

117TH CONGRESS
1ST SESSION

H. R. 2808

To amend the Internal Revenue Code of 1986 to make improvements to Health Savings Accounts.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2021

Mr. ROSENDALE (for himself, Mr. HICE of Georgia, Ms. MACE, Mr. VAN DREW, Ms. HERRELL, and Mr. CAWTHORN) 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 make improvements to 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 Freedom and
5 Flexibility Act”.

6 **SEC. 2. REPEAL OF REQUIREMENT TO BE ENROLLED IN**
7 **HEALTH PLAN.**

8 (a) IN GENERAL.—Subsection (a) of section 223 of
9 the Internal Revenue Code of 1986 is amended to read
10 as follows:

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

4 **SEC. 4. REPEAL OF RULES RELATING TO ELIGIBLE INDIVIDUAL;
5 HIGH DEDUCTIBLE HEALTH PLAN.**

6 (a) IN GENERAL.—Section 223 of the Internal Revenue
7 Code of 1986 is amended by striking subsections (c)
8 and (g) and by redesignating subsections (d), (e), (f), and
9 (h) as subsections (c), (d), (e), and (f), respectively.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years ending after the
12 date of the enactment of this Act.

13 **SEC. 5. HEALTH SAVINGS ACCOUNT.**

14 (a) IN GENERAL.—Subparagraph (A) of section
15 223(e)(1) of the Internal Revenue Code of 1986, as
16 amended by the preceding sections of this Act, is amended
17 to read as follows:

18 “(A) Except in the case of a rollover con-
19 tribution described in subsection (e)(5) or sec-
20 tion 220(f)(5), no contribution will be accepted
21 unless it is in cash.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years ending after the
24 date of the enactment of this Act.

1 **SEC. 6. QUALIFIED MEDICAL EXPENSES.**

2 (a) REPEAL OF PURCHASE OF HEALTH INSURANCE
3 LIMITATION.—Paragraph (2) of section 223(c) of the In-
4 ternal Revenue Code of 1986, as redesignated by the pre-
5 ceding provisions of this Act, is amended to read as fol-
6 lows:

7 “(2) QUALIFIED MEDICAL EXPENSES.—

8 “(A) IN GENERAL.—The term ‘qualified
9 medical expenses’ means, with respect to an ac-
10 count beneficiary, amounts paid by such bene-
11 ficiary for medical care (as defined in section
12 213(d)) for such individual, the spouse of such
13 individual, any dependent (as defined in section
14 152, determined without regard to subsections
15 (b)(1), (b)(2), and (d)(1)(B) thereof) of such
16 individual, but only to the extent such amounts
17 are not compensated for by insurance or other-
18 wise.

19 “(B) MENSTRUAL CARE PRODUCTS.—For
20 purposes of this paragraph—

21 “(i) IN GENERAL.—Amounts paid for
22 menstrual care products shall be treated as
23 paid for medical care.

24 “(ii) DEFINITION.—The term ‘men-
25 strual care product’ means a tampon, pad,
26 liner, cup, sponge, or similar product used

1 by individuals with respect to menstruation
2 or other genital-tract secretions.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to taxable years ending after the
5 date of the enactment of this Act.

6 **SEC. 7. ALLOWANCE OF DISTRIBUTIONS FOR PRESCRIP-**
7 **TION AND OVER-THE-COUNTER MEDICINES**
8 **AND DRUGS AND OTHER MEDICALLY NEC-**
9 **CESSARY ITEMS.**

10 (a) **HSAs.**—Paragraph (2) of section 223(e) of the
11 Internal Revenue Code of 1986, as redesignated by the
12 preceding provisions of this Act, is amended by adding at
13 the end the following:

14 “(C) **PRESCRIPTION AND OVER-THE-**
15 **COUNTER MEDICINES AND DRUGS AND OTHER**
16 **MEDICALLY NECESSARY ITEMS.**—For purposes
17 of this paragraph—

18 “(i) **IN GENERAL.**—The term ‘quali-
19 fied medical expenses’ shall include an
20 amount paid for any prescription or over-
21 the-counter medicine or drug and medically
22 necessary items.

