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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through modernized 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 “Bipartisan HSA Im-
5 provement Act of 2018”.

1 **SEC. 2. EXCEPTED BENEFITS ALLOWED AS PERMITTED IN-**
2 **SURANCE.**

3 (a) IN GENERAL.—Paragraph (3) of section 223(c)
4 of the Internal Revenue Code of 1986 is amended—

5 (1) by redesignating subparagraphs (B) and
6 (C) as subparagraphs (C) and (D), respectively, and

7 (2) by inserting the following new subpara-
8 graph:

9 “(B) insurance consisting of coverage for
10 any excepted benefits described in section
11 9832(c),”.

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

15 **SEC. 3. ON-SITE EMPLOYEE CLINICS AND RETAIL CLINICS.**

16 (a) IN GENERAL.—Paragraph (1) of section 223(c)
17 of the Internal Revenue Code of 1986 is amended by add-
18 ing at the end the following new subparagraph:

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

21 “(i) IN GENERAL.—For purposes of
22 subparagraph (A)(ii), an individual shall
23 not be treated as covered under a health
24 plan for purposes of subparagraph (A)(ii)
25 merely because the individual is eligible to

1 receive, or receives, qualified items and
2 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 retail health clinic.

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

14 “(I) Primary care including phys-
15 ical examination.

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

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

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

24 “(V) Tests for conditions or in-
25 fectious diseases.

1 “(VI) Management of medically
2 complex chronic conditions.

3 “(VII) Drug testing.

4 “(VIII) Hearing or vision
5 screenings and related services.

6 “(IX) Other similar items and
7 services.

8 “(iii) RETAIL HEALTH CLINIC DE-
9 FINED.—For purposes of this subpara-
10 graph, the term ‘retail health clinic’ means
11 a health care facility located within a su-
12 permarket, pharmacy, or similar retail es-
13 tablishment that offers urgent care by a li-
14 censed healthcare provider.

15 “(iv) AGGREGATION.—For purposes
16 of clause (i), all persons treated as a single
17 employer under subsection (b), (c), (m), or
18 (o) of section 414 shall be treated as a sin-
19 gle employer.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to months in taxable years begin-
22 ning after the date of enactment of this Act.

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

3 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A
4 HEALTH FLEXIBLE SPENDING ACCOUNT.—Subpara-
5 graph (B) of section 223(c)(1) of the Internal Revenue
6 Code of 1986 is amended by striking “and” at the end
7 of clause (ii), by striking the period at the end of clause
8 (iii) and inserting “, and”, and by inserting after clause
9 (iii) the following:

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

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 the date of the enactment of this Act.

16 **SEC. 5. DEPENDENTS TO INCLUDE CHILDREN UP TO AGE**
17 **26.**

18 (a) IN GENERAL.—Subparagraph (A) of section
19 223(d)(2) of the Internal Revenue Code of 1986 is amend-
20 ed by striking “and any dependent (as defined in section
21 152, determined without regard to subsections (b)(1),
22 (b)(2), and (d)(1)(B) thereof) of such individual” in sub-
23 paragraph (A) and inserting “any dependent (as defined
24 in section 152, determined without regard to subsections
25 (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual,
26 and any child (as defined in section 152(f)(A)) of such

1 individual who has not attained the age of 27 before the
2 end of such individual's taxable year”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply with respect to qualified medical
5 expenses incurred in taxable years beginning after the
6 date of the enactment of this Act.

7 **SEC. 6. FSA AND HRA INTERACTION WITH HSAS.**

8 (a) **ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA**
9 **PARTICIPANTS.**—Subparagraph (B) of section 223(c)(1)
10 of the Internal Revenue Code of 1986, as amended by this
11 Act, is amended by striking “and” at the end of clause
12 (iii), by striking the period at the end of clause (iv) and
13 inserting “, and”, and by inserting after clause (iv) the
14 following new clause:

15 “(v) coverage under a health flexible
16 spending arrangement or a health reim-
17 bursment arrangement in the plan year a
18 qualified HSA distribution as described in
19 section 106(e) is made on behalf of the in-
20 dividual if, after the qualified HSA dis-
21 tribution is made and for the remaining
22 duration of the plan year, the coverage
23 provided under the arrangement is con-
24 verted solely to one or more of the fol-
25 lowing:

1 “(I) POST-DEDUCTIBLE FSA OR
2 HRA.—A health flexible spending ar-
3 rangement or a health reimbursement
4 arrangement that does not pay or re-
5 imburse any medical expense incurred
6 before the minimum annual deductible
7 under paragraph (2)(A)(i) (prorated
8 for the period occurring after the
9 qualified HSA distribution is made) is
10 satisfied.

