

Union Calendar No. 330

118TH CONGRESS
2^D SESSION

H. R. 5688

[Report No. 118–401]

To amend the Internal Revenue Code of 1986 to improve health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2023

Mr. SMUCKER (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means

FEBRUARY 26, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on September 26, 2023]

A BILL

To amend the Internal Revenue Code of 1986 to improve
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 2023”.*

6 **SEC. 2. TREATMENT OF DIRECT PRIMARY CARE SERVICE**

7 **ARRANGEMENTS.**

8 *(a) IN GENERAL.—Section 223(c)(1) of the Internal*
 9 *Revenue Code of 1986 is amended by adding at the end*
 10 *the following new subparagraph:*

11 *“(E) TREATMENT OF DIRECT PRIMARY*
 12 *CARE SERVICE ARRANGEMENTS.—*

13 *“(i) IN GENERAL.—A direct primary*
 14 *care service arrangement shall not be treat-*
 15 *ed as a health plan for purposes of subpara-*
 16 *graph (A)(ii).*

17 *“(ii) DIRECT PRIMARY CARE SERVICE*
 18 *ARRANGEMENT.—For purposes of this para-*
 19 *graph—*

20 *“(I) IN GENERAL.—The term ‘di-*
 21 *rect primary care service arrangement’*
 22 *means, with respect to any individual,*
 23 *an arrangement under which such in-*
 24 *dividual is provided medical care (as*
 25 *defined in section 213(d)) consisting*

1 *solely of primary care services pro-*
2 *vided by primary care practitioners*
3 *(as defined in section 1833(x)(2)(A) of*
4 *the Social Security Act, determined*
5 *without regard to clause (ii) thereof), if*
6 *the sole compensation for such care is*
7 *a fixed periodic fee.*

8 “(II) *LIMITATION.*—*With respect*
9 *to any individual for any month, such*
10 *term shall not include any arrange-*
11 *ment if the aggregate fees for all direct*
12 *primary care service arrangements (de-*
13 *termined without regard to this sub-*
14 *clause) with respect to such individual*
15 *for such month exceed \$150 (twice such*
16 *dollar amount in the case of an indi-*
17 *vidual with any direct primary care*
18 *service arrangement (as so determined)*
19 *that covers more than one individual).*

20 “(iii) *CERTAIN SERVICES SPECIFI-*
21 *CALLY EXCLUDED FROM TREATMENT AS*
22 *PRIMARY CARE SERVICES.*—*For purposes of*
23 *this paragraph, the term ‘primary care*
24 *services’ shall not include—*

1 “(I) procedures that require the
2 use of general anesthesia,

3 “(II) prescription drugs (other
4 than vaccines), and

5 “(III) laboratory services not
6 typically administered in an ambula-
7 tory primary care setting.

8 The Secretary, after consultation with the
9 Secretary of Health and Human Services,
10 shall issue regulations or other guidance re-
11 garding the application of this clause.”.

12 (b) *DIRECT PRIMARY CARE SERVICE ARRANGEMENT*
13 *FEES TREATED AS MEDICAL EXPENSES.*—Section
14 223(d)(2)(C) of such Code is amended by striking “or” at
15 the end of clause (iii), by striking the period at the end
16 of clause (iv) and inserting “, or”, and by adding at the
17 end the following new clause:

18 “(v) any direct primary care service
19 arrangement.”.

20 (c) *INFLATION ADJUSTMENT.*—Section 223(g)(1) of
21 such Code is amended—

22 (1) by inserting “, (c)(1)(E)(ii)(II),” after
23 “(b)(2)” each place it appears, and

24 (2) in subparagraph (B), by inserting “and
25 (iii)” after “clause (ii)” in clause (i), by striking

1 “and” at the end of clause (i), by striking the period
2 at the end of clause (ii) and inserting “, and”, and
3 by inserting after clause (ii) the following new clause:

4 “(iii) in the case of the dollar amount
5 in subsection (c)(1)(E)(ii)(II) for taxable
6 years beginning in calendar years after
7 2026, ‘calendar year 2025’.”.

8 (d) *REPORTING OF DIRECT PRIMARY CARE SERVICE*
9 *ARRANGEMENT FEES ON W-2.*—Section 6051(a) of such
10 Code is amended by striking “and” at the end of paragraph
11 (16), by striking the period at the end of paragraph (17)
12 and inserting “, and”, and by inserting after paragraph
13 (17) the following new paragraph:

14 “(18) in the case of a direct primary care service
15 arrangement (as defined in section 223(c)(1)(E)(ii))
16 which is provided in connection with employment, the
17 aggregate fees for such arrangement for such em-
18 ployee.”.

