

116TH CONGRESS
1ST SESSION

S. 12

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

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2019

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

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 2019”.

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”.

22 (3) Section 106(e) is amended—

23 (A) by striking “HIGH DEDUCTIBLE
24 HEALTH PLAN” in the heading of paragraph (3)

1 and inserting “HSA-QUALIFIED HEALTH
2 PLAN”; and

3 (B) by striking “high deductible health
4 plan” in paragraph (5)(B)(iii) and inserting
5 “HSA-qualified health plan”.

6 **TITLE II—ENHANCING ACCESS**
7 **TO TAX-PREFERRED HEALTH**
8 **ACCOUNTS**

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

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

13 “(5) SPECIAL RULE FOR MARRIED INDIVIDUALS
14 WITH FAMILY COVERAGE.—

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

21 “(i) the limitation under paragraph
22 (1) shall be applied by not taking into ac-
23 count any other HSA-qualified health plan
24 coverage of either spouse (and if such
25 spouses both have family coverage under

1 separate HSA-qualified health plans, only
2 one such coverage shall be taken into ac-
3 count),

4 “(ii) such limitation (after application
5 of clause (i)) shall be reduced by the ag-
6 gregate amount paid to Archer MSAs of
7 such spouses for the taxable year, and

8 “(iii) such limitation (after application
9 of clauses (i) and (ii)) shall be divided
10 equally between such spouses unless they
11 agree on a different division.

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

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. 202. PROVISIONS RELATING TO MEDICARE.**

5 (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN
6 MEDICARE PART A.—Paragraph (7) of section 223(b) is
7 amended by adding at the end the following: “This para-
8 graph shall not apply to any individual during any period
9 for which the individual’s only entitlement to such benefits
10 is an entitlement to hospital insurance benefits under part
11 A of title XVIII of such Act pursuant to an enrollment
12 for such hospital insurance benefits under section 226(a)
13 of such Act.”.

14 (b) MEDICARE BENEFICIARIES PARTICIPATING IN
15 MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR
16 OWN MONEY TO THEIR MSA.—

17 (1) IN GENERAL.—Subsection (b) of section
18 138 is amended by striking paragraph (2) and by re-
19 designating paragraphs (3) and (4) as paragraphs
20 (2) and (3), respectively.

21 (2) CONFORMING AMENDMENT.—Paragraph (4)
22 of section 138(e) is amended by striking “and para-
23 graph (2)”.

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

4 **SEC. 203. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH**
5 **SERVICE ASSISTANCE.**

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

9 “(D) SPECIAL RULE FOR INDIVIDUALS EL-
10 IGIBLE FOR ASSISTANCE UNDER INDIAN
11 HEALTH SERVICE PROGRAMS.—For purposes of
12 subparagraph (A)(ii), an individual shall not be
13 treated as covered under a health plan de-
14 scribed in such subparagraph merely because
15 the individual receives hospital care or medical
16 services under a medical care program of the
17 Indian Health Service or of a tribal organiza-
18 tion.”.

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

1 **SEC. 204. MEMBERS OF HEALTH CARE SHARING MIN-**
 2 **ISTRIES ELIGIBLE TO ESTABLISH HEALTH**
 3 **SAVINGS ACCOUNTS.**

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

6 “(i) APPLICATION TO HEALTH CARE SHARING MIN-
 7 ISTRIES.—For purposes of this section, membership in a
 8 health care sharing ministry (as defined in section
 9 5000A(d)(2)(B)(ii)) shall be treated as coverage under an
 10 HSA-qualified health plan.”.

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. 205. TREATMENT OF DIRECT PRIMARY CARE SERVICE**
 15 **ARRANGEMENTS.**

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

18 “(6) TREATMENT OF DIRECT PRIMARY CARE
 19 SERVICE ARRANGEMENTS.—An arrangement under
 20 which an individual is provided coverage restricted to
 21 primary care services in exchange for a fixed peri-
 22 odic fee or payment for primary care services—

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

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

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. 206. INDIVIDUALS ELIGIBLE FOR ON-SITE MEDICAL**
 5 **CLINIC COVERAGE.**

6 (a) IN GENERAL.—Paragraph (1) of section 223(e),
 7 as amended by sections 203, is amended by adding at the
 8 end the following new subparagraph:

9 “(E) SPECIAL RULE FOR INDIVIDUALS EL-
 10 IGIBLE FOR ON-SITE MEDICAL CLINIC COV-
 11 ERAGE.—

12 “(i) IN GENERAL.—For purposes of
 13 subparagraph (A)(ii), an individual shall
 14 not be treated as covered under a health
 15 plan described in such subparagraph mere-
 16 ly because the individual is eligible to re-
 17 ceive health care benefits from an on-site
 18 medical clinic of employer of the individual
 19 or the individual’s spouse if such health
 20 care benefits are not significant benefits.

