

115TH CONGRESS  
1ST SESSION

# S. 191

To improve patient choice by allowing States to adopt market-based alternatives to the Affordable Care Act that increase access to affordable health insurance and reduce costs while ensuring important consumer protections and improving patient care.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2017

Mr. CASSIDY (for himself, Ms. COLLINS, Mrs. CAPITO, and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To improve patient choice by allowing States to adopt market-based alternatives to the Affordable Care Act that increase access to affordable health insurance and reduce costs while ensuring important consumer protections and improving patient care.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Patient Freedom Act of 2017”.

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

Sec. 1. Short title; table of contents.

## TITLE I—HEALTH REFORM

Sec. 100. Definitions.

### Subtitle A—Insurance Market Reform

Sec. 101. Ending the “one size fits all” ACA approach; continuing consumer protection policies by covering adult children, protecting individuals with preexisting conditions, and not applying lifetime or annual limits.

Sec. 102. State health insurance options.

Sec. 103. State alternative option.

Sec. 104. Computation of monthly Roth HSA deposit amount for deposit qualifying residents.

Sec. 105. State options for improved access to health insurance coverage in each State.

Sec. 106. State flexibility in ensuring orderly health insurance market outside of an Exchange.

Sec. 107. Expanded access and patient protections.

Sec. 108. Application of health savings accounts in relation to Medicaid.

### Subtitle B—Provider Price Transparency

Sec. 121. Ensuring access to emergency services without excessive charges for out-of-network services.

## TITLE II—REFORM OF TAX PROVISIONS RELATING TO HEALTH CARE

### Subtitle A—Health Savings Accounts

Sec. 201. Transition to non-deductible HSAs.

Sec. 202. Treatment of direct primary care.

Sec. 203. Treatment of HSA after death of account beneficiary.

### Subtitle B—Health Care Tax Credits

Sec. 211. Limited application of PPACA health premium credit.

Sec. 212. New Roth HSA credit.

# 1       **TITLE I—HEALTH REFORM**

## 2       **SEC. 100. DEFINITIONS.**

3       In this title:

4               (1) **PATIENT-GRANT ELECTING STATE.**—The  
5       term “patient-grant electing State” means an elect-  
6       ing State that specifies under section 103(a)(3)(B)  
7       that it will carry out section 103(b) itself (and not

1 to have section 103(b) carried out by means of the  
2 credit under section 36C of the Internal Revenue  
3 Code of 1986).

4 (2) BUDGET NEUTRAL.—The term “budget  
5 neutral” with respect to expenditures provided for in  
6 this Act, means the same amount of expenditures as  
7 are provided for under the Patient Protection and  
8 Affordable Care Act (Public Law 111–148).

9 (3) CHIP.—The term “CHIP” means the Chil-  
10 dren’s Health Insurance Program established under  
11 title XXI of the Social Security Act (42 U.S.C. 1396  
12 et seq.).

13 (4) CREDITABLE COVERAGE.—The term “cred-  
14 itable coverage” has the meaning given such term in  
15 section 2704(c)(1) of the Public Health Service Act  
16 (42 U.S.C. 300gg–3(c)(1)), as in effect as of the day  
17 before the date of the enactment of this Act.

18 (5) DEFAULT HEALTH INSURANCE COV-  
19 ERAGE.—The term “default health insurance cov-  
20 erage” has the meaning given such term in section  
21 107(c)(2).

22 (6) DEPOSIT QUALIFYING RESIDENT.—The  
23 term “deposit qualifying resident” has the meaning  
24 given such term in section 103(b)(2).

1           (7) ELECTING STATE.—The term “electing  
2 State” means a State that elects under section  
3 102(a)(2) the alternative option described in section  
4 103.

5           (8) HEALTH INSURANCE COVERAGE.—The term  
6 “health insurance coverage” has the meaning given  
7 such term in section 2791(b)(1) of the Public Health  
8 Service Act (42 U.S.C. 300gg–91(b)(1)).

9           (9) HEALTH SAVINGS DEPOSIT.—The term  
10 “health savings deposit” means a deposit made into  
11 a Roth HSA pursuant to section 103.

12           (10) MEDICAID.—The term “Medicaid” means  
13 the program under title XIX of the Social Security  
14 Act (42 U.S.C. 1396 et seq.).

15           (11) MEDICARE.—The term “Medicare” means  
16 the program under part A or B of title XVIII of the  
17 Social Security Act (42 U.S.C. 1395 et seq.).

18           (12) PPACA.—The term “PPACA” means the  
19 Patient Protection and Affordable Care Act (Public  
20 Law 111–148), as in effect on the day before the  
21 date of the enactment of this Act, unless otherwise  
22 specified.

23           (13) QUALIFIED HEALTH PLAN COVERAGE.—  
24 The term “qualified health plan coverage” means,  
25 with respect to residents of a State, health insurance

1 coverage that meets applicable standards under  
2 State law, which standards need not be the same as  
3 that previously required of qualified health plans  
4 under title I of PPACA, and includes a high deduct-  
5 ible health plan (as defined in section 223(e)(2) of  
6 the Internal Revenue Code of 1986) and includes  
7 coverage under a group health plan.

8 (14) QUALIFIED RESIDENT.—The term “quali-  
9 fied resident” means, with respect to a State for a  
10 month, an individual who is a resident of the State  
11 as of the first day of the month and is a citizen or  
12 national of the United States or otherwise lawfully  
13 residing in the State under color of law.

14 (15) ROTH HEALTH SAVINGS ACCOUNT; ROTH  
15 HSA.—The terms “Roth health savings account” and  
16 “Roth HSA” mean a Roth HSA established under  
17 section 530A of the Internal Revenue Code of 1986.

18 (16) SECRETARY.—The term “Secretary”  
19 means the Secretary of Health and Human Services.

20 (17) STATE.—The term “State” means the 50  
21 States and the District of Columbia.

22 (18) UNINSURED.—The term “uninsured”  
23 means, with respect to an individual, that the indi-  
24 vidual does not have creditable coverage.

1           **Subtitle A—Insurance Market**  
2                           **Reform**

3 **SEC. 101. ENDING THE “ONE SIZE FITS ALL” ACA AP-**  
4                           **PROACH; CONTINUING CONSUMER PROTEC-**  
5                           **TION POLICIES BY COVERING ADULT CHIL-**  
6                           **DREN, PROTECTING INDIVIDUALS WITH PRE-**  
7                           **EXISTING CONDITIONS, AND NOT APPLYING**  
8                           **LIFETIME OR ANNUAL LIMITS.**

9           (a) IN GENERAL.—Subject to subsections (b) and (c),  
10 title I of the Patient Protection and Affordable Care Act  
11 (including the amendments made by such title) shall not  
12 apply (and the provisions of law amended by such title  
13 are restored as if such title had not been enacted) in the  
14 case of any State that does not have in effect the election  
15 described in section 102(a)(1).

16           (b) CONTINUATION OF POLICIES FOR EXTENSION OF  
17 DEPENDENT COVERAGE FOR ADULT CHILDREN AND  
18 PROHIBITION OF LIFETIME AND ANNUAL COVERAGE  
19 LIMITS; PRESERVATION OF BLACK LUNG BENEFITS.—

20           (1) PUBLIC HEALTH SERVICE ACT PROVI-  
21           SIONS.—Notwithstanding subsection (a), the fol-  
22           lowing sections of the Public Health Service Act,  
23           that were added or amended by subtitles A and C  
24           of title I of PPACA, shall continue to apply to group

1 health plans and to health insurance coverage of-  
2 fered in the individual and group market:

3 (A) NO LIFETIME OR ANNUAL LIMITS.—  
4 Section 2711 (relating to no lifetime or annual  
5 limits), except in the case of limited benefit in-  
6 surance.

7 (B) DEPENDENT COVERAGE THROUGH  
8 AGE 26.—Section 2714 (relating to extension of  
9 dependent coverage).

10 (C) PROHIBITING PRE-EXISTING CONDI-  
11 TION EXCLUSIONS.—Section 2704 (relating to  
12 prohibition on preexisting conditions).

13 (D) PROHIBITING DISCRIMINATION BASED  
14 ON HEALTH STATUS.—Section 2705 (relating to  
15 prohibiting discrimination against individual  
16 participants and beneficiaries based on health  
17 status), subject to subsection (c).

18 (E) PRESERVATION OF PREVENTIVE SERV-  
19 ICE COVERAGE.—Section 2713 (relating to cov-  
20 erage of preventive health services), if employ-  
21 ers do not contribute to the individual's Roth  
22 HSA.

23 (2) PRESERVATION OF NON-DISCRIMINATION IN  
24 HEALTH CARE.—Subsection (a) shall not apply with

1 respect to section 1557 of title I of the Patient Pro-  
2 tection and Affordable Care Act (42 U.S.C. 18116).

3 (3) PRESERVATION OF COVERAGE OF MENTAL  
4 HEALTH SERVICES, AND APPLICABILITY OF MENTAL  
5 HEALTH PARITY.—For serious mental illness, seri-  
6 ous emotional disturbance, and substance use dis-  
7 order, subsection (a) shall not apply with respect to  
8 section 1302(b)(1)(E) of title I of the Patient Pro-  
9 tection and Affordable Care Act (relating to cov-  
10 erage of mental health and substance use treatment  
11 at limited cost sharing) (42 U.S.C. 18022(b)(1)(E)).  
12 Section 2726 of the Public Health Service Act shall  
13 apply to qualified health plans in the same manner  
14 and to the same extent as such section applies to  
15 health insurance coverage and group health plans.

16 (4) PRESERVATION OF BLACK LUNG BENEFITS  
17 FOR COAL MINERS.—Subsection (a) shall not apply  
18 with respect to section 1556 of title I of the Patient  
19 Protection and Affordable Care Act (amending the  
20 Black Lung Benefits Act).

21 (5) PRESERVATION OF STATE INNOVATIONS.—  
22 Subsection (a) shall not apply with respect to section  
23 1332 of title I of the Patient Protection and Afford-  
24 able Care Act (42 U.S.C. 18052).



1 (c) CONTINUATION OF FEDERAL EXCHANGES.—Sub-  
2 section (a) shall not apply with respect to Federal Ex-  
3 changes established pursuant to section 1321(c) of the Pa-  
4 tient Protection and Affordable Care Act (42 U.S.C.  
5 18041(c)) and such Exchanges shall continue to operate  
6 as provided for by the Secretary.

