

115TH CONGRESS
2D SESSION

H. R. 5138

To amend the Internal Revenue Code of 1986 to improve access to health care through modernized health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2018

Mr. KELLY of Pennsylvania (for himself, Mr. BLUMENAUER, Mr. PAULSEN, Mr. KIND, Ms. SEWELL of Alabama, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through modernized health savings accounts.

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.**

4 This Act may be cited as the “Bipartisan HSA Im-
5 provement Act of 2018”.

6 **SEC. 2. EXCEPTED BENEFITS ALLOWED AS PERMITTED IN-**
7 **SURANCE.**

8 (a) IN GENERAL.—Paragraph (3) of section 223(c)
9 of the Internal Revenue Code of 1986 is amended—

1 (1) by redesignating subparagraphs (B) and
2 (C) as subparagraphs (C) and (D), respectively; and

3 (2) by inserting the following new subpara-
4 graph:

5 “(B) insurance consisting of coverage for
6 any excepted benefits described in section
7 9832(c),”.

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

11 **SEC. 3. ON-SITE EMPLOYEE CLINICS AND RETAIL CLINICS.**

12 (a) **IN GENERAL.**—Paragraph (1) of section 223(c)
13 of the Internal Revenue Code of 1986 is amended by add-
14 ing at the end the following new subparagraph:

15 “(D) **SPECIAL RULE FOR QUALIFIED**
16 **ITEMS AND SERVICES.**—

17 “(i) **IN GENERAL.**—For purposes of
18 subparagraph (A)(ii), an individual shall
19 not be treated as covered under a health
20 plan for purposes of subparagraph (A)(ii)
21 merely because the individual is eligible to
22 receive, or receives, qualified items and
23 services at—

24 “(I) a healthcare facility located
25 at a facility owned or leased by the

1 employer of the individual (or of the
2 individual's spouse), or operated pri-
3 marily for the benefit of such employ-
4 er's employees, or

5 “(II) a retail health clinic.

6 “(ii) QUALIFIED ITEMS AND SERVICES
7 DEFINED.—For purposes of this subpara-
8 graph, the term ‘qualified items and serv-
9 ices’ means the following:

10 “(I) Primary care including phys-
11 ical examination.

12 “(II) Immunizations, including
13 injections of antigens provided by em-
14 ployees.

15 “(III) Drugs or biologicals other
16 than a prescribed drug (as such term
17 is defined in section 213(d)(3)).

18 “(IV) Treatment for injuries oc-
19 ccurring in the course of employment.

20 “(V) Tests for conditions or in-
21 fectious diseases.

22 “(VI) Management of medically
23 complex chronic conditions.

24 “(VII) Drug testing.

1 “(VIII) Hearing or vision
2 screenings and related services.

3 “(IX) Other similar items and
4 services.

5 “(iii) RETAIL HEALTH CLINIC DE-
6 FINED.—For purposes of this subpara-
7 graph, the term ‘retail health clinic’ means
8 a health care facility located within a su-
9 permarket, pharmacy, or similar retail es-
10 tablishment that offers urgent care by a li-
11 censed healthcare provider.

12 “(iv) AGGREGATION.—For purposes
13 of clause (i), all persons treated as a single
14 employer under subsection (b), (c), (m), or
15 (o) of section 414 shall be treated as a sin-
16 gle employer.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to months in taxable years begin-
19 ning after the date of enactment of this Act.

20 **SEC. 4. CONTRIBUTIONS PERMITTED IF SPOUSE HAS A**
21 **HEALTH FLEXIBLE SPENDING ACCOUNT.**

22 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A
23 HEALTH FLEXIBLE SPENDING ACCOUNT.—Subpara-
24 graph (B) of section 223(c)(1) of the Internal Revenue
25 Code of 1986 is amended by striking “and” at the end

1 of clause (ii), by striking the period at the end of clause
2 (iii) and inserting “, and”, and by inserting after clause
3 (iii) the following:

4 “(iv) coverage under a health flexible
5 spending arrangement of the spouse of the
6 individual.”.

