

THE “PERSONAL HEALTH INVESTMENT TODAY ACT” OR  
THE “PHIT ACT”

\_\_\_\_\_  
JULY 19, 2018.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. BRADY of Texas, from the Committee on Ways and Means,  
submitted the following

R E P O R T

[To accompany H.R. 6312]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6312) to amend the Internal Revenue Code of 1986 to treat qualified sports and fitness expenses as amounts paid for medical care, report favorably thereon with an amendment and recommend that the bill as amended do pass.

PERSONAL HEALTH INVESTMENT TODAY ACT

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Mr. BRADY of Texas, from the Committee on Ways and Means,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 6312]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6312) to amend the Internal Revenue Code of 1986 to treat certain amounts paid for physical activity, fitness, and exercise as amounts paid for medical care, having considered the same, report favorably thereon with an amendment 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 “Personal Health Investment Today Act” or the “PHIT Act.”

**SEC. 2. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY, FITNESS, AND EXERCISE TREATED AS AMOUNTS PAID FOR MEDICAL CARE.**

(a) **IN GENERAL.**—Section 213(d)(1) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “, or”, and by adding at the end the following new subparagraph:

“(E) for qualified sports and fitness expenses.”.

(b) **QUALIFIED SPORTS AND FITNESS EXPENSES.**—Section 213(d) of such Code is amended by adding at the end the following paragraph:

“(12) **QUALIFIED SPORTS AND FITNESS EXPENSES.**—

“(A) **IN GENERAL.**—The term ‘qualified sports and fitness expenses’ means amounts paid for—

“(i) membership at a fitness facility,

“(ii) participation or instruction in a program of physical exercise or physical activity, or

“(iii) safety equipment for use in a program (including a self-directed program) of physical exercise or physical activity.

“(B) **DOLLAR LIMITATIONS.**—

“(i) **OVERALL LIMITATION.**—The aggregate amount treated as qualified sports and fitness expenses with respect to any taxpayer for any taxable year shall not exceed \$500 (twice such amount in the case of a joint return or a head of household (as defined in section 2(b))).

“(ii) **SAFETY EQUIPMENT.**—The amount treated as qualified sports and fitness expenses with respect to any item of safety equipment described in subparagraph (A)(iii) shall not exceed \$250.

“(C) **CERTAIN EXCLUSIONS.**—

“(i) **IN GENERAL.**—Golf, hunting, sailing, and horseback riding shall not be treated as a physical exercise or physical activity.

“(ii) **EXERCISE VIDEOS, ETC.**—Qualified sports and fitness expenses shall not include videos, books, or similar materials.

“(D) **FITNESS FACILITY DEFINED.**—For purposes of subparagraph (A)(i), the term ‘fitness facility’ means a facility—

“(i) providing instruction in a program of physical exercise or physical activity, offering facilities for the preservation, maintenance, encouragement, or development of physical fitness, or serving as the site of such a program of a State or local government,

“(ii) which is not a private club owned and operated by its members,

“(iii) which does not offer facilities for any activity described in subparagraph (C)(i),

“(iv) whose health or fitness facility is not incidental to its overall function and purpose, and

“(v) which is fully compliant with applicable State and Federal anti-discrimination laws.

“(E) **PROGRAMS WHICH INCLUDE COMPONENTS OTHER THAN PHYSICAL EXERCISE AND PHYSICAL ACTIVITY.**—Rules similar to the rules of paragraph (6) shall apply in the case of any program that includes physical exercise or physical activity and also other components. For purposes of the preceding sentence, travel and accommodations shall be treated as an other component.

“(F) **INFLATION ADJUSTMENT.**—In the case of any taxable year beginning in a calendar year after 2019, the \$500 amount in subparagraph (B)(i) and the \$250 amount in subparagraph (B)(ii) shall each be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins, determined by substituting ‘calendar year 2018’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of \$10, such increase shall be rounded to the next lowest multiple of \$10.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2018.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

The bill H.R. 6312, as reported by the Committee on Ways and Means, adds qualified sports and fitness expenses to the definition of qualified medical expenses.