7 **SEC. 102. STATE HEALTH INSURANCE OPTIONS.**

8 (a) IN GENERAL.—Each State may elect, through  
9 written notice to the Secretary after the date of the enact-  
10 ment of this Act and in accordance with this title, 1 of  
11 the following 3 options in relation to the implementation  
12 of title I of the Patient Protection and Affordable Care  
13 Act after the date of enactment of this Act:

14 (1) CONTINUING IMPLEMENTATION OF  
15 PPACA.—The State continuing—

16 (A) the Federal premium and cost-sharing  
17 subsidies for coverage offered under title I of  
18 PPACA (and the amendments made thereby),  
19 reduced for qualified residents of such State for  
20 any year by the amount (if any) by which such  
21 subsidies would exceed the amount of contribu-  
22 tions that would have been made under section  
23 103(b) to all such residents for such year if the  
24 State had elected the option under paragraph  
25 (3); and

1 (B) all other requirements under such title.

2 (2) ESTABLISHING NEW STATE AND MARKET-  
3 BASED ALTERNATIVE, WITH ALTERNATIVE PER BEN-  
4 EFICIARY FEDERAL DEPOSIT SYSTEM.—The State  
5 implementing the alternative option described in sec-  
6 tion 103, which includes—

7 (A) the waiver of most requirements im-  
8 posed under such title I; and

9 (B) the provision of a new, Roth HSA- and  
10 market-based deposit system for individuals  
11 who do not otherwise qualify for Federal or  
12 State subsidies for health benefits coverage.

13 (3) REJECTION OF PPACA.—The State rejecting  
14 title I of PPACA (and the amendments made there-  
15 by), except as otherwise required in this title.

16 If a State fails to make an election described in this sub-  
17 section during the 1-year period beginning on the date of  
18 enactment of this Act, the State shall be deemed to have  
19 made the election described in paragraph (2). A State  
20 may, through written notice to the Secretary, change an  
21 election previously made under this subsection.

22 (b) RELATION TO CURRENT MEDICAID ACA COV-  
23 ERAGE OPTION.—Nothing in this section shall be con-  
24 strued to change the option of a State with respect to the  
25 implementation of Medicaid ACA coverage under section

1 1902(a)(10)(A)(i)(VIII) of the Social Security Act (42  
2 U.S.C. 1396a(a)(10)(A)(i)(VIII)), except that a State that  
3 elects not to provide medical assistance to individuals  
4 under such section may make such individuals deposit  
5 qualifying residents under this title.

6 **SEC. 103. STATE ALTERNATIVE OPTION.**

7 (a) IN GENERAL.—In the case of a State that elects  
8 under section 102(a)(2) the alternative option under this  
9 section, subject to subsection (d) and section 107, the fol-  
10 lowing shall apply:

11 (1) ELIMINATION OF INDIVIDUAL AND EM-  
12 PLOYER SHARED RESPONSIBILITY FOR HEALTH  
13 CARE TAX REQUIREMENTS FOR RESIDENTS AND EM-  
14 PLOYEES IN STATE.—The individual and employer  
15 health care responsibilities under the amendments  
16 made by title I of PPACA (including under sections  
17 5000A and 4980H of the Internal Revenue Code of  
18 1986) shall no longer apply pursuant to section 101  
19 with respect to individuals who are residents of such  
20 State and with respect to individuals who are em-  
21 ployed in such State, respectively.

22 (2) MODIFICATION OF INSURANCE REQUIRE-  
23 MENTS.—Except as specifically provided in this title,  
24 the requirements under title I of PPACA (including  
25 amendments made by such title) relating to health

1 insurance coverage offered in the State shall not  
2 apply except to the extent specified by the State.

3 (3) NEW DEPOSIT SYSTEM THROUGH FUNDING  
4 ROTH HSAS.—

5 (A) IN GENERAL.—Deposit qualifying resi-  
6 dents (as defined in subsection (b)(2)) who are  
7 residing in the State are eligible for a deposit  
8 to a Roth HSA that may be used for premiums  
9 and cost-sharing for health insurance coverage  
10 in accordance with subsection (b).

11 (B) STATE SPECIFICATION OF MANNER OF  
12 CARRYING OUT ROTH HSA DEPOSIT SYSTEM  
13 (PATIENT-GRANT ELECTING STATE).—In mak-  
14 ing the election under this subsection, a State  
15 shall specify whether the State will carry out  
16 subsection (b) or if such subsection shall be car-  
17 ried out by means of the credit under section  
18 36C of the Internal Revenue Code of 1986.

19 (4) ADDITIONAL AMOUNTS FOR POPULATION  
20 HEALTH INITIATIVES FOR STATE ADMINISTERED  
21 ROTH HSA DEPOSIT SYSTEM.—A patient-grant elect-  
22 ing State (as defined in section 100(1)) is entitled  
23 to receive additional funding under subsection (c) for  
24 population health initiatives.

1 (b) DEPOSIT THROUGH PAYMENT INTO ROTH HSA  
2 FOR DEPOSIT QUALIFYING RESIDENTS.—

3 (1) IN GENERAL.—The subsidies described in  
4 subsection (a)(3) for an electing State shall be fur-  
5 nished for each deposit qualifying resident through  
6 the deposit of a contribution into a Roth HSA of the  
7 individual in the amount determined under section  
8 104. For purposes of the Internal Revenue Code of  
9 1986, the amount of any contribution to a Roth  
10 HSA made under this paragraph shall be included  
11 in the gross income of the individual for whose ben-  
12 efit the Roth HSA was established.

13 (2) DEPOSIT QUALIFYING RESIDENT DE-  
14 FINED.—In this title, the term “deposit qualifying  
15 resident” means, with respect to a State and a  
16 month, an individual—

17 (A) who is a qualified resident (as defined  
18 in section 100(14)) of the State as of the first  
19 day of the month (or such other day in the  
20 month as the Secretary may specify);

21 (B) with respect to whom a Roth HSA has  
22 been established, which Roth HSA may have  
23 been established by the State in carrying out  
24 this section;

1 (C) who is enrolled in qualified health plan  
2 coverage (as defined in section 100(13)), which  
3 enrollment may have been effected by the State  
4 in carrying out this section; and

5 (D) who is not eligible for coverage under  
6 Medicare, is not enrolled for benefits under  
7 Medicaid or CHIP, and is not enrolled for bene-  
8 fits under chapter 55 of title 10, United States  
9 Code (relating to TRICARE), or title 39 of  
10 such Code (relating to veterans' benefits) or  
11 chapter 89 of title 5 of such Code (relating to  
12 the Federal Employees Health Benefits Pro-  
13 gram).

14 (3) PAYMENT ADMINISTRATION.—

15 (A) STATE.—In the case of an electing  
16 State that elects to carry out this subsection  
17 through the State, the Secretary shall provide  
18 for payment to the State in amounts and in a  
19 time and manner sufficient to permit the State  
20 to make timely monthly contributions to Roth  
21 HSAs under this subsection. The Secretary may  
22 provide for payment to the State using the pay-  
23 ment methodology described in subsection (d) of  
24 section 1903 of the Social Security Act for pay-  
25 ments under subsection (a) of such section (ap-

1           plied without regard to any State matching re-  
2           quirement) and may condition such payments  
3           upon the provision of such information as the  
4           Secretary may require to ensure the proper pay-  
5           ments under this subsection. As a condition of  
6           receiving payment under this section, a State  
7           shall submit such information, in such form,  
8           and manner, as the Secretary shall specify, in-  
9           cluding information necessary to make the com-  
10          putations of amounts under this section.

11           (B) FEDERAL.—In the case of a State  
12          electing to carry out this subsection other than  
13          through the State, subsidies described in sub-  
14          section (a)(3) shall be provided through a re-  
15          fundable tax credit under section 36C of the In-  
16          ternal Revenue Code of 1986.

17           (4) CONSTRUCTION.—Nothing in this sub-  
18          section shall be construed—

19           (A) to prevent an individual from affirma-  
20          tively electing not to have a Roth HSA estab-  
21          lished on the individual's behalf and not to be  
22          enrolled in health insurance coverage;

23           (B) subject to subparagraph (A), to pre-  
24          vent a State from establishing a Roth HSA for

1 each deposit qualifying resident who does not  
2 otherwise have a Roth HSA;

3 (C) subject to subparagraph (A), to pre-  
4 vent a State from establishing a mechanism  
5 whereby individuals who would be deposit quali-  
6 fying residents but for paragraph (2)(C) are en-  
7 rolled in health insurance coverage; and

8 (D) to prevent a State from changing its  
9 State Medicaid plan to eliminate coverage under  
10 section 1902(a)(10)(A)(i)(VIII) of the Social  
11 Security Act (42 U.S.C.  
12 1396a(a)(10)(A)(i)(VIII)), in order that indi-  
13 viduals otherwise covered under such section  
14 may qualify for subsidies under this section.

15 (c) POPULATION HEALTH INITIATIVE FUNDING.—

16 (1) IN GENERAL.—In the case of an electing  
17 State for a year, the State is entitled to receive pay-  
18 ment from the Secretary after the end of such year  
19 in an amount equal to 2 percent of the actual aggre-  
20 gate amount deposited under subsection (b) into  
21 Roth HSAs for residents of the State for the year.

22 (2) USE OF FUNDS.—Amounts paid to a State  
23 under paragraph (1) may only be used for popu-  
24 lation health initiatives (as defined by the Sec-  
25 retary).



1           (3) ENTITLEMENT.—Paragraph (1) constitutes  
 2           budget authority in advance of appropriations Acts  
 3           and represents the obligation of the Federal Govern-  
 4           ment to provide for the payment to States of  
 5           amounts provided under such paragraph.

6           (d) REQUIRING RULES FOR COMPUTING USUAL,  
 7           CUSTOMARY, AND REASONABLE (UCR) PRICES.—As a  
 8           condition for a State’s election of the alternative option  
 9           under this section, the State must provide, through its de-  
 10          partment of insurance or equivalent agency, for establish-  
 11          ment of rules to carry out section 1867(j)(1)(A)(ii) of the  
 12          Social Security Act, as added by section 121(a)(2).

13   **SEC. 104. COMPUTATION OF MONTHLY ROTH HSA DEPOSIT**  
 14                   **AMOUNT FOR DEPOSIT QUALIFYING RESI-**  
 15                   **DENTS.**

16          (a) COMPUTATION.—

17           (1) IN GENERAL.—The Secretary shall develop  
 18           a standardized methodology to determine consistent  
 19           with this section a monthly Roth HSA deposit  
 20           amount for deposit qualifying residents in each State  
 21           for months in each year. Subject to paragraphs (3)  
 22           and (4), such amount shall be equal to  $\frac{1}{12}$  of the  
 23           average per capita annual amount computed under  
 24           subsection (b) for the State for the year, as adjusted  
 25           for the deposit qualifying resident involved—

1 (A) for age and geographic area under  
2 subsection (c); and

3 (B) for income under subsection (d).

4 (2) NO VARIATION BASED ON HOW DEPOSIT  
5 AMOUNT DISTRIBUTED.—Such amount shall be the  
6 same for a deposit qualifying individual without re-  
7 gard to whether the contribution to the individual’s  
8 Roth HSA is made by a State under this section or  
9 by the Federal Government through the operation of  
10 section 36C of the Internal Revenue Code of 1986.

