

111TH CONGRESS
1ST SESSION

H. R. 3610

To amend the Internal Revenue Code of 1986 to improve access to health care by allowing a deduction for the health insurance costs of individuals, expanding health savings accounts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2009

Mr. AUSTRIA (for himself, Mrs. BACHMANN, Mr. BURTON of Indiana, Mr. LEE of New York, Mr. KINGSTON, Mr. MANZULLO, Mr. NEUGEBAUER, Mr. BILBRAY, Mrs. BLACKBURN, Mr. LAMBORN, Mr. PITTS, Mr. HENSARLING, Mr. SCALISE, Mr. MARCHANT, Ms. FALLIN, Mr. AKIN, Mrs. LUMMIS, Mr. GINGREY of Georgia, Mr. POSEY, Mr. TIBERI, Mr. THOMPSON of Pennsylvania, Mr. CHAFFETZ, Mr. SOUDER, Mr. FLEMING, Mr. SESSIONS, Mr. TIAHRT, Mr. MORAN of Kansas, and Mr. CASSIDY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care by allowing a deduction for the health insurance costs of individuals, expanding health savings accounts, and for other purposes.

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 (a) SHORT TITLE.—This Act may be cited as the
5 “Health Savings and Affordability Act of 2009”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
2 wise expressly provided, whenever in this Act an amend-
3 ment or repeal is expressed in terms of an amendment
4 to, or repeal of, a section or other provision, the reference
5 shall be considered to be made to a section or other provi-
6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. DEDUCTION FOR QUALIFIED HEALTH INSURANCE**
8 **COSTS OF INDIVIDUALS.**

9 (a) IN GENERAL.—Part VII of subchapter B of chap-
10 ter 1 (relating to additional itemized deductions) is
11 amended by redesignating section 224 as section 225 and
12 by inserting after section 223 the following new section:

13 **“SEC. 224. COSTS OF QUALIFIED HEALTH INSURANCE.**

14 “(a) IN GENERAL.—In the case of an individual,
15 there shall be allowed as a deduction an amount equal to
16 the amount paid during the taxable year for coverage for
17 the taxpayer, his spouse, and dependents under qualified
18 health insurance.

19 “(b) QUALIFIED HEALTH INSURANCE.—For pur-
20 poses of this section, the term ‘qualified health insurance’
21 means insurance which constitutes medical care; except
22 that such term shall not include any insurance if substan-
23 tially all of its coverage is of excepted benefits described
24 in section 9832(c).

25 “(c) SPECIAL RULES.—

1 “(1) COORDINATION WITH MEDICAL DEDUC-
2 TION, ETC.—Any amount paid by a taxpayer for in-
3 surance to which subsection (a) applies shall not be
4 taken into account in computing the amount allow-
5 able to the taxpayer as a deduction under section
6 162(l) or 213(a). Any amount taken into account in
7 determining the credit allowed under section 35 shall
8 not be taken into account for purposes of this sec-
9 tion.

10 “(2) DEDUCTION NOT ALLOWED FOR SELF-EM-
11 PLOYMENT TAX PURPOSES.—The deduction allow-
12 able by reason of this section shall not be taken into
13 account in determining an individual’s net earnings
14 from self-employment (within the meaning of section
15 1402(a)) for purposes of chapter 2.”.

16 (b) DEDUCTION ALLOWED IN COMPUTING AD-
17 JUSTED GROSS INCOME.—Subsection (a) of section 62 is
18 amended by inserting before the last sentence the fol-
19 lowing new paragraph:

20 “(22) COSTS OF QUALIFIED HEALTH INSUR-
21 ANCE.—The deduction allowed by section 224.”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for part VII of subchapter B of chapter 1 is amended by
24 redesignating the item relating to section 224 as an item

1 relating to section 225 and inserting before such item the
 2 following new item:

“Sec. 224. Costs of qualified health insurance.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to taxable years beginning after
 5 the date of the enactment of this Act.

6 **SEC. 3. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**
 7 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

8 (a) **IN GENERAL.**—Paragraph (3) of section 223(b)
 9 is amended by adding at the end the following new sub-
 10 paragraph:

11 “(C) **SPECIAL RULE WHERE BOTH**
 12 **SPOUSES ARE ELIGIBLE INDIVIDUALS WITH 1**
 13 **ACCOUNT.**—If—

14 “(i) an individual and the individual’s
 15 spouse have both attained age 55 before
 16 the close of the taxable year, and

17 “(ii) the spouse is not an account ben-
 18 eficiary of a health savings account as of
 19 the close of such year,

20 the additional contribution amount shall be 200
 21 percent of the amount otherwise determined
 22 under subparagraph (B).”.