### B. BACKGROUND AND NEED FOR LEGISLATION

Qualified medical expenses generally are defined in law and include expenses for diagnosis, cure, mitigation, treatment, or prevention of disease, including prescription drugs, transportation primarily for and essential to such care, and qualified long-term care expenses. The list of qualified medical expenses generally determines what services and items are eligible for a tax deduction either through the medical expense deduction or through existing tax-favored health care accounts.

Under present law, sports and fitness expenses such as memberships at a fitness facility or participation or instruction in a program of physical exercise are not treated as medical care expenses.

The Personal Health Investment Today Act (PHIT) expands the definition of a medical expense to include expenses for certain sports and fitness activities in the tax code with the intention of improving health and preventing illness through promoting physical activity and related safety equipment. Under the bill, allowable expenditures from existing tax-favored health care accounts, such as flexible spending accounts, health savings accounts, and health reimbursement arrangements, would be expanded to include certain physical activity expenses.

While the Committee believes numerous activities, including golfing, hunting, sailing and horseback riding are physical activities, these activities do not qualify for the purposes of a qualified medical expense under H.R. 6312.

### C. LEGISLATIVE HISTORY

#### *Background*

H.R. 6312 was introduced on July 6, 2018, and was referred to the Committee on Ways and Means.

#### *Committee action*

The Committee on Ways and Means marked up H.R. 6312, the “Personal Health Investment Today Act” or the “PHIT Act”, on July 12, 2018, and ordered the bill, as amended, favorably reported (with a quorum being present).

#### *Committee hearings*

The policy issues associated with Health Savings Accounts (HSAs) and need for legislative response were discussed at the following Ways and Means hearings during the 114th and 115th Congresses:

- Full Committee Hearing on the Tax Treatment of Health Care (April 14, 2016)
- Subcommittee on Health Member Day Hearing on Tax-Related Proposals to Improve Health Care (May 17, 2016)

- Subcommittee on Health Hearing on Rising Health Insurance Premiums Under the Affordable Care Act (July 12, 2016)
- Subcommittee on Health Hearing on Lowering Costs and Expanding Access to Health Care through Consumer-Directed Health Plans (June 6, 2018)

## II. EXPLANATION OF THE BILL

### A. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY, FITNESS AND EXERCISE TREATED AS AMOUNTS PAID FOR MEDICAL CARE

#### PRESENT LAW

##### *Health savings accounts*

An individual may establish a health savings account (“HSA”) only if the individual is covered under a plan that meets the requirements for a high deductible health plan, as described below. 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, an HSA is a tax-exempt trust or custodial account created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents.

Within limits,<sup>1</sup> contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA are excludible from income and employment taxes if made by the employer. Earnings in HSAs are not taxable. Distributions from an HSA for qualified medical expenses are not includible in 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 or disability, or after the individual attains the age of Medicare eligibility (age 65). Unlike reimbursements from a flexible spending arrangement or health reimbursement arrangement, distributions from an HSA are not required to be substantiated by the employer or a third party for the distributions to be excludible from income.

##### *High deductible health plans*

A high deductible health plan is a health plan that has a minimum annual deductible of \$1,350 (for 2018) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed \$6,650 (for 2018) for self-only coverage and twice this amount for family coverage.<sup>2</sup> These dollar thresholds are subject to inflation adjustment, based on chained CPI.<sup>3</sup>

<sup>1</sup>For 2018, the basic limit on annual contributions that can be made to an HSA is \$3,450 in the case of self-only coverage and \$6,900 in the case of family coverage. (The 2018 limitation for family coverage was revised by the IRS to permit taxpayers to disregard the \$6,850 limitation under the modified inflation adjustment of Pub. L. No. 115-97. Rev. Rul. 2018-27, 2018-20 I.R.B. 591, May 14, 2018.) The basic annual contributions 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).

<sup>2</sup>Sec. 223(c)(2).

<sup>3</sup>Sec. 223(g).