11 (3) PATIENT-GRANT ELECTING STATE HAS  
12 FLEXIBILITY TO MAINTAIN LEVEL OF BENEFITS FOR  
13 CURRENT ACA BENEFICIARIES.—A patient-grant  
14 electing State may elect to increase the amount of  
15 the deposit for all deposit qualifying individuals  
16 under this section to the amounts that the Secretary  
17 estimates would have been paid with respect to such  
18 individuals under section 36B of the Internal Rev-  
19 enue Code of 1986 and section 1402 of PPACA if  
20 those sections had remained in effect in the State  
21 with respect to such individuals. Such election shall  
22 be made for a year and shall continue from year to  
23 year until the State elects to terminate such election.  
24 The Secretary shall, in conjunction with the Actu-  
25 ary, ensure such changes to the amount of deposit

1 for qualifying individuals shall remain budget neu-  
2 tral.

3 (4) SPECIAL RULE FOR PARTIAL DEPOSIT FOR  
4 LOW-INCOME INDIVIDUALS WITH EMPLOYER-SPON-  
5 SORED INSURANCE (ESI).—In the case of an indi-  
6 vidual who is covered under a group health plan and  
7 with respect to such coverage there is a contribution  
8 by an employer which is excluded from the individ-  
9 ual's gross income under the Internal Revenue Code  
10 of 1986, insofar as the individual is a deposit quali-  
11 fying resident, the amount of the deposit with re-  
12 spect to the individual shall be reduced, in a manner  
13 specified by the Secretary in consultation with the  
14 Secretary of the Treasury and taking into account  
15 the income of the individual's household, by an  
16 amount that is approximately equivalent to the esti-  
17 mated amount of the reduction in the amount of in-  
18 come tax resulting from such exclusion (and any re-  
19 duction in taxes imposed by chapter 21 or chapter  
20 2 of such Code by reason of any exclusion of such  
21 contributions from wages and self employment in-  
22 come).

23 (b) COMPUTATION OF UNADJUSTED AVERAGE PER  
24 CAPITA ANNUAL AMOUNT.—

1           (1) FOR STATES THAT CONTINUE PPACA MED-  
2           ICAID COVERAGE.—

3           (A) IN GENERAL.—In the case of a State  
4           that provides medical assistance under section  
5           1902(a)(10)(A)(i)(VIII) of the Social Security  
6           Act (42 U.S.C. 1396b(a)(10)(A)(i)(VIII)) dur-  
7           ing a year, subject to paragraphs (3) and (4),  
8           the Secretary shall compute an average per cap-  
9           ita annual amount for the State for the year  
10          equal to—

11                   (i) the amount specified in subpara-  
12                   graph (B), divided by

13                   (ii) the average monthly number of  
14                   deposit qualifying residents of the State in  
15                   the year.

16          (B) AMOUNT BASED ON PPACA PROJECTED  
17          FEDERAL EXPENDITURES.—The amount speci-  
18          fied in this subparagraph for a State for a year  
19          is 95 percent of the Secretary’s estimate of the  
20          total payments that would have been made (as-  
21          suming the existence of a State established Ex-  
22          change in the State) under section 36B of the  
23          Internal Revenue Code of 1986 and under sec-  
24          tion 1402 of PPACA with respect to all quali-  
25          fied residents in the State in the year (or tax-

1           able year ending with such year, if applicable).  
2           The Secretary shall, in conjunction with the Ac-  
3           tuary, ensure such changes to the amount of  
4           deposit for qualifying individuals shall remain  
5           budget neutral.

6           (2) FOR STATES THAT DO NOT PROVIDE PPACA  
7           MEDICAID COVERAGE.—

8                   (A) IN GENERAL.—In the case of a State  
9                   not described in paragraph (1) for a year, sub-  
10                  ject to paragraphs (3) and (4), the Secretary  
11                  shall compute an average per capita annual  
12                  amount for the State for the year equal to—

13                           (i) the amount specified in subpara-  
14                           graph (B) for the State and year, divided  
15                           by

16                                   (ii) the average monthly number of  
17                                   deposit qualifying residents of the State in  
18                                   the year.

19                   (B) AMOUNT BASED ON PPACA AND MED-  
20                   ICAID PROJECTED FEDERAL EXPENDITURES.—

21                  The amount specified in this subparagraph for  
22                  a State for a year is equal to the sum of—

23                           (i) 95 percent of the Secretary's esti-  
24                           mate of the total payments that would  
25                           have been made (assuming the existence of

1 a State-established Exchange in the State)  
 2 under section 36B of the Internal Revenue  
 3 Code of 1986 and under section 1402 of  
 4 PPACA with respect to all qualified resi-  
 5 dents in the year (or taxable year ending  
 6 with such year, if applicable); and

7 (ii) the Secretary's estimate of the  
 8 total payments that would have been made  
 9 to the State under title XIX of the Social  
 10 Security Act for individuals eligible to be  
 11 covered under section  
 12 1902(a)(10)(A)(i)(VIII) of the Social Secu-  
 13 rity Act assuming the election of a State to  
 14 provide Medicaid coverage under such sec-  
 15 tion and assuming the applicable Federal  
 16 medical assistance percentage were 95 per-  
 17 cent with respect to such individuals.

18 (3) BUDGET NEUTRAL ADJUSTMENT IN PAY-  
 19 MENTS TO TAKE INTO ACCOUNT ELECTION OF HIGH-  
 20 ER DEPOSITS TO MAINTAIN ACA SUBSIDY LEVELS.—

21 If a State makes the election described in subsection  
 22 (a)(3) with respect to providing higher deposit  
 23 amounts for certain individuals described in such  
 24 subsection, then the Secretary shall adjust the aver-

1       age per capita annual amount under paragraph (1)  
2       or (2), as applicable to the State, by—

3               (A) reducing the amount described in  
4               paragraph (1)(B) (or, if applicable, paragraph  
5               (2)(B)(i)) by an amount equal to 95 percent of  
6               the aggregate increased deposit level attrib-  
7               utable to subsection (a)(3); and

8               (B) not counting such an individual as a  
9               qualifying resident for purposes of paragraph  
10              (1)(A)(ii) (or, if applicable, paragraph  
11              (2)(A)(ii)).

12       The Secretary shall, in conjunction with the Actua-  
13       ry, ensure changes, as outlined in this subsection,  
14       to the amount of deposit for qualifying individuals  
15       shall remain budget neutral.

16              (4) ADJUSTMENT FOR COSTS OF PARTIAL DE-  
17       POSITS FOR LOW-INCOME ESI INDIVIDUALS.—The  
18       Secretary shall adjust the average per capita annual  
19       amount under paragraph (1) or (2), as applicable to  
20       the State, by—

21              (A) reducing the amount described in  
22              paragraph (1)(B) (or, if applicable, paragraph  
23              (2)(B)(i)) by an amount equal to 95 percent of  
24              the amount of payments under this section that

1           are attributable to individuals described in sub-  
2           section (a)(4); and

3                   (B) not counting any individual described  
4           in subsection (a)(4) as a qualifying resident for  
5           purposes of paragraph (1)(A)(ii) (or, if applica-  
6           ble, paragraph (2)(A)(ii)).

7           (c) ADJUSTMENT FOR AGE, GEOGRAPHIC AREA, AND  
8 INCOME DISTRIBUTION WITHIN STATE.—

9                   (1) IN GENERAL.—The Secretary shall apply  
10          such adjustments to the per capita amount com-  
11          puted under subsection (b) as is designed to take  
12          into account, in a budget neutral manner and based  
13          on the costs estimated under paragraph (2), actu-  
14          arial differences in health care costs attributable to  
15          individuals in different age categories and different  
16          geographic locations of primary residences in the  
17          State and the reductions based on income under  
18          subsection (d). No such adjustment shall be made  
19          based on sex.

20                   (2) DATA ON AVERAGE COSTS OF SERVICES.—  
21          Not later than December 15 before the beginning of  
22          each year, the Agency for Healthcare Research and  
23          Quality shall estimate the average cost of health  
24          care for such year for individuals under 65 years of  
25          age and may estimate how such average varies for



1 different populations of individuals under age 65.  
2 The adjustments under paragraph (1) for age cat-  
3 egories for a year shall be based on such estimates  
4 made. Not later than such date, the Secretary shall  
5 prescribe tables for purposes of making adjustments  
6 based on age under paragraph (1) based on such de-  
7 termination which shall apply for taxable years be-  
8 ginning in the succeeding calendar year.

9 (d) INCOME-RELATED PHASE-OUT.—

10 (1) IN GENERAL.—The per capita amount as  
11 computed under subsection (b) and adjusted and ap-  
12 plied to a deposit qualifying individual under sub-  
13 section (c) shall be multiplied by a phase-out per-  
14 centage equal to 100 percent reduced by 1 percent-  
15 age point for each \$1,000 (or fraction thereof) by  
16 which the taxpayer’s modified adjusted gross income  
17 for the taxable year exceeds \$90,000 (or, in the case  
18 of a joint return, \$150,000), multiplied, for a tax-  
19 able year ending in a year beginning after December  
20 31, 2015, by the cost-of-living adjustment for the  
21 year as described in section 1(f)(3) of the Internal  
22 Revenue Code of 1986, but substituting “2015” for  
23 “1992” in subparagraph (B) of such section.

24 (2) ZERO PER CAPITA AMOUNT FOR MARRIED  
25 FILING SEPARATELY.—The per capita amount under

1 this section shall be zero in the case of a married  
2 couple filing separately.

3 **SEC. 105. STATE OPTIONS FOR IMPROVED ACCESS TO**  
4 **HEALTH INSURANCE COVERAGE IN EACH**  
5 **STATE.**

6 (a) STATE OPTIONS TO IMPROVE ACCESS.—

7 (1) IN GENERAL.—Each State may carry out  
8 any of the functions described in this section in  
9 order to improve the access of residents of the State  
10 to health insurance coverage.

11 (2) REPURPOSING STATE EXCHANGES.—A  
12 State may use or adapt an Exchange that the State  
13 has established under title I of PPACA to carry out  
14 any such function.

15 (3) REPURPOSING FEDERAL EXCHANGE.—The  
16 Federal Government shall make available to States  
17 current capabilities of the Federal Exchange, includ-  
18 ing the Federal Data Services Hub and Agent  
19 Broker Portal, to the extent requested by a State for  
20 activities related to enrollment of citizens of the  
21 State into health insurance coverage.

22 (b) TRANSPARENCY PORTAL.—Each State may es-  
23 tablish and operate an open and transparent marketplace  
24 mechanism whereby qualified residents of the State can  
25 readily compare, through the use of the Internet, the bene-

1 fits and prices between different health insurance coverage  
 2 options made available to them.

