

115TH CONGRESS  
1ST SESSION

# S. 403

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2017

Mr. HATCH (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded 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 “Health Savings Act of 2017”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment  
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents is  
 4 as follows:

Sec. 1. Short title, etc.

#### TITLE I—RENAMING HIGH DEDUCTIBLE HEALTH PLANS

Sec. 101. High deductible health plans renamed HSA-qualified health plans.

#### TITLE II—ENHANCING ACCESS TO TAX-PREFERRED HEALTH ACCOUNTS

Sec. 201. Allow both spouses to make catch-up contributions to the same HSA account.

Sec. 202. Provisions relating to Medicare.

Sec. 203. Individuals eligible for Indian Health Service assistance.

Sec. 204. Members of health care sharing ministries eligible to establish health savings accounts.

Sec. 205. Treatment of direct primary care service arrangements.

Sec. 206. Individuals eligible for on-site medical clinic coverage.

Sec. 207. Treatment of embedded deductibles.

#### TITLE III—IMPROVING COVERAGE UNDER TAX-PREFERRED HEALTH ACCOUNTS

Sec. 301. Allowance of distributions for prescription and over-the-counter medicines and drugs.

Sec. 302. Purchase of health insurance from HSA account.

Sec. 303. Special rule for certain medical expenses incurred before establishment of account.

Sec. 304. Preventive care prescription drug clarification.

#### TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO TAX-PREFERRED HEALTH ACCOUNTS

Sec. 401. FSA and HRA interaction with HSAs.

Sec. 402. Equivalent bankruptcy protections for health savings accounts as retirement funds.

Sec. 403. Administrative error correction before due date of return.

Sec. 404. Reauthorization of Medicaid health opportunity accounts.

Sec. 405. Maximum contribution limit to health savings account increased to amount of deductible and out-of-pocket limitation.

#### TITLE V—OTHER PROVISIONS

Sec. 501. Certain exercise equipment and physical fitness programs treated as medical care.

Sec. 502. Certain nutritional and dietary supplements to be treated as medical care.

Sec. 503. Certain provider fees to be treated as medical care.

1           **TITLE I—RENAMING HIGH**  
2           **DEDUCTIBLE HEALTH PLANS**

3   **SEC. 101. HIGH DEDUCTIBLE HEALTH PLANS RENAMED**  
4           **HSA-QUALIFIED HEALTH PLANS.**

5           (a) **IN GENERAL.**—Section 223 is amended by strik-  
6 ing “high deductible health plan” each place it appears  
7 and inserting “HSA-qualified health plan”.

8           (b) **CONFORMING AMENDMENTS.**—

9                 (1) The heading for paragraph (2) of section  
10           223(c) is amended by striking “HIGH DEDUCTIBLE  
11           HEALTH PLAN” and inserting “HSA-QUALIFIED  
12           HEALTH PLAN”.

13                 (2) Section 408(d)(9) is amended—

14                     (A) by striking “high deductible health  
15           plan” each place it appears in subparagraph  
16           (C) and inserting “HSA-qualified health plan”,  
17           and

18                     (B) by striking “HIGH DEDUCTIBLE  
19           HEALTH PLAN” in the heading of subparagraph  
20           (D) and inserting “HSA-QUALIFIED HEALTH  
21           PLAN”.

1 **TITLE II—ENHANCING ACCESS**  
 2 **TO TAX-PREFERRED HEALTH**  
 3 **ACCOUNTS**

4 **SEC. 201. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**  
 5 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

6 (a) IN GENERAL.—Paragraph (5) of section 223(b)  
 7 is amended to read as follows:

8 “(5) SPECIAL RULE FOR MARRIED INDIVIDUALS  
 9 WITH FAMILY COVERAGE.—

10 “(A) IN GENERAL.—In the case of individ-  
 11 uals who are married to each other, if both  
 12 spouses are eligible individuals and either  
 13 spouse has family coverage under an HSA-  
 14 qualified health plan as of the first day of any  
 15 month—

16 “(i) the limitation under paragraph  
 17 (1) shall be applied by not taking into ac-  
 18 count any other HSA-qualified health plan  
 19 coverage of either spouse (and if such  
 20 spouses both have family coverage under  
 21 separate HSA-qualified health plans, only  
 22 one such coverage shall be taken into ac-  
 23 count),

24 “(ii) such limitation (after application  
 25 of clause (i)) shall be reduced by the ag-

1            aggregate amount paid to Archer MSAs of  
2            such spouses for the taxable year, and

3            “(iii) such limitation (after application  
4            of clauses (i) and (ii)) shall be divided  
5            equally between such spouses unless they  
6            agree on a different division.

