112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112–516

RESTORING ACCESS TO MEDICATION ACT OF 2012

JUNE 5, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 5842]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5842) to amend the Internal Revenue Code of 1986 to repeal the amendments made by the Patient Protection and Affordable Care Act which disqualify expenses for over-the-counter drugs under health savings accounts and health flexible spending arrangements, having considered the same, report favorably thereon and recommend that the bill, as amended, do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Restoring Access to Medication Act of 2012".

SEC. 2. REPEAL OF DISQUALIFICATION OF EXPENSES FOR OVER-THE-COUNTER DRUGS UNDER CERTAIN ACCOUNTS AND ARRANGEMENTS.

(a) HSAS.—Subparagraph (A) of section 223(d)(2) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) ARCHER MSAS.—Subparagraph (A) of section 220(d)(2) of such Code is amended by striking the last sentence.

(c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Section 106 of such Code is amended by striking subsection (f).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred after December 31, 2012.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 5842, as reported by the Committee on Ways and Means, repeals the limitations on the use of certain tax-advantaged accounts and arrangements for the purchase of over-the-counter medicine.

B. BACKGROUND AND NEED FOR LEGISLATION

Millions of Americans currently use tax-advantaged accounts and arrangements to save for "qualified" medical expenses, as defined by the Internal Revenue Code ("IRC"). Contributions to and distributions from these accounts and arrangements are generally tax-favored and may be used for unreimbursed medical expenses such as deductibles and co-payments. Approximately 33 million Americans are currently in families with Flexible Spending Arrangements ("FSAs"), which are offered by 29 percent of small businesses and 85 percent of large employers. Over 13 million Americans currently hold or maintain a Health Savings Account ("HSA").

As a result of the Patient Protection and Affordable Care Act (Pub. L. No. 111–148), beginning in January 2011, the nearly 45 million Americans enrolled in an FSA, HSA, Archer Medical Savings Account ("MSA") or Health Reimbursement Arrangement ("HRA") could no longer purchase over-the-counter ("OTC") medicines, other than insulin, without a doctor's prescription with funds from these accounts or arrangements. Americans must now purchase non-prescribed OTC medications with after-tax dollars, resulting in a tax increase on American families.

The limitation on the use of HSA, FSA, HRA and Archer MSA funds for OTC medicine is directly at odds with the goal of lowering health care costs and increasing access to primary care physicians. A 2010 study by Booz & Co. concluded that every dollar spent by consumers on OTC medicines saves $6 to $7 for the U.S. healthcare system as a whole. According to a survey completed for the Consumer Healthcare Products Association, 63 percent of physicians believe the limitation on OTC purchases will increase the burden on medical professionals. In addition, 47 percent of patients surveyed said they would seek a doctor's prescription for their OTC medications.

Repealing the OTC medicine limitation will lower health care costs for millions of Americans, and relieve burdens placed on physicians by the Patient Protection and Affordable Care Act.

C. LEGISLATIVE HISTORY

Background

H.R. 5842 was introduced on May 18, 2012, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 5842 on May 31, 2012, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The Subcommittee on Oversight of the Committee on Ways and Means held a public hearing on April 25, 2012, on the impact of limitations on the use of tax-advantaged accounts for the purchase of over-the-counter medicine.

II. EXPLANATION OF PROVISION

A. REPEAL OF THE DISQUALIFICATION OF EXPENSES FOR OVER-THE-COUNTER MEDICINE UNDER HEALTH SAVINGS ACCOUNTS, ARCHER MSAS, HEALTH FLEXIBLE SPENDING ARRANGEMENTS, AND HEALTH REIMBURSEMENT ARRANGEMENTS (sec. 2 of the bill and secs. 106, 220, and 223 of the Code)

PRESENT LAW

Individual deduction for medical expenses

Expenses for medical care, not compensated for by insurance or otherwise, are deductible by an individual under the rules relating to itemized deductions to the extent the expenses exceed 7.5 percent (generally 10 percent for years after 2012) of adjusted gross income ("AGI").[1] Medical care generally is defined broadly as amounts paid for diagnoses, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure of the body.[2]