3 (c) ENROLLMENT, SUBJECT TO INDIVIDUAL OPT-  
 4 OUT.—A State may provide for the enrollment of qualified  
 5 residents of the State who are uninsured in default health  
 6 insurance coverage offered under section 107(c) and es-  
 7 tablishing a Roth HSA for such residents who do not have  
 8 a Roth HSA unless the resident has affirmatively elected  
 9 not to be so enrolled and not to have a Roth HSA, respec-  
 10 tively. Any such enrollment under this paragraph shall be  
 11 coordinated with the annual open enrollment periods pro-  
 12 vided under section 107(b).

13 (d) RISK MITIGATION MECHANISMS AND REINSUR-  
 14 ANCE AND RISK-CORRIDOR PROGRAMS.—

15 (1) IN GENERAL.—Notwithstanding any other  
 16 provision of this title or section 223(c)(2) of the In-  
 17 ternal Revenue Code of 1986, a State may estab-  
 18 lish—

19 (A) mechanisms for risk mitigation or risk  
 20 adjustment in order to limit volatility in the  
 21 premiums based on health experience to class-  
 22 average premiums; and

23 (B) a reinsurance and risk-corridor pro-  
 24 gram that involves no Federal funds with re-

1           spect to coverage both in the individual market  
2           and in the small group market.

3           (2) BASIS FOR RISK ADJUSTMENT.—Mecha-  
4           nisms and programs under paragraph (1) may be  
5           based on the health status score of each individual  
6           enrolled in health insurance coverage in the indi-  
7           vidual market and not solely based on the aggregate  
8           risk of the risk pool with respect to each plan of  
9           health insurance coverage.

10          (e) MODIFIED HEALTH STATUS INSURANCE MECHA-  
11          NISM.—

12           (1) IN GENERAL.—A State may establish a  
13           mechanism for providing modified health status in-  
14           surance in the State to encourage health plans to  
15           implement adequate benefit designs and services for  
16           a chronically ill individual.

17           (2) REQUIREMENTS.—A mechanism under  
18           paragraph (1) may implement the following require-  
19           ments:

20           (A) During the first open enrollment pe-  
21           riod after the date of enactment of this Act, an  
22           individual health plan shall provide coverage for  
23           health benefits as defined in the health plan for  
24           a period of 12 months.

1           (B) If an individual enrolls in a new health  
2 plan during the open enrollment period at the  
3 end of the first 12 months of coverage under  
4 subparagraph (A), the plan in which the indi-  
5 vidual was enrolled prior to such period shall be  
6 responsible for financing 75 percent of the  
7 health benefits administered to the individual  
8 under any other health plan in which the indi-  
9 vidual enrolls for the initial 3-month period of  
10 coverage under such other plan.

11           (C) During the 3-month period described  
12 in subparagraph (B), the plan in which the in-  
13 dividual was enrolled prior to such period shall  
14 receive 75 percent of the premiums paid for the  
15 individual's coverage under the other health  
16 plan.

17           (D) During the third open enrollment pe-  
18 riod after the date of enactment of this Act,  
19 and during all subsequent open enrollment peri-  
20 ods, a health plan that has enrollees terminate  
21 their coverage in order to enroll in other health  
22 plans shall be responsible for financing 75 per-  
23 cent of the health benefits administered to such  
24 enrollees under the other plans and shall receive  
25 75 percent of the premiums paid for such en-

1           rollees' coverage under such other health plans  
2           for the first 3 months of coverage in the new  
3           plan year.

4 **SEC. 106. STATE FLEXIBILITY IN ENSURING ORDERLY**  
5           **HEALTH INSURANCE MARKET OUTSIDE OF**  
6           **AN EXCHANGE.**

7           (a) IN GENERAL.—With respect to health insurance  
8 coverage offered in a State, the State may, in consultation  
9 with the Secretary, take such steps, such as limiting the  
10 availability of general open enrollment periods, imposing  
11 delays in the effectiveness for coverage, permitting dif-  
12 ferentials in premiums based on age and other factors, as  
13 the State determines necessary in order to ensure an or-  
14 derly market for health insurance coverage in the State  
15 that is not offered through an Exchange. Such steps may  
16 include the establishment of an initial open enrollment pe-  
17 riod during which qualified residents may enroll in health  
18 insurance coverage without the imposition of any under-  
19 writing as the State determines to be appropriate in ensur-  
20 ing initial access to such coverage.

21           (b) FLEXIBILITY IN IMPOSING ADDITIONAL RE-  
22 QUIREMENTS.—Nothing in this section shall be construed  
23 as preventing a State from continuing to apply, to health  
24 insurance coverage issued in the State, requirements  
25 under the provisions of title XXVII of the Public Health

1 Service Act (as amended by subtitles A and C of title I  
2 of PPACA), that are not continued under section 101(b).

3 (c) STATE FLEXIBILITY WITH RESPECT TO EX-  
4 CHANGES.—A State may waive such provisions of part 2  
5 of subtitle D of title I of PPACA, in relation to the estab-  
6 lishment of an Exchange in such State, as the State deter-  
7 mines appropriate in order for the State to implement and  
8 administer a market-based system for the availability of  
9 health insurance coverage throughout the State.

10 **SEC. 107. EXPANDED ACCESS AND PATIENT PROTECTIONS.**

11 (a) IN GENERAL.—As a condition for the election of  
12 the alternative option under section 103 in a State, the  
13 State must meet the requirements of this section.

14 (b) ANNUAL AND OTHER OPEN ENROLLMENT PERI-  
15 ODS.—

16 (1) IN GENERAL.—The State shall require, in  
17 connection with the offering of health insurance cov-  
18 erage in the individual market in the State, that  
19 there are uniform annual and other open enrollment  
20 periods (such as those for changes in life events,  
21 changes in State residency, and involuntary changes  
22 in eligibility for coverage under a group health plan)  
23 in order to permit qualified residents to enroll in  
24 qualified health plan coverage in a manner that pro-  
25 motes continuity of coverage. Such periods shall be

1 consistent with the open enrollment periods estab-  
2 lished under title I of PPACA, as in effect on the  
3 day before the date of the enactment of this Act.

4 (2) INITIAL OPEN ENROLLMENT PERIOD.—In  
5 addition, the State shall establish an initial open en-  
6 rollment period during which qualified residents may  
7 enroll in qualified health plan coverage without the  
8 imposition of any underwriting described in sub-  
9 section (d)(1)(B). Such period shall be a period of  
10 not less than 45 days and shall provide for enroll-  
11 ment to become effective on January 1 of the year  
12 specified by the State in which such State election  
13 first becomes effective.

14 (c) OFFERING OF DEFAULT HEALTH INSURANCE  
15 COVERAGE.—

16 (1) ENROLLMENT, SUBJECT TO INDIVIDUAL  
17 OPT-OUT.—Subject to paragraph (4), a State may  
18 elect to provide for the enrollment of residents of the  
19 State who are uninsured in default health insurance  
20 coverage (as defined in paragraph (2)) and estab-  
21 lishing a Roth HSA for such residents who do not  
22 have a Roth HSA unless the resident has affirma-  
23 tively elected not to be so enrolled and not to have  
24 such an account, respectively. If a State makes such



1 an election, the State shall permit eligible residents  
2 to enroll in such coverage on a continuous basis.

3 (2) DEFAULT HEALTH INSURANCE COVERAGE  
4 DEFINED.—In this subsection, the term “default  
5 health insurance coverage” means, with respect to a  
6 State, health insurance coverage that—

7 (A) is a high deductible health plan (within  
8 the meaning of section 223(e)(2) of the Internal  
9 Revenue Code of 1986) with prescription drug  
10 coverage limited to a Tier 1 formulary benefit  
11 (as commonly understood) for a limited number  
12 of chronic conditions (commonly referred to as  
13 tier I pharmacy benefit);

14 (B) meets such requirements as may apply  
15 to qualify for the payment of plan premiums  
16 from a health savings account under section  
17 223 of such Code (such as age-related pre-  
18 miums and limitation on imposition of pre-  
19 existing condition exclusions);

20 (C) has a provider network for covered  
21 benefits that is adequate (as determined con-  
22 sistent with the guidelines issued by the Sec-  
23 retary relating to provider access requirements  
24 for Medicare Advantage organizations under  
25 section 1852(d) of the Social Security Act (42

1 U.S.C. 1395w–22(d)) to ensure access to  
2 health benefits under such plan;

3 (D) provides for coverage of childhood im-  
4 munizations without cost sharing requirements  
5 to the extent such immunizations have in effect  
6 a recommendation from the Advisory Com-  
7 mittee on Immunization Practices of the Cen-  
8 ters for Disease Control and Prevention with  
9 respect to the individual involved; and

10 (E) meets such other requirements as the  
11 State may specify.

12 (3) ROTH HSA.—In this subsection, the term  
13 “Roth HSA” shall have the meaning given such  
14 term by section 530A(c) of the Internal Revenue  
15 Code of 1986.

16 (4) SIMPLE PROCESS FOR INDIVIDUALS TO OPT-  
17 OUT.—As a condition of a State providing for the  
18 enrollment function described in paragraph (1), the  
19 State shall establish an easy-to-use and transparent  
20 means by which individuals may elect not to be en-  
21 rolled in default health insurance coverage or to  
22 have a Roth HSA established on the individual’s be-  
23 half, or both.

24 (d) CONSEQUENCES RESPECTING CONTINUOUS COV-  
25 ERAGE.—

1           (1) CONSEQUENCES FOR NOT MAINTAINING  
2 CONTINUOUS COVERAGE.—

3           (A) AVOIDANCE OF CONSEQUENCES BY  
4 MAINTAINING CONTINUOUS COVERAGE.—

5           (i) IN GENERAL.—All qualified resi-  
6 dents of a State are eligible during the ini-  
7 tial open enrollment period provided under  
8 subsection (b)(2) to enroll in qualified  
9 health plan coverage and, thereafter, to  
10 maintain continuous coverage in order to  
11 avoid the adverse consequences described  
12 in the succeeding provisions of this para-  
13 graph.

14           (ii) SPECIAL ENROLLMENT PERI-  
15 ODS.—The State may provide for special  
16 enrollment periods based on birth, becom-  
17 ing 26 years of age, and independence  
18 from family coverage, during which certain  
19 individuals will be eligible to enroll in  
20 qualified health plan coverage for purposes  
21 of this subsection.

