

111TH CONGRESS
2^D SESSION

H. R. 5444

To amend the Internal Revenue Code of 1986 to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 and to replace it with provisions reforming the health care system by putting patients back in charge of health care.

IN THE HOUSE OF REPRESENTATIVES

MAY 27, 2010

Mr. PAUL introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Appropriations, House Administration, Ways and Means, Education and Labor, Natural Resources, the Judiciary, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 and to replace it with provisions reforming the health care system by putting patients back in charge of health care.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Private Option Health Care Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Repeal of Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010.
- Sec. 3. Refundable credit for health care costs.
- Sec. 4. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.
- Sec. 5. Strengthening health savings accounts.
- Sec. 6. Repeal of 7.5 percent threshold on deduction for medical expenses.
- Sec. 7. Purchase of health insurance across State lines.
- Sec. 8. Facilitation of importation of drugs approved by Food and Drug Administration.
- Sec. 9. Credit for purchase by patient of insurance against negative outcomes resulting from surgery.
- Sec. 10. Exclusion from gross income for medical malpractice awards granted in binding arbitration.

6 **SEC. 2. REPEAL OF PATIENT PROTECTION AND AFFORD-**
7 **ABLE CARE ACT AND HEALTH CARE AND**
8 **EDUCATION RECONCILIATION ACT OF 2010.**

9 (a) PPACA.—Effective as of the enactment of the
10 Patient Protection and Affordable Care Act, such Act is
11 repealed, and the provisions of law amended or repealed
12 by such Act are restored or revised as if such Act had
13 not been enacted.

14 (b) REPEAL OF HCERA.—Effective as of the enact-
15 ment of the Health Care and Education Reconciliation Act
16 of 2010, such Act is repealed, and the provisions of law
17 amended or repealed by such Act are restored or revised
18 as if such Act had not been enacted.

1 **SEC. 3. REFUNDABLE CREDIT FOR HEALTH CARE COSTS.**

2 (a) IN GENERAL.—Section 35 of the Internal Rev-
3 enue Code of 1986 (relating to health insurance costs of
4 eligible individuals) is amended to read as follows:

5 **“SEC. 35. HEALTH INSURANCE COSTS.**

6 “(a) IN GENERAL.—In the case of an individual,
7 there shall be allowed as a credit against the tax imposed
8 by this subtitle an amount equal to the sum of—

9 “(1) the amount paid by the taxpayer for insur-
10 ance which constitutes medical care for the taxpayer
11 and the taxpayer’s spouse and dependents, plus

12 “(2) the amount contributed to a health savings
13 account of the individual (or the individual’s
14 spouse).

15 “(b) LIMITATION.—The credit allowed by subsection
16 (a) for the taxable year shall not exceed the sum of—

17 “(1) the taxpayer’s net income tax for the tax-
18 able year, plus

19 “(2) the taxpayer’s Social Security taxes (as de-
20 fined in section 24(d)) for such taxable year.

21 For purposes of paragraph (1), the term ‘net income tax’
22 means the sum of the regular tax liability plus the tax
23 imposed by section 55, reduced by the credits allowable
24 under this part (other than this subpart).

25 “(c) DENIAL OF DOUBLE BENEFIT.—

1 “(1) IN GENERAL.—Any amount allowed as a
2 credit under this section shall not be taken into ac-
3 count in determining the amount of any deduction
4 under this chapter.

5 “(2) COORDINATION WITH HEALTH SAVINGS
6 ACCOUNT CONTRIBUTIONS.—For purposes of para-
7 graph (1), amounts taken into account under sub-
8 section (a) for a taxable year shall be treated as
9 being attributable to amounts paid for insurance to
10 the extent of such payments.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 223(b) of such Code, as amended by
13 section 5, is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(4) COORDINATION WITH CREDIT FOR
16 HEALTH INSURANCE.—The limitation under para-
17 graph (1) shall be reduced by the amount treated as
18 being taken into account under section 35(a)(2).”.