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

1 “(I) Physicals and immuniza-
2 tions.

3 “(II) Injecting antigens provided
4 by employees.

5 “(III) Medications available with-
6 out a prescription, such as pain reliev-
7 ers and antihistamines.

8 “(IV) Treatment for injuries oc-
9 curring at the employer’s place of em-
10 ployment or otherwise in the course of
11 employment.

12 “(V) Tests for infectious diseases
13 and conditions, such as streptococcal
14 sore throat.

15 “(VI) Monitoring of chronic con-
16 ditions, such as diabetes.

17 “(VII) Drug testing.

18 “(VIII) Hearing or vision
19 screenings and related services.

20 “(IX) Other services and treat-
21 ments of a similar nature to the serv-
22 ices described in subclauses (I)
23 through (VIII).

24 “(iii) AGGREGATION RULES.—For
25 purposes of clause (i), all persons treated

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

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

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

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

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

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

1 **TITLE III—IMPROVING COV-**
 2 **ERAGE UNDER TAX-PRE-**
 3 **FERRED HEALTH ACCOUNTS**

4 **SEC. 301. ALLOWANCE OF DISTRIBUTIONS FOR PRESCRIP-**
 5 **TION AND OVER-THE-COUNTER MEDICINES**
 6 **AND DRUGS.**

7 (a) HSAs.—Section 223(d)(2)(A) is amended by
 8 striking the last sentence thereof and inserting the fol-
 9 lowing: “Such term shall include an amount paid for any
 10 prescription or over-the-counter medicine or drug.”.

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

15 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
 16 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sub-
 17 section (f) of section 106 is amended to read as follows:

18 “(f) REIMBURSEMENTS FOR ALL MEDICINES AND
 19 DRUGS.—For purposes of this section and section 105,
 20 reimbursement for expenses incurred for any prescription
 21 or over-the-counter medicine or drug shall be treated as
 22 a reimbursement for medical expenses.”.

23 (d) EFFECTIVE DATES.—

24 (1) DISTRIBUTIONS FROM SAVINGS AC-
 25 COUNTS.—The amendments made by subsections (a)

1 and (b) shall apply to amounts paid in taxable years
2 beginning after December 31, 2019.

3 (2) REIMBURSEMENTS.—The amendment made
4 by subsection (c) shall apply to expenses incurred in
5 plan years beginning after December 31, 2019.

6 **SEC. 302. PURCHASE OF HEALTH INSURANCE FROM HSA**
7 **ACCOUNT.**

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

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

20 (2) by striking subparagraph (B) and inserting
21 the following:

22 “(B) HEALTH INSURANCE MAY NOT BE
23 PURCHASED FROM ACCOUNT.—Except as pro-
24 vided in subparagraph (C), subparagraph (A)

1 shall not apply to any payment for insurance.”;

2 and

3 (3) by striking “or” at the end of subparagraph

4 (C)(iii) and by striking subparagraph (C)(iv) and in-

5 serting the following:

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

7 “(v) any health insurance under title

8 XVIII of the Social Security Act, other

9 than a Medicare supplemental policy (as

10 defined in section 1882 of such Act).”.

11 (b) EFFECTIVE DATE.—The amendments made by

12 this section shall apply with respect to insurance pur-

13 chased after the date of the enactment of this Act in tax-

14 able years beginning after such date.

15 **SEC. 303. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**

16 **INCURRED BEFORE ESTABLISHMENT OF AC-**

17 **COUNT.**

18 (a) IN GENERAL.—Paragraph (2) of section 223(d)

19 is amended by adding at the end the following new sub-

20 paragraph:

21 “(D) TREATMENT OF CERTAIN MEDICAL

22 EXPENSES INCURRED BEFORE ESTABLISHMENT

23 OF ACCOUNT.—If a health savings account is

24 established during the 60-day period beginning

25 on the date that coverage of the account bene-

1 ficiary under an HSA-qualified health plan be-
2 gins, then, solely for purposes of determining
3 whether an amount paid is used for a qualified
4 medical expense, such account shall be treated
5 as having been established on the date that
6 such coverage begins.”.

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

10 **SEC. 304. PREVENTIVE CARE PRESCRIPTION DRUG CLARI-**
11 **FICATION.**

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

19 (b) **EFFECTIVE DATE.**—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2019.