22           (B) UNDERWRITING PERMITTED.—In the  
23 case of a qualified resident of the State who  
24 fails to maintain continuous creditable coverage

1 (not including any breaks in coverage of less  
2 than 63 days), the State shall—

3 (i) permit health insurance issuers for  
4 the period specified in subparagraph (C) to  
5 medically underwrite (through denial of  
6 health insurance coverage, application of  
7 preexisting condition limitations, differen-  
8 tial premiums, or otherwise) the issuance  
9 of health insurance coverage, other than  
10 with respect to the issuance of default  
11 health insurance coverage under subsection  
12 (c); and

13 (ii) require health insurance issuers,  
14 during the subsequent 2-year period in the  
15 case of issuance of health insurance cov-  
16 erage other than such default health insur-  
17 ance coverage, to impose a monthly late  
18 enrollment penalty in the amount specified  
19 in subparagraph (D)(i) and to remit the  
20 amount of such penalty collected to the  
21 Federal Treasury in accordance with sub-  
22 paragraph (D)(ii).

23 (C) PERIOD FOR APPLICATION OF UNDER-  
24 WRITING.—For purposes of subparagraph  
25 (B)(i), the period specified in this subparagraph

1 is, with respect to an uninsured individual as of  
2 a date, a period (not to exceed 18 months)  
3 equivalent to the number of months in the pre-  
4 vious 18-month period in which the individual  
5 did not have continuous creditable coverage de-  
6 scribed in subparagraph (B).

7 (D) MONTHLY LATE ENROLLMENT PEN-  
8 ALTY AMOUNT.—

9 (i) IN GENERAL.—The monthly late  
10 enrollment penalty amount specified in this  
11 clause for a month is equal to the lesser of  
12 10 percent or the product of—

13 (I) 1 percent of the monthly pre-  
14 mium amount for default health in-  
15 surance coverage with respect to the  
16 individual and month; and

17 (II) the number of months dur-  
18 ing the 2-year period (preceding the  
19 18-month period described in subpara-  
20 graph (B)(i)) in which the resident  
21 failed to maintain the continuous cov-  
22 erage described in paragraph (1)(D).

23 (ii) PAYMENT OF PENALTY AMOUNT  
24 TO FEDERAL TREASURY.—The amount of  
25 the monthly late enrollment penalty col-

1           lected under this subparagraph shall be  
 2           paid to the Treasury of the United States  
 3           in a form and manner specified by the Sec-  
 4           retary of the Treasury.

5           (2) CHANGES IN ENROLLMENT PERMITTED  
 6           WITHOUT MEDICAL UNDERWRITING DURING ANNUAL  
 7           OPEN ENROLLMENT PERIODS FOR THOSE MAINTAIN-  
 8           ING CONTINUOUS COVERAGE.—

9           (A) DURING SECOND OPEN ENROLLMENT  
 10          PERIOD.—In the case of a qualified resident  
 11          who maintains continuous coverage (not includ-  
 12          ing any breaks in coverage of less than 63  
 13          days) during the period after the initial open  
 14          enrollment period under subsection (b)(2) and  
 15          through the second annual open enrollment pe-  
 16          riod established by the State consistent with  
 17          subsection (b)(1), the State shall require health  
 18          insurance issuers to permit such residents dur-  
 19          ing such second annual open enrollment period  
 20          to change the qualified health plan coverage in  
 21          which the individual is enrolled without medical  
 22          underwriting.

23          (B) DURING THIRD AND SUBSEQUENT  
 24          OPEN ENROLLMENT PERIODS.—In the case of a  
 25          qualified resident who maintains continuous

1 coverage for a period of 18 months or longer  
 2 (not including any breaks in coverage of less  
 3 than 63 days) as of the initial date of a third  
 4 or subsequent annual open enrollment period  
 5 established by the State under subsection  
 6 (b)(1), the State shall require health insurance  
 7 issuers to permit such residents during such an  
 8 open enrollment period to change the qualified  
 9 health plan coverage in which the individual is  
 10 enrolled without medical underwriting.

11 **SEC. 108. APPLICATION OF HEALTH SAVINGS ACCOUNTS IN**  
 12 **RELATION TO MEDICAID.**

13 (a) IN GENERAL.—Title XIX of the Social Security  
 14 Act (42 U.S.C. 1396 et seq.) is amended by adding at  
 15 the end the following new section:

16 **“SEC. 1947. PROVISIONS RELATING TO HEALTH SAVINGS**  
 17 **ACCOUNTS.**

18 “(a) DISREGARDING ROTH HSA IN DETERMINING  
 19 ASSETS AND INCOME FOR MEDICAID ELIGIBILITY DE-  
 20 TERMINATIONS OTHER THAN FOR LONG-TERM CARE  
 21 SERVICES.—The assets in a health savings account under  
 22 section 223 of the Internal Revenue Code of 1986, and  
 23 any income from such assets in such account, shall be dis-  
 24 regarded for purposes of determining eligibility for and  
 25 amount of medical assistance under this title, other than

1 for purposes of determining eligibility for and the amount  
2 of medical assistance for long-term care services (de-  
3 scribed in section 1917(c)(1)(C)(i)).

4 “(b) NOTIFICATIONS OF TREASURY OF MEDICAID  
5 ELIGIBILITY.—In order to meet the requirements of this  
6 subsection (for purposes of section 1902(a)(78)), a State  
7 shall provide such notice to the Secretary of the Treasury,  
8 in such form and manner as the Secretary shall specify,  
9 as may be necessary to identify individuals who are eligible  
10 for, and receiving, medical assistance under this title in  
11 a month in order to carry out section 223 of the Internal  
12 Revenue Code of 1986.”.

13 (b) IMPLEMENTATION OF NOTIFICATION REQUIRE-  
14 MENT THROUGH STATE PLAN.—Section 1902(a) of the  
15 Social Security Act (42 U.S.C. 1396a(a)) is amended by  
16 inserting after paragraph (77) the following new para-  
17 graph:

18 “(78) provide for notice in accordance with sec-  
19 tion 1947(b) to the Secretary of the Treasury of the  
20 identity of individuals who are eligible for and re-  
21 ceiving medical assistance under this title;”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to eligibility determinations with  
24 respect to medical assistance for periods beginning on or  
25 after January 1, 2018.



1                   **Subtitle B—Provider Price**  
2                   **Transparency**

3 **SEC. 121. ENSURING ACCESS TO EMERGENCY SERVICES**  
4                   **WITHOUT EXCESSIVE CHARGES FOR OUT-OF-**  
5                   **NETWORK SERVICES.**

6           (a) IN GENERAL.—Section 1867 of the Social Secu-  
7 rity Act (42 U.S.C. 1395dd) is amended—

8                   (1) in subsection (d), by adding at the end the  
9 following new paragraph:

10                   “(5) ENFORCEMENT WITH RESPECT TO EXCES-  
11 SIVE CHARGES.—A hospital, physician, or other enti-  
12 ty that violates the requirements of subsection (j)(1)  
13 with respect to the furnishing of items and services  
14 is subject to a civil money penalty of not more than  
15 \$25,000 for each such violation. The provisions of  
16 section 1128A (other than subsections (a) and (b))  
17 shall apply to a civil money penalty under this para-  
18 graph in the same manner as such provisions apply  
19 with respect to a penalty or proceeding under section  
20 1128A(a).”; and

21                   (2) by adding at the end the following new sub-  
22 section:

23                   “(j) PROTECTIONS AGAINST EXCESSIVE OUT-OF-  
24 NETWORK CHARGES FOR EMERGENCY SERVICES.—

1           “(1) IN GENERAL.—In the absence of State  
2 regulations, if items or services to screen or treat an  
3 emergency medical condition are furnished under  
4 this section in a participating hospital with respect  
5 to an individual and the individual has not, directly  
6 or through a health insurance issuer, group health  
7 plan, or other third party, negotiated a payment rate  
8 for such items and services, subject to paragraph  
9 (2), the charges imposed for such items and services  
10 may not be in excess of the following:

11           “(A) PHYSICIANS’ AND OTHER PROFES-  
12 SIONAL SERVICES.—For physicians’ services or  
13 services of a health care provider which con-  
14 stitute medical care (as defined under section  
15 213(d) of the Internal Revenue Code of 1986,  
16 as in effect before the date of the enactment of  
17 this subsection) (and including drugs and  
18 biologicals furnished in conjunction with and  
19 billed as part of such services), the lesser of—

20           “(i) the cash price for such services  
21 posted pursuant to section 121(b) of the  
22 Patient Freedom Act of 2017; or

23           “(ii) 85 percent of the usual, cus-  
24 tomary, and reasonable (UCR) charge for  
25 such services, as determined under rules

1           established by the department of insurance  
2           for the State in which the services are fur-  
3           nished.

4           “(B) HOSPITAL SERVICES.—For inpatient  
5           and outpatient hospital services for which pay-  
6           ment rates are established under this title (and  
7           including drugs and biologicals furnished in  
8           conjunction with and billed as part of such  
9           services), the lesser of—

10                   “(i) the cash price for such services  
11                   posted pursuant to section 121(b) of the  
12                   Patient Freedom Act of 2017; or

13                   “(ii) 110 percent of the payment rate  
14                   applicable to such services in the case of  
15                   an individual entitled to benefits under  
16                   part A and enrolled under part B.

17           “(C) DRUGS AND BIOLOGICALS.—For  
18           drugs and other pharmaceuticals furnished to  
19           which a previous subparagraph does not apply,  
20           the lesser of—

21                   “(i) twice the acquisition cost to the  
22                   hospital or other provider for the dose in-  
23                   volved; or

24                   “(ii) the acquisition cost to the hos-  
25                   pital or other provider plus \$250.

1           The dollar amount in clause (ii) shall be in-  
2           creased from year to year (beginning with the  
3           year after the first year in which this subsection  
4           applies) by the same percentage as the percent-  
5           age increase in the consumer price index for all  
6           urban consumers (all items; U.S. city average)  
7           for the year involved (as determined by the Sec-  
8           retary). Any such dollar amount as so increased  
9           that is not a multiple of \$5 shall be rounded to  
10          the nearest multiple of \$5 (or, if a multiple of  
11          \$2.50, to the next highest multiple of \$5).

12           “(D) OTHER ITEMS AND SERVICES.—For  
13          any other items or services, the lesser of—

14                   “(i) the cash price for such items and  
15                   services posted pursuant to section 121(b)  
16                   of the Patient Freedom Act of 2017; or

17                   “(ii) 110 percent of the payment basis  
18                   that would be applicable to payment for  
19                   such items and services under this title in  
20                   the case of an individual entitled to bene-  
21                   fits under part A and enrolled under part  
22                   B.

23           “(2) SPECIAL RULE FOR ITEMS AND SERVICES  
24          FURNISHED AS A BUNDLE.—In the case of items  
25          and services for which there is a single price for a

1 group or bundle of such items and services, the max-  
2 imum charge permitted under paragraph (1) may  
3 not exceed the lesser of—

4 “(A) the price charged for such bundled  
5 services; or

6 “(B) the aggregate of the maximum  
7 charges permitted under paragraph (1) with re-  
8 spect to items and services included in such  
9 bundle.”.

