115TH CONGRESS
2D SESSION

H. R. 6199

AN ACT

To amend the Internal Revenue Code of 1986 to include certain over-the-counter medical products as qualified medical expenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Restoring Access to Medication and Modernizing Health Savings Accounts Act of 2018''.

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

SEC. 2. FIRST DOLLAR COVERAGE FLEXIBILITY FOR HIGH DEDUCTIBLE HEALTH PLANS.

(a) IN GENERAL.—Section 223(c)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(E) FIRST DOLLAR COVERAGE FLEXIBILITY.—

''(i) IN GENERAL.—A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for not more than $250 of specified services for self-only coverage (twice such amount in the case of family coverage) during a plan year.

''(ii) SPECIFIED SERVICES.—For purposes of this subparagraph, the term 'specified services' means, with respect to a plan, services other than preventive care (within the meaning of subparagraph (C)) identified under the terms of the plan as being services to which clause (i) applies.''.

(b) INFLATION ADJUSTMENT.—Section 223(g)(1) of such Code is amended—

(1) by striking ''and (c)(2)(A)'' each place it appears and inserting '', (c)(2)(A), and (c)(2)(E)'', and

(2) in subparagraph (B)—

(A) by striking ''such taxable year'' in the matter preceding clause (i) and inserting ''the taxable year (plan year in the case of the dollar amount in subsection (c)(2)(E))'', and

(B) by striking ''clause (ii)'' and inserting ''clauses (ii) and (iii)'' in clause (i), by striking ''and'' at the end of clause (i), by striking the period at the end of clause (ii) and inserting '', and'', and by inserting after clause (ii) the following new clause:

''(iii) in the case of the dollar amount in subsection (c)(2)(E) for plan years be-

ginning in calendar years after 2019, 'calendar year 2018'.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2018.

SEC. 3. TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.

(a) IN GENERAL.—Section 223(c)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(D) TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.—

''(i) IN GENERAL.—A direct primary care service arrangement shall not be treated as a health plan for purposes of subparagraph (A)(ii).

''(ii) DIRECT PRIMARY CARE SERVICE ARRANGEMENT.—For purposes of this paragraph—

''(I) IN GENERAL.—The term 'direct primary care service arrangement' means, with respect to any individual, an arrangement under which such individual is provided medical care (as defined in section 213(d))

consisting solely of primary care services provided by primary care practitioners (as defined in section 1833(x)(2)(A) of the Social Security Act, determined without regard to clause (ii) thereof), if the sole compensation for such care is a fixed periodic fee.

''(II) LIMITATION.—With respect to any individual for any month, such term shall not include any arrangement if the aggregate fees for all direct primary care service arrangements (determined without regard to this subclause) with respect to such individual for such month exceed $150 (twice such dollar amount in the case of an individual with any direct primary care service arrangement (as so determined) that covers more than one individual).

''(iii) CERTAIN SERVICES SPECIFICALLY EXCLUDED FROM TREATMENT AS PRIMARY CARE SERVICES.—For purposes

of this paragraph, the term 'primary care services' shall not include—

''(I) procedures that require the use of general anesthesia,

''(II) prescription drugs (other than vaccines), and

''(III) laboratory services not typically administered in an ambulatory primary care setting.

The Secretary, after consultation with the Secretary of Health and Human Services, shall issue regulations or other guidance regarding the application of this clause.''.

(b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT FEES TREATED AS MEDICAL EXPENSES.—Section 223(d)(2)(C) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) any direct primary care service arrangement.''.

(c) INFLATION ADJUSTMENT.—Section 223(g)(1) of such Code, as amended by section 2(b), is amended—

(1) by inserting ''(c)(1)(D)(ii)(II),'' after ''(b)(2),'' each place it appears, and

(2) in subparagraph (B), by striking ''and (iii)'' and inserting '', (iii) and (iv)'' in clause (i), by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by inserting after clause (iii) the following new clause:

''(iv) in the case of the dollar amount in subsection (e)(1)(D)(ii)(II) for taxable years beginning in calendar years after 2019, 'calendar year 2018'.''.

(d) REPORTING OF DIRECT PRIMARY CARE SERVICE ARRANGEMENT FEES ON W–2.—Section 6051(a) of such Code is amended by striking ''and'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', and'', and by inserting after paragraph (17) the following new paragraph:

''(18) in the case of a direct primary care service arrangement (as defined in section 223(e)(1)(D)(ii)) which is provided in connection with employment, the aggregate fees for such arrangement for such employee.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2018, in taxable years ending after such date.

SEC. 4. CERTAIN EMPLOYMENT RELATED SERVICES NOT TREATED AS DISQUALIFYING COVERAGE FOR PURPOSES OF HEALTH SAVINGS ACCOUNTS.