23 “(ii) **MEDICALLY NECESSARY**
24 **ITEMS.**—The term ‘medically necessary
25 item’ means any item for which a doctor or

1 nurse certifies by a letter of medical neces-
2 sity that the service or medication or item
3 is for a medical diagnosis, treatment, or
4 prevention of a medical diseases or condi-
5 tion.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to amounts paid in taxable years
8 ending after the date of the enactment of this Act.

9 **SEC. 8. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**
10 **INCURRED BEFORE ESTABLISHMENT OF AC-**
11 **COUNT.**

12 (a) IN GENERAL.—Paragraph (2) of section 223(c)
13 of the Internal Revenue Code of 1986, as redesignated by
14 the preceding sections of this Act, is amended by adding
15 at the end the following new subparagraph:

16 “(D) CERTAIN MEDICAL EXPENSES IN-
17 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
18 TREATED AS QUALIFIED.—An expense shall not
19 fail to be treated as a qualified medical expense
20 solely because such expense was incurred before
21 the establishment of the health savings account
22 if such expense was incurred—

23 “(i) during either—

1 “(I) the taxable year in which the
2 health savings account was estab-
3 lished, or

4 “(II) the preceding taxable year,
5 in the case of a health savings ac-
6 count established after the taxable
7 year in which such expense was in-
8 curred but before the time prescribed
9 by law for filing the return for such
10 taxable year (not including extensions
11 thereof), and

12 “(ii) for medical care which (but for
13 the fact that it was incurred before the es-
14 tablishment of the account) otherwise
15 meets the requirements of the preceding
16 subparagraphs.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this subsection (a) shall apply to taxable years ending
19 after the date of the enactment of this Act.

20 **SEC. 9. DIRECT PRIMARY CARE; EXERCISE EQUIPMENT;**
21 **DENTAL CARE ITEMS.**

22 (a) IN GENERAL.—Paragraph (2) of section 223(c)
23 of the Internal Revenue Code of 1986, as amended by the
24 preceding sections of this Act, is amended by adding at
25 the end the following new subparagraph:

1 “(E) DIRECT PRIMARY CARE; EXERCISE
2 EQUIPMENT; DENTAL CARE ITEMS.—For pur-
3 poses of this paragraph—

4 “(i) IN GENERAL.—The term ‘quali-
5 fied medical expenses’ shall include
6 amounts paid—

7 “(I) amounts paid under a direct
8 primary care service arrangement,

9 “(II) amounts paid for exercise
10 equipment, and

11 “(III) amounts paid for dental
12 care items.

13 “(ii) DIRECT PRIMARY CARE SERVICE
14 ARRANGEMENT.—The term ‘direct primary
15 care service arrangement’ means, with re-
16 spect to any individual, an arrangement
17 under which such individual is provided
18 medical care (as defined in section 213(d))
19 consisting solely of primary care services
20 provided by primary care practitioners (as
21 defined in section 1833(x)(2)(A) of the So-
22 cial Security Act, determined without re-
23 gard to clause (ii) thereof), if the sole com-
24 pensation for such care is a fixed periodic
25 fee.

1 “(iii) EXERCISE OR FITNESS EQUIP-
2 MENT.—The term ‘exercise or fitness
3 equipment’ means devices such as motor-
4 ized treadmills, stair climbers or step ma-
5 chines, stationary bicycles, rowing ma-
6 chines, weight machines, circuit training
7 equipment, cardiovascular equipment,
8 strength equipment, or other similar equip-
9 ment.

10 “(iv) DENTAL CARE ITEMS.—The
11 term ‘dental care items’ includes manual
12 or electric toothbrush, dental floss, and
13 dental mouthwash.”.

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

17 **SEC. 10. PROHIBITION ON USE OF FUNDS FOR ELECTIVE**
18 **ABORTIONS.**

19 (a) IN GENERAL.—Paragraph (2) of section 223(c)
20 of the Internal Revenue Code of 1986, as amended by the
21 preceding sections of this Act, is amended by adding at
22 the end the following new subparagraph:

23 “(F) PROHIBITION ON USE OF FUNDS FOR
24 ELECTIVE ABORTIONS.—For purposes of this
25 paragraph—

1 “(i) PAYMENTS FOR HEALTH INSUR-
2 ANCE WITH ABORTION COVERAGE.—The
3 term ‘qualified medical expenses’ shall not
4 include amounts paid for insurance that
5 includes coverage for abortions.