1 **TITLE** **IV—MISCELLANEOUS**
2 **PROVISIONS RELATING TO**
3 **TAX-PREFERRED HEALTH AC-**
4 **COUNTS**

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

6 (a) **ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA**
7 **PARTICIPANTS.**—Subparagraph (B) of section 223(c)(1)
8 is amended—

9 (1) by striking “and” at the end of clause (ii);

10 (2) by striking the period at the end of clause

11 (iii) and inserting “, and”; and

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

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

1 “(I) POST-DEDUCTIBLE FSA OR
2 HRA.—A health flexible spending ar-
3 rangement or a health reimbursement
4 arrangement that does not pay or re-
5 imburse any medical expense incurred
6 before the minimum annual deductible
7 under paragraph (2)(A)(i) (prorated
8 for the period occurring after the
9 qualified HSA distribution is made) is
10 satisfied.

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

21 “(III) LIMITED PURPOSE
22 HEALTH FSA.—A health flexible
23 spending arrangement that, after the
24 qualified HSA distribution is made,
25 pays or reimburses benefits for cov-

1 erage described in clause (ii) (but not
2 through insurance or for long-term
3 care services).

4 “(IV) LIMITED PURPOSE HRA.—

5 A health reimbursement arrangement
6 that, after the qualified HSA distribu-
7 tion is made, pays or reimburses bene-
8 fits for permitted insurance or cov-
9 erage described in clause (ii) (but not
10 for long-term care services).

11 “(V) RETIREMENT HRA.—A

12 health reimbursement arrangement
13 that, after the qualified HSA distribu-
14 tion is made, pays or reimburses only
15 those medical expenses incurred after
16 an individual’s retirement (and no ex-
17 penses incurred before retirement).

18 “(VI) SUSPENDED HRA.—A

19 health reimbursement arrangement
20 that, after the qualified HSA distribu-
21 tion is made, is suspended, pursuant
22 to an election made on or before the
23 date the individual elects a qualified
24 HSA distribution or, if later, on the
25 date of the individual enrolls in an

1 HSA-qualified health plan, that does
 2 not pay or reimburse, at any time,
 3 any medical expense incurred during
 4 the suspension period except as de-
 5 scribed in the preceding subclauses of
 6 this clause.”.

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

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

12 “(A) a health flexible spending arrange-
 13 ment under this section, section 105, or section
 14 125,

15 “(B) a health reimbursement arrangement
 16 under this section or section 105, or

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

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

23 “(E) EXCEPTION FOR QUALIFIED HSA DIS-
 24 TRIBUTIONS.—Subparagraph (A) shall not
 25 apply to the extent that there is an amount re-

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

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

9 “(2) QUALIFIED HSA DISTRIBUTION.—

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

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

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

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

23 “(B) DOLLAR LIMITATIONS.—

24 “(i) DISTRIBUTIONS FROM A HEALTH
 25 FLEXIBLE SPENDING ARRANGEMENT.—A

1 qualified HSA distribution from a health
2 flexible spending arrangement shall not ex-
3 ceed the applicable amount.

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

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

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

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

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

23 “(II) \$4,500 in the case of an eli-
24 gible individual who has family cov-
25 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, as amended by
6 section 101, is amended—

7 (1) by striking paragraph (3) and redesignating
8 paragraphs (4) and (5) as paragraphs (3) and (4),
9 respectively; and

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

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

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, as amended
11 by this section, is amended by adding at the end the fol-
12 lowing 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 2019, 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 2018’ for ‘calendar year 2016’ in subpara-
23 graph (A)(ii) 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), as amended by
5 this section, is amended—

6 (1) by striking “and” at the end of clause (iii);

7 (2) by striking the period at the end of clause
8 (iv) and inserting “, and”; and

9 (3) by inserting after clause (iv) the following
10 new clause:

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

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

1 **SEC. 402. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**
2 **HEALTH SAVINGS ACCOUNTS AS RETIRE-**
3 **MENT FUNDS.**

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

7 “(r) TREATMENT OF HEALTH SAVINGS AC-
8 COUNTS.—For purposes of this section, any health savings
9 account (as described in section 223 of the Internal Rev-
10 enue Code of 1986) shall be treated in the same manner
11 as an individual retirement account described in section
12 408 of such Code.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to cases commencing under title
15 11, United States Code, after the date of the enactment
16 of this Act.