11 “(II) PREVENTATIVE CARE.—A
12 health flexible spending arrangement
13 or a health reimbursement arrange-
14 ment that, after the qualified HSA
15 distribution is made, does not pay or
16 reimburse any medical expense in-
17 curred after the qualified HSA dis-
18 tribution is made other than preven-
19 tive care as defined in paragraph
20 (2)(C).

21 “(III) LIMITED PURPOSE
22 HEALTH FSA.—A health flexible
23 spending arrangement that, after the
24 qualified HSA distribution is made,
25 pays or reimburses benefits for cov-

1 erage described in clause (ii) (but not
2 through insurance or for long-term
3 care services).

4 “(IV) LIMITED PURPOSE HRA.—
5 A health reimbursement arrangement
6 that, after the qualified HSA distribu-
7 tion is made, pays or reimburses bene-
8 fits for permitted insurance or cov-
9 erage described in clause (ii) (but not
10 for long-term care services).

11 “(V) RETIREMENT HRA.—A
12 health reimbursement arrangement
13 that, after the qualified HSA distribu-
14 tion is made, pays or reimburses only
15 those medical expenses incurred after
16 an individual’s retirement (and no ex-
17 penses incurred before retirement).

18 “(VI) SUSPENDED HRA.—A
19 health reimbursement arrangement
20 that, after the qualified HSA distribu-
21 tion is made, is suspended, pursuant
22 to an election made on or before the
23 date the individual elects a qualified
24 HSA distribution or, if later, on the
25 date of the individual enrolls in an

1 HSA-qualified health plan, that does
2 not pay or reimburse, at any time,
3 any medical expense incurred during
4 the suspension period except as de-
5 scribed in the preceding subclauses of
6 this clause.”.

7 (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-
8 FECT FLEXIBLE SPENDING ARRANGEMENT.—Paragraph
9 (1) of section 106(e) of such Code is amended to read
10 as follows:

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

13 “(A) a health flexible spending arrange-
14 ment under this section, section 105, or section
15 125,

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

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

21 (c) FSA BALANCES AT YEAR END SHALL NOT FOR-
22 FEIT.—Paragraph (2) of section 125(d) of such Code is
23 amended by adding at the end the following new subpara-
24 graph:

1 “(E) EXCEPTION FOR QUALIFIED HSA DIS-
2 TRIBUTIONS.—Subparagraph (A) shall not
3 apply to the extent that there is an amount re-
4 maining in a health flexible spending account at
5 the end of a plan year that an individual elects
6 to contribute to a health savings account pursu-
7 ant to a qualified HSA distribution (as defined
8 in section 106(e)(2)).”.

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

12 “(2) QUALIFIED HSA DISTRIBUTION.—

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

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

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

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

1 “(B) DOLLAR LIMITATIONS.—

2 “(i) DISTRIBUTIONS FROM A HEALTH
3 FLEXIBLE SPENDING ARRANGEMENT.—A
4 qualified HSA distribution from a health
5 flexible spending arrangement shall not ex-
6 ceed the applicable amount.

7 “(ii) DISTRIBUTIONS FROM A HEALTH
8 REIMBURSEMENT ARRANGEMENT.—A
9 qualified HSA distribution from a health
10 reimbursement arrangement shall not ex-
11 ceed—

12 “(I) the applicable amount di-
13 vided by 12, multiplied by

14 “(II) the number of months dur-
15 ing which the individual is a partici-
16 pant in the health reimbursement ar-
17 rangement.

18 “(iii) APPLICABLE AMOUNT.—For
19 purposes of this subparagraph, the applica-
20 ble amount is—

21 “(I) \$2,250 in the case of an eli-
22 gible individual who has self-only cov-
23 erage under an HSA-qualified health
24 plan at the time of such distribution,
25 and

1 “(II) \$4,500 in the case of an eli-
2 gible individual who has family cov-
3 erage under an HSA-qualified health
4 plan at the time of such distribu-
5 tion.”.

6 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE
7 TO MAINTAIN HSA-QUALIFIED HEALTH PLAN COV-
8 ERAGE.—Subsection (e) of section 106 of such Code is
9 amended—

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

14 (2) by striking paragraph (3) and redesignating
15 paragraphs (4) (as so amended) and (5) as para-
16 graphs (3) and (4), respectively.

17 (f) LIMITED PURPOSE FSAS AND HRAS.—Sub-
18 section (e) of section 106 of such Code, as amended by
19 this section, is amended by adding at the end the following
20 new paragraph:

21 “(5) LIMITED PURPOSE FSAS AND HRAS.—A
22 plan shall not fail to be a health flexible spending
23 arrangement, a health reimbursement arrangement,
24 or an accident or health plan under this section or
25 section 105 merely because the plan converts cov-

1 erage for individuals who enroll in an HSA-qualified
2 health plan described in section 223(c)(2) to cov-
3 erage described in subclause (I), (II), (III), (IV),
4 (V), or (VI) of section 223(c)(1)(B)(iv). Coverage
5 for such individuals may be converted as of the date
6 of enrollment in the HSA-qualified health plan,
7 without regard to the period of coverage under the
8 health flexible spending arrangement or health reim-
9 bursement arrangement, and without requiring any
10 change in coverage to individuals who do not enroll
11 in an HSA-qualified health plan.”.

