

109TH CONGRESS
2^D SESSION

H. R. 6134

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2006

Mr. CANTOR (for himself and Mr. RYAN of Wisconsin) 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 expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

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.**

4 This Act may be cited as the “Health Opportunity
5 Patient Empowerment Act of 2006”.

6 **SEC. 2. FSA AND HRA TERMINATIONS TO FUND HSAS.**

7 (a) IN GENERAL.—Section 106 of the Internal Rev-
8 enue Code of 1986 (relating to contributions by employer

1 to accident and health plans) is amended by adding at the
2 end the following new subsection:

3 “(e) FSA AND HRA TERMINATIONS TO FUND
4 HSAs.—

5 “(1) IN GENERAL.—A plan shall not fail to be
6 treated as a health flexible spending arrangement or
7 health reimbursement arrangement under this sec-
8 tion or section 105 merely because such plan pro-
9 vides for a qualified HSA distribution.

10 “(2) QUALIFIED HSA DISTRIBUTION.—The
11 term ‘qualified HSA distribution’ means a distribu-
12 tion from a health flexible spending arrangement or
13 health reimbursement arrangement to the extent
14 that such distribution—

15 “(A) does not exceed the lesser of the bal-
16 ance in such arrangement on September 21,
17 2006, or as of the date of such distribution,
18 and

19 “(B) is contributed by the employer di-
20 rectly to the health savings account of the em-
21 ployee before January 1, 2012.

22 Such term shall not include more than 1 distribution
23 with respect to any arrangement.

1 “(3) ADDITIONAL TAX FOR FAILURE TO MAIN-
2 TAIN HIGH DEDUCTIBLE HEALTH PLAN COV-
3 ERAGE.—

4 “(A) IN GENERAL.—If, at any time during
5 the testing period, the employee is not an eligi-
6 ble individual, then the amount of the qualified
7 HSA distribution—

8 “(i) shall be includible in the gross in-
9 come of the employee for the taxable year
10 in which occurs the first month in the test-
11 ing period for which such employee is not
12 an eligible individual, and

13 “(ii) the tax imposed by this chapter
14 for such taxable year on the employee shall
15 be increased by 10 percent of the amount
16 which is so includible.

17 “(B) EXCEPTION FOR DISABILITY OR
18 DEATH.—Clauses (i) and (ii) of subparagraph
19 (A) shall not apply if the employee ceases to be
20 an eligible individual by reason of the death of
21 the employee or the employee becoming disabled
22 (within the meaning of section 72(m)(7)).

23 “(4) DEFINITIONS AND SPECIAL RULES.—For
24 purposes of this subsection—

1 “(A) TESTING PERIOD.—The term ‘testing
2 period’ means the period beginning with the
3 month in which the qualified HSA distribution
4 is contributed to the health savings account and
5 ending on the last day of the 12th month fol-
6 lowing such month.

7 “(B) ELIGIBLE INDIVIDUAL.—The term
8 ‘eligible individual’ has the meaning given such
9 term by section 223(c)(1).

10 “(C) TREATMENT AS ROLLOVER CON-
11 TRIBUTION.—A qualified HSA distribution shall
12 be treated as a rollover contribution described
13 in section 223(f)(5).

14 “(5) TAX TREATMENT RELATING TO DISTRIBU-
15 TIONS.—For purposes of this title—

16 “(A) IN GENERAL.—A qualified HSA dis-
17 tribution shall be treated as a payment de-
18 scribed in subsection (d).

19 “(B) COMPARABILITY EXCISE TAX.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), section 4980G shall
22 not apply to qualified HSA distributions.

23 “(ii) FAILURE TO OFFER TO ALL EM-
24 PLOYEES.—In the case of a qualified HSA
25 distribution to any employee, the failure to

1 offer such distribution to any eligible indi-
2 vidual covered under a high deductible
3 health plan of the employer shall (notwith-
4 standing section 4980G(d)) be treated for
5 purposes of section 4980G as a failure to
6 meet the requirements of section
7 4980G(b).”.

8 (b) APPLICATION OF SECTION.—This section shall
9 apply to distributions on or after the date of the enact-
10 ment of this Act.

11 **SEC. 3. REPEAL OF ANNUAL DEDUCTIBLE LIMITATION ON**
12 **HSA CONTRIBUTIONS.**

13 (a) IN GENERAL.—Paragraph (2) of section 223(b)
14 of the Internal Revenue Code of 1986 (relating to monthly
15 limitation) is amended—

16 (1) in subparagraph (A) by striking “the lesser
17 of—” and all that follows and inserting “\$2,250.”,
18 and

19 (2) in subparagraph (B) by striking “the lesser
20 of—” and all that follows and inserting “\$4,500.”.