Under an explicit limitation, any amount paid during a taxable year for medicine or drugs is deductible as a medical expense only if the medicine or drug is a prescribed drug or insulin.[3] The term prescribed drug means a drug or biological which requires a prescription of a physician for its use by an individual.[4] Thus, any amount paid for medicine available without a prescription ("over-the-counter medicine") is not deductible as a medical expense, including any medicine prescribed or recommended by a physician.[5]

Exclusion for employer-provided health care

Employees are not taxed on (that is, may exclude from gross income) the value of employer-provided health coverage under an ac-

[1] Sec. 213(a). The 7.5 percent of AGI threshold increases to 10 percent for taxable years beginning after December 31, 2012. However, this increase in the percentage does not apply until taxable years beginning after December 31, 2016 with respect to any taxpayer if the taxpayer or the taxpayer's spouse has attained age 65 before the close of the taxable year.

[2] Sec. 213(d). There are certain limitations on the general definition including a rule that cosmetic surgery or similar procedures are generally not medical care.

[3] Sec. 213(b).

[4] Sec. 213(d)(3).

[5] Rev. Rul. 2003–58, 2003–1 CB 959.

cident or health plan.[6] In addition, any reimbursements under an employer-provided accident or health plan for medical care expenses for employees, their spouses, their dependents, and adult children under age 27 generally are excludible from gross income.[7] An employer may agree to reimburse expenses for medical care of its employees (and their spouses and dependents), not covered by a health insurance plan, through a flexible spending arrangement ("FSA") which allows reimbursement not in excess of a specified dollar amount. The amounts available for reimbursement must be exclusively for reimbursement for medical care because the exclusion does not apply to amounts which the employee would be entitled to irrespective of whether he or she incurs expenses for medical care.[8]

Such dollar amount is either elected by an employee under a cafeteria plan ("Health FSA") or otherwise specified by the employer under a health reimbursement arrangement ("HRA"). Reimbursements under these arrangements are also excludible from gross income as reimbursements for medical care under employer-provided health coverage.

Health savings accounts

An individual with a high deductible health plan (and no other health plan other than a plan that provides certain permitted insurance or permitted coverage) may establish a health savings account ("HSA"). In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents. Thus, earnings on amounts in HSAs are not taxable.

Subject to limits,[9] contributions made to an HSA by an employer, including contributions made through a cafeteria plan through salary reduction, are excludible from income (and from wages for payroll tax purposes). Contributions made by individuals are deductible for income tax purposes, regardless of whether the individuals itemize. Distributions from an HSA that are used for qualified medical expenses are excludible from gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20-percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65). Similar rules apply for another type of medical savings arrangement called an Archer medical savings account ("Archer MSA").[10]

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[6] Sec 106.
[7] Sec. 105(b).
[8] Treas. Reg. sec. 1.105–2.
[9] For 2012, the maximum aggregate annual contribution that can be made to an HSA is $3,100 in the case of self-only coverage and $6,250 in the case of family coverage. The annual contribution limits are increased by $1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up contributions"). Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.
[10] Sec. 220.

Medical care for excludible reimbursements

For purposes of the exclusion for reimbursements under employer-provided accident and health plans (including under Health FSAs and HRAs), and for distributions from HSAs and Archer MSAs used for qualified medical expenses, the definition of medical care is generally the same as the definition that applies for the itemized deduction for the cost of medical care. However, prior to the enactment of the Patient Protection and Affordable Care Act (referred to as the "Affordable Care Act"),[11] the limitation (applicable to the itemized deduction) that only prescription medicines or drugs and insulin are taken into account did not apply. Thus, for example, amounts paid from a Health FSA or HRA, or funds distributed from an HSA to reimburse a taxpayer for nonprescription drugs, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, were excludible from income even though, if the taxpayer paid for such amounts directly (without such reimbursement), the expenses could not be taken into account in determining the itemized deduction for medical expenses.[12]

For years beginning after December 31, 2010, the Affordable Care Act changed the definition of medical care for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and for distributions from HSAs and Archer MSAs used for qualified medical expenses to require that over-the-counter medicine (other than insulin) be prescribed by a physician in order for the medicine to be medical care for these purposes.[13] Thus, under present law, a Health FSA or an HRA is only permitted to reimburse an employee for the cost of over-the-counter medicine if the medicine is prescribed by a physician and distributions from an HSA or an Archer MSA used to purchase over-the-counter medicine is not a qualified medical expense unless the medicine is prescribed by a physician.