17 **SEC. 403. ADMINISTRATIVE ERROR CORRECTION BEFORE**
18 **DUE DATE OF RETURN.**

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

22 “(D) EXCEPTION FOR ADMINISTRATIVE
23 ERRORS CORRECTED BEFORE DUE DATE OF RE-
24 TURN.—Subparagraph (A) shall not apply if
25 any payment or distribution is made to correct

1 an administrative, clerical, or payroll contribu-
2 tion error and if—

3 “(i) such distribution is received by
4 the individual on or before the last day
5 prescribed by law (including extensions of
6 time) for filing such individual’s return for
7 such taxable year, and

8 “(ii) such distribution is accompanied
9 by the amount of net income attributable
10 to such contribution.

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

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall take effect on the date of the enactment
16 of this Act.

17 **SEC. 404. REAUTHORIZATION OF MEDICAID HEALTH OP-**
18 **PORTUNITY ACCOUNTS.**

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

21 (1) in subsection (a)—

22 (A) by striking paragraph (2) and insert-
23 ing the following:

24 “(2) INITIAL DEMONSTRATION.—The Secretary
25 shall approve States to conduct demonstration pro-

1 grams under this section for a 5-year period, with
2 each State demonstration program covering one or
3 more geographic areas specified by the State. With
4 respect to a State, after the initial 5-year period of
5 any demonstration program conducted under this
6 section by the State, unless the Secretary finds, tak-
7 ing into account cost-effectiveness and quality of
8 care, that the State demonstration program has
9 been unsuccessful, the demonstration program may
10 be extended or made permanent in the State.”; and

11 (B) in paragraph (3), in the matter pre-
12 ceding subparagraph (A)—

13 (i) by striking “not”; and

14 (ii) by striking “unless” and inserting
15 “if”;

16 (2) in subsection (b)—

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

22 (B) by striking paragraphs (4), (5), and
23 (6);

24 (3) in subsection (c)—

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

1 (B) by redesignating paragraphs (5)
2 through (8) as paragraphs (3) through (6), re-
3 spectively; and

4 (C) in paragraph (4) (as redesignated by
5 subparagraph (B)), by striking “Subject to sub-
6 paragraphs (D) and (E)” and inserting “Sub-
7 ject to subparagraph (D)”; and
8 (4) in subsection (d)—

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

11 (B) in paragraph (3)—

12 (i) in subparagraph (A)(ii), by strik-
13 ing “Subject to subparagraph (B)(ii), in”
14 and inserting “In”; and

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

17 “(B) MAINTENANCE OF HEALTH OPPOR-
18 TUNITY ACCOUNT AFTER BECOMING INELI-
19 GIBLE FOR PUBLIC BENEFIT.—Notwithstanding
20 any other provision of law, if an account holder
21 of a health opportunity account becomes ineli-
22 gible for benefits under this title because of an
23 increase in income or assets—

1 “(i) no additional contribution shall be
2 made into the account under paragraph
3 (2)(A)(i); and

4 “(ii) the account shall remain avail-
5 able to the account holder for 3 years after
6 the date on which the individual becomes
7 ineligible for such benefits for withdrawals
8 under the same terms and conditions as if
9 the account holder remained eligible for
10 such benefits, and such withdrawals shall
11 be treated as medical assistance in accord-
12 ance with subsection (c)(4).”.

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

15 **SEC. 405. MAXIMUM CONTRIBUTION LIMIT TO HEALTH SAV-**
16 **INGS ACCOUNT INCREASED TO AMOUNT OF**
17 **DEDUCTIBLE AND OUT-OF-POCKET LIMITA-**
18 **TION.**

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

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

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

3 (1) by striking “subsections (b)(2) and” both
4 places it appears and inserting “subsection”; and

5 (2) by striking “determined by” in subpara-
6 graph (B) thereof and all that follows through “‘cal-
7 endar year 2003’.” and inserting “determined by
8 substituting ‘calendar year 2003’ for ‘calendar year
9 2016’ in subparagraph (A)(ii) thereof.”.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 December 31, 2019.

13 **TITLE V—OTHER PROVISIONS**

14 **SEC. 501. CERTAIN EXERCISE EQUIPMENT AND PHYSICAL** 15 **FITNESS PROGRAMS TREATED AS MEDICAL** 16 **CARE.**

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

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

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

1 “(i) for equipment for use in a pro-
2 gram (including a self-directed program) of
3 physical exercise or physical activity,

4 “(ii) to participate, or receive instruc-
5 tion, in a program of physical exercise, nu-
6 trition, or health coaching (including a
7 self-directed program), and

8 “(iii) for membership at a fitness fa-
9 cility.