19 (2) Section 223(e)(3)(B) of such Code, as
20 amended by section 5, is amended by inserting “nor
21 treated as being taken into account under section
22 35(a)(2)” before the period at the end.

23 (3) Section 4973(g) of such Code is amended—

1 (A) in paragraph (1) by inserting “or a
2 credit under section 35” after “section 223”,
3 and

4 (B) in paragraph (2)(B)(i) by striking
5 “maximum” and inserting “sum of the amount
6 treated as being taken into account under sec-
7 tion 35(a)(2) plus the”.

8 (4) Section 162 of such Code is amended by
9 striking subsection (l).

10 (5) Chapter 77 of such Code is amended by
11 striking section 7527 and by striking the item relat-
12 ing to section 7527 in the table of sections for such
13 chapter.

14 (6) Subpart B of part III of subchapter A of
15 chapter 61 of such Code is amended by striking sec-
16 tion 6050T and by striking the item relating to sec-
17 tion 6050T in the table of sections for such chapter.

18 (7) Section 6103(l) of such Code is amended by
19 striking paragraph (18).

20 (8) Section 6103(p) of such Code is amended—

21 (A) in paragraph (3)(A) by striking “(17),
22 or (18)” and inserting “or (17)”, and

23 (B) in paragraph (4) by striking “or (18)”
24 after “any other person described in subsection
25 (l)(10), (16)” each place it appears.

1 (9) Section 7213A(a)(1)(B) of such Code is
2 amended by striking “subsection (l)(18) or (n) of
3 section 6103” and inserting “section 6103(n)”.

4 (10) Section 6724(d)(1)(B) of such Code is
5 amended by striking clause (xiii).

6 (11) Section 6724(d)(2) of such Code is amend-
7 ed by striking subparagraph (DD).

8 (12) The item relating to section 35 in the table
9 of sections for subpart C of part IV of subchapter
10 A of chapter 1 of such Code is amended to read as
11 follows:

“Sec. 35. Health insurance costs.”

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2009.

15 **SEC. 4. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
16 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
17 **ARRANGEMENTS.**

18 (a) IN GENERAL.—Section 125 of the Internal Rev-
19 enue Code of 1986 (relating to cafeteria plans) is amended
20 by redesignating subsections (i) and (j) as subsections (j)
21 and (k), respectively, and by inserting after subsection (h)
22 the following:

23 “(i) CARRYFORWARDS OR PAYMENTS OF CERTAIN
24 UNUSED HEALTH BENEFITS.—

1 “(1) IN GENERAL.—For purposes of this title,
2 a plan or other arrangement shall not fail to be
3 treated as a cafeteria plan solely because qualified
4 benefits under such plan include a health flexible
5 spending arrangement under which not more than
6 \$500 of unused health benefits may be—

7 “(A) carried forward to the succeeding
8 plan year of such health flexible spending ar-
9 rangement, or

10 “(B) paid to or on behalf of an employee
11 as compensation as of the end of such plan year
12 or upon the termination of, or failure to re-en-
13 roll in, such plan or arrangement.

14 “(2) DISTRIBUTION OF UNUSED HEALTH BENE-
15 FITS ON BEHALF OF EMPLOYEE.—For purposes of
16 paragraph (1)(B), unused health benefits paid as
17 compensation on behalf of an employee by the em-
18 ployer shall be—

19 “(A) includible in gross income and wages
20 of the employee, whether or not a deduction for
21 such payment is allowable under this title to the
22 employee, and

23 “(B) excludable from—

24 “(i) gross income to the extent pro-
25 vided under section 402(e), 457(a) (with

1 respect to contributions to an eligible de-
2 ferred compensation plan (as defined in
3 section 457(b)) of an eligible employer de-
4 scribed in section 457(e)(1)(A)), or 220,
5 and

6 “(ii) wages to the extent otherwise
7 provided for amounts so excludable.

