H. R. 1004

To amend the Internal Revenue Code of 1986 to increase participation in medical flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2011

Mr. BOUSTANY (for himself, Mr. LARSON of Connecticut, Mr. PAULSEN, Mr. JOHNSON of Illinois, Mr. BISHOP of Georgia, and Mr. BURTON of Indiana) 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 increase participation in medical flexible spending arrangements.

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 “Medical FSA Improvement Act of 2011”.

SEC. 2. ADDITION OF TAXABLE DISTRIBUTIONS.

(a) TREATMENT OF AMOUNTS EXPENDED FOR MEDICAL CARE.—Section 105 of the Internal Revenue Code of 1986 (relating to amounts received under accident and
health plans) is amended by inserting at the end the fol-
lowing new subsection:

“(k) Amounts Paid Under Medical Flexible Spending Arrangements.—

“(1) Application of subsection (b) and section 106.—For purposes of subsection (b) and section 106, a plan shall not fail to be treated as flexible spending arrangement solely because such plan, in addition to reimbursing expenses incurred for medical care (as defined in subsection (b)) during the plan year, distributes for the plan year all or a portion of the employee’s balance.

“(2) Limitation.—Paragraph (1) shall apply only in the case that the balance under such arrangement for a plan year is distributed after the close of the plan year to which the balance relates and not later than the end of the 7th month following the close of such plan year.

“(3) Tax Treatment of Distribution.—Any distribution to which paragraph (1) applies shall be treated as remuneration of the employee for employ-
ment for the taxable year in which it is distributed.

“(4) Flexible Spending Arrangement.— The term ‘flexible spending arrangement’ means a
benefit program within the meaning of section 106(e)(2) (relating to long-term care benefits).”.

(b) ADDITIONAL DEFERRED COMPENSATION EXCEPTION.—Paragraph (2) of section 125(d) of such Code (relating to deferred compensation under a cafeteria plan) is amended by inserting at the end the following new subparagraph:

“(E) EXCEPTION FOR CERTAIN FLEXIBLE SPENDING ARRANGEMENTS.—Subparagraph (A) shall not apply to a flexible spending arrangement (within the meaning of section 106(e)(2)) as a result of amounts being distributed to the covered employee in accordance with section 105(k).”.

(c) CONFORMING AMENDMENT.—Section 409A(d)(1) of such Code is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following:

“(C) a flexible spending arrangement which is subject to section 105(k).”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2012.
(c) TRANSITION RULES.—In the case of plan years that begin before the date of the enactment of this Act, in implementing the amendments made by this section a flexible spending arrangement may allow an individual to make a new election or to revise an existing election under such arrangement so long as such new or revised election is made within 90 days after the date of the enactment of this Act.