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

10 **SEC. 5. DEPENDENTS TO INCLUDE CHILDREN UP TO AGE**

11 **26.**

12 (a) IN GENERAL.—Subparagraph (A) of section
13 223(d)(2) of the Internal Revenue Code of 1986 is amend-
14 ed by striking “and any dependent (as defined in section
15 152, determined without regard to subsections (b)(1),
16 (b)(2), and (d)(1)(B) thereof) of such individual” in sub-
17 paragraph (A) and inserting “any dependent (as defined
18 in section 152, determined without regard to subsections
19 (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual,
20 and any child (as defined in section 152(f)(A)) of such
21 individual who has not attained the age of 27 before the
22 end of such individual’s taxable year”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to qualified medical

1 expenses incurred in taxable years beginning after the
2 date of the enactment of this Act.

3 **SEC. 6. FSA AND HRA INTERACTION WITH HSAS.**

4 (a) **ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA**
5 **PARTICIPANTS.**—Subparagraph (B) of section 223(e)(1)
6 of the Internal Revenue Code of 1986, as amended by this
7 Act, is amended by striking “and” at the end of clause
8 (iii), by striking the period at the end of clause (iv) and
9 inserting “, and”, and by inserting after clause (iv) the
10 following new clause:

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

22 “(I) **POST-DEDUCTIBLE FSA OR**
23 **HRA.**—A health flexible spending ar-
24 rangement or a health reimbursement
25 arrangement that does not pay or re-

1 imburse any medical expense incurred
2 before the minimum annual deductible
3 under paragraph (2)(A)(i) (prorated
4 for the period occurring after the
5 qualified HSA distribution is made) is
6 satisfied.

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

17 “(III) LIMITED PURPOSE
18 HEALTH FSA.—A health flexible
19 spending arrangement that, after the
20 qualified HSA distribution is made,
21 pays or reimburses benefits for cov-
22 erage described in clause (ii) (but not
23 through insurance or for long-term
24 care services).

1 “(IV) LIMITED PURPOSE HRA.—
2 A health reimbursement arrangement
3 that, after the qualified HSA distribu-
4 tion is made, pays or reimburses bene-
5 fits for permitted insurance or cov-
6 erage described in clause (ii) (but not
7 for long-term care services).

8 “(V) RETIREMENT HRA.—A
9 health reimbursement arrangement
10 that, after the qualified HSA distribu-
11 tion is made, pays or reimburses only
12 those medical expenses incurred after
13 an individual’s retirement (and no ex-
14 penses incurred before retirement).

15 “(VI) SUSPENDED HRA.—A
16 health reimbursement arrangement
17 that, after the qualified HSA distribu-
18 tion is made, is suspended, pursuant
19 to an election made on or before the
20 date the individual elects a qualified
21 HSA distribution or, if later, on the
22 date of the individual enrolls in an
23 HSA-qualified health plan, that does
24 not pay or reimburse, at any time,
25 any medical expense incurred during

1 the suspension period except as de-
2 scribed in the preceding subclauses of
3 this clause.”.

4 (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-
5 FECT FLEXIBLE SPENDING ARRANGEMENT.—Paragraph
6 (1) of section 106(e) of such Code is amended to read
7 as follows:

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

10 “(A) a health flexible spending arrange-
11 ment under this section, section 105, or section
12 125,

13 “(B) a health reimbursement arrangement
14 under this section or section 105, or

15 “(C) an accident or health plan,
16 merely because such plan provides for a qualified
17 HSA distribution.”.

18 (c) FSA BALANCES AT YEAR END SHALL NOT FOR-
19 FEIT.—Paragraph (2) of section 125(d) of such Code is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(E) EXCEPTION FOR QUALIFIED HSA DIS-
23 TRIBUTIONS.—Subparagraph (A) shall not
24 apply to the extent that there is an amount re-
25 maining in a health flexible spending account at

1 the end of a plan year that an individual elects
2 to contribute to a health savings account pursu-
3 ant to a qualified HSA distribution (as defined
4 in section 106(e)(2)).”.

5 (d) SIMPLIFICATION OF LIMITATIONS ON FSA AND
6 HRA ROLLOVERS.—Paragraph (2) of section 106(e) of
7 such Code is amended to read as follows:

8 “(2) QUALIFIED HSA DISTRIBUTION.—

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

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

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

20 Such term shall not include more than 1 dis-
21 tribution with respect to any arrangement.

22 “(B) DOLLAR LIMITATIONS.—

23 “(i) DISTRIBUTIONS FROM A HEALTH
24 FLEXIBLE SPENDING ARRANGEMENT.—A
25 qualified HSA distribution from a health

1 flexible spending arrangement shall not ex-
2 ceed the applicable amount.

