

112TH CONGRESS
2D SESSION

H. R. 6137

To repeal provisions of the Patient Protection and Affordable Care Act relating to health savings accounts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2012

Mr. FLEMING introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 repeal provisions of the Patient Protection and Affordable Care Act relating to 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 “Helping Save Americans’ Health Care Choices Act of
6 2012”.

7 (b) **TABLE OF SECTIONS.**—The table of sections for
8 this Act is as follows:

- Sec. 1. Short title, etc.
- Sec. 2. Repeal of additional tax from distributions from HSAs and MSAs.
- Sec. 3. Repeal of limitation on deductions making non-prescription drugs non-qualifying distributions from tax-preferred accounts.
- Sec. 4. Treatment of high deductible health plans as qualified health plan under the Patient Protection and Affordable Care Act.
- Sec. 5. Repeal of limitation on health flexible spending arrangements under cafeteria plans.
- Sec. 6. Saver's credit for contributions to health savings accounts.
- Sec. 7. HSA funds for premiums for high deductible health plans.
- Sec. 8. Requiring greater coordination between high deductible health plan administrators and HSA account administrators so that enrollees can enroll in both at the same time.
- Sec. 9. Special rule for certain medical expenses incurred before establishment of account.
- Sec. 10. Provisions relating to medicare.
- Sec. 11. Individuals eligible for veterans benefits for a service-connected disability.
- Sec. 12. Increase the maximum contribution limit to an HSA to match deductible and out-of-pocket expense limitation.
- Sec. 13. FSA funds may be used for long-term care insurance premiums.
- Sec. 14. Individuals eligible for TRICARE.
- Sec. 15. Certain physician fees to be treated as medical care.
- Sec. 16. Allow both spouses to make catch-up contributions to the same hsa account.

1 **SEC. 2. REPEAL OF ADDITIONAL TAX FROM DISTRIBUTIONS**
 2 **FROM HSAS AND MSAS.**

3 Section 9004 of the Patient Protection and Afford-
 4 able Care Act is hereby repealed, and effective as of the
 5 date of the enactment of such Act the provisions of the
 6 Internal Revenue Code of 1986 amended by such section
 7 are amended to read as such provisions would read if such
 8 section had never been enacted.

9 **SEC. 3. REPEAL OF LIMITATION ON DEDUCTIONS MAKING**
 10 **NON-PRESCRIPTION DRUGS NON-QUALI-**
 11 **FYING DISTRIBUTIONS FROM TAX-PRE-**
 12 **FERRED ACCOUNTS.**

13 Section 9003 of the Patient Protection and Afford-
 14 able Care Act is hereby repealed, and effective as of the

1 date of the enactment of such Act the provisions of the
2 Internal Revenue Code of 1986 amended by such section
3 are amended to read as such provisions would read if such
4 section had never been enacted.

5 **SEC. 4. TREATMENT OF HIGH DEDUCTIBLE HEALTH PLANS**
6 **AS QUALIFIED HEALTH PLAN UNDER THE PA-**
7 **TIENT PROTECTION AND AFFORDABLE CARE**
8 **ACT.**

9 Subparagraph (B) of section 1301(a)(1) of the Pa-
10 tient Protection and Affordable Care Act is amended by
11 inserting “or meets the requirements for a high deductible
12 health plan under section 223(c)(2) of the Internal Rev-
13 enue Code of 1986” after “section 1302(a)”.

14 **SEC. 5. REPEAL OF LIMITATION ON HEALTH FLEXIBLE**
15 **SPENDING ARRANGEMENTS UNDER CAFE-**
16 **TERIA PLANS.**

17 Sections 9005 and 10902 of the Patient Protection
18 and Affordable Care Act are hereby repealed, and effective
19 as of the date of the enactment of such Act the provisions
20 of the Internal Revenue Code of 1986 amended by such
21 sections are amended to read as such provisions would
22 read if such sections had never been enacted.

1 **SEC. 6. SAVER'S CREDIT FOR CONTRIBUTIONS TO HEALTH**
2 **SAVINGS ACCOUNTS.**

3 (a) ALLOWANCE OF CREDIT.—Subsection (a) of sec-
4 tion 25B of the Internal Revenue Code of 1986 is amend-
5 ed by inserting “aggregate qualified HSA contributions
6 and” after “so much of the”.

7 (b) QUALIFIED HSA CONTRIBUTIONS.—Subsection
8 (d) of section 25B of such Code is amended by redesignig-
9 nating paragraph (2) as paragraph (3) and by inserting
10 after paragraph (1) the following new paragraph:

11 “(2) QUALIFIED HSA CONTRIBUTIONS.—The
12 term ‘qualified HSA contribution’ means, with re-
13 spect to any taxable year, a contribution of the eligi-
14 ble individual to a health savings account (as defined
15 in section 223(d)(1)) for which a deduction is allow-
16 able under section 223(a) for such taxable year.”.