21 (b) CONFORMING AMENDMENT.—Section
22 223(d)(1)(A)(ii)(I) of such Code is amended by striking
23 “subsection (b)(2)(B)(ii)” and inserting “subsection
24 (b)(2)(B)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2006.

4 **SEC. 4. MODIFICATION OF COST-OF-LIVING ADJUSTMENT.**

5 Paragraph (1) of section 223(g) of the Internal Rev-
6 enue Code of 1986 (relating to cost-of-living adjustment)
7 is amended by adding at the end the following new flush
8 sentence:

9 “In the case of adjustments made for any taxable
10 year beginning after 2008, section 1(f)(4) shall be
11 applied for purposes of this paragraph by sub-
12 stituting ‘March 31’ for ‘August 31’, and the Sec-
13 retary shall publish the adjusted amounts under sub-
14 sections (b)(2) and (c)(2)(A) for taxable years begin-
15 ning in any calendar year no later than June 1 of
16 the preceding calendar year.”.

17 **SEC. 5. CONTRIBUTION LIMITATION NOT REDUCED FOR**
18 **PART-YEAR COVERAGE.**

19 (a) INCREASE IN LIMIT FOR INDIVIDUALS BECOMING
20 ELIGIBLE INDIVIDUALS AFTER BEGINNING OF THE
21 YEAR.—Subsection (b) of section 223 of the Internal Rev-
22 enue Code of 1986 (relating to limitations) is amended
23 by adding at the end the following new paragraph:

1 “(8) INCREASE IN LIMIT FOR INDIVIDUALS BE-
2 COMING ELIGIBLE INDIVIDUALS AFTER THE BEGIN-
3 NING OF THE YEAR.—

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

9 “(i) as having been an eligible indi-
10 vidual during each of the months in such
11 taxable year, and

12 “(ii) as having been enrolled, during
13 each of the months such individual is
14 treated as an eligible individual solely by
15 reason of clause (i), in the same high de-
16 ductible health plan in which the individual
17 was enrolled for the last month of such
18 taxable year.

19 “(B) FAILURE TO MAINTAIN HIGH DE-
20 DUCTIBLE HEALTH PLAN COVERAGE.—

21 “(i) IN GENERAL.—If, at any time
22 during the testing period, the individual is
23 not an eligible individual, then—

24 “(I) gross income of the indi-
25 vidual for the taxable year in which

1 occurs the first month in the testing
2 period for which such individual is not
3 an eligible individual is increased by
4 the aggregate amount of all contribu-
5 tions to the health savings account of
6 the individual which could not have
7 been made but for subparagraph (A),
8 and

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

14 “(ii) EXCEPTION FOR DISABILITY OR
15 DEATH.—Subclauses (I) and (II) of clause
16 (i) shall not apply if the individual ceased
17 to be an eligible individual by reason of the
18 death of the individual or the individual
19 becoming disabled (within the meaning of
20 section 72(m)(7)).

21 “(iii) TESTING PERIOD.—The term
22 ‘testing period’ means the period beginning
23 with the last month of the taxable year re-
24 ferred to in subparagraph (A) and ending

1 on the last day of the 12th month fol-
2 lowing such month.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2006.

6 **SEC. 6. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO**
7 **MAKE COMPARABLE HEALTH SAVINGS AC-**
8 **COUNT CONTRIBUTIONS.**

9 (a) **IN GENERAL.**—Section 4980G of the Internal
10 Revenue Code of 1986 (relating to failure of employer to
11 make comparable health savings account contributions) is
12 amended by adding at the end the following new sub-
13 section:

14 “(d) **EXCEPTION.**—For purposes of applying section
15 4980E to a contribution to a health savings account of
16 an employee who is not a highly compensated employee
17 (as defined in section 414(q)), highly compensated em-
18 ployees shall not be treated as comparable participating
19 employees.”.

20 (b) **EFFECTIVE DATE.**—The amendment made by
21 this section shall apply to taxable years beginning after
22 December 31, 2006.

1 **SEC. 7. ONE-TIME DISTRIBUTION FROM INDIVIDUAL RE-**
2 **TIREMENT PLANS TO FUND HSAS.**

3 (a) IN GENERAL.—Subsection (d) of section 408 of
4 the Internal Revenue Code of 1986 (relating to taxability
5 of beneficiary of employees’ trust) is amended by adding
6 at the end the following new paragraph:

7 “(9) DISTRIBUTION FOR HEALTH SAVINGS AC-
8 COUNT FUNDING.—

9 “(A) IN GENERAL.—In the case of an indi-
10 vidual who is an eligible individual (as defined
11 in section 223(e)) and who elects the applica-
12 tion of this paragraph for a taxable year, gross
13 income of the individual for the taxable year
14 does not include a qualified HSA funding dis-
15 tribution to the extent such distribution is oth-
16 erwise includible in gross income.

