H. R. 5138

To amend the Internal Revenue Code of 1986 to improve access to health care through modernized health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2018

Mr. KELLY of Pennsylvania (for himself, Mr. BLUMENAUER, Mr. PAULSEN, Mr. KIND, Ms. SEWELL of Alabama, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through modernized health savings accounts.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. EXCEPTED BENEFITS ALLOWED AS PERMITTED INSURANCE.

(a) IN GENERAL.—Paragraph (3) of section 223(c) of the Internal Revenue Code of 1986 is amended—
(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and
(2) by inserting the following new subpara-
graph:
“(B) insurance consisting of coverage for any excepted benefits described in section 9832(c),”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years after the date of the enactment of this Act.

SEC. 3. ON-SITE EMPLOYEE CLINICS AND RETAIL CLINICS.
(a) In General.—Paragraph (1) of section 223(c) of the Internal Revenue Code of 1986 is amended by add-
ing at the end the following new subpara-
graph:
“(D) SPECIAL RULE FOR QUALIFIED
ITEMS AND SERVICES.—
“(i) In General.—For purposes of subparagraph (A)(ii), an individual shall not be treated as covered under a health plan for purposes of subparagraph (A)(ii) merely because the individual is eligible to receive, or receives, 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 primarily for the benefit of such employer’s employees, or

“(II) a retail health clinic.

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

“(I) Primary care including physical examination.

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

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

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

“(V) Tests for conditions or infectious diseases.

“(VI) Management of medically complex chronic conditions.

“(VII) Drug testing.
“(VIII) Hearing or vision screenings and related services.

“(IX) Other similar items and services.

“(iii) Retail health clinic defined.—For purposes of this subparagraph, the term ‘retail health clinic’ means a health care facility located within a supermarket, pharmacy, or similar retail establishment that offers urgent care by a licensed healthcare provider.

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

(b) Effective Date.—The amendments made by this section shall apply to months in taxable years beginning after the date of enactment of this Act.

SEC. 4. CONTRIBUTIONS PERMITTED IF SPOUSE HAS A HEALTH FLEXIBLE SPENDING ACCOUNT.

(a) Contributions Permitted if Spouse Has a Health Flexible Spending Account.—Subparagraph (B) of section 223(c)(1) 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:

“(iv) coverage under a health flexible spending arrangement of the spouse of the individual.”.

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5. DEPENDENTS TO INCLUDE CHILDREN UP TO AGE 26.

(a) In General.—Subparagraph (A) of section 223(d)(2) of the Internal Revenue Code of 1986 is amended by striking “and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual” in subparagraph (A) and inserting “any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, and any child (as defined in section 152(f)(A)) of such individual who has not attained the age of 27 before the end of such individual’s taxable year”.

(b) Effective Date.—The amendments made by this section shall apply with respect to qualified medical
expenses incurred in taxable years beginning after the
date of the enactment of this Act.

SEC. 6. FSA AND HRA INTERACTION WITH HSAS.

(a) Eligible Individuals Include FSA and HRA
Participants.—Subparagraph (B) of section 223(c)(1)
of the Internal Revenue Code of 1986, as amended by this
Act, is amended by striking “and” at the end of clause
(iii), by striking the period at the end of clause (iv) and
inserting “, and”, and by inserting after clause (iv) the
following new clause:

“(v) coverage under a health flexible
spending arrangement or a health reim-
bursement arrangement in the plan year a
qualified HSA distribution as described in
section 106(e) is made on behalf of the in-
dividual if, after the qualified HSA dis-
tribution is made and for the remaining
duration of the plan year, the coverage
provided under the arrangement is con-
verted solely to one or more of the fol-
lowing:

“(I) Post-deductible FSA or
HRA.—A health flexible spending ar-
angement or a health reimbursement
arrangement that does not pay or re-
imburse any medical expense incurred
before the minimum annual deductible
under paragraph (2)(A)(i) (prorated
for the period occurring after the
qualified HSA distribution is made) is
satisfied.

“(II) Preventative Care.—A
health flexible spending arrangement
or a health reimbursement arrange-
ment that, after the qualified HSA
distribution is made, does not pay or
reimburse any medical expense in-
curred after the qualified HSA dis-
tribution is made other than preven-
tive care as defined in paragraph
(2)(C).