19 (e) *EFFECTIVE DATE.*—The amendments made by this
20 section shall apply to months beginning after December 31,
21 2025, in taxable years ending after such date.

22 **SEC. 3. ON-SITE EMPLOYEE CLINICS.**

23 (a) *IN GENERAL.*—Section 223(c)(1) of the Internal
24 Revenue Code of 1986, as amended by the preceding provi-

1 sions of this Act, is amended by adding at the end the fol-
 2 lowing new subparagraph:

3 “(F) *SPECIAL RULE FOR QUALIFIED ITEMS*
 4 *AND SERVICES.*—

5 “(i) *IN GENERAL.*—For purposes of
 6 subparagraph (A)(ii), an individual shall
 7 not be treated as covered under a health
 8 plan described in subclauses (I) and (II) of
 9 such subparagraph merely because the indi-
 10 vidual is eligible to receive, or receives,
 11 qualified items and services—

12 “(I) at a healthcare facility lo-
 13 cated at a facility owned or leased by
 14 the employer of the individual (or of
 15 the individual’s spouse), or

16 “(II) at a healthcare facility oper-
 17 ated primarily for the benefit of em-
 18 ployees of the employer of the indi-
 19 vidual (or of the individual’s spouse).

20 “(ii) *QUALIFIED ITEMS AND SERVICES*
 21 *DEFINED.*—For purposes of this subpara-
 22 graph, the term ‘qualified items and serv-
 23 ices’ means the following:

24 “(I) *Physical examination.*

1 “(II) *Immunizations, including*
2 *injections of antigens provided by em-*
3 *ployees.*

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

7 “(IV) *Treatment for injuries oc-*
8 *curing in the course of employment.*

9 “(V) *Preventive care for chronic*
10 *conditions (as defined in clause (iv)).*

11 “(VI) *Drug testing.*

12 “(VII) *Hearing or vision*
13 *screenings and related services.*

14 “(iii) *AGGREGATION.—For purposes of*
15 *clause (i), all persons treated as a single*
16 *employer under subsection (b), (c), (m), or*
17 *(o) of section 414 shall be treated as a single*
18 *employer.*

19 “(iv) *PREVENTIVE CARE FOR CHRONIC*
20 *CONDITIONS.—For purposes of this subpara-*
21 *graph, the term ‘preventive care for chronic*
22 *conditions’ means any item or service speci-*
23 *fied in the Appendix of Internal Revenue*
24 *Service Notice 2019–45 which is prescribed*
25 *to treat an individual diagnosed with the*

1 *associated chronic condition specified in*
2 *such Appendix for the purpose of preventing*
3 *the exacerbation of such chronic condition*
4 *or the development of a secondary condition,*
5 *including any amendment, addition, re-*
6 *moval, or other modification made by the*
7 *Secretary (pursuant to the authority grant-*
8 *ed to the Secretary under paragraph (2)(C))*
9 *to the items or services specified in such Ap-*
10 *pendix subsequent to the date of enactment*
11 *of this subparagraph.”.*

12 **(b) EFFECTIVE DATE.**—*The amendments made by this*
13 *section shall apply to months in taxable years beginning*
14 *after December 31, 2025.*

15 **SEC. 4. CONTRIBUTIONS PERMITTED IF SPOUSE HAS**
16 **HEALTH FLEXIBLE SPENDING ARRANGE-**
17 **MENT.**

18 **(a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A**
19 **HEALTH FLEXIBLE SPENDING ARRANGEMENT.**—*Section*
20 *223(c)(1)(B) of the Internal Revenue Code of 1986 is*
21 *amended by striking “and” at the end of clause (ii), by*
22 *striking the period at the end of clause (iii) and inserting*
23 *“; and”, and by adding at the end the following new clause:*
24 *“(iv) coverage under a health flexible*
25 *spending arrangement of the spouse of the*

1 *individual for any plan year of such ar-*
2 *rangement if the aggregate reimbursements*
3 *under such arrangement for such year do*
4 *not exceed the aggregate expenses which*
5 *would be eligible for reimbursement under*
6 *such arrangement if such expenses were de-*
7 *termined without regard to any expenses*
8 *paid or incurred with respect to such indi-*
9 *vidual.”.*

10 ***(b) EFFECTIVE DATE.***—*The amendment made by this*
11 *section shall apply to plan years beginning after December*
12 *31, 2025.*