An individual who is covered under a high deductible health plan is eligible to establish an HSA, provided that while such individual is covered under the high deductible health plan, the individual is not covered under any health plan that (1) is not a high deductible health plan and (2) provides coverage for any benefit (subject to certain exceptions) covered under the high deductible health plan.<sup>4</sup>

Various types of coverage are disregarded for this purpose, including coverage of any benefit provided by permitted insurance, coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, as well as certain limited coverage through health flexible savings accounts.<sup>5</sup> Permitted insurance means insurance under which substantially all of the coverage provided relates to liabilities incurred under workers' compensation laws, tort liabilities, liabilities relating to ownership or use of property, or such other similar liabilities as specified by the Secretary under regulations. Permitted insurance also means insurance for a specified disease or illness, and insurance paying a fixed amount per day (or other period) of hospitalization.<sup>6</sup>

#### *Archer medical savings accounts*

Like an HSA, an Archer medical savings account ("Archer MSA") is a tax-exempt trust or custodial account to which tax-deductible contributions may be made by individuals with a high deductible health plan.<sup>7</sup> Only self-employed individuals and employees of small employers are eligible to have an Archer MSA. Archer MSAs provide tax benefits similar to those provided by HSAs for individuals covered by high deductible health plans. Distributions from an Archer MSA for qualified medical expenses are excludible from gross income. Distributions from an Archer MSA 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 or disability, or after the individual attains the age of Medicare eligibility (*i.e.*, age 65).

#### *Qualified medical expenses*

Qualified medical expenses generally are defined under Code section 213(d) and include expenses for diagnosis, cure, mitigation, treatment, or prevention of disease, including prescription drugs, transportation primarily for and essential to such care, and qualified long-term care expenses. Qualified medical expenses do not include expenses for insurance other than for (1) certain premiums paid for long-term care insurance, (2) premiums for health coverage during any period of continuation coverage required by Federal law, (3) premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law, and (4) premiums for individuals who have attained the age of Medicare eligibility, other than premiums for Medigap policies.

<sup>4</sup>Sec. 223(c)(1).

<sup>5</sup>Sec. 223(c)(1)(B).

<sup>6</sup>Sec. 223(c)(3).

<sup>7</sup>Sec. 220.

Qualified medical expenses may be incurred by the account owner, the spouse of such individual and any dependent<sup>8</sup> including qualifying children, or a qualifying relative including (1) a child or descendant of a child, (2) a brother, sister, stepbrother or step-sister, (3) the father or mother, or an ancestor of either, (4) a step-father or stepmother, (5) a son or daughter of a brother or sister of the taxpayer, (6) a brother or sister of the father or mother of the taxpayer, (7) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, or (8) an individual who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

*Health flexible spending accounts and health reimbursement arrangements*

In addition to offering health insurance, employers often agree to reimburse medical expenses of their employees (and their spouses and dependents). These arrangements are commonly used by employers to pay or reimburse employees for medical expenses that are not covered by health insurance. These arrangements include health flexible spending accounts ("health FSAs") and health reimbursement arrangements ("HRAs").

*Health FSAs*

Health FSAs typically are funded on a salary reduction basis under a cafeteria plan, meaning that employees are given the option to reduce their current cash compensation and instead have the amount made available for use in reimbursing the employee for his or her medical expenses. If the health FSA meets certain requirements, the compensation that is forgone is not includible in gross income or wages for payroll tax purposes.

Health FSAs that are funded on a salary reduction basis are subject to the requirements for cafeteria plans, including a requirement that amounts remaining in a health FSA at the end of a plan year must be forfeited by the employee (referred to as the "use-it-or-lose-it" rule).<sup>9</sup>

*HRAs*

HRAs operate in a manner similar to health FSAs, in that they are employer-maintained arrangements that reimburse employees and their dependents<sup>10</sup> for medical expenses. Some of the rules applicable to HRAs and health FSAs are similar (*e.g.*, the amounts in the arrangements can be used only to reimburse medical expenses and not for other purposes), but the rules are not identical. In particular, HRAs cannot be funded on a salary reduction basis and the use-it-or-lose-it rule does not apply. Thus, amounts remaining at the end of the year may be carried forward to be used to re-

<sup>8</sup>Generally as defined in sec. 152.

