

115TH CONGRESS  
2D SESSION

# H. R. 6199

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## AN ACT

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

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 “Restoring Access to Medication and Modernizing Health  
4 Savings Accounts Act of 2018”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. First dollar coverage flexibility for high deductible health plans.
- Sec. 3. Treatment of direct primary care service arrangements.
- Sec. 4. Certain employment related services not treated as disqualifying coverage for purposes of health savings accounts.
- Sec. 5. Contributions permitted if spouse has a health flexible spending account.
- Sec. 6. FSA and HRA terminations or conversions to fund HSAs.
- Sec. 7. Inclusion of certain over-the-counter medical products as qualified medical expenses.
- Sec. 8. Certain amounts paid for physical activity, fitness, and exercise treated as amounts paid for medical care.

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

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

12 “(E) FIRST DOLLAR COVERAGE FLEXI-  
13 BILITY.—

14 “(i) IN GENERAL.—A plan shall not  
15 fail to be treated as a high deductible  
16 health plan by reason of failing to have a  
17 deductible for not more than \$250 of spec-  
18 ified services for self-only coverage (twice  
19 such amount in the case of family cov-  
20 erage) during a plan year.

1                   “(ii) SPECIFIED SERVICES.—For pur-  
 2                   poses of this subparagraph, the term ‘spec-  
 3                   ified services’ means, with respect to a  
 4                   plan, services other than preventive care  
 5                   (within the meaning of subparagraph (C))  
 6                   identified under the terms of the plan as  
 7                   being services to which clause (i) applies.”.

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

10           (1) by striking “and (c)(2)(A)” each place it  
 11           appears and inserting “, (c)(2)(A), and (c)(2)(E)”,  
 12           and

13           (2) in subparagraph (B)—

14                   (A) by striking “such taxable year” in the  
 15                   matter preceding clause (i) and inserting “the  
 16                   taxable year (plan year in the case of the dollar  
 17                   amount in subsection (c)(2)(E))”, and

18                   (B) by striking “clause (ii)” and inserting  
 19                   “clauses (ii) and (iii)” in clause (i), by striking  
 20                   “and” at the end of clause (i), by striking the  
 21                   period at the end of clause (ii) and inserting “,  
 22                   and”, and by inserting after clause (ii) the fol-  
 23                   lowing new clause:

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

1                   ginning in calendar years after 2019, ‘cal-  
2                   endar year 2018’.”.

3           (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to plan years begin-  
5 ning after December 31, 2018.

6 **SEC. 3. TREATMENT OF DIRECT PRIMARY CARE SERVICE**  
7 **ARRANGEMENTS.**

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

11                   “(D) TREATMENT OF DIRECT PRIMARY  
12                   CARE SERVICE ARRANGEMENTS.—

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

17                           “(ii) DIRECT PRIMARY CARE SERVICE  
18                   ARRANGEMENT.—For purposes of this  
19                   paragraph—

20                                   “(I) IN GENERAL.—The term ‘di-  
21                   rect primary care service arrange-  
22                   ment’ means, with respect to any indi-  
23                   vidual, an arrangement under which  
24                   such individual is provided medical  
25                   care (as defined in section 213(d))

1 consisting solely of primary care serv-  
2 ices provided by primary care practi-  
3 tioners (as defined in section  
4 1833(x)(2)(A) of the Social Security  
5 Act, determined without regard to  
6 clause (ii) thereof), if the sole com-  
7 pensation for such care is a fixed peri-  
8 odic fee.

9 “(II) LIMITATION.—With respect  
10 to any individual for any month, such  
11 term shall not include any arrange-  
12 ment if the aggregate fees for all di-  
13 rect primary care service arrange-  
14 ments (determined without regard to  
15 this subclause) with respect to such  
16 individual for such month exceed  
17 \$150 (twice such dollar amount in the  
18 case of an individual with any direct  
19 primary care service arrangement (as  
20 so determined) that covers more than  
21 one individual).

