$2,250” and inserting “the amount
 12 in effect under subsection (c)(2)(A)(ii)(I)”.

13 (b) FAMILY COVERAGE.—Section 223(b)(2)(B) is
 14 amended by striking “\$4,500” and inserting “the amount
 15 in effect under subsection (c)(2)(A)(ii)(II)”.

16 (c) CONFORMING AMENDMENTS.—Section 223(g)(1)
 17 is amended—

18 (1) by striking “subsections (b)(2) and” both
 19 places it appears and inserting “subsection”, and

20 (2) by striking “determined by” in subpara-
 21 graph (B) thereof and all that follows through “cal-
 22 endar year 2003”.’ and inserting “determined by
 23 substituting ‘calendar year 2003’ for ‘calendar year
 24 1992’ in subparagraph (B) thereof.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2017.

4 **TITLE V—OTHER PROVISIONS**

5 **SEC. 501. CERTAIN EXERCISE EQUIPMENT AND PHYSICAL** 6 **FITNESS PROGRAMS TREATED AS MEDICAL** 7 **CARE.**

8 (a) IN GENERAL.—Subsection (d) of section 213 is
 9 amended by adding at the end the following new para-
 10 graph:

11 “(12) EXERCISE EQUIPMENT AND PHYSICAL
 12 FITNESS ACTIVITY.—

13 “(A) IN GENERAL.—The term ‘medical
 14 care’ shall include amounts paid—

15 “(i) for equipment for use in a pro-
 16 gram (including a self-directed program) of
 17 physical exercise or physical activity,

18 “(ii) to participate, or receive instruc-
 19 tion, in a program of physical exercise, nu-
 20 trition, or health coaching (including a
 21 self-directed program), and

22 “(iii) for membership at a fitness fa-
 23 cility.

24 “(B) OVERALL DOLLAR LIMITATION.—

1 “(i) IN GENERAL.—Amounts treated
 2 as medical care under subparagraph (A)
 3 shall not exceed \$1,000 with respect to any
 4 individual for any taxable year.

5 “(ii) EXCEPTION.—Clause (i) shall
 6 not apply for purposes of determining
 7 whether expenses reimbursed through a
 8 health flexible spending arrangement sub-
 9 ject to section 125(i)(1) are incurred for
 10 medical care.

11 “(C) LIMITATIONS RELATED TO SPORTS
 12 AND FITNESS EQUIPMENT.—Amounts paid for
 13 equipment described in subparagraph (A)(i)
 14 shall be treated as medical care only—

15 “(i) if such equipment is utilized ex-
 16 clusively for participation in fitness, exer-
 17 cise, sport, or other physical activity pro-
 18 grams,

19 “(ii) if such equipment is not apparel
 20 or footwear, and

21 “(iii) in the case of any item of sports
 22 equipment (other than exercise equip-
 23 ment), with respect to so much of the
 24 amount paid for such item as does not ex-
 25 ceed \$250.

“(D) FITNESS FACILITY DEFINED.—For purposes of subparagraph (A)(iii), the term ‘fitness facility’ means a facility—

“(i) providing instruction in a program of physical exercise, offering facilities for the preservation, maintenance, encouragement, or development of physical fitness, or serving as the site of such a program of a State or local government,

“(ii) which is not a private club owned and operated by its members,

“(iii) which does not offer golf, hunting, sailing, or riding facilities,

“(iv) whose health or fitness facility is not incidental to its overall function and purpose, and

“(v) which is fully compliant with the State of jurisdiction and Federal anti-discrimination laws.”.

(b) LIMITATION NOT TO APPLY FOR CERTAIN PURPOSES.—

(1) HEALTH SAVINGS ACCOUNTS.—Subparagraph (A) of section 223(d)(2) is amended by inserting “, determined without regard to paragraph

1 (12)(B) thereof” after “medical care (as defined in
2 section 213(d)”.