<sup>9</sup>See sec. 125(d)(2). Subsequent IRS guidance has provided a grace period for the carryover of excess benefits or contributions in a health FSA. See, *e.g.*, Notice 2005-42, 2005-23 I.R.B. 1204 (June 6, 2005). As an alternative to a grace period, Notice 2013-71 permits employers to amend the cafeteria plan document to provide for up to \$500 of any unused amount as of the end of the plan year in a health FSA to be carried over to the following year. 2013-47 I.R.B. 532 (November 18, 2013).

<sup>10</sup>As defined in sec. 152.

imburse medical expenses in following years.<sup>11</sup> Unlike a health FSA, an HRA is permitted to reimburse an employee for health insurance premiums.

*Physical activity, fitness, and exercise*

Sports and fitness expenses, such as membership fees at a fitness facility or costs associated with participation or instruction in a program of physical exercise or physical activity, generally are not treated as medical care.<sup>12</sup>

REASONS FOR CHANGE

The Committee believes that HSAs, Archer MSAs, health FSAs, and HRAs are important tools that provide consumers with funds set aside (either through their own contributions and/or employer contributions, depending on the particular account) for the payment of medical expenses. These tools provide consumers the ability to choose how to spend those funds to pay for medical care.

Although medical care currently includes amounts paid for the prevention of disease, amounts paid for membership at a fitness facility, participation or instruction in a program of physical exercise or physical activity, or safety equipment for use in a program of physical exercise or physical activity that are widely available and contribute to the health of individuals and prevention of disease are not treated as medical care. The Committee believes that such sports and fitness expenses (except for those related to certain activities that have limited availability) up to certain dollar caps, should be treated as medical care that may be paid from any of the aforementioned accounts.

EXPLANATION OF PROVISION

Under the provision, qualified sports and fitness expenses are treated as medical care. The term qualified sports and fitness expenses means amounts paid for membership at a fitness facility, participation or instruction in a program of physical exercise or physical activity, or safety equipment for use in a program (including a self-directed program) of physical exercise or physical activity. The aggregate amount treated as qualified sports and fitness expenses with respect to any taxpayer for any taxable year is limited to \$500 (twice that amount in the case of a joint return or a head of household), and the amount treated as qualified sports and fitness expenses with respect to any single item of safety equipment is limited to \$250 with respect to any taxpayer for any taxable year. These amounts are adjusted for inflation. Golf, hunting, sailing, and horseback riding are not treated as a physical exercise or physical activity for purposes of determining qualified sports and fitness expenses. Qualified sports and fitness expenses also do not include videos, books, or similar materials.

<sup>11</sup>Guidance with respect to HRAs, including the interaction of health FSAs and HRAs in the case of an individual covered by both, is provided in Notice 2002-45, 2002-2 C.B. 93 (July 15, 2002).

<sup>12</sup>See, e.g., Chief Counsel Advice Memorandum 201622031 (May 27, 2016). Under guidance, certain expenses may be treated as medical care. For example, taxpayers may deduct the cost of a weight loss program if the individual is diagnosed as obese or is directed by a doctor to lose weight as treatment for a specific disease. See Rev. Rul. 2002-19, 2002-16 I.R.B. 778 (April 22, 2002).

A fitness facility means a facility providing instruction in a program of physical exercise or physical activity, offering facilities for the preservation, maintenance, encouragement, or development of physical fitness, or serving as the site of such a program of a State or local government, (1) which is not a private club owned and operated by its members, (2) which does not offer facilities for golf, hunting, sailing or horseback riding, (3) whose health or fitness facility is not incidental to its overall function and purpose, and (4) which is fully compliant with applicable State and Federal anti-discrimination laws. In the case of any program that includes physical exercise or physical activity and also other components (such as travel and accommodations), special rules apply.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2018.

**III. VOTES OF THE COMMITTEE**

In compliance with clause 3(b) of rule XIII of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 6312, the “Personal Health Investment Today Act,” or the “PHIT Act” on July 12, 2018.