7            “(B) TREATMENT OF ADDITIONAL CON-  
8            TRIBUTION AMOUNTS.—If both spouses referred  
9            to in subparagraph (A) have attained age 55  
10           before the close of the taxable year, the limita-  
11           tion referred to in subparagraph (A)(iii) which  
12           is subject to division between the spouses shall  
13           include the additional contribution amounts de-  
14           termined under paragraph (3) for both spouses.  
15           In any other case, any additional contribution  
16           amount determined under paragraph (3) shall  
17           not be taken into account under subparagraph  
18           (A)(iii) and shall not be subject to division be-  
19           tween the spouses.”.

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

23           **SEC. 202. PROVISIONS RELATING TO MEDICARE.**

24           (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN  
25           MEDICARE PART A.—Paragraph (7) of section 223(b) is

1 amended by adding at the end the following: “This para-  
2 graph shall not apply to any individual during any period  
3 for which the individual’s only entitlement to such benefits  
4 is an entitlement to hospital insurance benefits under part  
5 A of title XVIII of such Act pursuant to an enrollment  
6 for such hospital insurance benefits under section 226(a)  
7 of such Act.”.

8 (b) MEDICARE BENEFICIARIES PARTICIPATING IN  
9 MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR  
10 OWN MONEY TO THEIR MSA.—

11 (1) IN GENERAL.—Subsection (b) of section  
12 138 is amended by striking paragraph (2) and by re-  
13 designating paragraphs (3) and (4) as paragraphs  
14 (2) and (3), respectively.

15 (2) CONFORMING AMENDMENT.—Paragraph (4)  
16 of section 138(e) is amended by striking “and para-  
17 graph (2)”.

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

21 **SEC. 203. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH**  
22 **SERVICE ASSISTANCE.**

23 (a) IN GENERAL.—Paragraph (1) of section 223(c)  
24 is amended by adding at the end the following new sub-  
25 paragraph:

1           “(D) SPECIAL RULE FOR INDIVIDUALS EL-  
 2           IGIBLE FOR ASSISTANCE UNDER INDIAN  
 3           HEALTH SERVICE PROGRAMS.—For purposes of  
 4           subparagraph (A)(ii), an individual shall not be  
 5           treated as covered under a health plan de-  
 6           scribed in such subparagraph merely because  
 7           the individual receives hospital care or medical  
 8           services under a medical care program of the  
 9           Indian Health Service or of a tribal organiza-  
 10          tion.”.

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. 204. MEMBERS OF HEALTH CARE SHARING MIN-**  
 15                           **ISTRIES ELIGIBLE TO ESTABLISH HEALTH**  
 16                           **SAVINGS ACCOUNTS.**

17          (a) IN GENERAL.—Section 223 is amended by adding  
 18 at the end the following new subsection:

19          “(i) APPLICATION TO HEALTH CARE SHARING MIN-  
 20 ISTRIES.—For purposes of this section, membership in a  
 21 health care sharing ministry (as defined in section  
 22 5000A(d)(2)(B)(ii)) shall be treated as coverage under an  
 23 HSA-qualified health plan.”.

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

4 **SEC. 205. TREATMENT OF DIRECT PRIMARY CARE SERVICE**  
 5 **ARRANGEMENTS.**

6 (a) IN GENERAL.—Section 223(c) is amended by  
 7 adding at the end the following new paragraph:

8 “(6) TREATMENT OF DIRECT PRIMARY CARE  
 9 SERVICE ARRANGEMENTS.—An arrangement under  
 10 which an individual is provided coverage restricted to  
 11 primary care services in exchange for a fixed peri-  
 12 odic fee or payment for primary care services—

13 “(A) shall not be treated as a health plan  
 14 for purposes of paragraph (1)(A)(ii), and

15 “(B) shall not be treated as insurance for  
 16 purposes of subsection (d)(2)(B).”.

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

20 **SEC. 206. INDIVIDUALS ELIGIBLE FOR ON-SITE MEDICAL**  
 21 **CLINIC COVERAGE.**

22 (a) IN GENERAL.—Paragraph (1) of section 223(c),  
 23 as amended by sections 203, is amended by adding at the  
 24 end the following new subparagraph:

1           “(E) SPECIAL RULE FOR INDIVIDUALS EL-  
2           IGIBLE FOR ON-SITE MEDICAL CLINIC COV-  
3           ERAGE.—

4           “(i) IN GENERAL.—For purposes of  
5           subparagraph (A)(ii), an individual shall  
6           not be treated as covered under a health  
7           plan described in such subparagraph mere-  
8           ly because the individual is eligible to re-  
9           ceive health care benefits from an onsite-  
10          medical clinic of employer of the individual  
11          or the individual’s spouse if such health  
12          care benefits are not significant benefits.

13          “(ii) INCLUDED BENEFITS.—For pur-  
14          poses of clause (i), the following health  
15          care benefits shall be considered to be ben-  
16          efits which are not significant benefits:

17                 “(I) Physicals and immuniza-  
18                 tions.