17 “(B) QUALIFIED HSA FUNDING DISTRIBUTION.—For purposes of this paragraph, the
18 term ‘qualified HSA funding distribution’
19 means a distribution from an individual retire-
20 ment plan (other than a plan described in sub-
21 section (k) or (p)) of the employee to the extent
22 that such distribution is contributed to the
23 health savings account of the individual in a di-
24 rect trustee-to-trustee transfer.

25 “(C) LIMITATIONS.—

1 “(i) MAXIMUM DOLLAR LIMITA-
2 TION.—The amount excluded from gross
3 income by subparagraph (A) shall not ex-
4 ceed the excess of—

5 “(I) the annual limitation under
6 section 223(b) computed on the basis
7 of the type of coverage under the high
8 deductible health plan covering the in-
9 dividual at the time of the qualified
10 HSA funding distribution, over

11 “(II) in the case of a distribution
12 described in clause (ii)(II), the
13 amount of the earlier qualified HSA
14 funding distribution.

15 “(ii) ONE-TIME TRANSFER.—

16 “(I) IN GENERAL.—Except as
17 provided in subclause (II), an indi-
18 vidual may make an election under
19 subparagraph (A) only for one quali-
20 fied HSA funding distribution during
21 the lifetime of the individual. Such an
22 election, once made, shall be irrev-
23 ocable.

24 “(II) CONVERSION FROM SELF-
25 ONLY TO FAMILY COVERAGE.—If a

1 qualified HSA funding distribution is
2 made during a month in a taxable
3 year during which an individual has
4 self-only coverage under a high de-
5 ductible health plan as of the first day
6 of the month, the individual may elect
7 to make an additional qualified HSA
8 funding distribution during a subse-
9 quent month in such taxable year dur-
10 ing which the individual has family
11 coverage under a high deductible
12 health plan as of the first day of the
13 subsequent month.

14 “(D) FAILURE TO MAINTAIN HIGH DE-
15 DUCTIBLE HEALTH PLAN COVERAGE.—

16 “(i) IN GENERAL.—If, at any time
17 during the testing period, the individual is
18 not an eligible individual, then the aggre-
19 gate amount of all contributions to the
20 health savings account of the individual
21 made under subparagraph (A)—

22 “(I) shall be includible in the
23 gross income of the individual for the
24 taxable year in which occurs the first
25 month in the testing period for which

1 such individual is not an eligible indi-
2 vidual, and

3 “(II) the tax imposed by this
4 chapter for any taxable year on the
5 individual shall be increased by 10
6 percent of the amount which is so in-
7 cludible.

8 “(ii) EXCEPTION FOR DISABILITY OR
9 DEATH.—Subclauses (I) and (II) of clause
10 (i) shall not apply if the individual ceased
11 to be an eligible individual by reason of the
12 death of the individual or the individual
13 becoming disabled (within the meaning of
14 section 72(m)(7)).

15 “(iii) TESTING PERIOD.—The term
16 ‘testing period’ means the period beginning
17 with the month in which the qualified HSA
18 funding distribution is contributed to a
19 health savings account and ending on the
20 last day of the 12th month following such
21 month.

22 “(E) APPLICATION OF SECTION 72.—Not-
23 withstanding section 72, in determining the ex-
24 tent to which an amount is treated as otherwise
25 includible in gross income for purposes of sub-

1 paragraph (A), the aggregate amount distrib-
2 uted from an individual retirement plan shall be
3 treated as includible in gross income to the ex-
4 tent that such amount does not exceed the ag-
5 gregate amount which would have been so in-
6 cludible if all amounts from all individual retire-
7 ment plans were distributed. Proper adjust-
8 ments shall be made in applying section 72 to
9 other distributions in such taxable year and
10 subsequent taxable years.”.

11 (b) COORDINATION WITH LIMITATION ON CON-
12 TRIBUTIONS TO HSAS.—Section 223(b)(4) of such Code
13 (relating to coordination with other contributions) is
14 amended by striking “and” at the end of subparagraph
15 (A), by striking the period at the end of subparagraph
16 (B) and inserting “, and”, and by inserting after subpara-
17 graph (B) the following new subparagraph:

18 “(C) the aggregate amount contributed to
19 health savings accounts of such individual for
20 such taxable year under section 408(d)(9) (and
21 such amount shall not be allowed as a deduc-
22 tion under subsection (a)).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2006.

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