I

118TH CONGRESS
1ST SESSION

H. R. 5688

To amend the Internal Revenue Code of 1986 to improve health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2023

Mr. SMUCKER (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to improve health savings accounts.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bipartisan HSA Improvement Act of 2023''.

SEC. 2. TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.

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

"(E) TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.—

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

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

"(I) IN GENERAL.—The term 'direct primary care service arrangement' means, with respect to any individual, an arrangement under which such individual is provided medical care (as defined in section 213(d)) consisting solely of primary care services provided by primary care practitioners (as defined in section 1833(x)(2)(A) of the Social Security Act, determined without regard to clause (ii) thereof), if the sole compensation for such care is a fixed periodic fee.

"(II) LIMITATION.—With respect to any individual for any month, such

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

''(iii) CERTAIN SERVICES SPECIFICALLY EXCLUDED FROM TREATMENT AS PRIMARY CARE SERVICES.—For purposes of this paragraph, the term 'primary care services' shall not include—

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

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

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

The Secretary, after consultation with the Secretary of Health and Human Services,

shall issue regulations or other guidance regarding the application of this clause.''.

(b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT FEES TREATED AS MEDICAL EXPENSES.—Section 223(d)(2)(C) of such Code 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 is amended—

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

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

''(iii) in the case of the dollar amount in subsection (c)(1)(E)(ii)(II) for taxable years beginning in calendar years after 2026, 'calendar year 2025'.''.

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

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

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2025, in taxable years ending after such date.

SEC. 3. ON-SITE EMPLOYEE CLINICS.

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

''(F) SPECIAL RULE FOR QUALIFIED ITEMS AND SERVICES.—

''(i) IN GENERAL.—For purposes of subparagraph (A)(ii), an individual shall not be treated as covered under a health plan described in subclauses (I) and (II) of

such subparagraph merely because the individual is eligible to receive, or receives, qualified items and services—

"(I) at a healthcare facility located at a facility owned or leased by the employer of the individual (or of the individual's spouse), or

"(II) at a healthcare facility operated primarily for the benefit of employees of the employer of the individual (or of the individual's spouse).

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

"(I) Physical examination.

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

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

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

"(V) Preventive care for chronic conditions (as defined in clause (iv)).

"(VI) Drug testing.

"(VII) Hearing or vision screenings and related services.

"(iii) AGGREGATION.—For purposes of clause (i), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

"(iv) PREVENTIVE CARE FOR CHRONIC CONDITIONS.—For purposes of this subparagraph, the term 'preventive care for chronic conditions' means any item or service specified in the Appendix of Internal Revenue Service Notice 2019–45 which is prescribed to treat an individual diagnosed with the associated chronic condition specified in such Appendix for the purpose of preventing the exacerbation of such chronic condition or the development of a secondary condition, including any amendment, addition, removal, or other modification made by the Secretary (pursuant to the authority granted to the Secretary

under paragraph (2)(C)) to the items or services specified in such Appendix subsequent to the date of enactment of this subparagraph.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to months in taxable years beginning after December 31, 2025.

SEC. 4. CONTRIBUTIONS PERMITTED IF SPOUSE HAS HEALTH FLEXIBLE SPENDING ARRANGEMENT.

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

''(iv) coverage under a health flexible spending arrangement of the spouse of the individual for any plan year of such arrangement if the aggregate reimbursements under such arrangement for such year do not exceed the aggregate expenses which would be eligible for reimbursement under such arrangement if such expenses

were determined without regard to any expenses paid or incurred with respect to such individual.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2025.

SEC. 5. FSA AND HRA TERMINATIONS OR CONVERSIONS TO FUND HSAs.

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

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

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

''(i) such distribution is made in connection with such employee establishing coverage under a high deductible health plan (as defined in section 223(c)(2)) if during the 4-year period preceding the date the employee so establishes coverage

the employee was not covered under such a high deductible health plan, and

''(ii) such arrangement is described in section 223(c)(1)(B)(vi) with respect to any portion of the plan year remaining after such distribution is made, if such employee remains enrolled in such arrangement.

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

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

''(D) so much of any qualified HSA distribution (as defined in section 106(e)(2)) made to a health savings account of such individual during the taxable year as does not exceed the aggregate increases in the balance of the arrangement from which such distribution is made which occur during the portion of the plan year which precedes such distribution (other than any balance carried over to such plan year and determined without regard to any decrease in such balance during such portion of the plan year).''.

(c) CONVERSION TO HSA-COMPATIBLE ARRANGEMENT FOR REMAINDER OF PLAN YEAR.—Section 223(c)(1)(B) of such Code, as amended by this preceding provisions of this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) coverage under a health flexible spending arrangement or health reimbursement arrangement for the portion of the plan year after a qualified HSA distribution (as defined in section 106(e)(2) determined without regard to subparagraph

(A)(ii) thereof) is made, if the terms of such arrangement which apply for such portion of the plan year are such that, if such terms applied for the entire plan year, then such arrangement would not be taken into account under subparagraph (A)(ii) of this paragraph for such plan year.''.

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

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

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

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

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions made after December 31, 2025, in taxable years ending after such date.

○