13 **SEC. 5. FSA AND HRA TERMINATIONS OR CONVERSIONS TO**
14 **FUND HSAs.**

15 ***(a) IN GENERAL.***—*Section 106(e)(2) of the Internal*
16 *Revenue Code of 1986 is amended to read as follows:*

17 ***“(2) QUALIFIED HSA DISTRIBUTION.***—*For pur-*
18 *poses of this subsection—*

19 ***“(A) IN GENERAL.***—*The term ‘qualified*
20 *HSA distribution’ means, with respect to any*
21 *employee, a distribution from a health flexible*
22 *spending arrangement or health reimbursement*
23 *arrangement of such employee contributed di-*
24 *rectly to a health savings account of such em-*
25 *ployee if—*

1 “(i) such distribution is made in con-
2 nection with such employee establishing cov-
3 erage under a high deductible health plan
4 (as defined in section 223(c)(2)) if during
5 the 4-year period preceding the date the em-
6 ployee so establishes coverage the employee
7 was not covered under such a high deduct-
8 ible health plan, and

9 “(ii) such arrangement is described in
10 section 223(c)(1)(B)(vi) with respect to any
11 portion of the plan year remaining after
12 such distribution is made, if such employee
13 remains enrolled in such arrangement.

14 “(B) DOLLAR LIMITATION.—The aggregate
15 amount of distributions from health flexible
16 spending arrangements and health reimburse-
17 ment arrangements of any employee which may
18 be treated as qualified HSA distributions in con-
19 nection with an establishment of coverage de-
20 scribed in subparagraph (A)(i) shall not exceed
21 the dollar amount in effect under section
22 125(i)(1) (twice such amount in the case of cov-
23 erage which is described in section
24 223(b)(2)(B)).”.

1 (b) *PARTIAL REDUCTION OF LIMITATION ON DEDUCT-*
2 *IBLE HSA CONTRIBUTIONS.*—Section 223(b)(4) of such
3 Code is amended by striking “and” at the end of subpara-
4 graph (B), by striking the period at the end of subpara-
5 graph (C) and inserting “, and”, and by inserting after
6 subparagraph (C) the following new subparagraph:

7 “(D) so much of any qualified HSA dis-
8 tribution (as defined in section 106(e)(2)) made
9 to a health savings account of such individual
10 during the taxable year as does not exceed the
11 aggregate increases in the balance of the arrange-
12 ment from which such distribution is made
13 which occur during the portion of the plan year
14 which precedes such distribution (other than any
15 balance carried over to such plan year and deter-
16 mined without regard to any decrease in such
17 balance during such portion of the plan year).”.

18 (c) *CONVERSION TO HSA-COMPATIBLE ARRANGEMENT*
19 *FOR REMAINDER OF PLAN YEAR.*—Section 223(c)(1)(B) of
20 such Code, as amended by this preceding provisions of this
21 Act, is amended by striking “and” at the end of clause (iii),
22 by striking the period at the end of clause (iv) and inserting
23 “, and”, and by adding at the end the following new clause:

24 “(v) coverage under a health flexible
25 spending arrangement or health reimburse-

1 *ment arrangement for the portion of the*
2 *plan year after a qualified HSA distribu-*
3 *tion (as defined in section 106(e)(2) deter-*
4 *mined without regard to subparagraph*
5 *(A)(ii) thereof) is made, if the terms of such*
6 *arrangement which apply for such portion*
7 *of the plan year are such that, if such terms*
8 *applied for the entire plan year, then such*
9 *arrangement would not be taken into ac-*
10 *count under subparagraph (A)(ii) of this*
11 *paragraph for such plan year.”.*

12 *(d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS*
13 *ON W-2.—*

14 *(1) IN GENERAL.—Section 6051(a) of such Code,*
15 *as amended by this preceding provisions of this Act,*
16 *is amended by striking “and” at the end of para-*
17 *graph (17), by striking the period at the end of para-*
18 *graph (18) and inserting “, and”, and by inserting*
19 *after paragraph (18) the following new paragraph:*

20 *“(19) the amount of any qualified HSA distribu-*
21 *tion (as defined in section 106(e)(2)) with respect to*
22 *such employee.”.*

23 *(2) CONFORMING AMENDMENT.—Section*
24 *6051(a)(12) of such Code is amended by inserting*
25 *“(other than any qualified HSA distribution, as de-*

1 *fined in section 106(e)(2))” before the comma at the*
2 *end.*

3 *(e) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to distributions made after December 31,*
5 *2025, in taxable years ending after such date.*

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