17 (c) CONFORMING AMENDMENT.—The first sentence
18 of section 25B(d)(3)(A) of such Code (as redesignated by
19 subsection (b)) is amended to read as follows: “The aggre-
20 gate qualified retirement savings contributions determined
21 under paragraph (1) and qualified HSA contributions de-
22 termined under paragraph (2) shall be reduced (but not
23 below zero) by the aggregate distributions received by the
24 individual during the testing period from any entity of a
25 type to which contributions under paragraph (1) or para-
26 graph (2) (as the case may be) may be made.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to contributions made after De-
3 cember 31, 2012.

4 **SEC. 7. HSA FUNDS FOR PREMIUMS FOR HIGH DEDUCT-**
5 **IBLE HEALTH PLANS.**

6 (a) IN GENERAL.—Subparagraph (C) of section
7 223(d)(2) of the Internal Revenue Code of 1986 is amend-
8 ed by striking “or” at the end of clause (iii), by striking
9 the period at the end of clause (iv) and inserting “, or”,
10 and by adding at the end the following:

11 “(v) a high deductible health plan if—

12 “(I) such plan is not offered in
13 connection with a group health plan,
14 and

15 “(II) no portion of any premium
16 (within the meaning of applicable pre-
17 mium under section 4980B(f)(4)) for
18 such plan is excludable from gross in-
19 come under section 106.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to premiums for a high deduct-
22 ible health plan for periods beginning after December 31,
23 2012.

1 **SEC. 8. REQUIRING GREATER COORDINATION BETWEEN**
2 **HIGH DEDUCTIBLE HEALTH PLAN ADMINIS-**
3 **TRATORS AND HSA ACCOUNT ADMINISTRA-**
4 **TORS SO THAT ENROLLEES CAN ENROLL IN**
5 **BOTH AT THE SAME TIME.**

6 The Secretary of the Treasury, through the issuance
7 of regulations or other guidance, shall encourage adminis-
8 trators of health plans and trustees of health savings ac-
9 counts to provide for simultaneous enrollment in high de-
10 ductible health plans and setup of health savings accounts.

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

14 (a) IN GENERAL.—Subsection (d) of section 223 of
15 the Internal Revenue Code of 1986 is amended by redesi-
16 gnating paragraph (4) as paragraph (5) and by inserting
17 after paragraph (3) the following new paragraph:

18 “(4) TREATMENT OF ACCOUNT ESTABLISHED
19 BEFORE TAX RETURN DUE FOR TAX YEAR.—For
20 purposes of this section, if, before the time pre-
21 scribed by law for filing the return of tax for a tax-
22 able year (not including extensions thereof), a tax-
23 payer—

24 “(A) establishes a health savings account,

25 “(B) makes contributions to a health sav-
26 ings account on account of such taxable year, or

1 “(C) makes payments or distributions from
2 a health savings account for such taxable year,
3 the health savings account shall be deemed to be es-
4 tablished on the last day of such taxable year and
5 such contributions and distributions shall be deemed
6 to have been made on account of such taxable
7 year.”.

8 (b) CONFORMING AMENDMENT.—Paragraph (5) of
9 section 223(d) of such Code, as redesignated by subsection
10 (a), is amended by striking subparagraph (B) and redesignig-
11 nating subparagraphs (C) through (E) as subparagraphs
12 (B) through (D), respectively.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to health savings ac-
15 counts established, and contributions to and distributions
16 from health savings accounts after, the date of the enact-
17 ment of this Act.

18 **SEC. 10. PROVISIONS RELATING TO MEDICARE.**

19 (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN
20 MEDICARE PART A.—Section 223(b)(7) of the Internal
21 Revenue Code of 1986 (relating to contribution limitation
22 on Medicare eligible individuals) is amended by adding at
23 the end the following new sentence: “This paragraph shall
24 not apply to any individual during any period the individ-
25 ual’s only entitlement to such benefits is an entitlement

1 to hospital insurance benefits under part A of title XVIII
2 of such Act pursuant to an enrollment for such hospital
3 insurance benefits under section 226(a)(1) of such Act.”.

4 (b) **MEDICARE BENEFICIARIES PARTICIPATING IN**
5 **MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR**
6 **OWN MONEY TO THEIR MSA.**—Subsection (b) of section
7 138 of such Code is amended by striking paragraph (2)
8 and by redesignating paragraphs (3) and (4) as para-
9 graphs (2) and (3), respectively.

10 (c) **EFFECTIVE DATE.**—The amendments made by
11 this section shall apply to taxable years beginning after
12 the date of the enactment of this Act.