REASONS FOR CHANGE

The Committee observes that the requirement that over-the-counter medicine requires a prescription in order to be an eligible expense for individuals and families covered by an FSA, HSA, HRA, or MSA has left these consumers with three options: (1) seek an unnecessary appointment with a doctor to obtain a prescription, and then submit the purchase for reimbursement under an FSA account; (2) purchase the OTC medicine out-of-pocket, which significantly increases the after-tax cost to the consumer; or (3) forego treatment entirely and suffer from the symptoms of the condition. The Committee notes that all three options increase costs to the consumer and to our healthcare system. The Committee therefore believes that the provision of the Affordable Care Act that disqualified expenses for over-the-counter medicine (unless obtained with a prescription) from being medical expenses under Health FSAs, HRAs, HSAs, and Archer HSAs should be repealed.

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[11] Pub. L. No 111–148. Various provisions of the Affordable Care Act are amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152.

[12] Rev. Rul. 2003–102, 2993–2 C.B. 559, now obsolete by Rev. Rul. 2010–23, 2010–39 I.R.B. 388.

[13] Sec. 9003 of the Affordable Care Act. Notice 2010–59, 2010–39 I.R.B. 388, provides guidance on this change to the definition of medical care for these purposes.

EXPLANATION OF PROVISION

The provision repeals the change to the definition of medical care made by the Affordable Care Act for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and for distributions from HSAs or Archer MSAs used for qualified medical expenses that requires that over-the-counter medicine (other than insulin) be prescribed by a physician in order for the medicine to be medical care for these purposes. Thus, for example, amounts paid from a Health FSA or HRA, or funds distributed from an HSA or an Archer MSA to reimburse a taxpayer for nonprescription drugs, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, are excludible from income even though, if the taxpayer paid for such amounts directly (without such reimbursement), the expenses could not be taken into account in determining the itemized deduction for medical expenses.

EFFECTIVE DATE

The provision is effective with respect to expenses incurred after December 31, 2012.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee on Ways and Means in its consideration of H.R. 5842.

MOTION TO REPORT RECOMMENDATION

The bill H.R. 5842, as amended, was ordered favorably reported by a rollcall vote of 24 yeas to 9 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X			Mr. Levin		X	
Mr. Herger	X			Mr. Rangel			
Mr. Johnson				Mr. Stark		X	
Mr. Brady	X			Mr. McDermott			
Mr. Ryan	X			Mr. Lewis		X	
Mr. Nunes	X			Mr. Neal		X	
Mr. Tiberi	X			Mr. Becerra		X	
Mr. Davis	X			Mr. Doggett		X	
Mr. Reichert	X			Mr. Thompson		X	
Mr. Boustany	X			Mr. Larson		X	
Mr. Roskam	X			Mr. Blumenauer		X	
Mr. Gerlach	X			Mr. Kind	X		
Mr. Price	X			Mr. Pascrell			
Mr. Buchanan	X			Ms. Berkley	X		
Mr. Smith	X			Mr. Crowley	X		
Mr. Schock	X						
Ms. Jenkins	X						
Mr. Paulsen	X						
Mr. Marchant	X						
Mr. Berg	X						
Ms. Black	X						
Mr. Reed	X						

IV. BUDGET EFFECTS OF THE PROVISION

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 5842 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2013–2022:

FISCAL YEARS

[Millions of dollars]

	Item											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013–17	2013–22
Repeal the limitation on reimbursement of over-the-counter medications from health FSAs, HRAs, HSAs, and Archer MSAs [1]	−223	−305	−332	−361	−390	−419	−448	−479	−511	−544	−1,611	−4,012

NOTE: Details do not add to totals dur to rounding.

[1] Estimate includes the following off-budget effects:

2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013–17	2013–22
−54	−73	−80	−87	−94	−100	−108	−115	−123	−130	−387	−963

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by the CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 4, 2012.

Hon. Dave Camp,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5842, the Restoring Access to Medication Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Pamela Green.

Sincerely,

Douglas W. Elmendorf.

Enclosure.