3 “(ii) DISTRIBUTIONS FROM A HEALTH
4 REIMBURSEMENT ARRANGEMENT.—A
5 qualified HSA distribution from a health
6 reimbursement arrangement shall not ex-
7 ceed—

8 “(I) the applicable amount di-
9 vided by 12, multiplied by

10 “(II) the number of months dur-
11 ing which the individual is a partici-
12 pant in the health reimbursement ar-
13 rangement.

14 “(iii) APPLICABLE AMOUNT.—For
15 purposes of this subparagraph, the applica-
16 ble amount is—

17 “(I) \$2,250 in the case of an eli-
18 gible individual who has self-only cov-
19 erage under an HSA-qualified health
20 plan at the time of such distribution,
21 and

22 “(II) \$4,500 in the case of an eli-
23 gible individual who has family cov-
24 erage under an HSA-qualified health

1 plan at the time of such distribu-
2 tion.”.

3 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE
4 TO MAINTAIN HSA-QUALIFIED HEALTH PLAN COV-
5 ERAGE.—Subsection (e) of section 106 of such Code is
6 amended—

7 (1) by striking subparagraph (A) of paragraph
8 (4) and redesignating subparagraphs (B) and (C) of
9 such paragraph as subparagraphs (A) and (B)
10 thereof, respectively; and

11 (2) by striking paragraph (3) and redesignating
12 paragraphs (4) (as so amended) and (5) as para-
13 graphs (3) and (4), respectively.

14 (f) LIMITED PURPOSE FSAS AND HRAS.—Sub-
15 section (e) of section 106 of such Code, as amended by
16 this section, is amended by adding at the end the following
17 new paragraph:

18 “(5) LIMITED PURPOSE FSAS AND HRAS.—A
19 plan shall not fail to be a health flexible spending
20 arrangement, a health reimbursement arrangement,
21 or an accident or health plan under this section or
22 section 105 merely because the plan converts cov-
23 erage for individuals who enroll in an HSA-qualified
24 health plan described in section 223(c)(2) to cov-
25 erage described in subclause (I), (II), (III), (IV),

1 (V), or (VI) of section 223(c)(1)(B)(iv). Coverage
2 for such individuals may be converted as of the date
3 of enrollment in the HSA-qualified health plan,
4 without regard to the period of coverage under the
5 health flexible spending arrangement or health reim-
6 bursement arrangement, and without requiring any
7 change in coverage to individuals who do not enroll
8 in an HSA-qualified health plan.”.

9 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-
10 OF-LIVING.—Subsection (e) of section 106 of such Code,
11 as amended by this section, is amended by adding at the
12 end the following new paragraph:

13 “(6) COST-OF-LIVING ADJUSTMENT.—

14 “(A) IN GENERAL.—In the case of any
15 taxable year beginning in a calendar year after
16 2018, each of the dollar amounts in paragraph
17 (2)(B)(iii) shall be increased by an amount
18 equal to such dollar amount, multiplied by the
19 cost-of-living adjustment determined under sec-
20 tion 1(f)(3) for the calendar year in which such
21 taxable year begins by substituting ‘calendar
22 year 2017’ for ‘calendar year 1992’ in subpara-
23 graph (B) thereof.

24 “(B) ROUNDING.—If any increase under
25 paragraph (1) is not a multiple of \$50, such in-

1 crease shall be rounded to the nearest multiple
2 of \$50.”.

3 (h) **DISCLAIMER OF DISQUALIFYING COVERAGE.**—
4 Subparagraph (B) of section 223(c)(1) of such Code, as
5 amended by this section, is amended by striking “and”
6 at the end of clause (iv), by striking the period at the end
7 of clause (v) and inserting “, and”, and by inserting after
8 clause (v) the following new clause:

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

20 (i) **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.