H.R. 6312 was ordered favorably reported to the House of Representatives as amended by an amendment in the nature of a substitute offered by Mr. Roskam by a roll call vote of 28 yeas to 7 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady				Mr. Neal		X	
Mr. Johnson	X			Mr. Levin		X	
Mr. Nunes	X			Mr. Lewis		X	
Mr. Reichert	X			Mr. Doggett		X	
Mr. Roskam	X			Mr. Thompson	X		
Mr. Buchanan	X			Mr. Larson		X	
Mr. Smith (NE)	X			Mr. Blumenauer			
Ms. Jenkins	X			Mr. Kind	X		
Mr. Paulsen	X			Mr. Pascrell	X		
Mr. Marchant	X			Mr. Crowley			
Ms. Black				Mr. Davis		X	
Mr. Reed	X			Ms. Sanchez			
Mr. Kelly	X			Mr. Higgins	X		
Mr. Renacci	X			Ms. Sewell	X		
Ms. Noem	X			Ms. DelBene	X		
Mr. Holding	X			Ms. Chu		X	
Mr. Smith (MO)	X						
Mr. Rice	X						
Mr. Schweikert	X						
Ms. Walorski	X						
Mr. Curbelo	X						
Mr. Bishop	X						
Mr. LaHood	X						
Mr. Wenstrup	X						

**IV. BUDGET EFFECTS OF THE BILL**

**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 bill, H.R. 6312, as reported.

The bill, as reported, is estimated to have the following effect on Federal fiscal year budget receipts for the period 2019–2028:

Item	Fiscal Years (Millions of Dollars)											
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-23	2019-28
Certain Amounts Paid for Physical Activity, Fitness, and Exercise Treated as Amounts Paid for Medical Care <sup>(1)</sup> .....	-226	-335	-345	-350	-355	-360	-365	-382	-403	-412	-1,611	-3,533
2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-23	2019-28	
.....	-92	-98	-99	-101	-102	-104	-105	-107	-108	-110	-493	-1,026

<sup>(1)</sup> Estimate includes the following off-budget effects .....

Pursuant to clause 8 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 gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

**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 provision involves no new tax expenditure.

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

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 bill, H.R. 6138, as reported. As of the filing of this report, the Committee had not received an estimate prepared by the Congressional Budget Office (CBO).

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

**A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated into the description portions of this report.

**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 which any measure authorizes 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 bill does not contain Federal mandates on the private sector. The Committee 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)

Rule XXI 5(b) 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 bill and states that the bill does 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 Restructuring and Reform Act of 1998 (“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 of 1986 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, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

#### 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.

#### G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

#### H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (115th Congress), the following statement is made concerning directed rule makings: The Committee advises that the bill requires no directed rule makings within the meaning of such section.

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

### B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed 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):

#### 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, and 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

\* \* \* \* \*

#### Subchapter B—Computation of Taxable Income

\* \* \* \* \*

### PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

\* \* \* \* \*

#### SEC. 213. MEDICAL, DENTAL, ETC., EXPENSES.

(a) ALLOWANCE OF DEDUCTION.—There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 10 percent of adjusted gross income.

(b) LIMITATION WITH RESPECT TO MEDICINE AND DRUGS.—An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) SPECIAL RULE FOR DECEDENTS.—

(1) TREATMENT OF EXPENSES PAID AFTER DEATH.—For purposes of subsection (a), expenses for the medical care of the

taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) LIMITATION.—Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) DEFINITIONS.—For purposes of this section—

(1) The term “medical care” means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), **[or]**

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b))**[.], or**

*(E) for qualified sports and fitness expenses.*

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) Amounts paid for certain lodging away from home treated as paid for medical care

Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed \$50 for each night for each individual.

(3) Prescribed drug

The term “prescribed drug” means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) Physician

The term “physician” has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) Special rule in the case of child of divorced parents, etc.

Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) COSMETIC SURGERY.—

(A) IN GENERAL.—The term “medical care” does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term “cosmetic surgery” means any procedure which is directed at improving the patient’s appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) ELIGIBLE LONG-TERM CARE PREMIUMS.—

(A) IN GENERAL.—For purposes of this section, the term “eligible long-term care Premiums” means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500.