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

"(E) SPECIAL RULE FOR QUALIFIED ITEMS AND SERVICES.—

"(i) IN GENERAL.—An individual shall not be treated as covered under a health plan for purposes of subparagraph (A)(ii) merely because the individual, in connection with the employment of the individual or the individual's spouse, receives (or is eligible to receive) qualified items and services at—

"(I) a healthcare facility located at a facility owned or leased by the employer of the individual (or of the individual's spouse), or operated primarily for the benefit of such employer's employees, or

"(II) a healthcare facility located within a supermarket, pharmacy, or similar retail establishment.

"(ii) QUALIFIED ITEMS AND SERVICES DEFINED.—For purposes of this subparagraph, the term 'qualified items and services' means the following:

"(I) Physical examinations.

"(II) Immunizations, including injections of antigens provided by employees.

"(III) Drugs other than a prescribed drug (as such term is defined in section 213(d)(3)).

"(IV) Treatment for injuries occurring in the course of employment.

"(V) Drug testing, if required as a condition of employment.

"(VI) Hearing or vision screenings.

"(VII) Other similar items and services that do not provide significant benefits in the nature of medical care.

"(iii) AGGREGATION.—For purposes of clause (i)(I), all persons treated as a single employer under subsection (b), (c),

(m), or (o) of section 414 shall be treated as a single employer.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2018, in taxable years ending after such date.

SEC. 5. CONTRIBUTIONS PERMITTED IF SPOUSE HAS A HEALTH FLEXIBLE SPENDING ACCOUNT.

(a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A HEALTH FLEXIBLE SPENDING ACCOUNT.—Section 223(c)(1)(B) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by inserting after clause (iii) the following new clause:

> ''(iv) coverage under a health flexible spending arrangement of the spouse of the individual for any plan year of such arrangement if the aggregate reimbursements under such arrangement for such year do not exceed the aggregate expenses which would be eligible for reimbursement under such arrangement if such expenses were determined without regard to any expenses paid or incurred with respect to such individual.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2018.

SEC. 6. FSA AND HRA TERMINATIONS OR CONVERSIONS TO FUND HSAS.

(a) IN GENERAL.—Section 106(e)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

''(2) QUALIFIED HSA DISTRIBUTION.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified HSA distribution' means, with respect to any employee, a distribution from a health flexible spending arrangement or health reimbursement arrangement of such employee directly to a health savings account of such employee if—

''(i) such distribution is made in connection with such employee establishing coverage under a high deductible health plan (as defined in section 223(c)(2)) after a significant period of not having such coverage, and

''(ii) such arrangement is described in section 223(c)(1)(B)(iii) with respect to the portion of the plan year after such distribution is made.

"(B) DOLLAR LIMITATION.—The aggregate amount of distributions from health flexible spending arrangements and health reimbursement arrangements of any employee which may be treated as qualified HSA distributions in connection with an establishment of coverage described in subparagraph (A)(i) shall not exceed the dollar amount in effect under section 125(i)(1) (twice such amount in the case of coverage which is described in section 223(b)(2)(B)).".

(b) PARTIAL REDUCTION OF LIMITATION ON DEDUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of such Code is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by inserting after subparagraph (C) the following new subparagraph:

"(D) so much of any qualified HSA distribution (as defined in section 106(e)(2)) made to a health savings account of such individual during the taxable year as does not exceed the aggregate increases in the balance of the arrangement from which such distribution is made which occur during the portion of the plan year which precedes such distribution

(other than any balance carried over to such plan year and determined without regard to any decrease in such balance during such portion of the plan year).''.

(c) CONVERSION TO HSA-COMPATIBLE ARRANGEMENT FOR REMAINDER OF PLAN YEAR.—Section 223(c)(1)(B)(iii) of such Code, as amended by section 5(a), is amended to read as follows:

''(iii) coverage under a health flexible spending arrangement or health reimbursement arrangement for the portion of the plan year after a qualified HSA distribution (as defined in section 106(e)(2) determined without regard to subparagraph (A)(ii) thereof) is made, if the terms of such arrangement which apply for such portion of the plan year are such that, if such terms applied for the entire plan year, then such arrangement would not be taken into account under subparagraph (A)(ii) of this paragraph for such plan year, and''.

(d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS ON W–2.—

(1) IN GENERAL.—Section 6051(a) of such Code, as amended by section 3(d), is amended by striking ''and'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', and'', and by inserting after paragraph (18) the following new paragraph:

''(19) the amount of any qualified HSA distribution (as defined in section 106(e)(2)) with respect to such employee.''.