H.R. 5842—Restoring Access to Medication Act of 2012

Summary: H.R. 5842 would amend the Internal Revenue Code to repeal the provisions that disqualify expenses for over-the-counter medicine under health savings accounts (HSAs), Archer medical savings accounts (Archer MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs). The bill would thus allow costs for over-the-counter medications to be eligible for reimbursement by funds in those tax-favored accounts.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 5842 would reduce revenues by about $4 billion over the 2012–2022 period. Of that reduction, about $3 billion would result from changes in on-budget revenues, and about $1 billion would result from changes in off-budget revenues (from Social Security payroll taxes, which are categorized as off-budget). Pay-as-you-go procedures apply because enacting the legislation would affect on-budget revenues.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5842 is shown in the following table.

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012—2017	2012—2022
CHANGES IN REVENUES													
Estimated Revenues	0	—223	—305	—332	—361	—390	—419	—448	—479	—511	—544	—1,611	—4,012
On-budget	0	—169	—232	—252	—274	—296	—319	—340	—364	—388	—414	—1,224	—3,049
Off-budget	0	—54	—73	—80	—87	—94	—100	—108	—115	—123	—130	—387	—963

Source: Staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding.

Basis of estimate: H.R. 5842 would allow taxpayers to be reimbursed for purchases of over-the-counter drugs from their HSAs, Archer MSAs, FSAs and HRAs. Under current law, expenses for over-the-counter medications are not eligible for reimbursement from these accounts unless the medicine is prescribed by a physician. The bill would expand the expenses eligible for reimbursement under these health accounts, which provide tax-favored treatment for medical expenses. JCT estimates that enacting H.R. 5842 would reduce on-budget revenues by about $3 billion and off-budget revenues by about $1 billion between 2013 and 2022, thereby increasing federal budget deficits by about $4 billion over that period.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF H.R. 5842, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON MAY 31, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
NET INCREASE IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact	0	169	232	252	274	296	319	340	364	388	414	1,224	3,049

Intergovernmental and private-sector impact: JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Pamela Greene.

Estimate approved by: Frank Sammartino, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the potential impact of the limitations on the use of certain tax-advantaged accounts and arrangements for the purchase of over-the-counter medicine and the provisions of H.R. 5842 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for any measure authorizing funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the reported bill does not contain any Federal private sector mandates within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995. The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

The Committee has determined that the bill does not impose a private sector mandate, and has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment,

or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, for each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with a discussion regarding the relevant complexity and administrative issues. Below is a summary description of the provision and discussion regarding the relevant complexity and administrative issues provided by the Internal Revenue Service with which the staff of the Joint Committee on Taxation concurs.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

June 4, 2012

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
Washington, D.C. 20515

Dear Mr. Barthold:

I am responding to your letter dated May 31, 2012, in which you requested a complexity analysis related to H.R. 5842, Restoring Access to Medication Act of 2012.

Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department for inclusion in the complexity analysis in the House Committee on Ways and Means Report on H.R. 5842.

Our comments are based on the description of the provision provided in your letter. The analysis does not include administrative cost estimates for the changes that would be required. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provision. The analysis does not cover any other provisions of the bill.

Sincerely,

Douglas H. Shulman

Enclosure

COMPLEXITY ANALYSIS OF THE COMMITTEE REPORT ON H.R. 5842, RESTORING ACCESS TO MEDICATION ACT OF 2012

The provision repeals the change to the definition of medical care made by the Affordable Care Act for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and for distributions from HSAs or Archer MSAs used for qualified medical expenses that requires that over-the-counter medicine (other than insulin) be prescribed by a physician in order for the medicine to be medical care for these purposes. Thus, for example, amounts paid from a Health FSA or HRA, or funds distributed from an HSA or an Archer MSA to reimburse a taxpayer for nonprescription drugs, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, are excludible from income even though, if the taxpayer paid for such amounts directly (without such reimbursement), the expenses could not be taken into account in determining the itemized deduction for medical expenses.

IRS and Treasury Comments:

- Development of a new form or forms is not necessary.
- IRS would need to revise publications and instructions to reflect the broadening of the definition of medical expenses. Specifically, the following publications and instructions would require revision: Publication 505 Tax Withholding and Estimated Tax; Publication 919 How Do I Adjust My Tax Withholding; Publication 969 Health Savings Accounts and Other Tax-Favored Health Plans; Form 1040 Schedule A Instructions; Form 1040ES Instructions; Form 1040ES/V Instructions; Form 1040ES PR Instructions; Form 8889 Health Savings Accounts Instructions.
- IRS would need to develop a comprehensive communication strategy to ensure that IRS employees and taxpayers understand the change.
- Taxpayers voluntarily claiming FSA reimbursement for over-the-counter medicines would incur extra burdens in record keeping and claim submissions, potentially for small amounts of money.
- Record keeping burden on pharmacies may be reduced depending on their current plan requirements.
- Guidance under sections 105 and 106 would also be needed.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * * * *

SEC. 106. CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND HEALTH PLANS.