23 (b) **EFFECTIVE DATE.**—The amendment made by
 24 this section shall apply to taxable years beginning after
 25 the date of the enactment of this Act.

1 **SEC. 4. INCREASE IN HSA CONTRIBUTION LIMITATION.**

2 (a) IN GENERAL.—Subsection (b) of section 223 (re-
3 lating to monthly limitation) is amended—

4 (1) by striking “\$2,250” in paragraph (2)(A)
5 and inserting “the amount in effect under subsection
6 (c)(2)(A)(ii)(I)”, and

7 (2) by striking “\$4,500” in paragraph (2)(B)
8 and inserting “the amount in effect under subsection
9 (c)(2)(A)(ii)(II)”.

10 (b) CONFORMING AMENDMENT.—Paragraph (1) of
11 section 223(g) is amended by striking “subsections (b)(2)
12 and” and inserting “subsection”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to contributions for taxable years
15 beginning after the date of the enactment of this Act.

16 **SEC. 5. TREATMENT OF FAMILY COVERAGE PLANS HAVING**
17 **BOTH INDIVIDUAL AND FAMILY**
18 **DEDUCTIBLES.**

19 (a) IN GENERAL.—Paragraph (2) of section 223(c)
20 (defining high deductible plan) is amended by adding at
21 the end the following new subparagraph:

22 “(E) FAMILY COVERAGE PLANS HAVING
23 BOTH INDIVIDUAL AND FAMILY
24 DEDUCTIBLES.—In the case of a family cov-
25 erage plan having a deductible (and the same
26 deductible) for each covered individual and a

1 deductible for the family as a whole, the re-
2 quirement of subparagraph (A)(i) shall be
3 treated as met if (without regard to this sub-
4 paragraph)—

5 “(i) the individual deductible meets
6 the requirement of subparagraph (A)(i)(I),
7 or

8 “(ii) the family deductible meets the
9 requirement of subparagraph (A)(i)(II).”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years beginning after
12 the date of the enactment of this Act.

13 **SEC. 6. FSA AND HRA TERMINATION TO FUND HSAS.**

14 (a) ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA
15 PARTICIPANTS.—Section 223(c)(1)(B) is amended—

16 (1) by striking “and” at the end of clause (ii),

17 (2) by striking the period at the end of clause

18 (iii) and inserting “, and”, and

19 (3) by inserting after clause (iii) the following
20 new clause:

21 “(iv) coverage under a health flexible
22 spending arrangement or a health reim-
23 bursement arrangement in the plan year a
24 qualified HSA distribution as described in
25 section 106(e) is made on behalf of the in-

1 dividual if after the qualified HSA dis-
2 tribution is made and for the remaining
3 duration of the plan year, the coverage
4 provided under the health flexible spending
5 arrangement or health reimbursement ar-
6 rangement is converted to—

7 “(I) coverage that does not pay
8 or reimburse any medical expense in-
9 curred before the minimum annual de-
10 ductible under section 223(c)(2)(A)(i)
11 (prorated for the period occurring
12 after the qualified HSA distribution is
13 made) is satisfied,

14 “(II) coverage that, after the
15 qualified HSA distribution is made,
16 does not pay or reimburse any med-
17 ical expense incurred after the quali-
18 fied HSA distribution is made other
19 than preventive care as defined in sec-
20 tion 223(c)(2)(C),

21 “(III) coverage that, after the
22 qualified HSA distribution is made,
23 pays or reimburses benefits for cov-
24 erage described in section
25 223(c)(1)(B)(ii) (but not through in-

1 insurance or for long-term care serv-
2 ices),

3 “(IV) coverage that, after the
4 qualified HSA distribution is made,
5 pays or reimburses benefits for per-
6 mitted insurance as defined in section
7 223(c)(1)(B)(i) or coverage described
8 in section 223(c)(1)(B)(ii) (but not
9 for long-term care services),

10 “(V) coverage that, after the
11 qualified HSA distribution is made,
12 pays or reimburses only those medical
13 expenses incurred after an individual’s
14 retirement (and no expenses incurred
15 before retirement), or

16 “(VI) coverage that, after the
17 qualified HSA distribution is made, is
18 suspended, pursuant to an election
19 made on or before the date the indi-
20 vidual elects a qualified HSA distribu-
21 tion or, if later, on the date of the in-
22 dividual enrolls in a high deductible
23 health plan (as defined in section
24 223(c)(2)), that does not pay or reim-
25 burse, at any time, any medical ex-

1 pense incurred during the suspension
2 period except as defined in subclauses
3 (I) through (V) above.”.