(2) CONFORMING AMENDMENT.—Section 6051(a)(12) of such Code is amended by inserting ''(other than any qualified HSA distribution, as defined in section 106(e)(2))'' before the comma at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2018, in taxable years ending after such date.

SEC. 7. INCLUSION OF CERTAIN OVER-THE-COUNTER MEDICAL PRODUCTS AS QUALIFIED MEDICAL EXPENSES.

(a) HSAS.—Section 223(d)(2) of the Internal Revenue Code of 1986 is amended—

(1) by striking the last sentence of subparagraph (A) and inserting the following: ''For purposes of this subparagraph, amounts paid for men-

strual care products shall be treated as paid for medical care.'', and

(2) by adding at the end the following new subparagraph:

''(D) MENSTRUAL CARE PRODUCT.—For purposes of this paragraph, the term 'menstrual care product' means a tampon, pad, liner, cup, sponge, or similar product used by women with respect to menstruation or other genital-tract secretions.''.

(b) ARCHER MSAS.—Section 220(d)(2)(A) of such Code is amended by striking the last sentence and inserting the following: ''For purposes of this subparagraph, amounts paid for menstrual care products (as defined in section 223(d)(2)(D)) shall be treated as paid for medical care.''.

(c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Section 106 of such Code is amended by striking subsection (f) and inserting the following new subsection:

''(f) REIMBURSEMENTS FOR MENSTRUAL CARE PRODUCTS.—For purposes of this section and section 105, expenses incurred for menstrual care products (as defined in section 223(d)(2)(D)) shall be treated as incurred for medical care.''.

(d) EFFECTIVE DATES.—

(1) DISTRIBUTIONS FROM HEALTH SAVINGS ACCOUNTS.—The amendments made by subsections (a) and (b) shall apply to amounts paid after December 31, 2018.

(2) REIMBURSEMENTS.—The amendment made by subsection (c) shall apply to expenses incurred after December 31, 2018.

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

(a) IN GENERAL.—Section 213(d)(1) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting '', or'', and by adding at the end the following new subparagraph:

''(E) for qualified sports and fitness expenses.''.

(b) QUALIFIED SPORTS AND FITNESS EXPENSES.—Section 213(d) of such Code is amended by adding at the end the following paragraph:

''(12) QUALIFIED SPORTS AND FITNESS EXPENSES.—

"(A) IN GENERAL.—The term 'qualified sports and fitness expenses' means amounts paid for—

"(i) membership at a fitness facility,

"(ii) participation or instruction in a program of qualified physical activity, or

"(iii) safety equipment for use in a program (including a self-directed program) of qualified physical activity.

"(B) LIMITATIONS.—

"(i) OVERALL DOLLAR LIMITATION.—The aggregate amount treated as qualified sports and fitness expenses with respect to any taxpayer for any taxable year shall not exceed $500 (twice such amount in the case of a joint return or a head of household (as defined in section 2(b))).

"(ii) DOLLAR LIMITATION ON SAFETY EQUIPMENT.—The amount treated as qualified sports and fitness expenses with respect to any item of safety equipment described in subparagraph (A)(iii) shall not exceed $250.

"(iii) EXCLUSION OF EXERCISE VIDEOS, ETC.—Qualified sports and fitness ex-

penses shall not include videos, books, or similar materials.

''(C) QUALIFIED PHYSICAL ACTIVITY.—For purposes of this paragraph—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'qualified physical activity' means any physical exercise or physical activity.

''(ii) EXCLUSIONS.—The Secretary, after consultation with the Secretary of Health and Human Services, shall issue guidance to determine for purposes of this paragraph what does not constitute a qualified physical activity, including golf, hunting, sailing, horseback riding, and other similar activities.

''(D) FITNESS FACILITY DEFINED.—For purposes of subparagraph (A)(i), the term 'fitness facility' means a facility—

''(i) providing instruction in a program of qualified physical activity or facilities for qualified physical activity,

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

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

''(iv) which is fully compliant with applicable State and Federal anti-discrimination laws.

''(E) PROGRAMS WHICH INCLUDE COMPONENTS OTHER QUALIFIED PHYSICAL ACTIVITY.—Rules similar to the rules of paragraph (6) shall apply in the case of any program or facility that includes qualified physical activity (or facilities therefore) and also other components. For purposes of the preceding sentence, travel and accommodations shall be treated as an other component.

''(F) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2019, the $500 amount in subparagraph (B)(i) and the $250 amount in subparagraph (B)(ii) shall each be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year be-

gins, determined by substituting 'calendar year 2018' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2018.

Passed the House of Representatives July 25, 2018.

Attest:

Clerk.

115TH CONGRESS
2D SESSION

H. R. 6199

AN ACT

To amend the Internal Revenue Code of 1986 to include certain over-the-counter medical products as qualified medical expenses.