6 “(ii) PAYMENTS FOR ABORTIONS.—
7 The term ‘qualified medical expense’ shall
8 not include amounts paid for an abortion.

9 “(iii) ABORTION.—The term ‘abor-
10 tion’ means the use or prescription of any
11 instrument, medicine, drug, or any other
12 substance or device—

13 “(I) to intentionally kill the un-
14 born child of a woman known to be
15 pregnant, or

16 “(II) to intentionally terminate
17 the pregnancy of a woman known to
18 be pregnant, with an intention other
19 than—

20 “(aa) after viability, to
21 produce a live birth and preserve
22 the life and health of the child
23 born alive, or

24 “(bb) to remove a dead un-
25 born child.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to plan years ending after the date
3 of the enactment of this Act.

4 **SEC. 11. TREATMENT AFTER DEATH IF DESIGNATED BENE-**
5 **FICIARY IS SPOUSE OR CHILD OF ACCOUNT**
6 **BENEFICIARY.**

7 (a) IN GENERAL.—Subparagraph (A) of section
8 223(e)(7) of the Internal Revenue Code of 1986, as redес-
9 igned by the preceding sections of this Act, is amended
10 to read as follows:

11 “(A) TREATMENT AFTER DEATH IF DES-
12 IGNATED BENEFICIARY IS SPOUSE OR CHILD OF
13 ACCOUNT BENEFICIARY.—If the account bene-
14 ficiary’s surviving spouse or child acquires such
15 beneficiary’s interest in a health savings ac-
16 count by reason of being the designated bene-
17 ficiary of such account at the death of the ac-
18 count beneficiary, such health savings account
19 shall be treated as if the spouse or child (as the
20 case may be) were the account beneficiary.”.

21 (b) CHILD DEFINED.—Paragraph (7) of section
22 223(e) of such Code, as so redesignated, is amended by
23 adding at the end the following:

24 “(C) CHILD.—For purposes of this para-
25 graph, the term ‘child’ means, with respect to

1 an account beneficiary, an individual who bears
2 a relationship to the account beneficiary de-
3 scribed in section 152(f)(1).”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to account bene-
6 ficiaries dying in taxable years ending after the date of
7 the enactment of this Act.

8 **SEC. 12. ADMINISTRATIVE ERROR CORRECTION BEFORE**
9 **DUE DATE OF RETURN.**

10 (a) IN GENERAL.—Paragraph (3) of section 223(d)
11 of the Internal Revenue Code of 1986, as amended and
12 redesignated by the preceding sections of this Act, is
13 amended by adding at the end the following new subpara-
14 graph:

15 “(C) EXCEPTION FOR ADMINISTRATIVE
16 ERRORS CORRECTED BEFORE DUE DATE OF RE-
17 TURN.—Subparagraph (A) shall not apply if
18 any payment or distribution is made to correct
19 an administrative, clerical, or payroll contribu-
20 tion error and if—

21 “(i) such distribution is received by
22 the individual on or before the last day
23 prescribed by law (including extensions of
24 time) for filing such individual’s return for
25 such taxable year, and

1 “(ii) such distribution is accompanied
2 by the amount of net income attributable
3 to such contribution.

4 Any net income described in clause (ii) shall be
5 included in the gross income of the individual
6 for the taxable year in which it is received.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect on the date of the enactment
9 of this Act.

10 **SEC. 13. CONFORMING AMENDMENTS.**

11 (a) Section 26(b)(2) of the Internal Revenue Code of
12 1986 is amended—

13 (1) by striking “, 223(b)(8)(B)(i)(II),” in sub-
14 paragraph (S), and

15 (2) by striking “223(f)(4)” in subparagraph
16 (U) and inserting “223(e)(3)”.

17 (b) Section 106 of such Code is amended—

18 (1) by amending subsection (d)(1) to read as
19 follows:

20 “(1) IN GENERAL.—In the case of an employee,
21 amounts contributed by such employee’s employer to
22 any health savings account (as defined in section
23 223(c)) of such employee shall be treated as em-
24 ployer-provided coverage for medical expenses under
25 an accident or health plan.”,

1 (2) in subsection (e)—

2 (A) by striking paragraphs (3) and (4) and
3 redesignating paragraph (5) as paragraph (4),

4 (B) by inserting after paragraph (2) the
5 following new paragraph:

6 “(3) TREATMENT AS ROLLOVER CONTRIBU-
7 TION.—A qualified HSA distribution shall be treated
8 as a rollover contribution described in section
9 223(e)(4).”, and

10 (C) by striking “to any eligible individual
11 covered under a high deductible health plan of
12 the employer” in paragraph (4)(B)(ii) (as so re-
13 designated) and inserting “to any employee
14 with respect to whom a health savings account
15 has been established”.