19                 “(II) Injecting antigens provided  
20                 by employees.

21                 “(III) Medications available with-  
22                 out a prescription, such as pain reliev-  
23                 ers and antihistamines.

24                 “(IV) Treatment for injuries oc-  
25                 curring at the employer’s place of em-

1                   employment or otherwise in the course of  
2                   employment.

3                   “(V) Tests for infectious diseases  
4                   and conditions, such as streptococcal  
5                   sore throat.

6                   “(VI) Monitoring of chronic con-  
7                   ditions, such as diabetes.

8                   “(VII) Drug testing.

9                   “(VIII) Hearing or vision  
10                  screenings and related services.

11                  “(IX) Other services and treat-  
12                  ments of a similar nature to the serv-  
13                  ices described in subclauses (I)  
14                  through (VIII).

15                  “(iii) AGGREGATION RULES.—For  
16                  purposes of clause (i), all persons treated  
17                  as a single employer under subsection (b),  
18                  (c), (m), or (o) of section 414 shall be  
19                  treated as a single employer.”.

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

1 **SEC. 207. TREATMENT OF EMBEDDED DEDUCTIBLES.**

2 (a) IN GENERAL.—Paragraph (2) of section 223(c)  
3 is amended by adding at the end the following new sub-  
4 paragraph:

5 “(E) TREATMENT OF EMBEDDED DEDUCT-  
6 IBLE.—A health plan providing family coverage  
7 that has an annual deductible for all covered in-  
8 dividuals under the plan of at least the amount  
9 described in subparagraph (A)(i)(II) shall not  
10 fail to be treated as an HSA-qualified health  
11 plan solely because it covers expenses with re-  
12 spect to an individual under that plan that ex-  
13 ceed an embedded deductible which is equal to  
14 or in excess of the amount described in sub-  
15 paragraph (A)(i)(I).”.

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

19 **TITLE III—IMPROVING COV-  
20 ERAGE UNDER TAX-PRE-  
21 FERRED HEALTH ACCOUNTS**

22 **SEC. 301. ALLOWANCE OF DISTRIBUTIONS FOR PRESCRIP-  
23 TION AND OVER-THE-COUNTER MEDICINES  
24 AND DRUGS.**

25 (a) HSAs.—Section 223(d)(2)(A) is amended by  
26 striking the last sentence thereof and inserting the fol-

1 lowing: “Such term shall include an amount paid for any  
2 prescription or over-the-counter medicine or drug.”.

3 (b) ARCHER MSAs.—Section 220(d)(2)(A) is amend-  
4 ed by striking the last sentence thereof and inserting the  
5 following: “Such term shall include an amount paid for  
6 any prescription or over-the-counter medicine or drug.”.

7 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS  
8 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sub-  
9 section (f) of section 106 is amended to read as follows:  
10 “(f) REIMBURSEMENTS FOR ALL MEDICINES AND  
11 DRUGS.—For purposes of this section and section 105,  
12 reimbursement for expenses incurred for any prescription  
13 or over-the-counter medicine or drug shall be treated as  
14 a reimbursement for medical expenses.”.

15 (d) EFFECTIVE DATES.—

16 (1) DISTRIBUTIONS FROM SAVINGS AC-  
17 COUNTS.—The amendments made by subsections (a)  
18 and (b) shall apply to amounts paid in taxable years  
19 beginning after December 31, 2017.

20 (2) REIMBURSEMENTS.—The amendment made  
21 by subsection (c) shall apply to expenses incurred in  
22 plan years beginning after December 31, 2017.

1 **SEC. 302. PURCHASE OF HEALTH INSURANCE FROM HSA**  
2 **ACCOUNT.**

3 (a) IN GENERAL.—Paragraph (2) of section 223(d),  
4 as amended by section 301, is amended—

5 (1) by striking “and any dependent (as defined  
6 in section 152, determined without regard to sub-  
7 sections (b)(1), (b)(2), and (d)(1)(B) thereof) of  
8 such individual” in subparagraph (A) and inserting  
9 “any dependent (as defined in section 152, deter-  
10 mined without regard to subsections (b)(1), (b)(2),  
11 and (d)(1)(B) thereof) of such individual, and any  
12 child (as defined in section 152(f)(1)) of such indi-  
13 vidual who has not attained the age of 27 before the  
14 end of such individual’s taxable year”,

15 (2) by striking subparagraph (B) and inserting  
16 the following:

17 “(B) HEALTH INSURANCE MAY NOT BE  
18 PURCHASED FROM ACCOUNT.—Except as pro-  
19 vided in subparagraph (C), subparagraph (A)  
20 shall not apply to any payment for insurance.”,  
21 and

22 (3) by striking “or” at the end of subparagraph  
23 (C)(iii) and by striking subparagraph (C)(iv) and in-  
24 serting the following:

25 “(iv) an HSA-qualified health plan, or

1                   “(v) any health insurance under title  
2                   XVIII of the Social Security Act, other  
3                   than a Medicare supplemental policy (as  
4                   defined in section 1882 of such Act).”.

