

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
OFFERED BY MR. SMITH OF MISSOURI**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “HSA Modernization  
3 Act of 2023”.

**4 SEC. 2. INDIVIDUALS WITHOUT SERVICE-CONNECTED DIS-  
5 ABILITY AND ELIGIBLE FOR CERTAIN VET-  
6 ERANS BENEFITS PERMITTED TO CON-  
7 TRIBUTE TO HEALTH SAVINGS ACCOUNTS.**

8 (a) IN GENERAL.—Section 223(c)(1)(C) of the Inter-  
9 nal Revenue Code of 1986 is amended by striking “for  
10 a service-connected disability (within the meaning of sec-  
11 tion 101(16) of title 38, United States Code)”.

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

**15 SEC. 3. INDIVIDUALS ENTITLED TO PART A OF MEDICARE  
16 BY REASON OF AGE ALLOWED TO CON-  
17 TRIBUTE TO HEALTH SAVINGS ACCOUNTS.**

18 (a) IN GENERAL.—Section 223(c)(1)(B) of the Inter-  
19 nal Revenue Code of 1986 is amended by striking “and”

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

4 “(iv) entitlement to hospital insurance  
5 benefits under part A of title XVIII of the  
6 Social Security Act by reason of section  
7 226(a) of such Act.”.

8 (b) TREATMENT OF HEALTH INSURANCE PUR-  
9 CHASED FROM ACCOUNT.—Section 223(d)(2)(C)(iv) of  
10 such Code is amended by inserting “and who is not an  
11 eligible individual” after “who has attained the age speci-  
12 fied in section 1811 of the Social Security Act”.

13 (c) COORDINATION WITH PENALTY ON DISTRIBUTION-  
14 TIONS NOT USED FOR QUALIFIED MEDICAL EX-  
15 PENSES.—Section 223(f)(4)(C) of such Code is amended  
16 by striking “Subparagraph (A)” and inserting “Except in  
17 the case of an eligible individual, subparagraph (A)”

18 (d) CONFORMING AMENDMENT.—Section 223(b)(7)  
19 of such Code is amended by inserting “(other than an enti-  
20 tlement to benefits described in subsection (c)(1)(B)(iv))”  
21 after “Social Security Act”.

22 (e) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to months beginning after Decem-  
24 ber 31, 2025, in taxable years ending after such date.

1 **SEC. 4. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH SERV-**  
2 **ICE ASSISTANCE NOT DISQUALIFIED FROM**  
3 **HEALTH SAVINGS ACCOUNTS.**

4 (a) IN GENERAL.—Section 223(c)(1) of the Internal  
5 Revenue Code of 1986 is amended by adding at the end  
6 the following new subparagraph:

7 “(E) SPECIAL RULE FOR INDIVIDUALS EL-  
8 IGIBLE FOR ASSISTANCE UNDER INDIAN  
9 HEALTH SERVICE PROGRAMS.—For purposes of  
10 subparagraph (A)(ii), an individual shall not be  
11 treated as covered under a health plan de-  
12 scribed in such subparagraph merely because  
13 the individual receives hospital care or medical  
14 services under a medical care program of the  
15 Indian Health Service or of a tribal organiza-  
16 tion.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2025.

20 **SEC. 5. ALLOWANCE OF BRONZE AND CATASTROPHIC**  
21 **PLANS IN CONNECTION WITH HEALTH SAV-**  
22 **INGS ACCOUNTS.**

23 (a) IN GENERAL.—Section 223(c)(2) of the Internal  
24 Revenue Code of 1986 is amended by adding at the end  
25 the following new subparagraph:

1           “(H) BRONZE AND CATASTROPHIC PLANS  
2           TREATED AS HIGH DEDUCTIBLE HEALTH  
3           PLANS.—The term ‘high deductible health plan’  
4           shall include any plan described in subsection  
5           (d)(1)(A) or (e) of section 1302 of the Patient  
6           Protection and Affordable Care Act.”.

7           (b) EFFECTIVE DATE.—The amendment made by  
8           this section shall apply to months beginning after Decem-  
9           ber 31, 2025, in taxable years ending after such date.

10   **SEC. 6. SAFE HARBOR FOR ABSENCE OF DEDUCTIBLE FOR**  
11           **MENTAL HEALTH SERVICES.**

12           (a) IN GENERAL.—Section 223(c)(2) of the Internal  
13           Revenue Code of 1986, as amended by this Act, is amend-  
14           ed by adding at the end the following new subparagraph:

15                   “(I) SAFE HARBOR FOR ABSENCE OF DE-  
16                   DUCTIBLE FOR MENTAL HEALTH SERVICES.—A  
17                   plan shall not fail to be treated as a high de-  
18                   ductible health plan by reason of failing to have  
19                   a deductible for not more than the first \$500  
20                   of any mental health benefits (as defined in sec-  
21                   tion 9812(e)(4)) specified by the plan for pur-  
22                   poses of this subparagraph.”.

23           (b) EFFECTIVE DATE.—The amendments made by  
24           this section shall apply to plan years beginning after De-  
25           cember 31, 2025.

