

**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:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Bipartisan HSA Im-
3 provement Act of 2018”.

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

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

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

12 “(i) IN GENERAL.—An individual
13 shall not be treated as covered under a
14 health plan for purposes of subparagraph
15 (A)(ii) merely because the individual, in
16 connection with the employment of the in-
17 dividual or the individual’s spouse, receives

1 (or is eligible to receive) qualified items
2 and services at—

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

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

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

16 “(I) Physical examinations.

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

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

23 “(IV) Treatment for injuries oc-
24 ccurring in the course of employment.

1 “(V) Drug testing, if required as
2 a condition of employment.

3 “(VI) Hearing or vision
4 screenings.

5 “(VII) Other similar items and
6 services that do not provide signifi-
7 cant benefits in the nature of medical
8 care.

9 “(iii) AGGREGATION.—For purposes
10 of clause (i)(I), all persons treated as a
11 single employer under subsection (b), (c),
12 (m), or (o) of section 414 shall be treated
13 as a single employer.”.

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

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

19 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A
20 HEALTH FLEXIBLE SPENDING ACCOUNT.—Section
21 223(c)(1)(B) of the Internal Revenue Code of 1986 is
22 amended by striking “and” at the end of clause (ii), by
23 striking the period at the end of clause (iii) and inserting
24 “, and”, and by inserting after clause (iii) the following
25 new clause:

1 “(iv) coverage under a health flexible
2 spending arrangement of the spouse of the
3 individual for any plan year of such ar-
4 rangement if the aggregate reimburse-
5 ments under such arrangement for such
6 year do not exceed the aggregate expenses
7 which would be eligible for reimbursement
8 under such arrangement if such expenses
9 were determined without regard to any ex-
10 penses paid or incurred with respect to
11 such individual.”.

12 (b) **EFFECTIVE DATE.**—The amendment made by
13 this section shall apply to plan years beginning after De-
14 cember 31, 2018.

15 **SEC. 4. FSA AND HRA TERMINATIONS OR CONVERSIONS TO**
16 **FUND HSAS.**

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

19 “(2) **QUALIFIED HSA DISTRIBUTION.**—For pur-
20 poses of this subsection—

21 “(A) **IN GENERAL.**—The term ‘qualified
22 HSA distribution’ means, with respect to any
23 employee, a distribution from a health flexible
24 spending arrangement or health reimbursement

1 arrangement of such employee directly to a
2 health savings account of such employee if—

3 “(i) such distribution is made in con-
4 nection with such employee establishing
5 coverage under a high deductible health
6 plan (as defined in section 223(c)(2)) after
7 a significant period of not having such cov-
8 erage, and

9 “(ii) such arrangement is described in
10 section 223(c)(1)(B)(iii) with respect to
11 the portion of the plan year after such dis-
12 tribution is made.

13 “(B) DOLLAR LIMITATION.—The aggre-
14 gate amount of distributions from health flexi-
15 ble spending arrangements and health reim-
16 bursement arrangements of any employee which
17 may be treated as qualified HSA distributions
18 in connection with an establishment of coverage
19 described in subparagraph (A)(i) shall not ex-
20 ceed the dollar amount in effect under section
21 125(i)(1) (twice such amount in the case of cov-
22 erage which is described in section
23 223(b)(2)(B)).”.

24 (b) PARTIAL REDUCTION OF LIMITATION ON DE-
25 DUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of

1 such Code is amended by striking “and” at the end of
2 subparagraph (B), by striking the period at the end of
3 subparagraph (C) and inserting “, and”, and by inserting
4 after subparagraph (C) the following new subparagraph:

5 “(D) so much of any qualified HSA dis-
6 tribution (as defined in section 106(e)(2)) made
7 to a health savings account of such individual
8 during the taxable year as does not exceed the
9 aggregate increases in the balance of the ar-
10 rangement from which such distribution is
11 made which occur during the portion of the
12 plan year which precedes such distribution
13 (other than any balance carried over to such
14 plan year and determined without regard to any
15 decrease in such balance during such portion of
16 the plan year).”.

17 (c) CONVERSION TO HSA-COMPATIBLE ARRANGE-
18 MENT FOR REMAINDER OF PLAN YEAR.—Section
19 223(c)(1)(B)(iii) of such Code, as amended by the pre-
20 ceding provisions of this Act, is amended to read as fol-
21 lows:

22 “(iii) coverage under a health flexible
23 spending arrangement or health reimburse-
24 ment arrangement for the portion of the
25 plan year after a qualified HSA distribu-

1 tion (as defined in section 106(e)(2) deter-
2 mined without regard to subparagraph
3 (A)(ii) thereof) is made, if the terms of
4 such arrangement which apply for such
5 portion of the plan year are such that, if
6 such terms applied for the entire plan
7 year, then such arrangement would not be
8 taken into account under subparagraph
9 (A)(ii) of this paragraph for such plan
10 year, and”.

11 (d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS
12 ON W-2.—

13 (1) IN GENERAL.—Section 6051(a) of such
14 Code is amended by striking “and” at the end of
15 paragraph (16), by striking the period at the end of
16 paragraph (17) and inserting “, and”, and by insert-
17 ing after paragraph (17) the following new para-
18 graph: .

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

22 (2) CONFORMING AMENDMENT.—Section
23 6051(a)(12) of such Code is amended by inserting
24 “(other than any qualified HSA distribution, as de-

1 fined in section 106(e)(2))” before the comma at the
2 end.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to distributions made after Decem-
5 ber 31, 2018, in taxable years ending after such date.