5           (b) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall apply with respect to insurance pur-  
7 chased after the date of the enactment of this Act in tax-  
8 able years beginning after such date.

9   **SEC. 303. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**  
10                   **INCURRED BEFORE ESTABLISHMENT OF AC-**  
11                   **COUNT.**

12           (a) **IN GENERAL.**—Paragraph (2) of section 223(d)  
13 is amended by adding at the end the following new sub-  
14 paragraph:

15                   “(D) **TREATMENT OF CERTAIN MEDICAL**  
16                   **EXPENSES INCURRED BEFORE ESTABLISHMENT**  
17                   **OF ACCOUNT.**—If a health savings account is  
18                   established during the 60-day period beginning  
19                   on the date that coverage of the account bene-  
20                   ficiary under an HSA-qualified health plan be-  
21                   gins, then, solely for purposes of determining  
22                   whether an amount paid is used for a qualified  
23                   medical expense, such account shall be treated  
24                   as having been established on the date that  
25                   such coverage begins.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply with respect to coverage beginning  
 3 after the date of the enactment of this Act.

4 **SEC. 304. PREVENTIVE CARE PRESCRIPTION DRUG CLARI-**  
 5 **FICATION.**

6 (a) CLARIFY USE OF DRUGS IN PREVENTIVE  
 7 CARE.—Subparagraph (C) of section 223(c)(2) is amend-  
 8 ed by adding at the end the following: “Preventive care  
 9 shall include prescription and over-the-counter drugs and  
 10 medicines which have the primary purpose of preventing  
 11 the onset of, further deterioration from, or complications  
 12 associated with chronic conditions, illnesses, or diseases.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
 14 this section shall apply to taxable years beginning after  
 15 December 31, 2017.

16 **TITLE IV—MISCELLANEOUS**  
 17 **PROVISIONS RELATING TO**  
 18 **TAX-PREFERRED HEALTH AC-**  
 19 **COUNTS**

20 **SEC. 401. FSA AND HRA INTERACTION WITH HSAS.**

21 (a) ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA  
 22 PARTICIPANTS.—Subparagraph (B) of section 223(c)(1)  
 23 is amended—

24 (1) by striking “and” at the end of clause (ii),

1           (2) by striking the period at the end of clause  
2           (iii) and inserting “, and”, and

3           (3) by inserting after clause (iii) the following  
4           new clause:

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

16                               “(I) POST-DEDUCTIBLE FSA OR  
17                               HRA.—A health flexible spending ar-  
18                               rangement or a health reimbursement  
19                               arrangement that does not pay or re-  
20                               imburse any medical expense incurred  
21                               before the minimum annual deductible  
22                               under paragraph (2)(A)(i) (prorated  
23                               for the period occurring after the  
24                               qualified HSA distribution is made) is  
25                               satisfied.

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

11           “(III) LIMITED PURPOSE  
12 HEALTH FSA.—A health flexible  
13 spending arrangement that, after the  
14 qualified HSA distribution is made,  
15 pays or reimburses benefits for cov-  
16 erage described in clause (ii) (but not  
17 through insurance or for long-term  
18 care services).

19           “(IV) LIMITED PURPOSE HRA.—  
20 A health reimbursement arrangement  
21 that, after the qualified HSA distribu-  
22 tion is made, pays or reimburses bene-  
23 fits for permitted insurance or cov-  
24 erage described in clause (ii) (but not  
25 for long-term care services).

1                   “(V) RETIREMENT HRA.—A  
2 health reimbursement arrangement  
3 that, after the qualified HSA distribu-  
4 tion is made, pays or reimburses only  
5 those medical expenses incurred after  
6 an individual’s retirement (and no ex-  
7 penses incurred before retirement).

8                   “(VI) SUSPENDED HRA.—A  
9 health reimbursement arrangement  
10 that, after the qualified HSA distribu-  
11 tion is made, is suspended, pursuant  
12 to an election made on or before the  
13 date the individual elects a qualified  
14 HSA distribution or, if later, on the  
15 date of the individual enrolls in an  
16 HSA-qualified health plan, that does  
17 not pay or reimburse, at any time,  
18 any medical expense incurred during  
19 the suspension period except as de-  
20 scribed in the preceding subclauses of  
21 this clause.”.

22           (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-  
23 FECT FLEXIBLE SPENDING ARRANGEMENT.—Paragraph  
24 (1) of section 106(e) is amended to read as follows:

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

3                   “(A) a health flexible spending arrange-  
4                   ment under this section, section 105, or section  
5                   125,

6                   “(B) a health reimbursement arrangement  
7                   under this section or section 105, or

8                   “(C) an accident or health plan,  
9                   merely because such plan provides for a qualified  
10                  HSA distribution.”.