13 **SEC. 11. INDIVIDUALS ELIGIBLE FOR VETERANS BENEFITS**
14 **FOR A SERVICE-CONNECTED DISABILITY.**

15 (a) **IN GENERAL.**—Section 223(c)(1) of the Internal
16 Revenue Code of 1986 (defining eligible individual) is
17 amended by adding at the end the following new subpara-
18 graph:

19 “(C) **SPECIAL RULE FOR INDIVIDUALS ELI-**
20 **GIBLE FOR CERTAIN VETERANS BENEFITS.**—
21 For purposes of subparagraph (A)(ii), an indi-
22 vidual shall not be treated as covered under a
23 health plan described in such subparagraph
24 merely because the individual receives periodic
25 hospital care or medical services for a service-

1 connected disability under any law administered
2 by the Secretary of Veterans Affairs but only if
3 the individual is not eligible to receive such care
4 or services for any condition other than a serv-
5 ice-connected disability.”.

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

9 **SEC. 12. INCREASE THE MAXIMUM CONTRIBUTION LIMIT**
10 **TO AN HSA TO MATCH DEDUCTIBLE AND**
11 **OUT-OF-POCKET EXPENSE LIMITATION.**

12 (a) SELF-ONLY COVERAGE.—Subparagraph (A) of
13 section 223(b)(2) of the Internal Revenue Code of 1986
14 is amended by striking “\$2,250” and inserting “the
15 amount in effect under subsection (c)(2)(A)(ii)(I)”.

16 (b) FAMILY COVERAGE.—Subparagraph (B) of sec-
17 tion 223(b)(2) of such Code is amended by striking
18 “\$4,500” and inserting “the amount in effect under sub-
19 section (c)(2)(A)(ii)(II)”.

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

1 **SEC. 13. FSA FUNDS MAY BE USED FOR LONG-TERM CARE**
2 **INSURANCE PREMIUMS.**

3 (a) IN GENERAL.—Subsection (c) of section 106 of
4 the Internal Revenue Code of 1986 is amended by redesignig-
5 nating paragraph (2) as paragraph (3) and by amending
6 so much of such subsection as precedes such paragraph
7 (3) to read as follows:

8 “(c) LONG-TERM CARE BENEFITS PROVIDED
9 THROUGH FLEXIBLE SPENDING ARRANGEMENTS.—

10 “(1) IN GENERAL.—Effective on and after Jan-
11 uary 1, 2013, gross income of an employee shall not
12 include employer-provided coverage for qualified
13 long-term care services (as defined in section
14 7702B(c)) to the extent that such coverage is pro-
15 vided through a flexible spending or similar arrange-
16 ment.

17 “(2) PREMIUMS FOR LONG-TERM CARE.—Quali-
18 fied medical expenses for which reimbursement may
19 be made by distributions from a flexible spending ar-
20 rangement shall include amounts paid for long-term
21 care coverage.”.

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

1 **SEC. 14. INDIVIDUALS ELIGIBLE FOR TRICARE.**

2 (a) IN GENERAL.—Section 223(c)(1) of the Internal
3 Revenue Code of 1986 (defining eligible individual), as
4 amended by section 4, is amended by adding at the end
5 the following new subparagraph:

6 “(D) SPECIAL RULE FOR INDIVIDUALS EL-
7 IGIBLE FOR TRICARE.—Subparagraph (A)(ii)
8 shall be applied without regard to coverage
9 under the TRICARE program under chapter 55
10 of title 10, United States Code.”.

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. 15. CERTAIN PHYSICIAN FEES TO BE TREATED AS**
15 **MEDICAL CARE.**

16 (a) IN GENERAL.—Subsection (d) of section 213 of
17 the Internal Revenue Code of 1986, as amended by sec-
18 tions 15 and 16, is amended by adding at the end the
19 following new paragraph:

20 “(12) PRE-PAID PHYSICIAN FEES.—The term
21 ‘medical care’ shall include amounts paid by patients
22 to their primary physician in advance for the right
23 to receive medical services on an as-needed basis.”.

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

1 **SEC. 16. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**
2 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

3 (a) IN GENERAL.—Paragraph (3) of section 223(b)
4 of the Internal Revenue Code of 1986 is amended by add-
5 ing at the end the following new subparagraph:

6 “(C) SPECIAL RULE WHERE BOTH
7 SPOUSES ARE ELIGIBLE INDIVIDUALS WITH 1
8 ACCOUNT.—If—

9 “(i) an individual and the individual’s
10 spouse have both attained age 55 before
11 the close of the taxable year, and

12 “(ii) the spouse is not an account ben-
13 eficiary of a health savings account as of
14 the close of such year,

15 the additional contribution amount shall be 200
16 percent of the amount otherwise determined
17 under subparagraph (B).”.

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

○