3 (2) ARCHER MSAS.—Subparagraph (A) of sec-
4 tion 220(d)(2) is amended by inserting “, deter-
5 mined without regard to paragraph (12)(B) thereof”
6 after “medical care (as defined in section 213(d)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 the date of the enactment of this Act.

10 **SEC. 502. CERTAIN NUTRITIONAL AND DIETARY SUPPLE-**
11 **MENTS TO BE TREATED AS MEDICAL CARE.**

12 (a) IN GENERAL.—Subsection (d) of section 213, as
13 amended by section 501, is amended by adding at the end
14 the following new paragraph:

15 “(13) NUTRITIONAL AND DIETARY SUPPLE-
16 MENTS.—

17 “(A) IN GENERAL.—The term ‘medical
18 care’ shall include amounts paid to purchase
19 herbs, vitamins, minerals, homeopathic rem-
20 edies, meal replacement products, and other di-
21 etary and nutritional supplements.

22 “(B) LIMITATION.—Amounts treated as
23 medical care under subparagraph (A) shall not
24 exceed \$1,000 with respect to any individual for
25 any taxable year.

1 “(C) MEAL REPLACEMENT PRODUCT.—

2 For purposes of this paragraph, the term ‘meal
3 replacement product’ means any product that—

4 “(i) is permitted to bear labeling mak-
5 ing a claim described in section 403(r)(3)
6 of the Federal Food, Drug, and Cosmetic
7 Act, and

8 “(ii) is permitted to claim under such
9 section that such product is low in fat and
10 is a good source of protein, fiber, and mul-
11 tiple essential vitamins and minerals.

12 “(D) EXCEPTION.—Subparagraph (B)
13 shall not apply for purposes of determining
14 whether expenses reimbursed through a health
15 flexible spending arrangement subject to section
16 125(i)(1) are incurred for medical care.”.

17 (b) LIMITATION NOT TO APPLY FOR CERTAIN PUR-
18 POSES.—

19 (1) HEALTH SAVINGS ACCOUNTS.—Subpara-
20 graph (A) of section 223(d)(2), as amended by sec-
21 tion 501, is amended by striking “paragraph
22 (12)(B)” and inserting “paragraphs (12)(B) and
23 (13)(B)”.

24 (2) ARCHER MSAS.—Subparagraph (A) of sec-
25 tion 220(d)(2), as amended by section 501, is

1 amended by striking “paragraph (12)(B)” and in-
 2 serting “paragraphs (12)(B) and (13)(B)”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to taxable years beginning after
 5 the date of the enactment of this Act.

6 **SEC. 503. CERTAIN PROVIDER FEES TO BE TREATED AS**
 7 **MEDICAL CARE.**

8 (a) IN GENERAL.—Subsection (d) of section 213, as
 9 amended by sections 501 and 502, is amended by adding
 10 at the end the following new paragraph:

11 “(14) PERIODIC PROVIDER FEES.—The term
 12 ‘medical care’ shall include—

13 “(A) periodic fees paid to a primary care
 14 physician for a defined set of medical services
 15 or the right to receive medical services on an
 16 as-needed basis, and

17 “(B) pre-paid primary care services de-
 18 signed to screen for, diagnose, cure, mitigate,
 19 treat, or prevent disease and promote
 20 wellness.”.

21 (b) EXCEPTION FOR FLEXIBLE SPENDING AC-
 22 COUNTS.—Section 125 is amended by redesignating sub-
 23 sections (k) and (l) as subsections (l) and (m), respec-
 24 tively, and by inserting after subsection (j) the following
 25 new subsection:

1 “(k) SPECIAL RULE WITH RESPECT TO HEALTH
2 FLEXIBLE SPENDING ARRANGEMENTS.—For purposes of
3 applying this with respect to any health flexible spending
4 arrangement, amounts described in section 213(d)(14)
5 shall not be considered insurance.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 the date of the enactment of this Act.

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