11           (c) FSA BALANCES AT YEAR END SHALL NOT FOR-  
12 FEIT.—Paragraph (2) of section 125(d) is amended by  
13 adding at the end the following new subparagraph:

14                   “(E) EXCEPTION FOR QUALIFIED HSA DIS-  
15                   TRIBUTIONS.—Subparagraph (A) shall not  
16                   apply to the extent that there is an amount re-  
17                   maining in a health flexible spending account at  
18                   the end of a plan year that an individual elects  
19                   to contribute to a health savings account pursu-  
20                   ant to a qualified HSA distribution (as defined  
21                   in section 106(e)(2)).”.

22           (d) SIMPLIFICATION OF LIMITATIONS ON FSA AND  
23 HRA ROLLOVERS.—Paragraph (2) of section 106(e) is  
24 amended to read as follows:

25                   “(2) QUALIFIED HSA DISTRIBUTION.—

1           “(A) IN GENERAL.—The term ‘qualified  
2 HSA distribution’ means a distribution from a  
3 health flexible spending arrangement or health  
4 reimbursement arrangement directly to a health  
5 savings account of the employee to the extent  
6 that such distribution does not exceed the lesser  
7 of—

8                   “(i) the balance in such arrangement  
9 as of the date of such distribution, or

10                   “(ii) the amount determined under  
11 subparagraph (B).

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

14           “(B) DOLLAR LIMITATIONS.—

15                   “(i) DISTRIBUTIONS FROM A HEALTH  
16 FLEXIBLE SPENDING ARRANGEMENT.—A  
17 qualified HSA distribution from a health  
18 flexible spending arrangement shall not ex-  
19 ceed the applicable amount.

20                   “(ii) DISTRIBUTIONS FROM A HEALTH  
21 REIMBURSEMENT ARRANGEMENT.—A  
22 qualified HSA distribution from a health  
23 reimbursement arrangement shall not ex-  
24 ceed—

1 “(I) the applicable amount di-  
2 vided by 12, multiplied by

3 “(II) the number of months dur-  
4 ing which the individual is a partici-  
5 pant in the health reimbursement ar-  
6 rangement.

7 “(iii) APPLICABLE AMOUNT.—For  
8 purposes of this subparagraph, the applica-  
9 ble amount is—

10 “(I) \$2,250 in the case of an eli-  
11 gible individual who has self-only cov-  
12 erage under an HSA-qualified health  
13 plan at the time of such distribution,  
14 and

15 “(II) \$4,500 in the case of an eli-  
16 gible individual who has family cov-  
17 erage under an HSA-qualified health  
18 plan at the time of such distribu-  
19 tion.”.

20 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE  
21 TO MAINTAIN HSA-QUALIFIED HEALTH PLAN COV-  
22 ERAGE.—Subsection (e) of section 106 is amended—

23 (1) by striking paragraph (3) and redesignating  
24 paragraphs (4) and (5) as paragraphs (3) and (4),  
25 respectively, and

1           (2) by striking subparagraph (A) of paragraph  
2           (3), as so redesignated, and redesignating subpara-  
3           graphs (B) and (C) of such paragraph as subpara-  
4           graphs (A) and (B) thereof, respectively.

5           (f) LIMITED PURPOSE FSAS AND HRAS.—Sub-  
6           section (e) of section 106, as amended by this section, is  
7           amended by adding at the end the following new para-  
8           graph:

9           “(5) LIMITED PURPOSE FSAS AND HRAS.—A  
10           plan shall not fail to be a health flexible spending  
11           arrangement, a health reimbursement arrangement,  
12           or an accident or health plan under this section or  
13           section 105 merely because the plan converts cov-  
14           erage for individuals who enroll in an HSA-qualified  
15           health plan described in section 223(c)(2) to cov-  
16           erage described in subclause (I), (II), (III), (IV),  
17           (V), or (VI) of section 223(c)(1)(B)(iv). Coverage  
18           for such individuals may be converted as of the date  
19           of enrollment in the HSA-qualified health plan,  
20           without regard to the period of coverage under the  
21           health flexible spending arrangement or health reim-  
22           bursement arrangement, and without requiring any  
23           change in coverage to individuals who do not enroll  
24           in an HSA-qualified health plan.”.