**(B) INDEXING.—**

(i) **IN GENERAL.**—In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of \$10, such increase shall be rounded to the nearest multiple of \$10.

(ii) **MEDICAL CARE COST ADJUSTMENT.**—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the C-CPI-U (as defined in section 1(f)(6)) for August of the preceding calendar year, exceeds

(II) such component of the CPI (as defined in section 1(f)(4)) for August of 1996, multiplied by the amount determined under section 1(f)(3)(B).

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) Certain payments to relatives treated as not paid for medical care --An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term “relative” means an individual bearing a relationship to the individual which is described in any of subparagraphs (A) through (G) of section 152(d)(2). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(12) **QUALIFIED SPORTS AND FITNESS EXPENSES.**—

(A) **IN GENERAL.**—The term “qualified sports and fitness expenses” means amounts paid for—

(i) membership at a fitness facility,

(ii) participation or instruction in a program of physical exercise or physical activity, or

(iii) safety equipment for use in a program (including a self-directed program) of physical exercise or physical activity.

**(B) DOLLAR LIMITATIONS.—**

(i) **OVERALL LIMITATION.**—The aggregate amount treated as qualified sports and fitness expenses with respect to any taxpayer for any taxable year shall not exceed \$500 (twice such amount in the case of a joint return or a head of household (as defined in section 2(b))).

(ii) **SAFETY EQUIPMENT.**—The amount treated as qualified sports and fitness expenses with respect to any item of safety equipment described in subparagraph (A)(iii) shall not exceed \$250.

**(C) CERTAIN EXCLUSIONS.—**

(i) **IN GENERAL.**—Golf, hunting, sailing, and horseback riding shall not be treated as a physical exercise or physical activity.

(ii) **EXERCISE VIDEOS, ETC.**—Qualified sports and fitness expenses shall not include videos, books, or similar materials.

**(D) FITNESS FACILITY DEFINED.**—For purposes of subparagraph (A)(i), the term “fitness facility” means a facility—

(i) providing instruction in a program of physical exercise or physical activity, offering facilities for the preservation, maintenance, encouragement, or development of physical fitness, or serving as the site of such a program of a State or local government,

(ii) which is not a private club owned and operated by its members,

(iii) which does not offer facilities for any activity described in subparagraph (C)(i),

(iv) whose health or fitness facility is not incidental to its overall function and purpose, and

(v) which is fully compliant with applicable State and Federal anti-discrimination laws.

**(E) PROGRAMS WHICH INCLUDE COMPONENTS OTHER THAN PHYSICAL EXERCISE AND PHYSICAL ACTIVITY.**—Rules similar to the rules of paragraph (6) shall apply in the case of any program that includes physical exercise or physical activity and also other components. For purposes of the preceding sentence, travel and accommodations shall be treated as an other component.

**(F) INFLATION ADJUSTMENT.**—In the case of any taxable year beginning in a calendar year after 2019, the \$500 amount in subparagraph (B)(i) and the \$250 amount in subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins, determined by substituting “calendar

*year 2018” for “calendar year 2016” in subparagraph (A)(ii) thereof.*

*If any increase determined under the preceding sentence is not a multiple of \$10, such increase shall be rounded to the next lowest multiple of \$10.*

(e) EXCLUSION OF AMOUNTS ALLOWED FOR CARE OF CERTAIN DEPENDENTS.—Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

(f) SPECIAL RULES FOR 2013 THROUGH 2018.—In the case of any taxable year—

(1) beginning after December 31, 2012, and ending before January 1, 2017, in the case of a taxpayer if such taxpayer or such taxpayer’s spouse has attained age 65 before the close of such taxable year, and

(2) beginning after December 31, 2016, and ending before January 1, 2019, in the case of any taxpayer, subsection (a) shall be applied with respect to a taxpayer by substituting “7.5 percent” for “10 percent”.