10 (b) REFERENCE TO PRICE DISCLOSURE PROVI-  
11 SION.—

12 (1) IN GENERAL.—Persons providing medical  
13 care (as defined in section 213(d) of the Internal  
14 Revenue Code of 1986, as in effect before the date  
15 of the enactment of this Act) are required to post  
16 prices under this subsection.

17 (2) FORM OF DISCLOSURE.—The disclosure of  
18 prices under this subsection shall be in a form and  
19 manner specified by the Secretary, in consultation  
20 with the Secretary of the Treasury, and shall be de-  
21 signed—

22 (A) to establish a single price for related  
23 items and services in a manner similar to the  
24 manner in which pricing and payment for such  
25 items and services is provided under the Medi-

1 care program under title XVIII of the Social  
2 Security Act (42 U.S.C. 1395 et seq.); and

3 (B) to make it easy for consumers to com-  
4 pare the prices for similar items and services  
5 furnished by different providers.

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to charges imposed for items and  
8 services furnished on or after January 1, 2018.

9 **TITLE II—REFORM OF TAX PRO-**  
10 **VISIONS RELATING TO**  
11 **HEALTH CARE**

12 **Subtitle A—Health Savings**  
13 **Accounts**

14 **SEC. 201. TRANSITION TO NON-DEDUCTIBLE HSAS.**

15 (a) NON-DEDUCTIBLE HSAS.—Subchapter F of  
16 chapter 1 of the Internal Revenue Code of 1986 is amend-  
17 ed by adding at the end the following new part:

18 **“PART IX—HEALTH SAVINGS ACCOUNTS**

“Sec. 530A. Roth HSAs.

19 **“SEC. 530A. ROTH HSAS.**

20 “(a) IN GENERAL.—With the exception of the taxes  
21 imposed by section 511 (relating to imposition of tax on  
22 unrelated business income of charitable organizations), a  
23 Roth HSA shall be exempt from taxation under this sub-

1 title. No deduction shall be allowed for any contribution  
2 to a Roth HSA.

3 “(b) DOLLAR LIMITATION.—

4 “(1) IN GENERAL.—The aggregate amount of  
5 contributions for any taxable year to all Roth HSAs  
6 maintained for the benefit of an individual shall not  
7 exceed the sum of the monthly limitations for any  
8 month during such taxable year that the individual  
9 is an eligible individual.

10 “(2) MONTHLY LIMITATION.—The monthly lim-  
11 itation for any month is  $\frac{1}{12}$  of—

12 “(A) in the case of an eligible individual  
13 who has self-only creditable coverage as of the  
14 first day of such month, \$5,000, and

15 “(B) in the case of an eligible individual  
16 who has family creditable coverage as of the  
17 first day of such month, the amount in effect  
18 under subparagraph (A) for the taxable year  
19 multiplied by the number of individuals (includ-  
20 ing the eligible individual) covered under such  
21 family creditable coverage as of such day.

22 “(3) ADDITIONAL CONTRIBUTIONS FOR INDI-  
23 VIDUALS 55 OR OLDER.—In the case of an individual  
24 who has attained age 55 before the close of the tax-  
25 able year, the applicable limitation under subpara-

1 graphs (A) and (B) of paragraph (2) shall be in-  
2 creased by \$1,000.

3 “(4) COORDINATION WITH OTHER CONTRIBU-  
4 TIONS.—The limitation which would (but for this  
5 paragraph) apply under this subsection to an indi-  
6 vidual for any taxable year shall be reduced (but not  
7 below zero) by the sum of—

8 “(A) the aggregate amount paid for such  
9 taxable year to Archer MSAs of such individual,  
10 and

11 “(B) the aggregate amount contributed to  
12 Roth HSAs of such individual for such taxable  
13 year under section 408(d)(9).

14 Subparagraph (A) shall not apply with respect to  
15 any individual to whom paragraph (5) applies.

16 “(5) SPECIAL RULE FOR MARRIED INDIVID-  
17 UALS.—In the case of individuals who are married  
18 to each other, if either spouse has family coverage—

19 “(A) both spouses shall be treated as hav-  
20 ing only such family coverage (and if such  
21 spouses each have family coverage under dif-  
22 ferent plans, as having the family coverage with  
23 the lowest annual deductible), and

24 “(B) the limitation under paragraph (1)  
25 (after the application of subparagraph (A) and



1 without regard to any additional contribution  
2 amount under paragraph (3))—

3 “(i) shall be reduced by the aggregate  
4 amount paid to Archer MSAs of such  
5 spouses for the taxable year, and

6 “(ii) after such reduction, shall be di-  
7 vided equally between them unless they  
8 agree on a different division.

9 “(6) DENIAL OF DEDUCTION TO DEPEND-  
10 ENTS.—No contribution may be made to a Roth  
11 HSA under this section by any individual with re-  
12 spect to whom a deduction under section 151 is al-  
13 lowable to another taxpayer for a taxable year begin-  
14 ning in the calendar year in which such individual’s  
15 taxable year begins.

16 “(7) MEDICARE ELIGIBLE INDIVIDUALS.—The  
17 limitation under this subsection for any month with  
18 respect to an individual shall be zero for the first  
19 month such individual is entitled to benefits under  
20 title XVIII of the Social Security Act and for each  
21 month thereafter.

22 “(8) INCREASE IN LIMIT FOR INDIVIDUALS BE-  
23 COMING ELIGIBLE INDIVIDUALS AFTER THE BEGIN-  
24 NING OF THE YEAR.—

1           “(A) IN GENERAL.—For purposes of com-  
2           puting the limitation under paragraph (1) for  
3           any taxable year, an individual who is an eligi-  
4           ble individual during the last month of such  
5           taxable year shall be treated—

6                   “(i) as having been an eligible indi-  
7                   vidual during each of the months in such  
8                   taxable year, and

9                   “(ii) as having been enrolled, during  
10                  each of the months such individual is  
11                  treated as an eligible individual solely by  
12                  reason of clause (i), in the same health  
13                  plan in which the individual was enrolled  
14                  for the last month of such taxable year.

15           “(B) FAILURE TO MAINTAIN CREDITABLE  
16           COVERAGES.—

17                   “(i) IN GENERAL.—If, at any time  
18                   during the testing period, the individual is  
19                   not an eligible individual, then—

20                           “(I) the gross income of the indi-  
21                           vidual for the taxable year in which  
22                           occurs the first month in the testing  
23                           period for which such individual is not  
24                           an eligible individual shall be in-  
25                           creased by the aggregate amount of

1 all contributions to the Roth HSA of  
2 the individual which could not have  
3 been made but for subparagraph (A),  
4 and

5 “(II) the tax imposed by this  
6 chapter for any taxable year on the  
7 individual shall be increased by 10  
8 percent of the amount of such in-  
9 crease.

10 “(ii) EXCEPTION FOR DISABILITY OR  
11 DEATH.—Clause (i) shall not apply if the  
12 individual ceased to be an eligible indi-  
13 vidual by reason of the death of the indi-  
14 vidual or the individual becoming disabled  
15 (within the meaning of section 72(m)(7)).

16 “(iii) TESTING PERIOD.—The term  
17 ‘testing period’ means the period beginning  
18 with the last month of the taxable year re-  
19 ferred to in subparagraph (A) and ending  
20 on the last day of the 12th month fol-  
21 lowing such month.

22 “(9) LIMITATION NOT TO APPLY TO CERTAIN  
23 CONTRIBUTIONS MADE UNDER PATIENT FREEDOM  
24 ACT.—Any contributions made under 103(b) of the  
25 Patient Freedom Act of 2017 or as provided in sec-

1       tion 36C shall not be taken into account for pur-  
2       poses of determining whether the limitation under  
3       paragraph (1) has been met.

4       “(c) ROTH HSA.—For purposes of this title—

5               “(1) IN GENERAL.—The term ‘Roth HSA’ or  
6       ‘Roth health savings account’ means a trust created  
7       or organized in the United States as a Roth HSA  
8       exclusively for the purpose of paying the qualified  
9       medical expenses of the account beneficiary, but only  
10       if the written governing instrument creating the  
11       trust meets the following requirements:

12               “(A) Except in the case of a rollover con-  
13       tribution described in subsection (e)(5) or sec-  
14       tion 220(f)(5) or 223(f)(5), no contribution will  
15       be accepted—

16                       “(i) unless it is in cash, or

17                       “(ii) to the extent such contribution,  
18       when added to previous contributions to  
19       the trust for the calendar year, exceeds the  
20       sum of—

21                               “(I) the dollar amount in effect  
22       under subsection (b)(2)(B), and

23                               “(II) the dollar amount in effect  
24       under subsection (b)(3).

1           “(B) The trustee is a bank (as defined in  
2 section 408(n)), an insurance company (as de-  
3 fined in section 816), or another person who  
4 demonstrates to the satisfaction of the Sec-  
5 retary that the manner in which such person  
6 will administer the trust will be consistent with  
7 the requirements of this section.

8           “(C) No part of the trust assets will be in-  
9 vested in life insurance contracts.

10           “(D) The assets of the trust will not be  
11 commingled with other property except in a  
12 common trust fund or common investment  
13 fund.

14           “(E) The interest of an individual in the  
15 balance in his account is nonforfeitable.

16           “(2) QUALIFIED MEDICAL EXPENSES.—For  
17 purposes of this section—

18           “(A) IN GENERAL.—The term ‘qualified  
19 medical expenses’ means, with respect to an ac-  
20 count beneficiary, amounts paid by such bene-  
21 ficiary for medical care (as defined in section  
22 213(d) as in effect on the day before the date  
23 of the enactment of the Patient Freedom Act of  
24 2017) for such individual, the spouse of such  
25 individual, and any dependent (as defined in

1 section 152, determined without regard to sub-  
2 sections (b)(1), (b)(2), and (d)(1)(B) thereof  
3 of such individual, but only to the extent such  
4 amounts are not compensated for by insurance  
5 or otherwise.

6 “(B) LIMITATION ON HEALTH INSURANCE  
7 PURCHASED FROM ACCOUNT.—Such term shall  
8 not include any payment for health benefits cov-  
9 erage that is not creditable coverage (within the  
10 meaning of title XXVII of the Public Health  
11 Service Act).

12 “(C) EXCEPTIONS.—Subparagraph (B)  
13 shall not apply to any expense for coverage  
14 under—

15 “(i) a health plan during any period  
16 of continuation coverage required under  
17 any Federal law,

18 “(ii) a qualified long-term care insur-  
19 ance contract (as defined in section  
20 7702B(b)),

21 “(iii) a health plan during a period in  
22 which the individual is receiving unemploy-  
23 ment compensation under any Federal or  
24 State law, or

1                   “(iv) in the case of an account bene-  
2                   ficiary who has attained the age specified  
3                   in section 1811 of the Social Security Act,  
4                   any health insurance other than a medi-  
5                   care supplemental policy (as defined in sec-  
6                   tion 1882 of the Social Security Act).