“(III) Limited Purpose
Health FSA.—A health flexible
spending arrangement that, after the
qualified HSA distribution is made,
pays or reimburses benefits for cov-
erage described in clause (ii) (but not
through insurance or for long-term
care services).
“(IV) **Limited Purpose HRA.**—A health reimbursement arrangement that, after the qualified HSA distribution is made, pays or reimburses benefits for permitted insurance or coverage described in clause (ii) (but not for long-term care services).

“(V) **Retirement HRA.**—A health reimbursement arrangement that, after the qualified HSA distribution is made, pays or reimburses only those medical expenses incurred after an individual’s retirement (and no expenses incurred before retirement).

“(VI) **Suspended HRA.**—A health reimbursement arrangement that, after the qualified HSA distribution is made, is suspended, pursuant to an election made on or before the date the individual elects a qualified HSA distribution or, if later, on the date of the individual enrolls in an HSA-qualified health plan, that does not pay or reimburse, at any time, any medical expense incurred during
the suspension period except as described in the preceding subclauses of this clause.”.

(b) **QUALIFIED HSA DISTRIBUTION SHALL NOT AFFECT FLEXIBLE SPENDING ARRANGEMENT.**—Paragraph (1) of section 106(e) of such Code is amended to read as follows:

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

“(A) a health flexible spending arrangement under this section, section 105, or section 125,

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

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

(c) **FSA BALANCES AT YEAR END SHALL NOT FORFEIT.**—Paragraph (2) of section 125(d) of such Code is amended by adding at the end the following new subparagraph:

“(E) **EXCEPTION FOR QUALIFIED HSA DISTRIBUTIONS.**—Subparagraph (A) shall not apply to the extent that there is an amount remaining in a health flexible spending account at
the end of a plan year that an individual elects
to contribute to a health savings account pursuant
to a qualified HSA distribution (as defined
in section 106(e)(2)).”.

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

“(2) QUALIFIED HSA DISTRIBUTION.—

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

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

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

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

“(B) DOLLAR LIMITATIONS.—

“(i) DISTRIBUTIONS FROM A HEALTH
FLEXIBLE SPENDING ARRANGEMENT.—A
qualified HSA distribution from a health
flexible spending arrangement shall not exceed the applicable amount.

“(ii) DISTRIBUTIONS FROM A HEALTH REIMBURSEMENT ARRANGEMENT.—A qualified HSA distribution from a health reimbursement arrangement shall not exceed—

“(I) the applicable amount divided by 12, multiplied by

“(II) the number of months during which the individual is a participant in the health reimbursement arrangement.

“(iii) APPLICABLE AMOUNT.—For purposes of this subparagraph, the applicable amount is—

“(I) $2,250 in the case of an eligible individual who has self-only coverage under an HSA-qualified health plan at the time of such distribution, and

“(II) $4,500 in the case of an eligible individual who has family coverage under an HSA-qualified health plan at the time of such distribution,
plan at the time of such distribution.”.

(e) Elimination of Additional Tax for Failure to Maintain HSA-Qualified Health Plan Coverage.—Subsection (e) of section 106 of such Code is amended—

(1) by striking subparagraph (A) of paragraph (4) and redesignating subparagraphs (B) and (C) of such paragraph as subparagraphs (A) and (B) thereof, respectively; and

(2) by striking paragraph (3) and redesignating paragraphs (4) (as so amended) and (5) as paragraphs (3) and (4), respectively.

(f) Limited Purpose FSAs and HRAs.—Subsection (e) of section 106 of such Code, as amended by this section, is amended by adding at the end the following new paragraph:

“(5) Limited Purpose FSAs and HRAs.—A plan shall not fail to be a health flexible spending arrangement, a health reimbursement arrangement, or an accident or health plan under this section or section 105 merely because the plan converts coverage for individuals who enroll in an HSA-qualified health plan described in section 223(c)(2) to coverage described in subclause (I), (II), (III), (IV), (V), or (VI) of section 223(c)(1).
(V), or (VI) of section 223(e)(1)(B)(iv). Coverage for such individuals may be converted as of the date of enrollment in the HSA-qualified health plan, without regard to the period of coverage under the health flexible spending arrangement or health reimbursement arrangement, and without requiring any change in coverage to individuals who do not enroll in an HSA-qualified health plan.”.