1 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-  
 2 OF-LIVING.—Subsection (e) of section 106, as amended  
 3 by this section, is amended by adding at the end the fol-  
 4 lowing new paragraph:

5 “(6) COST-OF-LIVING ADJUSTMENT.—

6 “(A) IN GENERAL.—In the case of any  
 7 taxable year beginning in a calendar year after  
 8 2017, each of the dollar amounts in paragraph  
 9 (2)(B)(iii) shall be increased by an amount  
 10 equal to such dollar amount, multiplied by the  
 11 cost-of-living adjustment determined under sec-  
 12 tion 1(f)(3) for the calendar year in which such  
 13 taxable year begins by substituting ‘calendar  
 14 year 2016’ for ‘calendar year 1992’ in subpara-  
 15 graph (B) thereof.

16 “(B) ROUNDING.—If any increase under  
 17 paragraph (1) is not a multiple of \$50, such in-  
 18 crease shall be rounded to the nearest multiple  
 19 of \$50.”.

20 (h) DISCLAIMER OF DISQUALIFYING COVERAGE.—  
 21 Subparagraph (B) of section 223(c)(1), as amended by  
 22 this section, is amended—

23 (1) by striking “and” at the end of clause (iii),  
 24 (2) by striking the period at the end of clause  
 25 (iv) and inserting “, and”, and

1           (3) by inserting after clause (iv) the following  
2           new clause:

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

14           (i) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to taxable years beginning after  
16 the date of the enactment of this Act.

17 **SEC. 402. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**  
18                           **HEALTH SAVINGS ACCOUNTS AS RETIRE-**  
19                           **MENT FUNDS.**

20           (a) IN GENERAL.—Section 522 of title 11, United  
21 States Code, is amended by adding at the end the fol-  
22 lowing new subsection:

23                           “(r) TREATMENT OF HEALTH SAVINGS AC-  
24 COUNTS.—For purposes of this section, any health savings  
25 account (as described in section 223 of the Internal Rev-

1 enue Code of 1986) shall be treated in the same manner  
2 as an individual retirement account described in section  
3 408 of such Code.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to cases commencing under title  
6 11, United States Code, after the date of the enactment  
7 of this Act.

8 **SEC. 403. ADMINISTRATIVE ERROR CORRECTION BEFORE**  
9 **DUE DATE OF RETURN.**

10 (a) IN GENERAL.—Paragraph (4) of section 223(f)  
11 is amended by adding at the end the following new sub-  
12 paragraph:

13 “(D) EXCEPTION FOR ADMINISTRATIVE  
14 ERRORS CORRECTED BEFORE DUE DATE OF RE-  
15 TURN.—Subparagraph (A) shall not apply if  
16 any payment or distribution is made to correct  
17 an administrative, clerical, or payroll contribu-  
18 tion error and if—

19 “(i) such distribution is received by  
20 the individual on or before the last day  
21 prescribed by law (including extensions of  
22 time) for filing such individual’s return for  
23 such taxable year, and

1                   “(ii) such distribution is accompanied  
2                   by the amount of net income attributable  
3                   to such contribution.

4                   Any net income described in clause (ii) shall be  
5                   included in the gross income of the individual  
6                   for the taxable year in which it is received.”.

7                   (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall take effect on the date of the enactment  
9 of this Act.

10 **SEC. 404. REAUTHORIZATION OF MEDICAID HEALTH OP-**  
11 **PORTUNITY ACCOUNTS.**

12                   (a) IN GENERAL.—Section 1938 of the Social Secu-  
13 rity Act (42 U.S.C. 1396u–8) is amended—

14                   (1) in subsection (a)—

15                   (A) by striking paragraph (2) and insert-  
16 ing the following:

17                   “(2) INITIAL DEMONSTRATION.—The Secretary  
18 shall approve States to conduct demonstration pro-  
19 grams under this section for a 5-year period, with  
20 each State demonstration program covering one or  
21 more geographic areas specified by the State. With  
22 respect to a State, after the initial 5-year period of  
23 any demonstration program conducted under this  
24 section by the State, unless the Secretary finds, tak-  
25 ing into account cost-effectiveness and quality of

1 care, that the State demonstration program has  
2 been unsuccessful, the demonstration program may  
3 be extended or made permanent in the State.”; and

4 (B) in paragraph (3), in the matter pre-  
5 ceding subparagraph (A)—

6 (i) by striking “not”; and

7 (ii) by striking “unless” and inserting  
8 “if”;

9 (2) in subsection (b)—

10 (A) in paragraph (3), by inserting “clause  
11 (i) through (vii), (viii) (without regard to the  
12 amendment made by section 2004(c)(2) of Pub-  
13 lic Law 111–148), (x), or (xi) of” after “de-  
14 scribed in”; and

15 (B) by striking paragraphs (4), (5), and  
16 (6);

17 (3) in subsection (c)—

18 (A) by striking paragraphs (3) and (4);

19 (B) by redesignating paragraphs (5)  
20 through (8) as paragraphs (3) through (6), re-  
21 spectively; and