7                   “(3) ACCOUNT BENEFICIARY.—The term ‘ac-  
8                   count beneficiary’ means the individual on whose be-  
9                   half the Roth HSA was established.

10                  “(4) CERTAIN RULES TO APPLY.—Rules similar  
11                  to the following rules shall apply for purposes of this  
12                  section:

13                         “(A) Section 219(f)(3) (relating to time  
14                         when contributions deemed made).

15                         “(B) Section 219(f)(5) (relating to em-  
16                         ployer payments).

17                         “(C) Section 408(g) (relating to commu-  
18                         nity property laws).

19                         “(D) Section 408(h) (relating to custodial  
20                         accounts).

21                         “(5) ACCOUNT TERMINATIONS.—Rules similar  
22                         to the rules of paragraphs (2) and (4) of section  
23                         408(e) shall apply to Roth HSAs, and any amount  
24                         treated as distributed under such rules shall be

1 treated as not used to pay qualified medical ex-  
2 penses.

3 “(d) ELIGIBLE INDIVIDUAL.—For purposes of this  
4 section, the term ‘eligible individual’ means, with respect  
5 to any month, any individual who is covered under cred-  
6 itable coverage (within the meaning of title XXVII of the  
7 Public Health Service Act) as of the 1st day of such  
8 month.

9 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

10 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL  
11 EXPENSES.—Any amount paid or distributed out of  
12 a Roth HSA which is used exclusively to pay quali-  
13 fied medical expenses of any account beneficiary  
14 shall not be includible in gross income in the manner  
15 provided in section 72.

16 “(2) INCLUSION OF AMOUNTS NOT USED FOR  
17 QUALIFIED MEDICAL EXPENSES.—Any amount paid  
18 or distributed out of a Roth HSA which is not used  
19 exclusively to pay the qualified medical expenses of  
20 the account beneficiary shall be included in the gross  
21 income of such beneficiary.

22 “(3) EXCESS CONTRIBUTIONS RETURNED BE-  
23 FORE DUE DATE OF RETURN.—

24 “(A) IN GENERAL.—If any excess con-  
25 tribution is contributed for a taxable year to



1 any Roth HSA of an individual, paragraph (2)  
2 shall not apply to distributions from the Roth  
3 HSAs of such individual (to the extent such dis-  
4 tributions do not exceed the aggregate excess  
5 contributions to all such accounts of such indi-  
6 vidual for such year) if—

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

12 “(ii) such distribution is accompanied  
13 by the amount of net income attributable  
14 to such excess contribution.

15 Any net income described in clause (ii) shall be  
16 included in the gross income of the individual  
17 for the taxable year in which it is received.

18 “(B) EXCESS CONTRIBUTION.—For pur-  
19 poses of subparagraph (A), the term ‘excess  
20 contribution’ means any contribution (other  
21 than a rollover contribution described in para-  
22 graph (5) or section 220(f)(5) or 223(f)(5))  
23 which exceeds the contribution limitation with  
24 respect to the individual for the taxable year.

1           “(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT  
2 USED FOR QUALIFIED MEDICAL EXPENSES.—

3           “(A) IN GENERAL.—The tax imposed by  
4 this chapter on the account beneficiary for any  
5 taxable year in which there is a payment or dis-  
6 tribution from a Roth HSA of such beneficiary  
7 which is includible in gross income under para-  
8 graph (2) shall be increased by 10 percent of  
9 the amount which is so includible.

10           “(B) EXCEPTION FOR DISABILITY OR  
11 DEATH.—Subparagraph (A) shall not apply if  
12 the payment or distribution is made after the  
13 account beneficiary becomes disabled within the  
14 meaning of section 72(m)(7) or dies.

15           “(C) EXCEPTION FOR DISTRIBUTIONS  
16 AFTER MEDICARE ELIGIBILITY.—Subparagraph  
17 (A) shall not apply to any payment or distribu-  
18 tion after the date on which the account bene-  
19 ficiary attains the age specified in section 1811  
20 of the Social Security Act.

21           “(5) ROLLOVER CONTRIBUTION.—An amount is  
22 described in this paragraph as a rollover contribu-  
23 tion if it meets the requirements of subparagraphs  
24 (A) and (B).

1           “(A) IN GENERAL.—Paragraph (2) shall  
2 not apply to any amount paid or distributed  
3 from a health savings account (as defined in  
4 section 223) or a Roth HSA to the account  
5 beneficiary to the extent the amount received is  
6 paid into a Roth HSA for the benefit of such  
7 beneficiary not later than the 60th day after  
8 the day on which the beneficiary receives the  
9 payment or distribution.

10           “(B) LIMITATION.—This paragraph shall  
11 not apply to any amount described in subpara-  
12 graph (A) received by an individual from a  
13 health savings account or a Roth HSA if, at  
14 any time during the 1-year period ending on the  
15 day of such receipt, such individual received any  
16 other amount described in subparagraph (A)  
17 from a health savings account or Roth HSA  
18 which was not includible in the individual’s  
19 gross income because of the application of this  
20 paragraph.

21           “(6) TRANSFER OF ACCOUNT INCIDENT TO DI-  
22 VORCE.—The transfer of an individual’s interest in  
23 a Roth HSA to an individual’s spouse or former  
24 spouse under a divorce or separation instrument de-  
25 scribed in subparagraph (A) of section 71(b)(2) shall

1 not be considered a taxable transfer made by such  
2 individual notwithstanding any other provision of  
3 this subtitle, and such interest shall, after such  
4 transfer, be treated as a Roth HSA with respect to  
5 which such spouse is the account beneficiary.

6 “(7) TREATMENT AFTER DEATH OF ACCOUNT  
7 BENEFICIARY.—If an individual acquires an account  
8 beneficiary’s interest in a health savings account by  
9 reason of the death of the account beneficiary, such  
10 health savings account shall be treated as if the indi-  
11 vidual were the account beneficiary.

12 “(f) COST-OF-LIVING ADJUSTMENT.—

13 “(1) IN GENERAL.—In the case of any calendar  
14 year beginning after 2017, the \$5,000 dollar amount  
15 in subsection (b)(2) shall be increased by an amount  
16 equal to—

17 “(A) such dollar amount, multiplied by

18 “(B) the cost-of-living adjustment deter-  
19 mined under section 1(f)(3) for the calendar  
20 year, determined—

21 “(i) by substituting ‘calendar year  
22 2016’ for ‘calendar year 1992’ in subpara-  
23 graph (B) thereof, and

24 “(ii) by substituting ‘CPI medical care  
25 component’ for ‘CPI’.

1           “(2) CPI MEDICAL CARE COMPONENT.—For  
2 purposes of this paragraph, the term ‘CPI medical  
3 care component’ means the medical care component  
4 for the Consumer Price Index for All Urban Con-  
5 sumers published by the Department of Labor.

6           “(3) ROUNDING.—If the amount of any in-  
7 crease under the preceding sentence is not a mul-  
8 tiple of \$50, such increase shall be rounded to the  
9 next lowest multiple of \$50.

10          “(g) REPORTS.—The Secretary may require—

11           “(1) the trustee of a Roth HSA to make such  
12 reports regarding such account to the Secretary and  
13 to the account beneficiary with respect to contribu-  
14 tions, distributions, the return of excess contribu-  
15 tions, and such other matters as the Secretary deter-  
16 mines appropriate, and

17           “(2) any person who provides an individual with  
18 creditable coverage to make such reports to the Sec-  
19 retary and to the account beneficiary with respect to  
20 such plan as the Secretary determines appropriate.

21 The reports required by this subsection shall be filed at  
22 such time and in such manner and furnished to such indi-  
23 viduals at such time and in such manner as may be re-  
24 quired by the Secretary.”.

1 (b) LIMIT ON CONTRIBUTIONS TO DEDUCTIBLE  
2 HEALTH SAVINGS ACCOUNTS.—Section 223 of such Code  
3 is amended by adding at the end the following new sub-  
4 section:

5 “(i) LIMITED CONTRIBUTIONS AFTER 2016.—

6 “(1) IN GENERAL.—No contribution may be ac-  
7 cepted by a health savings account after the date of  
8 the enactment of this subsection.

9 “(2) EXCEPTIONS.—Paragraph (1) shall not  
10 apply to a rollover contribution described in sub-  
11 section (f)(5).”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Section 26(b)(2) of the Internal Revenue  
14 Code of 1986 is amended—

15 (A) in subparagraph (S), by striking “and  
16 408(d)(9)(D)(i)(II)” and inserting  
17 “408(d)(9)(D)(i)(II), and  
18 530A(b)(8)(B)(i)(II)”, and

19 (B) in subparagraph (U), by inserting  
20 “and section 530A(e)(4)” before the comma at  
21 the end.

22 (2) Section 35(g)(3) of such Code is amended—

23 (A) by striking “or from” and inserting “,  
24 from”, and

1 (B) by inserting “or from a Roth HSA (as  
2 defined in section 530A(c))” after “223(d)”.

3 (3) Section 220(f)(5)(A) of such Code is  
4 amended by inserting “or a Roth HSA (as defined  
5 in section 530A(c))” after “223(d)”.

6 (4) Section 223(f)(5)(A) of such Code is  
7 amended by inserting “or a Roth HSA (as defined  
8 in section 530A(c))” after “paid into a health sav-  
9 ings account”.

10 (5) Section 408(d)(9) of such Code is amended  
11 by adding at the end the following new subpara-  
12 graph:

13 “(F) APPLICATION TO ROTH HSAS.—Rules  
14 similar to the rules of the preceding subpara-  
15 graphs of this paragraph shall apply with re-  
16 spect to eligible individuals (as defined in sec-  
17 tion 530A(d)) making contributions to Roth  
18 HSAs, except that subparagraph (C) shall be  
19 applied by substituting ‘section 530A(b)’ for  
20 ‘section 223(b)’.”.

21 (6) Section 848(e)(1)(B)(v) of such Code is  
22 amended by inserting “or a Roth HSA (as defined  
23 in section 530A(c))” after “223(d)”.

1           (7) Section 877A(e)(2) of such Code is amend-  
2           ed by inserting “a Roth HSA (as defined in section  
3           530A(e),” after “223),”.