16 (c) Section 408 of such Code is amended—

17 (1) in subsection (d)(9)(A) by striking “who is
18 an eligible individual (as defined in section 223(e))
19 and”; and

20 (2) in subsection (d)(9)(C)—

21 (A) by striking “LIMITATIONS.—” in the
22 heading and all that follows through “(ii) ONE-
23 TIME TRANSFER.—” in clause (ii), and insert-
24 ing “ONE-TIME TRANSFER.—”,

1 (B) by redesignating subclauses (I) and
2 (II) as clauses (i) and (ii) and moving such
3 clauses 2 ems to the left, and

4 (C) by striking “subclause (II)” in clause
5 (i), as so redesignated, and inserting “clause
6 (ii)”.

7 (d) Section 877A(g)(6) of such Code is amended by
8 striking “223(f)(4)” and inserting “223(e)(3)”.

9 (e) Section 4973 of such Code is amended by striking
10 subsection (g) and by redesignating subsection (h) as sub-
11 section (g).

12 (f) Section 4975 of such Code is amended—

13 (1) in subsection (c)(6)—

14 (A) by striking “section 223(d)” and in-
15 serting “section 223(c)”, and

16 (B) by striking “section 223(e)(2)” and in-
17 serting “section 223(d)(2)”, and

18 (2) in subsection (e)(1)(E), by striking “section
19 223(d)” and inserting “section 223(c)”.

20 (g) Sections 35(g)(3), 220(f)(5)(A), 848(e)(1)(B)(v),
21 4973(a)(5), and 6051(a)(12) of such Code are each
22 amended by striking “section 223(d)” each place it ap-
23 pears and inserting “section 223(c)”.

24 (h) Section 4980G of such Code is amended—

1 (1) by amending Subsection (b) to read as fol-
2 lows:

3 “(b) RULES AND REQUIREMENTS.—

4 “(1) IN GENERAL.—An employer meets the re-
5 quirements of this subsection for any calendar year
6 if the employer makes available comparable con-
7 tributions to the health savings accounts of all com-
8 parable participating employees for each coverage
9 period during such calendar year.

10 “(2) COMPARABLE CONTRIBUTIONS.—

11 “(A) IN GENERAL.—For purposes of para-
12 graph (1), the term ‘comparable contributions’
13 means contributions—

14 “(i) which are the same amount, or

15 “(ii) if the employees are covered by a
16 health plan, which are the same percentage
17 of the annual deductible limit under the
18 plan covering the employees.

19 “(B) PART-YEAR EMPLOYEES.—In the
20 case of an employee who is employed by the em-
21 ployer for only a portion of the calendar year,
22 a contribution to the health savings account of
23 such employee shall be treated as comparable if
24 it is an amount which bears the same ratio to
25 the comparable amount (determined without re-

1 gard to this subparagraph) as such portion
2 bears to the entire calendar year.

3 “(3) COMPARABLE PARTICIPATING EMPLOYEES.—For purposes of paragraph (1), the term
4 EES.—For purposes of paragraph (1), the term
5 ‘comparable participating employees’ means all em-
6 ployees who are covered (if at all) under the same
7 health plan of the employer and have the same cat-
8 egory of coverage. For purposes of the preceding
9 sentence, the categories of coverage are self-only and
10 family coverage.

11 “(4) PART-TIME EMPLOYEES.—

12 “(A) IN GENERAL.—Paragraph (3) shall
13 be applied separately with respect to part-time
14 employees and other employees.

15 “(B) PART-TIME EMPLOYEE.—For pur-
16 poses of subparagraph (A), the term ‘part-time
17 employee’ means any employee who is custom-
18 arily employed for fewer than 30 hours per
19 week.”, and

20 (2) in subsection (d) by striking “section
21 4980E” and inserting “this section”.

22 (i) Section 6693(a)(2)(C) of such Code is amended
23 by striking “section 223(h)” and inserting “section
24 223(f)”.

○