22 (C) in paragraph (4) (as redesignated by  
23 subparagraph (B)), by striking “Subject to sub-  
24 paragraphs (D) and (E)” and inserting “Sub-  
25 ject to subparagraph (D)”; and

1 (4) in subsection (d)—

2 (A) in paragraph (2), by striking subpara-  
3 graph (E); and

4 (B) in paragraph (3)—

5 (i) in subparagraph (A)(ii), by strik-  
6 ing “Subject to subparagraph (B)(ii), in”  
7 and inserting “In”; and

8 (ii) by striking subparagraph (B) and  
9 inserting the following:

10 “(B) MAINTENANCE OF HEALTH OPPOR-  
11 TUNITY ACCOUNT AFTER BECOMING INELI-  
12 GIBLE FOR PUBLIC BENEFIT.—Notwithstanding  
13 any other provision of law, if an account holder  
14 of a health opportunity account becomes ineli-  
15 gible for benefits under this title because of an  
16 increase in income or assets—

17 “(i) no additional contribution shall be  
18 made into the account under paragraph  
19 (2)(A)(i); and

20 “(ii) the account shall remain avail-  
21 able to the account holder for 3 years after  
22 the date on which the individual becomes  
23 ineligible for such benefits for withdrawals  
24 under the same terms and conditions as if  
25 the account holder remained eligible for

1           such benefits, and such withdrawals shall  
 2           be treated as medical assistance in accord-  
 3           ance with subsection (c)(4).”.

4           (b) CONFORMING AMENDMENT.—Section 613 of  
 5 Public Law 111–3 is repealed.

6 **SEC. 405. MAXIMUM CONTRIBUTION LIMIT TO HEALTH SAV-**  
 7 **INGS ACCOUNT INCREASED TO AMOUNT OF**  
 8 **DEDUCTIBLE AND OUT-OF-POCKET LIMITA-**  
 9 **TION.**

10          (a) SELF-ONLY COVERAGE.—Section 223(b)(2)(A) is  
 11 amended by striking “\$2,250” and inserting “the amount  
 12 in effect under subsection (c)(2)(A)(ii)(I)”.

13          (b) FAMILY COVERAGE.—Section 223(b)(2)(B) is  
 14 amended by striking “\$4,500” and inserting “the amount  
 15 in effect under subsection (c)(2)(A)(ii)(II)”.

16          (c) CONFORMING AMENDMENTS.—Section 223(g)(1)  
 17 is amended—

18           (1) by striking “subsections (b)(2) and” both  
 19 places it appears and inserting “subsection”, and

20           (2) by striking “determined by” in subpara-  
 21 graph (B) thereof and all that follows through “cal-  
 22 endar year 2003”.’ and inserting “determined by  
 23 substituting ‘calendar year 2003’ for ‘calendar year  
 24 1992’ in subparagraph (B) thereof.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2017.

## 4 **TITLE V—OTHER PROVISIONS**

### 5 **SEC. 501. CERTAIN EXERCISE EQUIPMENT AND PHYSICAL** 6 **FITNESS PROGRAMS TREATED AS MEDICAL** 7 **CARE.**

8 (a) IN GENERAL.—Subsection (d) of section 213 is  
9 amended by adding at the end the following new para-  
10 graph:

11 “(12) EXERCISE EQUIPMENT AND PHYSICAL  
12 FITNESS ACTIVITY.—

13 “(A) IN GENERAL.—The term ‘medical  
14 care’ shall include amounts paid—

15 “(i) for equipment for use in a pro-  
16 gram (including a self-directed program) of  
17 physical exercise or physical activity,

18 “(ii) to participate, or receive instruc-  
19 tion, in a program of physical exercise, nu-  
20 trition, or health coaching (including a  
21 self-directed program), and

22 “(iii) for membership at a fitness fa-  
23 cility.

24 “(B) OVERALL DOLLAR LIMITATION.—

1           “(i) IN GENERAL.—Amounts treated  
2           as medical care under subparagraph (A)  
3           shall not exceed \$1,000 with respect to any  
4           individual for any taxable year.

5           “(ii) EXCEPTION.—Clause (i) shall  
6           not apply for purposes of determining  
7           whether expenses reimbursed through a  
8           health flexible spending arrangement sub-  
9           ject to section 125(i)(1) are incurred for  
10          medical care.

11          “(C) LIMITATIONS RELATED TO SPORTS  
12          AND FITNESS EQUIPMENT.—Amounts paid for  
13          equipment described in subparagraph (A)(i)  
14          shall be treated as medical care only—

15               “(i) if such equipment is utilized ex-  
16               clusively for participation in fitness, exer-  
17               cise, sport, or other physical activity pro-  
18               grams,

19               “(ii) if such equipment is not apparel  
20               or footwear, and

21               “(iii) in the case of any item of sports  
22               equipment (other than exercise equip-  
23               ment), with respect to so much of the  
24               amount paid for such item as does not ex-  
25               ceed \$250.