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## MINORITY VIEWS

### H.R. 6312 Personal Health Investment Today Act (PHIT) Act

H.R. 6312 (Smith, R–MO and Kind, D–WI) allows individuals to use Health Savings Account (HSA) and Flexible Spending Account (FSA) funds up to \$500 for an individual (\$1000 for a family) to pay for certain fitness expenses, including fitness facility membership; participation in a physical activity (such as gym memberships or sports leagues); and safety equipment, such as bike helmets. The bill excludes certain sports, such as golf and hunting, as well as exercise instruction materials, such as videos and books.

H.R. 6312 does not undo sabotage, premium hikes, and benefit cuts Republicans have caused over the past 18 months. This bill was one in a series of 11 bills the Committee marked up that Republicans claim will help lower health care costs for consumers. This legislation does not undo the disruption and sabotage the Republicans have continued to inflict on the American health care system. Instead of focusing on expansion of HSAs and High-Deductible Health Plans (HDHPs), Democrats encourage the Committee to redirect its attention to legislation that could actually ensure that uninsured, low-income, and vulnerable people have real access to care. For example H.R. 5155, sponsored by Reps. Pallone, Neal, and Scott would protect people with pre-existing conditions, help lower premiums for Americans, and improve affordability of health coverage.

Legislation busts the deficit to benefit the wealthy, again. Altogether the 11 bills the Committee marked up would add another \$92 billion in unoffset tax cuts to the deficit. Republican attempts to expand HSAs (and encourage more enrollment in plans with high deductibles, covering very few up-front health costs) are a continuation of their platform of shifting families into health plans that provide fewer health benefits and higher out-of-pocket costs—while providing greater tax benefits for higher-income individuals and corporate-special interests. According to 2014 Treasury data, only five percent of families with adjusted gross income of under \$100,000 held money in an HSA, and those users' average account balances were \$1,700.

HDHPs and HSAs do not promote healthy behavior and this legislation further directs consumers away from care. It is widely acknowledged that HSAs and HDHPs lead consumers to delay care. They do not encourage individuals to make better health care decisions, as Republicans' "skin in the game" talking points assert. Decades of research shows that exposure to high out-of-pocket costs lead consumers to delay or forgo both necessary and unnecessary care. Delaying care and increasing costs run counter to Democratic policy goals of better coordinated, high-value affordable care for American families. This legislation demonstrates why HDHPs in

their current format do not allow consumers to see value in their health insurance.

According to the American Hospital Association, “Hospitals and health systems report that increased enrollment in HDHPs over the past several years has reduced access to care and subjected patients to costs they cannot afford. In addition, patients enrolled in HDHPs appear to delay care until they have reached their deductible or are in an emergency situation, which could lead to poorer health outcomes.”

H.R. 6312 allows a tax preference for services that are not directly related to health care. The bill allows an HSA or FSA to be used for services that might never be used or might not directly improve an individual’s health. Because this bill allows consumers to use tax-preferred services for leisure activities, reducing the amount available to address the high deductible that is supposed to drive better health purchases, it further undermines the Republican talking point about consumers having “skin in the game.” This provision is a tax break—plain and simple.

HSAs mostly benefit high-income taxpayers while doing little to help moderate-income families or the uninsured. High-income individuals can best afford to save for health care expenses and are therefore the most likely to contribute to HSAs. Higher income filers are much more likely to establish HSAs than lower income filers—70 percent of HSA contributions come from households with incomes over \$100,000, according to the Joint Commission on Taxation (JCT)—and they are also likelier to max out their contributions. Additionally, high-income people receive the biggest tax benefit for each dollar contributed to an HSA because the value of a tax deduction rises with an individual’s tax bracket. More than 44 percent of Americans cannot afford a \$400 emergency visit. For these families, it is unlikely that they have excess income to devote to a tax preferred account.

JCT estimates the cost of this bill to be \$3.5 billion over 10 years. With this bill, Republicans are adding more tax cuts and increasing the deficit. Republicans are using the deficit, which they keep making larger with cuts for the wealthy, to justify their deep cuts to Medicare and Medicaid. Republicans are already proposing to cut Medicare and Medicaid by nearly a trillion dollars to try to pay for the tax cuts they’ve already enacted. This bill will only add fuel to the fire.

RICHARD E. NEAL,  
*Ranking Member.*

