

**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 “Bipartisan HSA Im-
3 provement Act of 2023”.

**4 SEC. 2. TREATMENT OF DIRECT PRIMARY CARE SERVICE
5 ARRANGEMENTS.**

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

9 “(E) TREATMENT OF DIRECT PRIMARY
10 CARE SERVICE ARRANGEMENTS.—

11 “(i) IN GENERAL.—A direct primary
12 care service arrangement shall not be
13 treated as a health plan for purposes of
14 subparagraph (A)(ii).

15 “(ii) DIRECT PRIMARY CARE SERVICE
16 ARRANGEMENT.—For purposes of this
17 paragraph—

18 “(I) IN GENERAL.—The term ‘di-
19 rect primary care service arrange-

1 ment’ means, with respect to any indi-
2 vidual, an arrangement under which
3 such individual is provided medical
4 care (as defined in section 213(d))
5 consisting solely of primary care serv-
6 ices provided by primary care practi-
7 tioners (as defined in section
8 1833(x)(2)(A) of the Social Security
9 Act, determined without regard to
10 clause (ii) thereof), if the sole com-
11 pensation for such care is a fixed peri-
12 odic fee.

13 “(II) LIMITATION.—With respect
14 to any individual for any month, such
15 term shall not include any arrange-
16 ment if the aggregate fees for all di-
17 rect primary care service arrange-
18 ments (determined without regard to
19 this subclause) with respect to such
20 individual for such month exceed
21 \$150 (twice such dollar amount in the
22 case of an individual with any direct
23 primary care service arrangement (as
24 so determined) that covers more than
25 one individual).

1 “(iii) CERTAIN SERVICES SPECIFI-
2 CALLY EXCLUDED FROM TREATMENT AS
3 PRIMARY CARE SERVICES.—For purposes
4 of this paragraph, the term ‘primary care
5 services’ shall not include—

6 “(I) procedures that require the
7 use of general anesthesia,

8 “(II) prescription drugs (other
9 than vaccines), and

10 “(III) laboratory services not
11 typically administered in an ambula-
12 tory primary care setting.

13 The Secretary, after consultation with the
14 Secretary of Health and Human Services,
15 shall issue regulations or other guidance
16 regarding the application of this clause.”.

17 (b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT
18 FEES TREATED AS MEDICAL EXPENSES.—Section
19 223(d)(2)(C) of such Code is amended by striking “or”
20 at the end of clause (iii), by striking the period at the
21 end of clause (iv) and inserting “, or”, and by adding at
22 the end the following new clause:

23 “(v) any direct primary care service
24 arrangement.”.

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

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

5 (2) in subparagraph (B), by inserting “and
6 (iii)” after “clause (ii)” in clause (i), by striking
7 “and” at the end of clause (i), by striking the period
8 at the end of clause (ii) and inserting “, and”, and
9 by inserting after clause (ii) the following new
10 clause:

11 “(iii) in the case of the dollar amount
12 in subsection (c)(1)(E)(ii)(II) for taxable
13 years beginning in calendar years after
14 2026, ‘calendar year 2025’.”.

15 (d) REPORTING OF DIRECT PRIMARY CARE SERVICE
16 ARRANGEMENT FEES ON W-2.—Section 6051(a) of such
17 Code is amended by striking “and” at the end of para-
18 graph (16), by striking the period at the end of paragraph
19 (17) and inserting “, and”, and by inserting after para-
20 graph (17) the following new paragraph:

21 “(18) in the case of a direct primary care serv-
22 ice arrangement (as defined in section
23 223(c)(1)(E)(ii)) which is provided in connection
24 with employment, the aggregate fees for such ar-
25 rangement for such employee.”.

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

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

5 (a) IN GENERAL.—Section 223(c)(1) of the Internal
6 Revenue Code of 1986, as amended by the preceding pro-
7 visions of this Act, is amended by adding at the end the
8 following new subparagraph:

9 “(F) SPECIAL RULE FOR QUALIFIED ITEMS
10 AND SERVICES.—

11 “(i) IN GENERAL.—For purposes of
12 subparagraph (A)(ii), an individual shall
13 not be treated as covered under a health
14 plan described in subclauses (I) and (II) of
15 such subparagraph merely because the in-
16 dividual is eligible to receive, or receives,
17 qualified items and services—

18 “(I) at a healthcare facility lo-
19 cated at a facility owned or leased by
20 the employer of the individual (or of
21 the individual’s spouse), or

22 “(II) at a healthcare facility op-
23 erated primarily for the benefit of em-
24 ployees of the employer of the indi-
25 vidual (or of the individual’s spouse).

1 “(ii) QUALIFIED ITEMS AND SERVICES
2 DEFINED.—For purposes of this subpara-
3 graph, the term ‘qualified items and serv-
4 ices’ means the following:

5 “(I) Physical examination.

6 “(II) Immunizations, including
7 injections of antigens provided by em-
8 ployees.

9 “(III) Drugs or biologicals other
10 than a prescribed drug (as such term
11 is defined in section 213(d)(3)).

12 “(IV) Treatment for injuries oc-
13 curring in the course of employment.

14 “(V) Preventive care for chronic
15 conditions (as defined in clause (iv)).

16 “(VI) Drug testing.

17 “(VII) Hearing or vision
18 screenings and related services.

19 “(iii) AGGREGATION.—For purposes
20 of clause (i), all persons treated as a single
21 employer under subsection (b), (c), (m), or
22 (o) of section 414 shall be treated as a sin-
23 gle employer.