1           “(D) FITNESS FACILITY DEFINED.—For  
2 purposes of subparagraph (A)(iii), the term ‘fit-  
3 ness facility’ means a facility—

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

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

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

14           “(iv) whose health or fitness facility is  
15 not incidental to its overall function and  
16 purpose, and

17           “(v) which is fully compliant with the  
18 State of jurisdiction and Federal anti-dis-  
19 crimination laws.”.

20           (b) LIMITATION NOT TO APPLY FOR CERTAIN PUR-  
21 POSES.—

22           (1) HEALTH SAVINGS ACCOUNTS.—Subpara-  
23 graph (A) of section 223(d)(2) is amended by insert-  
24 ing “, determined without regard to paragraph

1 (12)(B) thereof” after “medical care (as defined in  
2 section 213(d)”.

3 (2) ARCHER MSAS.—Subparagraph (A) of sec-  
4 tion 220(d)(2) is amended by inserting “, deter-  
5 mined without regard to paragraph (12)(B) thereof”  
6 after “medical care (as defined in section 213(d)”.

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. 502. CERTAIN NUTRITIONAL AND DIETARY SUPPLE-**  
11 **MENTS TO BE TREATED AS MEDICAL CARE.**

12 (a) IN GENERAL.—Subsection (d) of section 213, as  
13 amended by section 501, is amended by adding at the end  
14 the following new paragraph:

15 “(13) NUTRITIONAL AND DIETARY SUPPLE-  
16 MENTS.—

17 “(A) IN GENERAL.—The term ‘medical  
18 care’ shall include amounts paid to purchase  
19 herbs, vitamins, minerals, homeopathic rem-  
20 edies, meal replacement products, and other di-  
21 etary and nutritional supplements.

22 “(B) LIMITATION.—Amounts treated as  
23 medical care under subparagraph (A) shall not  
24 exceed \$1,000 with respect to any individual for  
25 any taxable year.

1           “(C) MEAL REPLACEMENT PRODUCT.—

2           For purposes of this paragraph, the term ‘meal  
3           replacement product’ means any product that—

4                   “(i) is permitted to bear labeling mak-  
5                   ing a claim described in section 403(r)(3)  
6                   of the Federal Food, Drug, and Cosmetic  
7                   Act, and

8                   “(ii) is permitted to claim under such  
9                   section that such product is low in fat and  
10                  is a good source of protein, fiber, and mul-  
11                  tiple essential vitamins and minerals.

12           “(D) EXCEPTION.—Subparagraph (B)  
13           shall not apply for purposes of determining  
14           whether expenses reimbursed through a health  
15           flexible spending arrangement subject to section  
16           125(i)(1) are incurred for medical care.”.

17           (b) LIMITATION NOT TO APPLY FOR CERTAIN PUR-  
18           POSES.—

19                   (1) HEALTH SAVINGS ACCOUNTS.—Subpara-  
20                   graph (A) of section 223(d)(2), as amended by sec-  
21                   tion 501, is amended by striking “paragraph  
22                   (12)(B)” and inserting “paragraphs (12)(B) and  
23                   (13)(B)”.

24                   (2) ARCHER MSAS.—Subparagraph (A) of sec-  
25                   tion 220(d)(2), as amended by section 501, is

1 amended by striking “paragraph (12)(B)” and in-  
 2 serting “paragraphs (12)(B) and (13)(B)”.

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

6 **SEC. 503. CERTAIN PROVIDER FEES TO BE TREATED AS**  
 7 **MEDICAL CARE.**

8 (a) IN GENERAL.—Subsection (d) of section 213, as  
 9 amended by sections 501 and 502, is amended by adding  
 10 at the end the following new paragraph:

11 “(14) PERIODIC PROVIDER FEES.—The term  
 12 ‘medical care’ shall include—

13 “(A) periodic fees paid to a primary care  
 14 physician for a defined set of medical services  
 15 or the right to receive medical services on an  
 16 as-needed basis, and

17 “(B) pre-paid primary care services de-  
 18 signed to screen for, diagnose, cure, mitigate,  
 19 treat, or prevent disease and promote  
 20 wellness.”.

21 (b) EXCEPTION FOR FLEXIBLE SPENDING AC-  
 22 COUNTS.—Section 125 is amended by redesignating sub-  
 23 sections (k) and (l) as subsections (l) and (m), respec-  
 24 tively, and by inserting after subsection (j) the following  
 25 new subsection:

1       “(k) SPECIAL RULE WITH RESPECT TO HEALTH  
2 FLEXIBLE SPENDING ARRANGEMENTS.—For purposes of  
3 applying this with respect to any health flexible spending  
4 arrangement, amounts described in section 213(d)(14)  
5 shall not be considered insurance.”.

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

○