22 “(iii) CERTAIN SERVICES SPECIFI-  
23 CALLY EXCLUDED FROM TREATMENT AS  
24 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

1           (2) in subparagraph (B), by striking “and (iii)”  
 2           and inserting “, (iii) and (iv)” in clause (i), by strik-  
 3           ing “and” at the end of clause (ii), by striking the  
 4           period at the end of clause (iii) and inserting “,  
 5           and”, and by inserting after clause (iii) the following  
 6           new clause:

7                               “(iv) in the case of the dollar amount  
 8                               in subsection (c)(1)(D)(ii)(II) for taxable  
 9                               years beginning in calendar years after  
 10                              2019, ‘calendar year 2018’.”.

11       (d) REPORTING OF DIRECT PRIMARY CARE SERVICE  
 12 ARRANGEMENT FEES ON W-2.—Section 6051(a) of such  
 13 Code is amended by striking “and” at the end of para-  
 14 graph (16), by striking the period at the end of paragraph  
 15 (17) and inserting “, and”, and by inserting after para-  
 16 graph (17) the following new paragraph:

17                           “(18) in the case of a direct primary care serv-  
 18                           ice arrangement (as defined in section  
 19                           223(c)(1)(D)(ii)) which is provided in connection  
 20                           with employment, the aggregate fees for such ar-  
 21                           rangement for such employee.”.

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

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

4 (a) IN GENERAL.—Section 223(c)(1) of the Internal  
5 Revenue Code of 1986, as amended by section 3(a), is  
6 amended by adding at the end the following new subpara-  
7 graph:

8 “(E) SPECIAL RULE FOR QUALIFIED  
9 ITEMS AND SERVICES.—

10 “(i) IN GENERAL.—An individual  
11 shall not be treated as covered under a  
12 health plan for purposes of subparagraph  
13 (A)(ii) merely because the individual, in  
14 connection with the employment of the in-  
15 dividual or the individual’s spouse, receives  
16 (or is eligible to receive) qualified items  
17 and services at—

18 “(I) a healthcare facility located  
19 at a facility owned or leased by the  
20 employer of the individual (or of the  
21 individual’s spouse), or operated pri-  
22 marily for the benefit of such employ-  
23 er’s employees, or

24 “(II) a healthcare facility located  
25 within a supermarket, pharmacy, or  
26 similar retail establishment.



1 “(ii) QUALIFIED ITEMS AND SERVICES  
2 DEFINED.—For purposes of this subpara-  
3 graph, the term ‘qualified items and serv-  
4 ices’ means the following:

5 “(I) Physical examinations.

6 “(II) Immunizations, including  
7 injections of antigens provided by em-  
8 ployees.

9 “(III) Drugs other than a pre-  
10 scribed drug (as such term is defined  
11 in section 213(d)(3)).

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

14 “(V) Drug testing, if required as  
15 a condition of employment.

16 “(VI) Hearing or vision  
17 screenings.

18 “(VII) Other similar items and  
19 services that do not provide signifi-  
20 cant benefits in the nature of medical  
21 care.

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

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

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

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

8 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A  
9 HEALTH FLEXIBLE SPENDING ACCOUNT.—Section  
10 223(c)(1)(B) of the Internal Revenue Code of 1986 is  
11 amended by striking “and” at the end of clause (ii), by  
12 striking the period at the end of clause (iii) and inserting  
13 “, and”, and by inserting after clause (iii) the following  
14 new clause:

15 “(iv) coverage under a health flexible  
16 spending arrangement of the spouse of the  
17 individual for any plan year of such ar-  
18 rangement if the aggregate reimburse-  
19 ments under such arrangement for such  
20 year do not exceed the aggregate expenses  
21 which would be eligible for reimbursement  
22 under such arrangement if such expenses  
23 were determined without regard to any ex-  
24 penses paid or incurred with respect to  
25 such individual.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to plan years beginning after De-  
3 cember 31, 2018.

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

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

8 “(2) QUALIFIED HSA DISTRIBUTION.—For pur-  
9 poses of this subsection—

10 “(A) IN GENERAL.—The term ‘qualified  
11 HSA distribution’ means, with respect to any  
12 employee, a distribution from a health flexible  
13 spending arrangement or health reimbursement  
14 arrangement of such employee directly to a  
15 health savings account of such employee if—

16 “(i) such distribution is made in con-  
17 nection with such employee establishing  
18 coverage under a high deductible health  
19 plan (as defined in section 223(c)(2)) after  
20 a significant period of not having such cov-  
21 erage, and

22 “(ii) such arrangement is described in  
23 section 223(c)(1)(B)(iii) with respect to  
24 the portion of the plan year after such dis-  
25 tribution is made.