8 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-
9 MENT.—For purposes of this subsection, the term
10 ‘health flexible spending arrangement’ means a flexi-
11 ble spending arrangement (as defined in section
12 106(c)) that is a qualified benefit and only permits
13 reimbursement for expenses for medical care (as de-
14 fined in section 213(d)(1)) (without regard to sub-
15 paragraphs (C) and (D) thereof).

16 “(4) UNUSED HEALTH BENEFITS.—For pur-
17 poses of this subsection, the term ‘unused health
18 benefits’ means the excess of—

19 “(A) the maximum amount of reimburse-
20 ment allowable during a plan year under a
21 health flexible spending arrangement, over

22 “(B) the actual amount of reimbursement
23 during such year under such arrangement.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to taxable years beginning after
3 December 31, 2009.

4 **SEC. 5. STRENGTHENING HEALTH SAVINGS ACCOUNTS.**

5 (a) REPEAL OF REQUIREMENT FOR COVERAGE
6 UNDER HIGH DEDUCTIBLE HEALTH PLAN.—

7 (1) IN GENERAL.—Section 223 of the Internal
8 Revenue Code of 1986 (relating to health savings ac-
9 counts) is amended by striking subsections (a), (b),
10 and (c) and inserting the following:

11 “(a) DEDUCTION ALLOWED.—In the case of an indi-
12 vidual, there shall be allowed as a deduction for the tax-
13 able year an amount equal to the aggregate amount paid
14 in cash during such taxable year by or on behalf of such
15 individual to a health savings account of such individual.

16 “(b) LIMITATIONS.—

17 “(1) IN GENERAL.—The amount allowable as a
18 deduction to a taxpayer under subsection (a) for the
19 taxable year shall not exceed \$8,000 (\$16,000 in the
20 case of a joint return).

21 “(2) COORDINATION WITH OTHER CONTRIBU-
22 TIONS.—The limitation which would (but for this
23 paragraph) apply under this subsection to a tax-
24 payer for any taxable year shall be reduced (but not
25 below zero) by the sum of—

1 “(A) the aggregate amount paid for such
2 taxable year to Archer MSAs of the taxpayer,
3 and

4 “(B) the aggregate amount contributed to
5 health savings accounts of the taxpayer which is
6 excludable from the taxpayer’s gross income for
7 such taxable year under section 106(d) (and
8 such amount shall not be allowed as a deduc-
9 tion under subsection (a)).

10 “(3) DENIAL OF DEDUCTION TO DEPEND-
11 ENTS.—No deduction shall be allowed under this
12 section to any individual with respect to whom a de-
13 duction under section 151 is allowable to another
14 taxpayer for a taxable year beginning in the cal-
15 endar year in which such individual’s taxable year
16 begins.”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 223 of such Code is amended
19 by redesignating subsections (d), (e), (f), (g),
20 and (h) as subsections (c), (d), (e), (f), and (g),
21 respectively.

22 (B) Section 223(f) of such Code (as redesi-
23 gnated by subparagraph (A)) is amended to
24 read as follows:

25 “(f) COST-OF-LIVING ADJUSTMENT.—

1 “(1) IN GENERAL.—In the case of any taxable
2 year beginning in a calendar year after 2010, each
3 dollar amount in subsection (b)(1) shall be increased
4 by an amount equal to—

5 “(A) such dollar amount, multiplied by

6 “(B) the cost-of-living adjustment deter-
7 mined under section 1(f)(3) for the calendar
8 year in which such taxable year begins, deter-
9 mined by substituting ‘calendar year 2009’ for
10 ‘calendar year 1992’ in subparagraph (B)
11 thereof.

12 “(2) ROUNDING.—If any increase under para-
13 graph (1) is not a multiple of \$50, such increase
14 shall be rounded to the nearest multiple of \$50.”.

