AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6305
OFFERED BY MR. BRADY OF TEXAS

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bipartisan HSA Improvement Act of 2018”.

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

(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:

“(D) SPECIAL RULE FOR QUALIFIED ITEMS AND SERVICES.—

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

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

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

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

“(I) Physical examinations.

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

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

“(IV) Treatment for injuries oc-
curring in the course of employment.
“(V) Drug testing, if required as a condition of employment.

“(VI) Hearing or vision screenings.

“(VII) Other similar items and services that do not provide significant benefits in the nature of medical care.

“(iii) AGGREGATION.—For purposes of clause (i)(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.”.

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

SEC. 3. CONTRIBUTIONS PERMITTED IF SPOUSE HAS A HEALTH FLEXIBLE SPENDING ACCOUNT.

(a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A HEALTH FLEXIBLE SPENDING ACCOUNT.—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 inserting after clause (iii) 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, 2018.

SEC. 4. 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 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)) after a significant period of not having such coverage, and

“(ii) such arrangement is described in section 223(c)(1)(B)(iii) with respect to the portion of the plan year after such distribution is made.

“(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 dis-
tribution (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 ar-
angement 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)(iii) of such Code, as amended by the pre-
ceeding provisions of this Act, is amended to read as fol-
 lows:

“(iii) coverage under a health flexible
spending arrangement or health reimburse-
ment arrangement for the portion of the
plan year after a qualified HSA distribu-
tion (as defined in section 106(e)(2)) deter-
mined 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, and”.

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

(1) IN GENERAL.—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 insert-
ing after paragraph (17) the following new para-
graph: .

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

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

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2018, in taxable years ending after such date.