1           “(B) DOLLAR LIMITATION.—The aggre-  
2           gate amount of distributions from health flexi-  
3           ble spending arrangements and health reim-  
4           bursement arrangements of any employee which  
5           may be treated as qualified HSA distributions  
6           in connection with an establishment of coverage  
7           described in subparagraph (A)(i) shall not ex-  
8           ceed the dollar amount in effect under section  
9           125(i)(1) (twice such amount in the case of cov-  
10          erage which is described in section  
11          223(b)(2)(B)).”.

12          (b) PARTIAL REDUCTION OF LIMITATION ON DE-  
13          DUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of  
14          such Code is amended by striking “and” at the end of  
15          subparagraph (B), by striking the period at the end of  
16          subparagraph (C) and inserting “, and”, and by inserting  
17          after subparagraph (C) the following new subparagraph:

18               “(D) so much of any qualified HSA dis-  
19               tribution (as defined in section 106(e)(2)) made  
20               to a health savings account of such individual  
21               during the taxable year as does not exceed the  
22               aggregate increases in the balance of the ar-  
23               rangement from which such distribution is  
24               made which occur during the portion of the  
25               plan year which precedes such distribution

1 (other than any balance carried over to such  
 2 plan year and determined without regard to any  
 3 decrease in such balance during such portion of  
 4 the plan year).”.

5 (c) CONVERSION TO HSA-COMPATIBLE ARRANGE-  
 6 MENT FOR REMAINDER OF PLAN YEAR.—Section  
 7 223(c)(1)(B)(iii) of such Code, as amended by section  
 8 5(a), is amended to read as follows:

9 “(iii) coverage under a health flexible  
 10 spending arrangement or health reimburse-  
 11 ment arrangement for the portion of the  
 12 plan year after a qualified HSA distribu-  
 13 tion (as defined in section 106(e)(2) deter-  
 14 mined without regard to subparagraph  
 15 (A)(ii) thereof) is made, if the terms of  
 16 such arrangement which apply for such  
 17 portion of the plan year are such that, if  
 18 such terms applied for the entire plan  
 19 year, then such arrangement would not be  
 20 taken into account under subparagraph  
 21 (A)(ii) of this paragraph for such plan  
 22 year, and”.

23 (d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS  
 24 ON W-2.—

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

7           “(19) the amount of any qualified HSA dis-  
 8           tribution (as defined in section 106(e)(2)) with re-  
 9           spect to such employee.”.

10          (2) CONFORMING AMENDMENT.—Section  
 11          6051(a)(12) of such Code is amended by inserting  
 12          “(other than any qualified HSA distribution, as de-  
 13          fined in section 106(e)(2))” before the comma at the  
 14          end.

15          (e) EFFECTIVE DATE.—The amendments made by  
 16          this section shall apply to distributions made after Decem-  
 17          ber 31, 2018, in taxable years ending after such date.

18       **SEC. 7. INCLUSION OF CERTAIN OVER-THE-COUNTER MED-**  
 19                               **ICAL PRODUCTS AS QUALIFIED MEDICAL EX-**  
 20                               **PENSES.**

21          (a) HSAs.—Section 223(d)(2) of the Internal Rev-  
 22          enue Code of 1986 is amended—

23               (1) by striking the last sentence of subpara-  
 24               graph (A) and inserting the following: “For pur-  
 25               poses of this subparagraph, amounts paid for men-

1       strual care products shall be treated as paid for  
2       medical care.”, and

3               (2) by adding at the end the following new sub-  
4       paragraph:

5               “(D) MENSTRUAL CARE PRODUCT.—For  
6       purposes of this paragraph, the term ‘menstrual  
7       care product’ means a tampon, pad, liner, cup,  
8       sponge, or similar product used by women with  
9       respect to menstruation or other genital-tract  
10      secretions.”.

11      (b) ARCHER MSAs.—Section 220(d)(2)(A) of such  
12      Code is amended by striking the last sentence and insert-  
13      ing the following: “For purposes of this subparagraph,  
14      amounts paid for menstrual care products (as defined in  
15      section 223(d)(2)(D)) shall be treated as paid for medical  
16      care.”.