15 (C) Section 26(b)(2)(S) of such Code is
16 amended by striking “section 223(f)(4)” and
17 inserting “section 223(e)(4)”.

18 (D) Each of the following sections of such
19 Code is amended by striking “section 223(d)”
20 and inserting “section 223(c)”:

21 (i) Section 35(g)(3).

22 (ii) Section 106(d)(1).

23 (iii) Section 220(f)(5)(A).

24 (iv) Section 848(e)(1)(B)(v).

25 (v) Section 4973(a)(5).

1 (vi) Section 4973(g).

2 (vii) Section 4975(c)(6).

3 (viii) Section 4975(e)(1)(E).

4 (ix) Section 6051(a)(12).

5 (E) Section 4973(g) of such Code is
6 amended—

7 (i) in paragraph (1) by striking “sec-
8 tion 223(f)(5)” and inserting “section
9 223(e)(5)”,

10 (ii) in paragraph (2)(A) by striking
11 “section 223(f)(2)” and inserting “section
12 223(e)(2)”, and

13 (iii) in the matter following paragraph
14 (2) by striking “section 223(f)(3)” and in-
15 serting “section 223(e)(3)”.

16 (F) Section 4975(c)(6) of such Code is
17 amended by striking “section 223(e)(2)” and
18 inserting “section 223(d)(2)”.

19 (G) Section 6693(a)(2)(C) of such Code is
20 amended by striking “section 223(h)” and in-
21 serting “section 223(g)”.

22 (b) DEDUCTION ALLOWED FOR PREMIUM PAYMENTS
23 FOR HIGH DEDUCTIBLE POLICIES.—Section 223(c)(2)(C)
24 of such Code (as amended by subsection (a)) is amended
25 by striking “or” at the end of clause (iii), by striking the

1 period at the end of clause (iv) and inserting “, or”, and
2 by inserting after clause (iv) the following new clause:

3 “(v) a high deductible health plan.”.

4 (c) PURCHASE OF MEDIGAP POLICIES PER-
5 MITTED.—Clause (iv) of section 223(c)(2)(C) of such
6 Code (as amended by this section) is amended by striking
7 “other than” and inserting “, including”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2009.

11 **SEC. 6. REPEAL OF 7.5 PERCENT THRESHOLD ON DEDUC-**
12 **TION FOR MEDICAL EXPENSES.**

13 (a) IN GENERAL.—Subsection (a) of section 213 of
14 the Internal Revenue Code of 1986 (relating to deduction
15 for medical expenses) is amended by striking “to the ex-
16 tent that such expenses exceed 7.5 percent of adjusted
17 gross income”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to taxable years beginning after
20 December 31, 2009.

21 **SEC. 7. PURCHASE OF HEALTH INSURANCE ACROSS STATE**
22 **LINES.**

23 Notwithstanding any other Federal or State law, any
24 individual residing in a State in the United States may
25 purchase health insurance coverage from a health insur-

1 ance issuer located in any other such State so long as such
2 issuer is in compliance withal relevant laws of the State
3 of its incorporation (or the State where it is domiciled or
4 primarily does business).

5 **SEC. 8. FACILITATION OF IMPORTATION OF DRUGS AP-**
6 **PROVED BY FOOD AND DRUG ADMINISTRA-**
7 **TION.**

8 (a) IN GENERAL.—Chapter VIII of the Federal
9 Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.)
10 is amended—

11 (1) by striking section 804; and

12 (2) in section 801(d)—

13 (A) by striking paragraph (2); and

14 (B) by striking “(d)(1)” and all that fol-
15 lows through the end of paragraph (1) and in-
16 serting the following:

17 “(d)(1)(A) A person who meets applicable legal re-
18 quirements to be an importer of drugs described in sub-
19 paragraph (B) may import such a drug (without regard
20 to whether the person is a manufacturer of the drug) if
21 the person submits to the Secretary an application to im-
22 port the drug and the Secretary approves the application.