24 “(iv) PREVENTIVE CARE FOR CHRON-
25 IC CONDITIONS.—For purposes of this sub-

1 paragraph, the term ‘preventive care for
2 chronic conditions’ means any item or
3 service specified in the Appendix of Inter-
4 nal Revenue Service Notice 2019–45 which
5 is prescribed to treat an individual diag-
6 nosed with the associated chronic condition
7 specified in such Appendix for the purpose
8 of preventing the exacerbation of such
9 chronic condition or the development of a
10 secondary condition, including any amend-
11 ment, addition, removal, or other modifica-
12 tion made by the Secretary (pursuant to
13 the authority granted to the Secretary
14 under paragraph (2)(C)) to the items or
15 services specified in such Appendix subse-
16 quent to the date of enactment of this sub-
17 paragraph.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to months in taxable years begin-
20 ning after December 31, 2025.

21 **SEC. 4. CONTRIBUTIONS PERMITTED IF SPOUSE HAS**
22 **HEALTH FLEXIBLE SPENDING ARRANGE-**
23 **MENT.**

24 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A
25 HEALTH FLEXIBLE SPENDING ARRANGEMENT.—Section

1 223(c)(1)(B) of the Internal Revenue Code of 1986 is
2 amended by striking “and” at the end of clause (ii), by
3 striking the period at the end of clause (iii) and inserting
4 “, and”, and by adding at the end the following new
5 clause:

6 “(iv) coverage under a health flexible
7 spending arrangement of the spouse of the
8 individual for any plan year of such ar-
9 rangement if the aggregate reimburse-
10 ments under such arrangement for such
11 year do not exceed the aggregate expenses
12 which would be eligible for reimbursement
13 under such arrangement if such expenses
14 were determined without regard to any ex-
15 penses paid or incurred with respect to
16 such individual.”.

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

20 **SEC. 5. FSA AND HRA TERMINATIONS OR CONVERSIONS TO**
21 **FUND HSAs.**

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

24 “(2) QUALIFIED HSA DISTRIBUTION.—For pur-
25 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘qualified
2 HSA distribution’ means, with respect to any
3 employee, a distribution from a health flexible
4 spending arrangement or health reimbursement
5 arrangement of such employee contributed di-
6 rectly to a health savings account of such em-
7 ployee if—

8 “(i) such distribution is made in con-
9 nection with such employee establishing
10 coverage under a high deductible health
11 plan (as defined in section 223(c)(2)) if
12 during the 4-year period preceding the
13 date the employee so establishes coverage
14 the employee was not covered under such
15 a high deductible health plan, and

16 “(ii) such arrangement is described in
17 section 223(c)(1)(B)(vi) with respect to
18 any portion of the plan year remaining
19 after such distribution is made, if such em-
20 ployee remains enrolled in such arrange-
21 ment.

22 “(B) DOLLAR LIMITATION.—The aggre-
23 gate amount of distributions from health flexi-
24 ble spending arrangements and health reim-
25 bursement arrangements of any employee which

1 may be treated as qualified HSA distributions
2 in connection with an establishment of coverage
3 described in subparagraph (A)(i) shall not ex-
4 ceed the dollar amount in effect under section
5 125(i)(1) (twice such amount in the case of cov-
6 erage which is described in section
7 223(b)(2)(B)).”.

8 (b) PARTIAL REDUCTION OF LIMITATION ON DE-
9 DUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of
10 such Code is amended by striking “and” at the end of
11 subparagraph (B), by striking the period at the end of
12 subparagraph (C) and inserting “, and”, and by inserting
13 after subparagraph (C) the following new subparagraph:

14 “(D) so much of any qualified HSA dis-
15 tribution (as defined in section 106(e)(2)) made
16 to a health savings account of such individual
17 during the taxable year as does not exceed the
18 aggregate increases in the balance of the ar-
19 rangement from which such distribution is
20 made which occur during the portion of the
21 plan year which precedes such distribution
22 (other than any balance carried over to such
23 plan year and determined without regard to any
24 decrease in such balance during such portion of
25 the plan year).”.

1 (c) CONVERSION TO HSA-COMPATIBLE ARRANGE-
2 MENT FOR REMAINDER OF PLAN YEAR.—Section
3 223(e)(1)(B) of such Code, as amended by this preceding
4 provisions of this Act, is amended by striking “and” at
5 the end of clause (iii), by striking the period at the end
6 of clause (iv) and inserting “, and”, and by adding at the
7 end the following new clause:

8 “(v) coverage under a health flexible
9 spending arrangement or health reimburse-
10 ment arrangement for the portion of the
11 plan year after a qualified HSA distribu-
12 tion (as defined in section 106(e)(2) deter-
13 mined without regard to subparagraph
14 (A)(ii) thereof) is made, if the terms of
15 such arrangement which apply for such
16 portion of the plan year are such that, if
17 such terms applied for the entire plan
18 year, then such arrangement would not be
19 taken into account under subparagraph
20 (A)(ii) of this paragraph for such plan
21 year.”.

22 (d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS
23 ON W-2.—

24 (1) IN GENERAL.—Section 6051(a) of such
25 Code, as amended by this preceding provisions of

1 this Act, is amended by striking “and” at the end
2 of paragraph (17), by striking the period at the end
3 of paragraph (18) and inserting “, and”, and by in-
4 serting after paragraph (18) the following new para-
5 graph:

6 “(19) the amount of any qualified HSA dis-
7 tribution (as defined in section 106(e)(2)) with re-
8 spect to such employee.”.

9 (2) CONFORMING AMENDMENT.—Section
10 6051(a)(12) of such Code is amended by inserting
11 “(other than any qualified HSA distribution, as de-
12 fined in section 106(e)(2))” before the comma at the
13 end.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to distributions made after Decem-
16 ber 31, 2025, in taxable years ending after such date.