17      (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS  
18      AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-  
19      tion 106 of such Code is amended by striking subsection  
20      (f) and inserting the following new subsection:

21              “(f) REIMBURSEMENTS FOR MENSTRUAL CARE  
22      PRODUCTS.—For purposes of this section and section  
23      105, expenses incurred for menstrual care products (as  
24      defined in section 223(d)(2)(D)) shall be treated as in-  
25      curred for medical care.”.

1 (d) EFFECTIVE DATES.—

2 (1) DISTRIBUTIONS FROM HEALTH SAVINGS AC-  
3 COUNTS.—The amendments made by subsections (a)  
4 and (b) shall apply to amounts paid after December  
5 31, 2018.

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

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

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

17 “(E) for qualified sports and fitness ex-  
18 penses.”.

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

22 “(12) QUALIFIED SPORTS AND FITNESS EX-  
23 PENSES.—



1           “(A) IN GENERAL.—The term ‘qualified  
2 sports and fitness expenses’ means amounts  
3 paid for—

4                   “(i) membership at a fitness facility,

5                   “(ii) participation or instruction in a  
6 program of qualified physical activity, or

7                   “(iii) safety equipment for use in a  
8 program (including a self-directed pro-  
9 gram) of qualified physical activity.

10          “(B) LIMITATIONS.—

11                   “(i) OVERALL DOLLAR LIMITATION.—

12           The aggregate amount treated as qualified  
13 sports and fitness expenses with respect to  
14 any taxpayer for any taxable year shall not  
15 exceed \$500 (twice such amount in the  
16 case of a joint return or a head of house-  
17 hold (as defined in section 2(b))).

18                   “(ii) DOLLAR LIMITATION ON SAFETY

19 EQUIPMENT.—The amount treated as  
20 qualified sports and fitness expenses with  
21 respect to any item of safety equipment de-  
22 scribed in subparagraph (A)(iii) shall not  
23 exceed \$250.

24                   “(iii) EXCLUSION OF EXERCISE VID-

25 EOS, ETC.—Qualified sports and fitness ex-

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

3           “(C) QUALIFIED PHYSICAL ACTIVITY.—

4           For purposes of this paragraph—

5                 “(i) IN GENERAL.—Except as pro-  
6                 vided in clause (ii), the term ‘qualified  
7                 physical activity’ means any physical exer-  
8                 cise or physical activity.

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

17           “(D) FITNESS FACILITY DEFINED.—For  
18           purposes of subparagraph (A)(i), the term ‘fit-  
19           ness facility’ means a facility—

20                 “(i) providing instruction in a pro-  
21                 gram of qualified physical activity or facili-  
22                 ties for qualified physical activity,

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

1 “(iii) whose health or fitness facility is  
2 not incidental to its overall function and  
3 purpose, and

4 “(iv) which is fully compliant with ap-  
5 plicable State and Federal anti-discrimina-  
6 tion laws.

7 “(E) PROGRAMS WHICH INCLUDE COMPO-  
8 NENTS OTHER QUALIFIED PHYSICAL ACTIV-  
9 ITY.—Rules similar to the rules of paragraph  
10 (6) shall apply in the case of any program or  
11 facility that includes qualified physical activity  
12 (or facilities therefore) and also other compo-  
13 nents. For purposes of the preceding sentence,  
14 travel and accommodations shall be treated as  
15 an other component.

16 “(F) INFLATION ADJUSTMENT.—In the  
17 case of any taxable year beginning in a calendar  
18 year after 2019, the \$500 amount in subpara-  
19 graph (B)(i) and the \$250 amount in subpara-  
20 graph (B)(ii) shall each be increased by an  
21 amount equal to—

22 “(i) such dollar amount, multiplied by

23 “(ii) the cost-of-living adjustment de-  
24 termined under section 1(f)(3) for the cal-  
25 endar year in which such taxable year be-

1                   gins, determined by substituting ‘calendar  
2                   year 2018’ for ‘calendar year 2016’ in sub-  
3                   paragraph (A)(ii) thereof.

4                   If any increase determined under the preceding  
5                   sentence is not a multiple of \$10, such increase  
6                   shall be rounded to the next lowest multiple of  
7                   \$10.’’.

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

                  Passed the House of Representatives July 25, 2018.

                  Attest:

*Clerk.*



115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6199

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## AN ACT

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