23 “(B) For purposes of subparagraph (A), the drugs
24 described in this subparagraph are drugs that are subject

1 to section 503(b)(1) or that are composed wholly or partly
2 of insulin.

3 “(C) The Secretary shall approve an application
4 under subparagraph (A) if the application demonstrates
5 that the drug to be imported meets all requirements under
6 this Act for the admission of the drug into the United
7 States, including demonstrating that—

8 “(i) an application for the drug has been ap-
9 proved under section 505, or as applicable, under
10 section 351 of the Public Health Service Act; and

11 “(ii) the drug is not adulterated or misbranded.

12 “(D) Not later than 60 days after the date on which
13 an application under subparagraph (A) is submitted to the
14 Secretary, the Secretary shall—

15 “(i) approve the application; or

16 “(ii) refuse to approve the application and pro-
17 vide to the person who submitted the application the
18 reason for such refusal.

19 “(E) This paragraph may not be construed as affect-
20 ing any right secured by patent.”.

21 (b) CONFORMING AMENDMENTS.—Section 801(d) of
22 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
23 381(d)) is amended—

24 (1) by redesignating paragraphs (3) and (4) as
25 paragraphs (2) and (3), respectively;

1 (2) in subclause (III) of paragraph (2)(A)(i) (as
 2 redesignated by this subsection), by striking “para-
 3 graph (4)” and inserting “paragraph (3)”; and

4 (3) in paragraph (3) (as redesignated by this
 5 subsection), by striking “paragraph (3)” each place
 6 such term appears and inserting “paragraph (2)”.

7 **SEC. 9. CREDIT FOR PURCHASE BY PATIENT OF INSUR-**
 8 **ANCE AGAINST NEGATIVE OUTCOMES RE-**
 9 **SULTING FROM SURGERY.**

10 (a) IN GENERAL.—Subpart A of part IV of sub-
 11 chapter A of chapter 1 of the Internal Revenue Code of
 12 1986 (relating to nonrefundable credits) is amended by
 13 inserting after section 25D the following new section:

14 **“SEC. 25E. COST OF INSURANCE PURCHASED BY PATIENT**
 15 **AGAINST NEGATIVE OUTCOMES RESULTING**
 16 **FROM SURGERY.**

17 “(a) IN GENERAL.—In the case of an individual,
 18 there shall be allowed as a credit against the tax imposed
 19 by this chapter for the taxable year an amount equal to
 20 the cost of negative outcomes insurance covering the indi-
 21 vidual or the spouse or any dependent (as defined in sec-
 22 tion 152) of the individual.

23 “(b) NEGATIVE OUTCOMES INSURANCE.—For pur-
 24 poses of this section, the term ‘negative outcomes insur-
 25 ance’ means insurance covering any negative side effect

1 of surgery, including those caused by malpractice from the
2 action or inaction of a physician.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for such subpart A of such Code is amended by in-
5 serting after the item relating to section 25D the following
6 new item:

“Sec. 25E. Cost of insurance purchased by patient against negative outcomes
resulting from surgery.”.

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. 10. EXCLUSION FROM GROSS INCOME FOR MEDICAL**
11 **MALPRACTICE AWARDS GRANTED IN BIND-**
12 **ING ARBITRATION.**

13 (a) IN GENERAL.—Section 104 of the Internal Rev-
14 enue Code of 1986 (relating to compensation for injuries
15 or sickness) is amended by redesignated subsection (d) as
16 subsection (e) and by inserting after subsection (c) the fol-
17 lowing new subsection:

18 “(d) MEDICAL MALPRACTICE BINDING ARBITRATION
19 AWARDS.—In the case of damages awarded for medical
20 malpractice in binding arbitration, gross income does not
21 include such damages (whether for lost wages or other-
22 wise).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to damages awarded after the
3 date of the enactment of this Act.

○