(a) * * *

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[(f) REIMBURSEMENTS FOR MEDICINE RESTRICTED TO PRESCRIBED DRUGS AND INSULIN.—For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.**]**

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PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

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SEC. 220. ARCHER MSAS.

(a) * * *

* * * * * * *

(d) ARCHER MSA.—For purposes of this section—

(1) * * *

(2) QUALIFIED MEDICAL EXPENSES.—

(A) IN GENERAL.—The term "qualified medical expenses" means, with respect to an account holder, amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. **[**Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.**]**

* * * * * * *

SEC. 223. HEALTH SAVINGS ACCOUNTS.

(a) * * *

* * * * * * *

(d) HEALTH SAVINGS ACCOUNT.—For purposes of this section—

(1) * * *

(2) QUALIFIED MEDICAL EXPENSES.—

(A) IN GENERAL.—The term "qualified medical expenses" means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. **[**Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.**]**

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VII. DISSENTING VIEWS

We voted against this bill because it costs $4 billion in lost tax revenues and this revenue loss is not offset. When combined with the three other health care measures under consideration at the Markup, the total cost for all bills is nearly $42 billion—and the Majority has not set forth any options to pay for this cost. Not one option was set forth at the Markup. It is simply unacceptable in this time of fiscal austerity to not pay the cost of these bills. It is irresponsible to add nearly $42 billion to the deficit.

This Markup continues the Majority's attempt to repeal the Affordable Care Act (ACA) without offering a replacement. In January of 2009, the Majority voted to repeal and replace the ACA. If their replacement solution is expanded access to Health Flexible Spending Accounts and Health Savings Accounts, then it falls far short of the needs of American families. Neither Health Flexible Spending Accounts nor Health Savings Accounts provide health coverage to participants. They only provide tax breaks for certain health costs. They are not real solutions to the problems facing our nation with respect to health care and insurance coverage.

SANDER M. LEVIN.
CHARLES B. RANGEL.
FORTNEY PETE STARK.
JIM MCDERMOTT.
JOHN B. LEWIS.
XAVIER BECERRA.
EARL BLUMENAUER.

VIII. ADDITIONAL VIEWS

The legislation reported by the Committee repeals a prohibition on the use of Health Savings Accounts (HSAs), Flexible Spending Accounts (FSAs), and Health Reimbursement Arrangements (HRAs) for purchasing over-the-counter drugs without a prescription. In addition to this statutory barrier, we are concerned that the Internal Revenue Service (IRS) is imposing additional restrictions on the use of these tax-advantaged savings accounts through its interpretation of the definition of "medical care" in Section 213(d) of the Code. Specifically, we understand that the IRS is currently preventing individuals and families from using HSAs, FSAs, HRAs, or the deduction for medical expenses exceeding 7.5% of adjusted gross income, for private umbilical cord blood banking unless a transplant need is imminently probable at the time of banking.

As medical technology moves increasingly toward personalized cellular therapies, families that choose to bank their child's umbilical cord blood are making an investment in their child's healthcare that, in our view, clearly falls within the definition of "prevention of disease." Further, the methodology that the IRS is currently using is contradictory. Expenses associated with a cord blood stem cell transplant are considered "medical care" and qualify for use with a tax-advantaged healthcare account or the medical expense deduction. However, expenses associated with collecting, processing and storing cord blood stem cells at the time of birth so they can be used for such a future transplant are not. Since umbilical cord blood stem cells must be collected, processed and stored prior to transplantation, whether such a transplant occurs imminently or in the future, we believe the current IRS interpretation of the law is conflicting and incorrect.

We urge the IRS to closely review and consider changing its classification of private umbilical cord blood banking so that individuals and families may use HSAs, FSAs, HRAs or the deduction for medical expenses exceeding 7.5% of adjusted gross income, for expenses associated with the collection, processing and storage of umbilical cord blood stem cells.

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