23 **SEC. 7. CHRONIC DISEASE PREVENTION.**

24 (a) **IN GENERAL.**—Section 223(c)(2) of the Internal
25 Revenue Code of 1986 is amended by redesignating sub-

1 paragraph (D) as subparagraph (E) and by inserting after
2 subparagraph (C) the following new subparagraph:

3 “(D) SAFE HARBOR FOR ABSENCE OF DE-
4 DUCTIBLE FOR CARE RELATED TO CHRONIC
5 CONDITIONS.—A plan shall not fail to be treat-
6 ed as a high deductible health plan by reason
7 of failing to have a deductible for care and pre-
8 scription medications related to the treatment
9 of medically complex chronic conditions which—

10 “(i) are substantially disabling or life
11 threatening,

12 “(ii) have a high risk of hospitaliza-
13 tion or other significant adverse health
14 outcomes, and

15 “(iii) require specialized delivery sys-
16 tems across domains of care.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to coverage for months beginning
19 after the date of the enactment of this Act.

20 **SEC. 8. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY,**
21 **FITNESS, AND EXERCISE TREATED AS**
22 **AMOUNTS PAID FOR MEDICAL CARE.**

23 (a) IN GENERAL.—Section 213(d)(1) of the Internal
24 Revenue Code of 1986 is amended by striking “or” at the
25 end of subparagraph (C), by striking the period at the end

1 of subparagraph (D) and inserting “, or”, and by inserting
2 after subparagraph (D) the following new subparagraph:

3 “(E) for qualified sports and fitness ex-
4 penses.”.

5 (b) QUALIFIED SPORTS AND FITNESS EXPENSES.—
6 Section 213(d) of such Code, as amended by this Act, is
7 amended by adding at the end the following paragraph:

8 “(13) QUALIFIED SPORTS AND FITNESS EX-
9 PENSES.—

10 “(A) IN GENERAL.—The term ‘qualified
11 sports and fitness expenses’ means amounts
12 paid exclusively for the sole purpose of partici-
13 pating in a physical activity including—

14 “(i) for membership at a fitness facil-
15 ity,

16 “(ii) for participation or instruction in
17 a program of physical exercise or physical
18 activity, and

19 “(iii) for equipment for use in a pro-
20 gram (including a self-directed program) of
21 physical exercise or physical activity.

22 “(B) OVERALL DOLLAR LIMITATION.—The
23 aggregate amount treated as qualified sports
24 and fitness expenses with respect to any tax-
25 payer for any taxable year shall not exceed

1 \$1,000 (\$2,000 in the case of a joint return or
2 a head of household (as defined in section
3 2(b))).

4 “(C) FITNESS FACILITY DEFINED.—For
5 purposes of subparagraph (A)(i), the term ‘fit-
6 ness facility’ means a facility—

7 “(i) providing instruction in a pro-
8 gram of physical exercise, offering facilities
9 for the preservation, maintenance, encour-
10 agement, or development of physical fit-
11 ness, or serving as the site of such a pro-
12 gram of a State or local government,

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

15 “(iii) which does not offer golf, hunt-
16 ing, sailing, or riding facilities,

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

20 “(v) which is fully compliant with the
21 State of jurisdiction and Federal anti-dis-
22 crimination laws.

23 “(D) TREATMENT OF EXERCISE VIDEOS,
24 ETC.—Videos, books, and similar materials
25 shall be treated as described in subparagraph

1 (A)(ii) if the content of such materials con-
2 stitute instruction in a program of physical ex-
3 ercise or physical activity.

4 “(E) LIMITATIONS RELATED TO SPORTS
5 AND FITNESS EQUIPMENT.—Amounts paid for
6 equipment described in subparagraph (A)(iii)
7 shall be treated as a qualified sports and fitness
8 expense only—

9 “(i) if such equipment is utilized ex-
10 clusively for participation in fitness, exer-
11 cise, sport, or other physical activity pro-
12 grams,

13 “(ii) if such equipment is not apparel
14 or footwear, and

15 “(iii) in the case of any item of sports
16 equipment (other than exercise equip-
17 ment), with respect to so much of the
18 amount paid for such item as does not ex-
19 ceed \$250.

20 “(F) PROGRAMS WHICH INCLUDE COMPO-
21 NENTS OTHER THAN PHYSICAL EXERCISE AND
22 PHYSICAL ACTIVITY.—Rules similar to the rules
23 of section 213(d)(6) shall apply in the case of
24 any program that includes physical exercise or
25 physical activity and also other components.

1 For purposes of the preceding sentence, travel
2 and accommodations shall be treated as an
3 other component.”.

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

○