10 “(B) OVERALL DOLLAR LIMITATION.—

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

15 “(ii) EXCEPTION.—Clause (i) shall
16 not apply for purposes of determining
17 whether expenses reimbursed through a
18 health flexible spending arrangement sub-
19 ject to section 125(i)(1) are incurred for
20 medical care.

21 “(C) LIMITATIONS RELATED TO SPORTS
22 AND FITNESS EQUIPMENT.—Amounts paid for
23 equipment described in subparagraph (A)(i)
24 shall be treated as medical care only—

1 “(i) if such equipment is utilized ex-
2 clusively for participation in fitness, exer-
3 cise, sport, or other physical activity pro-
4 grams,

5 “(ii) if such equipment is not apparel
6 or footwear, and

7 “(iii) in the case of any item of sports
8 equipment (other than exercise equip-
9 ment), with respect to so much of the
10 amount paid for such item as does not ex-
11 ceed \$250.

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

15 “(i) providing instruction in a pro-
16 gram of physical exercise, offering facilities
17 for the preservation, maintenance, encour-
18 agement, or development of physical fit-
19 ness, or serving as the site of such a pro-
20 gram of a State or local government,

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

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

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

4 “(v) which is fully compliant with the
5 State of jurisdiction and Federal anti-dis-
6 crimination laws.”.

7 (b) **LIMITATION NOT TO APPLY FOR CERTAIN PUR-**
8 **POSES.—**

9 (1) **HEALTH SAVINGS ACCOUNTS.—**Subpara-
10 graph (A) of section 223(d)(2) is amended by insert-
11 ing “, determined without regard to paragraph
12 (12)(B) thereof” after “medical care (as defined in
13 section 213(d)”.

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

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

23 (a) **IN GENERAL.—**Subsection (d) of section 213, as
24 amended by section 501, is amended by adding at the end
25 the following new paragraph:

1 “(13) NUTRITIONAL AND DIETARY SUPPLE-
2 MENTS.—

3 “(A) IN GENERAL.—The term ‘medical
4 care’ shall include amounts paid to purchase
5 herbs, vitamins, minerals, homeopathic rem-
6 edies, meal replacement products, and other di-
7 etary and nutritional supplements.

8 “(B) LIMITATION.—Amounts treated as
9 medical care under subparagraph (A) shall not
10 exceed \$1,000 with respect to any individual for
11 any taxable year.

12 “(C) MEAL REPLACEMENT PRODUCT.—
13 For purposes of this paragraph, the term ‘meal
14 replacement product’ means any product that—

15 “(i) is permitted to bear labeling mak-
16 ing a claim described in section 403(r)(3)
17 of the Federal Food, Drug, and Cosmetic
18 Act, and

19 “(ii) is permitted to claim under such
20 section that such product is low in fat and
21 is a good source of protein, fiber, and mul-
22 tiple essential vitamins and minerals.

23 “(D) EXCEPTION.—Subparagraph (B)
24 shall not apply for purposes of determining
25 whether expenses reimbursed through a health

1 flexible spending arrangement subject to section
2 125(i)(1) are incurred for medical care.”.

3 (b) LIMITATION NOT TO APPLY FOR CERTAIN PUR-
4 POSES.—

5 (1) HEALTH SAVINGS ACCOUNTS.—Subpara-
6 graph (A) of section 223(d)(2), as amended by sec-
7 tion 501, is amended by striking “paragraph
8 (12)(B)” and inserting “paragraphs (12)(B) and
9 (13)(B)”.

10 (2) ARCHER MSAS.—Subparagraph (A) of sec-
11 tion 220(d)(2), as amended by section 501, is
12 amended by striking “paragraph (12)(B)” and in-
13 sserting “paragraphs (12)(B) and (13)(B)”.

14 (c) 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. 503. CERTAIN PROVIDER FEES TO BE TREATED AS**
18 **MEDICAL CARE.**

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

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

24 “(A) periodic fees paid to a primary care
25 physician for a defined set of medical services

1 or the right to receive medical services on an
2 as-needed basis, and

3 “(B) pre-paid primary care services de-
4 signed to screen for, diagnose, cure, mitigate,
5 treat, or prevent disease and promote
6 wellness.”.

7 (b) EXCEPTION FOR FLEXIBLE SPENDING AC-
8 COUNTS.—Section 125 is amended by redesignating sub-
9 sections (k) and (l) as subsections (l) and (m), respec-
10 tively, and by inserting after subsection (j) the following
11 new subsection:

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

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

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