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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. 5688

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

IN THE HOUSE OF REPRESENTATIVES

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

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”.

1 **SEC. 2. TREATMENT OF DIRECT PRIMARY CARE SERVICE**
2 **ARRANGEMENTS.**

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

6 “(E) TREATMENT OF DIRECT PRIMARY
7 CARE SERVICE ARRANGEMENTS.—

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

12 “(ii) DIRECT PRIMARY CARE SERVICE
13 ARRANGEMENT.—For purposes of this
14 paragraph—

15 “(I) IN GENERAL.—The term ‘di-
16 rect primary care service arrange-
17 ment’ means, with respect to any indi-
18 vidual, an arrangement under which
19 such individual is provided medical
20 care (as defined in section 213(d))
21 consisting solely of primary care serv-
22 ices provided by primary care practi-
23 tioners (as defined in section
24 1833(x)(2)(A) of the Social Security
25 Act, determined without regard to
26 clause (ii) thereof), if the sole com-

1 pensation for such care is a fixed peri-
2 odic fee.

3 “(II) LIMITATION.—With respect
4 to any individual for any month, such
5 term shall not include any arrange-
6 ment if the aggregate fees for all di-
7 rect primary care service arrange-
8 ments (determined without regard to
9 this subclause) with respect to such
10 individual for such month exceed
11 \$150 (twice such dollar amount in the
12 case of an individual with any direct
13 primary care service arrangement (as
14 so determined) that covers more than
15 one individual).

16 “(iii) CERTAIN SERVICES SPECIFI-
17 CALLY EXCLUDED FROM TREATMENT AS
18 PRIMARY CARE SERVICES.—For purposes
19 of this paragraph, the term ‘primary care
20 services’ shall not include—

21 “(I) procedures that require the
22 use of general anesthesia,

23 “(II) prescription drugs (other
24 than vaccines), and

1 “(III) laboratory services not
2 typically administered in an ambula-
3 tory primary care setting.

4 The Secretary, after consultation with the
5 Secretary of Health and Human Services,
6 shall issue regulations or other guidance
7 regarding the application of this clause.”.

8 (b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT
9 FEES TREATED AS MEDICAL EXPENSES.—Section
10 223(d)(2)(C) of such Code is amended by striking “or”
11 at the end of clause (iii), by striking the period at the
12 end of clause (iv) and inserting “, or”, and by adding at
13 the end the following new clause:

14 “(v) any direct primary care service
15 arrangement.”.

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

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

20 (2) in subparagraph (B), by inserting “and
21 (iii)” after “clause (ii)” in clause (i), by striking
22 “and” at the end of clause (i), by striking the period
23 at the end of clause (ii) and inserting “, and”, and
24 by inserting after clause (ii) the following new
25 clause:

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

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

11 “(18) in the case of a direct primary care serv-
12 ice arrangement (as defined in section
13 223(c)(1)(E)(ii)) which is provided in connection
14 with employment, the aggregate fees for such ar-
15 rangement for such employee.”.

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

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

20 (a) **IN GENERAL.**—Section 223(c)(1) of the Internal
21 Revenue Code of 1986, as amended by the preceding pro-
22 visions of this Act, is amended by adding at the end the
23 following new subparagraph:

24 “(F) **SPECIAL RULE FOR QUALIFIED ITEMS**
25 **AND SERVICES.**—

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

8 “(I) at a healthcare facility lo-
9 cated at a facility owned or leased by
10 the employer of the individual (or of
11 the individual’s spouse), or

12 “(II) at a healthcare facility op-
13 erated primarily for the benefit of em-
14 ployees of the employer of the indi-
15 vidual (or of the individual’s spouse).

16 “(ii) QUALIFIED ITEMS AND SERVICES
17 DEFINED.—For purposes of this subpara-
18 graph, the term ‘qualified items and serv-
19 ices’ means the following:

20 “(I) Physical examination.

21 “(II) Immunizations, including
22 injections of antigens provided by em-
23 ployees.

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

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

6 “(V) Preventive care for chronic
7 conditions (as defined in clause (iv)).

8 “(VI) Drug testing.

9 “(VII) Hearing or vision
10 screenings and related services.

11 “(iii) AGGREGATION.—For purposes
12 of clause (i), all persons treated as a single
13 employer under subsection (b), (c), (m), or
14 (o) of section 414 shall be treated as a sin-
15 gle employer.

16 “(iv) PREVENTIVE CARE FOR CHRON-
17 IC CONDITIONS.—For purposes of this sub-
18 paragraph, the term ‘preventive care for
19 chronic conditions’ means any item or
20 service specified in the Appendix of Inter-
21 nal Revenue Service Notice 2019–45 which
22 is prescribed to treat an individual diag-
23 nosed with the associated chronic condition
24 specified in such Appendix for the purpose
25 of preventing the exacerbation of such

1 chronic condition or the development of a
2 secondary condition, including any amend-
3 ment, addition, removal, or other modifica-
4 tion made by the Secretary (pursuant to
5 the authority granted to the Secretary
6 under paragraph (2)(C)) to the items or
7 services specified in such Appendix subse-
8 quent to the date of enactment of this sub-
9 paragraph.”.

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

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

16 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A
17 HEALTH FLEXIBLE SPENDING ARRANGEMENT.—Section
18 223(c)(1)(B) of the Internal Revenue Code of 1986 is
19 amended by striking “and” at the end of clause (ii), by
20 striking the period at the end of clause (iii) and inserting
21 “, and”, and by adding at the end the following new
22 clause:

23 “(iv) coverage under a health flexible
24 spending arrangement of the spouse of the
25 individual for any plan year of such ar-

1 rangement if the aggregate reimburse-
2 ments under such arrangement for such
3 year do not exceed the aggregate expenses
4 which would be eligible for reimbursement
5 under such arrangement if such expenses
6 were determined without regard to any ex-
7 penses paid or incurred with respect to
8 such individual.”.

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

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

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

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

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

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

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

15 “(B) DOLLAR LIMITATION.—The aggre-
16 gate amount of distributions from health flexi-
17 ble spending arrangements and health reim-
18 bursement arrangements of any employee which
19 may be treated as qualified HSA distributions
20 in connection with an establishment of coverage
21 described in subparagraph (A)(i) shall not ex-
22 ceed the dollar amount in effect under section
23 125(i)(1) (twice such amount in the case of cov-
24 erage which is described in section
25 223(b)(2)(B)).”.

1 (b) PARTIAL REDUCTION OF LIMITATION ON DE-
2 DUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of
3 such Code is amended by striking “and” at the end of
4 subparagraph (B), by striking the period at the end of
5 subparagraph (C) and inserting “, and”, and by inserting
6 after 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 ar-
12 rangement from which such distribution is
13 made which occur during the portion of the
14 plan year which precedes such distribution
15 (other than any balance carried over to such
16 plan year and determined without regard to any
17 decrease in such balance during such portion of
18 the plan year).”.

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

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

15 (d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS
16 ON W-2.—

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

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

4 (2) CONFORMING AMENDMENT.—Section
5 6051(a)(12) of such Code is amended by inserting
6 “(other than any qualified HSA distribution, as de-
7 fined in section 106(e)(2))” before the comma at the
8 end.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this subsection shall apply to distributions made after De-
11 cember 31, 2025, in taxable years ending after such date.