1 **SEC. 7. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**  
2 **INCURRED BEFORE ESTABLISHMENT OF**  
3 **HEALTH SAVINGS ACCOUNT.**

4 (a) IN GENERAL.—Section 223(d)(2) of the Internal  
5 Revenue Code of 1986 is amended by adding at the end  
6 the following new subparagraph:

7 “(E) TREATMENT OF CERTAIN MEDICAL  
8 EXPENSES INCURRED BEFORE ESTABLISHMENT  
9 OF ACCOUNT.—If a health savings account is  
10 established during the 60-day period beginning  
11 on the date that coverage of the account bene-  
12 ficiary under a high deductible health plan be-  
13 gins, then, solely for purposes of determining  
14 whether an amount paid is used for a qualified  
15 medical expense, such account shall be treated  
16 as having been established on the date that  
17 such coverage begins.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply with respect to coverage beginning  
20 after December 31, 2025.

21 **SEC. 8. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**  
22 **TRIBUTIONS TO THE SAME HEALTH SAVINGS**  
23 **ACCOUNT.**

24 (a) IN GENERAL.—Section 223(b)(5) of the Internal  
25 Revenue Code of 1986 is amended to read as follows:

1           “(5) SPECIAL RULE FOR MARRIED INDIVIDUALS  
2 WITH FAMILY COVERAGE.—

3           “(A) IN GENERAL.—In the case of individ-  
4 uals who are married to each other, if both  
5 spouses are eligible individuals and either  
6 spouse has family coverage under a high de-  
7 ductible health plan as of the first day of any  
8 month—

9           “(i) the limitation under paragraph  
10 (1) shall be applied by not taking into ac-  
11 count any other high deductible health  
12 plan coverage of either spouse (and if such  
13 spouses both have family coverage under  
14 separate high deductible health plans, only  
15 one such coverage shall be taken into ac-  
16 count),

17           “(ii) such limitation (after application  
18 of clause (i)) shall be reduced by the ag-  
19 gregate amount paid to Archer MSAs of  
20 such spouses for the taxable year, and

21           “(iii) such limitation (after application  
22 of clauses (i) and (ii)) shall be divided  
23 equally between such spouses unless they  
24 agree on a different division.

1           “(B) TREATMENT OF ADDITIONAL CON-  
2           TRIBUTION AMOUNTS.—If both spouses referred  
3           to in subparagraph (A) have attained age 55  
4           before the close of the taxable year, the limita-  
5           tion referred to in subparagraph (A)(iii) which  
6           is subject to division between the spouses shall  
7           include the additional contribution amounts de-  
8           termined under paragraph (3) for both spouses.  
9           In any other case, any additional contribution  
10          amount determined under paragraph (3) shall  
11          not be taken into account under subparagraph  
12          (A)(iii) and shall not be subject to division be-  
13          tween the spouses.”.

14          (b) EFFECTIVE DATE.—The amendments made by  
15          this section shall apply to taxable years beginning after  
16          December 31, 2025.

17      **SEC. 9. MAXIMUM CONTRIBUTION LIMIT TO HEALTH SAV-**  
18                              **INGS ACCOUNT INCREASED TO AMOUNT OF**  
19                              **DEDUCTIBLE AND OUT-OF-POCKET LIMITA-**  
20                              **TION.**

21          (a) SELF-ONLY COVERAGE.—Section 223(b)(2)(A)  
22          of the Internal Revenue Code of 1986 is amended by strik-  
23          ing “\$2,250” and inserting “the amount in effect under  
24          subsection (c)(2)(A)(ii)(I)”.

1 (b) FAMILY COVERAGE.—Section 223(b)(2)(B) of  
2 such Code is amended by striking “\$4,500” and inserting  
3 “the amount in effect under subsection (c)(2)(A)(ii)(II)”.

4 (c) CONFORMING AMENDMENTS.—Section 223(g)(1)  
5 of such Code is amended—

6 (1) by striking “subsections (b)(2) and” both  
7 places it appears and inserting “subsection”, and

8 (2) in subparagraph (B), by striking “deter-  
9 mined by” and all that follows through “‘calendar  
10 year 2003’.” and inserting “determined by sub-  
11 stituting ‘calendar year 2003’ for ‘calendar year  
12 2016’ in subparagraph (A)(ii) thereof.”.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2025.

16 **SEC. 10. CLARIFICATION OF TREATMENT OF DISTRIBUTIONS FROM HEALTH SAVINGS ACCOUNT FOR LONG-TERM CARE SERVICES.**

17  
18  
19 (a) IN GENERAL.—Section 223(d)(2)(A) of the Inter-  
20 nal Revenue Code of 1986 is amended by inserting before  
21 the last sentence the following: “Such term includes  
22 amounts paid for qualified long-term care services (as de-  
23 fined in section 7702B(e)).”.



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

4           (c) **NO INFERENCE.**—Nothing contained in this sec-  
5 tion or the amendment made thereby shall be construed  
6 to create any inference with respect to any amounts paid  
7 on or before such date.