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

16 “(6) COST-OF-LIVING ADJUSTMENT.—

17 “(A) IN GENERAL.—In the case of any
18 taxable year beginning in a calendar year after
19 2018, each of the dollar amounts in paragraph
20 (2)(B)(iii) shall be increased by an amount
21 equal to such dollar amount, multiplied by the
22 cost-of-living adjustment determined under sec-
23 tion 1(f)(3) for the calendar year in which such
24 taxable year begins by substituting ‘calendar

1 year 2017’ for ‘calendar year 1992’ in subpara-
2 graph (B) thereof.

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

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

13 “(iv) any coverage (including prospec-
14 tive coverage) under a health plan that is
15 not an HSA-qualified health plan which is
16 disclaimed in writing, at the time of the
17 creation or organization of the health sav-
18 ings account, including by execution of a
19 trust described in subsection (d)(1)
20 through a governing instrument that in-
21 cludes such a disclaimer, or by acceptance
22 of an amendment to such a trust that in-
23 cludes such a disclaimer.”.

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

4 **SEC. 7. CHRONIC DISEASE PREVENTION.**

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

9 “(D) SAFE HARBOR FOR ABSENCE OF DE-
10 DUCTIBLE FOR CARE RELATED TO CHRONIC
11 CONDITIONS.—A plan shall not fail to be treat-
12 ed as a high deductible health plan by reason
13 of failing to have a deductible for care and pre-
14 scription medications related to the treatment
15 of medically complex chronic conditions which—

16 “(i) are substantially disabling or life
17 threatening,

18 “(ii) have a high risk of hospitaliza-
19 tion or other significant adverse health
20 outcomes, and

21 “(iii) require specialized delivery sys-
22 tems across domains of care.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to coverage for months beginning
25 after the date of the enactment of this Act.

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

4 (a) **IN GENERAL.**—Section 213(d)(1) of the Internal
5 Revenue Code of 1986 is amended by striking “or” at the
6 end of subparagraph (C), by striking the period at the end
7 of subparagraph (D) and inserting “, or”, and by inserting
8 after subparagraph (D) the following new subparagraph:

9 “(E) for qualified sports and fitness ex-
10 penses.”.

11 (b) **QUALIFIED SPORTS AND FITNESS EXPENSES.**—
12 Section 213(d) of such Code, as amended by this Act, is
13 amended by adding at the end the following paragraph:

14 “(13) **QUALIFIED SPORTS AND FITNESS EX-**
15 **PENSES.**—

16 “(A) **IN GENERAL.**—The term ‘qualified
17 sports and fitness expenses’ means amounts
18 paid exclusively for the sole purpose of partici-
19 pating in a physical activity including—

20 “(i) for membership at a fitness facil-
21 ity,

22 “(ii) for participation or instruction in
23 a program of physical exercise or physical
24 activity, and

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

4 “(B) OVERALL DOLLAR LIMITATION.—The
5 aggregate amount treated as qualified sports
6 and fitness expenses with respect to any tax-
7 payer for any taxable year shall not exceed
8 \$1,000 (\$2,000 in the case of a joint return or
9 a head of household (as defined in section
10 2(b))).

11 “(C) FITNESS FACILITY DEFINED.—For
12 purposes of subparagraph (A)(i), the term ‘fit-
13 ness facility’ means a facility—

14 “(i) providing instruction in a pro-
15 gram of physical exercise, offering facilities
16 for the preservation, maintenance, encour-
17 agement, or development of physical fit-
18 ness, or serving as the site of such a pro-
19 gram of a State or local government,

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

22 “(iii) which does not offer golf, hunt-
23 ing, sailing, or riding facilities,

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

4 “(v) which is fully compliant with the
5 State of jurisdiction and Federal anti-dis-
6 crimination laws.

7 “(D) TREATMENT OF EXERCISE VIDEOS,
8 ETC.—Videos, books, and similar materials
9 shall be treated as described in subparagraph
10 (A)(ii) if the content of such materials con-
11 stitute instruction in a program of physical ex-
12 ercise or physical activity.

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

18 “(i) if such equipment is utilized ex-
19 clusively for participation in fitness, exer-
20 cise, sport, or other physical activity pro-
21 grams,

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

24 “(iii) in the case of any item of sports
25 equipment (other than exercise equip-

1 ment), with respect to so much of the
2 amount paid for such item as does not ex-
3 ceed \$250.

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

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