4           (8) Section 4973 of such Code is amended—

5                   (A) in subsection (a), by striking “or” at  
6           the end of paragraph (5), by inserting “or” at  
7           the end of paragraph (6), and by inserting after  
8           paragraph (6) the following new paragraph:

9                   “(7) a Roth HSA (within the meaning of sec-  
10          tion 530A),” and

11                   (B) by adding at the end the following new  
12          subsection:

13                   “(j) EXCESS CONTRIBUTION TO ROTH HSAs.—For  
14          purposes of this section, in the case of Roth HSA (within  
15          the meaning of section 530A(e)), the term ‘excess con-  
16          tributions’ means the sum of—

17                           “(1) the aggregate amount contributed for the  
18          taxable year to the accounts (other than a rollover  
19          contribution described in section 220(f)(5),  
20          223(f)(5), or 530A(e)(5)), and

21                           “(2) the amount determined under this sub-  
22          section for the preceding taxable year, reduced by  
23          the sum of—



1           “(A) the distributions out of the accounts  
2           which were included in gross income under sec-  
3           tion 530A(e)(2), and

4           “(B) the excess (if any) of—

5                   “(i) the maximum amount allowable  
6                   as a contribution under section 530A(b)  
7                   for the taxable year, over

8                   “(ii) the amount contributed to the  
9                   accounts for the taxable year.

10 For purposes of this subsection, any contribution which  
11 is distributed out of the Roth HSA in a distribution to  
12 which section 530A(e)(3) applies shall be treated as an  
13 amount not contributed.”.

14           (9) Section 4975(c) of such Code is amended by  
15           adding at the end the following new paragraph:

16           “(7) SPECIAL RULE FOR ROTH HSAS.—An indi-  
17           vidual for whose benefit a Roth HSA (within the  
18           meaning of section 530A(e)) is established shall be  
19           exempt from the tax imposed by this section with re-  
20           spect to any transaction concerning such account  
21           (which would otherwise be taxable under this sec-  
22           tion) if, with respect to such transaction, the ac-  
23           count ceases to be a Roth HSA by reason of the ap-  
24           plication of section 530A(e)(5) to such account.”.

1           (10) Section 6051(a)(12) of such Code is  
2 amended by inserting “and to any Roth HSA (as de-  
3 fined in section 530A(c))” after “223(d)”.

4           (11) Section 6693(a)(2) of such Code is amend-  
5 ed by striking “and” at the end of subparagraph  
6 (E), by striking the period at the end of subpara-  
7 graph (F) and inserting “, and”, and by adding at  
8 the end the following new subparagraph:

9                   “(G) section 530A(g) (relating to Roth  
10 HSAs).”.

11          (d) CLERICAL AMENDMENT.—The table of parts for  
12 subchapter F of chapter 1 of such Code is amended by  
13 adding at the end the following new item:

                  “PART IX. ROTH HEALTH SAVINGS ACCOUNTS”.

14          (e) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to taxable years beginning after  
16 December 31, 2016.

17 **SEC. 202. TREATMENT OF DIRECT PRIMARY CARE.**

18          (a) HSAs.—

19               (1) ROTH HSA.—Section 530A(c)(2)(A) of the  
20 Internal Revenue Code of 1986, as added by this  
21 Act, is amended by adding at the end the following:  
22               “Such term shall include the payment of a monthly  
23 or other prepaid amount for the furnishing (or ac-  
24 cess to the furnishing) by a physician or group of

1 physicians of physician professional services (and an-  
2 cillary services).”.

3 (2) HSA.—Section 223(d)(2)(A) of such Code  
4 is amended by adding at the end the following:  
5 “Such term shall include the payment of a monthly  
6 or other prepaid amount for the furnishing (or ac-  
7 cess to the furnishing) by a physician or group of  
8 physicians of physician professional services (and an-  
9 cillary services).”.

10 (b) NOT TREATED AS HEALTH INSURANCE COV-  
11 ERAGE.—

12 (1) IN GENERAL.—For purposes of title XXVII  
13 of the Public Health Service Act, subtitle B of title  
14 I of the Employee Retirement Income Security Act  
15 of 1974, PPACA, and this Act, the offering of direct  
16 primary care shall not be treated as the offering of  
17 health insurance coverage and shall not be subject to  
18 regulations as such coverage under such Acts.

19 (2) DIRECT PRIMARY CARE DEFINED.—In this  
20 subsection, the term “direct primary care” means  
21 the furnishing (or access to the furnishing) by a  
22 physician or group of physicians of physician profes-  
23 sional services (and ancillary services) in return for  
24 payment of a monthly or other prepaid amount.

1 **SEC. 203. TREATMENT OF HSA AFTER DEATH OF ACCOUNT**  
2 **BENEFICIARY.**

3 (a) IN GENERAL.—Section 223(e)(8) of the Internal  
4 Revenue Code of 1986, as redesignated by section  
5 201(e)(3) of this Act, is amended to read as follows:

6 “(8) TREATMENT AFTER DEATH OF ACCOUNT  
7 BENEFICIARY.—If an individual acquires an account  
8 beneficiary’s interest in a health savings account by  
9 reason of the death of the account beneficiary, such  
10 health savings account shall be treated as if the indi-  
11 vidual were the account beneficiary.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply with respect to interests acquired  
14 after the date of the enactment of this Act.

15 **Subtitle B—Health Care Tax**  
16 **Credits**

17 **SEC. 211. LIMITED APPLICATION OF PPACA HEALTH PRE-**  
18 **MIUM CREDIT.**

19 (a) IN GENERAL.—Section 36B(e)(1) of the Internal  
20 Revenue Code of 1986 is amended by adding at the end  
21 the following:

22 “(E) SPECIAL RULE FOR RESIDENTS OF  
23 STATES CONTINUING PPACA IMPLEMENTA-  
24 TION.—No credit shall be allowed under this  
25 section to any individual who is not a qualified  
26 resident (as defined in section 100(15) of the

1 Patient Freedom Act of 2017) of a State that  
2 has elected the option under section 102(a)(1)  
3 of such Act in relation to the implementation of  
4 title I of the Patient Protection and Affordable  
5 Care Act.”.

6 (b) LIMITATION ON AMOUNT OF CREDIT.—Section  
7 36B(b) of the Internal Revenue Code of 1986 is amended  
8 by adding at the end the following new paragraph:

9 “(4) LIMITATION ON AMOUNT OF CREDIT.—In  
10 the case of any taxable year beginning in a calendar  
11 year which begins after the date of the enactment of  
12 this paragraph, the Secretary shall reduce the  
13 amount determined under this subsection (deter-  
14 mined before the application of this paragraph) for  
15 each qualified resident (as defined in section 100 of  
16 the Patient Freedom Act of 2017) of a State that  
17 makes an election under section 102(a)(1) of such  
18 Act by an amount equal to—

19 “(A) the amount of the reduction described  
20 in section 102(a)(1)(A) of such Act for such  
21 year (calculated by only taking into account  
22 credit allowed under this section), divided by

23 “(B) the total number of such qualified  
24 residents of such State estimated by the Sec-

1           retary to claim the credit allowed under sub-  
2           section (a) for such year.”.

3           (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 January 1, 2018.

6 **SEC. 212. NEW ROTH HSA CREDIT.**

7           (a) IN GENERAL.—Subpart C of part IV of sub-  
8 chapter A of chapter 1 of the Internal Revenue Code of  
9 1986 is amended by inserting after section 36B the fol-  
10 lowing new section:

11 **“SEC. 36C. ROTH HSA CREDIT.**

12           “(a) IN GENERAL.—In the case of a qualifying indi-  
13 vidual, there shall be allowed as a credit against the tax  
14 imposed by this subtitle for any taxable year, an amount  
15 equal to the Roth HSA credit amount of the individual  
16 for the taxable year.

17           “(b) QUALIFYING INDIVIDUAL.—For purposes of this  
18 section, the term ‘qualifying individual’ means, with re-  
19 spect to any month, any individual who for such month  
20 is a deposit qualifying resident (as defined in section  
21 103(b)(2) of the Patient Freedom Act of 2017) of a State  
22 described in section 102(a)(2) of such Act that elects to  
23 have section 103(b) of such Act carried out by way of the  
24 credit determined under this section.

1       “(c) ROTH HSA CREDIT AMOUNT.—For purposes of  
2 this section, the term ‘Roth HSA credit amount’ means,  
3 with respect to any taxable year, the sum of the Roth HSA  
4 deposit amounts determined under section 104 of the Pa-  
5 tient Freedom Act of 2017 with respect to the individual  
6 for all months ending during the taxable year.

7       “(d) SPECIAL RULES.—For purposes of this sec-  
8 tion—

9               “(1) RECONCILIATION OF CREDIT AND AD-  
10 VANCE CREDIT.—

11                       “(A) EXCESS ADVANCE PAYMENTS.—If the  
12 advance payments to an individual for a taxable  
13 year under subsection (e) exceed the credit al-  
14 lowed by this section with respect to such indi-  
15 vidual for such taxable year, the tax imposed by  
16 this chapter for the taxable year shall be in-  
17 creased by the amount of such excess.

18                       “(B) ADVANCE PAYMENT SHORTFALL.—If  
19 the credit allowed by this section (determined  
20 without regard to this subparagraph) with re-  
21 spect to an individual for a taxable year exceeds  
22 the advance payments to such individual for  
23 such taxable year under subsection (e), the Sec-  
24 retary shall, in lieu of a credit allowed against  
25 the tax imposed by this subtitle, make a pay-

1           ment on behalf of such individual to such indi-  
2           vidual's health savings account in an amount  
3           equal to such excess.

4           “(2) MARRIED COUPLES MUST FILE JOINT RE-  
5           TURN.—If the taxpayer is married (within the mean-  
6           ing of section 7703) at the close of the taxable year,  
7           the credit shall be allowed under this section only if  
8           the taxpayer and the taxpayer's spouse file a joint  
9           return for the taxable year.

10          “(e) ADVANCE PAYMENT PROGRAM.—

11           “(1) IN GENERAL.—The Secretary of the  
12           Treasury, in consultation with the Secretary of  
13           Health and Human Services, shall establish a pro-  
14           gram—

15           “(A) to make advance determinations with  
16           respect to the eligibility of individuals for the  
17           credit allowed under this section, and

18           “(B) to make advance payments of the  
19           credit allowed under this section directly to the  
20           Roth HSA of any such individual so eligible.

21          “(2) PROGRAM REQUIREMENTS.—Such pro-  
22          gram shall be established under rules similar to the  
23          rules of section 1412 of the Patient Protection and  
24          Affordable Care Act, except that advance determina-  
25          tions and advance payments shall be made on re-



1       quest of the individual with respect to whom the de-  
2       termination is to be made and taking into account  
3       the enrollment process (including any opt-out elec-  
4       tion under such process) established under section  
5       105(c) of the Patient Freedom Act of 2017.

6               “(3) TREATMENT AS INCOME.—The amount of  
7       any credit allowed under this section shall be in-  
8       cluded in gross income.”.

9       (b) CLERICAL AMENDMENT.—The table of sections  
10      for such subpart is amended by inserting after the item  
11      relating to section 36B the following new item:

      “Sec. 36C. Roth HSA credit.”.

12      (c) EFFECTIVE DATE.—The amendments made by  
13      this section shall apply to taxable years beginning after  
14      January 1, 2018.

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