(g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-OF-LIVING.—Subsection (e) of section 106 of such Code, as amended by this section, is amended by adding at the end the following new paragraph:

“(6) COST-OF-LIVING ADJUSTMENT.—

“(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2018, each of the dollar amounts in paragraph (2)(B)(iii) shall be increased by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ‘calendar year 2017’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) ROUNDING.—If any increase under paragraph (1) is not a multiple of $50, such in-
crease shall be rounded to the nearest multiple of $50.”.

(h) DISCLAIMER OF DISQUALIFYING COVERAGE.—
Subparagraph (B) of section 223(e)(1) of such Code, as amended by this section, is amended by striking “and” at the end of clause (iv), by striking the period at the end of clause (v) and inserting “, and”, and by inserting after clause (v) the following new clause:

“(iv) any coverage (including prospective coverage) under a health plan that is not an HSA-qualified health plan which is disclaimed in writing, at the time of the creation or organization of the health savings account, including by execution of a trust described in subsection (d)(1) through a governing instrument that includes such a disclaimer, or by acceptance of an amendment to such a trust that includes such a disclaimer.”.

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

SEC. 7. CHRONIC DISEASE PREVENTION.

(a) IN GENERAL.—Section 223(e)(2) of the Internal Revenue Code of 1986 is amended by redesignating sub-
paragraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) Safe harbor for absence of deductible for care related to chronic conditions.—A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for care and prescription medications related to the treatment of medically complex chronic conditions which—

“(i) are substantially disabling or life threatening,

“(ii) have a high risk of hospitalization or other significant adverse health outcomes, and

“(iii) require specialized delivery systems across domains of care.”.

(b) Effective Date.—The amendments made by this section shall apply to coverage for months beginning after the date of the enactment of this Act.

SEC. 8. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY, FITNESS, AND EXERCISE TREATED AS AMOUNTS PAID FOR MEDICAL CARE.

(a) In General.—Section 213(d)(1) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of subparagraph (C), by striking the period at the end
of subparagraph (D) and inserting ‘‘, or’’, and by inserting
after subparagraph (D) the following new subparagraph:

‘‘(E) for qualified sports and fitness expenses.’’.

(b) Qualified Sports and Fitness Expenses.—

Section 213(d) of such Code, as amended by this Act, is
amended by adding at the end the following paragraph:

‘‘(13) Qualified Sports and Fitness Expenses.—

‘‘(A) In General.—The term ‘qualified
sports and fitness expenses’ means amounts
paid exclusively for the sole purpose of participat-
ing in a physical activity including—

‘‘(i) for membership at a fitness facil-
ity,

‘‘(ii) for participation or instruction in
a program of physical exercise or physical
activity, and

‘‘(iii) for equipment for use in a pro-
gram (including a self-directed program) of
physical exercise or physical activity.

‘‘(B) Overall Dollar Limitation.—The
aggregate amount treated as qualified sports
and fitness expenses with respect to any tax-
payer for any taxable year shall not exceed

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$1,000 ($2,000 in the case of a joint return or a head of household (as defined in section 2(b))).

“(C) **Fitness facility defined.**—For purposes of subparagraph (A)(i), the term ‘fitness facility’ means a facility—

“(i) providing instruction in a program of physical exercise, offering facilities for the preservation, maintenance, encouragement, or development of physical fitness, or serving as the site of such a program of a State or local government,

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

“(iii) which does not offer golf, hunting, sailing, or riding facilities,

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

“(v) which is fully compliant with the State of jurisdiction and Federal anti-discrimination laws.

“(D) **Treatment of exercise videos, etc.**—Videos, books, and similar materials shall be treated as described in subparagraph
(A)(ii) if the content of such materials constitute instruction in a program of physical exercise or physical activity.

“(E) LIMITATIONS RELATED TO SPORTS AND FITNESS EQUIPMENT.—Amounts paid for equipment described in subparagraph (A)(iii) shall be treated as a qualified sports and fitness expense only—

“(i) if such equipment is utilized exclusively for participation in fitness, exercise, sport, or other physical activity programs,

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

“(iii) in the case of any item of sports equipment (other than exercise equipment), with respect to so much of the amount paid for such item as does not exceed $250.

“(F) PROGRAMS WHICH INCLUDE COMPONENTS OTHER THAN PHYSICAL EXERCISE AND PHYSICAL ACTIVITY.—Rules similar to the rules of section 213(d)(6) shall apply in the case of any program that includes physical exercise or physical activity and also other components.
For purposes of the preceding sentence, travel and accommodations shall be treated as an other component.”.

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