4 (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-
5 FECT FLEXIBLE SPENDING ARRANGEMENT.—Section
6 106(e)(1) is amended to read as follows:

7 “(1) IN GENERAL.—A plan shall not fail to be
8 treated as a health flexible spending arrangement
9 under this section, section 105, or section 125, or as
10 a health reimbursement arrangement under this sec-
11 tion or section 105, merely because such plan pro-
12 vides for a qualified HSA distribution.”.

13 (c) FSA BALANCES AT YEAR END SHALL NOT FOR-
14 FEIT.—Section 125(d)(2) is amended by adding at the end
15 the following new subparagraph:

16 “(E) EXCEPTION FOR QUALIFIED HSA DIS-
17 TRIBUTIONS.—Subparagraph (A) shall not
18 apply to the extent that there is an amount re-
19 maining in a health flexible spending account at
20 the end of a plan year that an individual elects
21 to contribute to a health savings account pursu-
22 ant to a qualified HSA distribution (as defined
23 in section 106(e)(2)).”.

1 (d) SIMPLIFICATION OF LIMITATIONS ON FSA AND
2 HRA ROLLOVERS.—Section 106(e)(2) (relating to quali-
3 fied HSA distribution) is amended to read as follows:

4 “(2) QUALIFIED HSA DISTRIBUTION.—

5 “(A) IN GENERAL.—The term ‘qualified
6 HSA distribution’ means a distribution from a
7 health flexible spending arrangement or health
8 reimbursement arrangement to the extent that
9 such distribution does not exceed the lesser
10 of—

11 “(i) the balance in such arrangement
12 as of the date of such distribution, or

13 “(ii) the amount determined under
14 subparagraph (B).

15 Such term shall not include more than 1 dis-
16 tribution with respect to any arrangement.

17 “(B) DOLLAR LIMITATIONS.—

18 “(i) DISTRIBUTIONS FROM A HEALTH
19 FLEXIBLE SPENDING ARRANGEMENT.—A
20 qualified HSA distribution from a health
21 flexible spending arrangement shall not ex-
22 ceed the applicable amount.

23 “(ii) DISTRIBUTIONS FROM A HEALTH
24 REIMBURSEMENT ARRANGEMENT.—A
25 qualified HSA distribution from a health

1 reimbursement arrangement shall not ex-
2 ceed—

3 “(I) the applicable amount di-
4 vided by 12, multiplied by

5 “(II) the number of months dur-
6 ing which the individual is a partici-
7 pant in the health reimbursement ar-
8 rangement.

9 “(iii) APPLICABLE AMOUNT.—For
10 purposes of this subparagraph, the applica-
11 ble amount is—

12 “(I) \$2,250 in the case of an eli-
13 gible individual who has self-only cov-
14 erage under a high deductible health
15 plan at the time of such distribution,
16 and

17 “(II) \$4,500 in the case of an eli-
18 gible individual who has family cov-
19 erage under a high deductible health
20 plan at the time of such distribu-
21 tion.”.

22 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE
23 TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COV-
24 ERAGE.—Section 106(e) is amended—

1 (1) by striking paragraph (3) and redesignating
2 paragraphs (4) and (5) as paragraphs (3) and (4),
3 respectively, and

4 (2) by striking subparagraph (A) of paragraph
5 (3), as so redesignated, and redesignating subpara-
6 graphs (B) and (C) of such paragraph as subpara-
7 graphs (A) and (B) thereof, respectively.

8 (f) LIMITED PURPOSE FSAS AND HRAS.—Section
9 106(e), as amended by this section, is amended by adding
10 at the end the following new paragraph:

11 “(5) LIMITED PURPOSE FSAS AND HRAS.—A
12 plan shall not fail to be a health flexible spending
13 arrangement or health reimbursement arrangement
14 under this section or section 105 merely because the
15 plan converts coverage for individuals who enroll in
16 a high deductible health plan described in section
17 223(c)(2) to coverage described in section
18 223(c)(1)(B)(iv). Coverage for such individuals may
19 be converted as of the date of enrollment in the high
20 deductible health plan, without regard to the period
21 of coverage under the health flexible spending ar-
22 rangement or health reimbursement arrangement,
23 and without requiring any change in coverage to in-
24 dividuals who do not enroll in a high deductible
25 health plan.”.

1 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-
2 OF-LIVING.—Section 106(e), as amended by this section,
3 is amended by adding at the end the following new para-
4 graph:

5 “(6) COST-OF-LIVING ADJUSTMENT.—

6 “(A) IN GENERAL.—In the case of any
7 taxable year beginning after December 31,
8 2010, each of the dollar amounts in paragraph
9 (2)(B)(iii) shall be increased by an amount
10 equal to such dollar amount, multiplied by the
11 cost-of-living adjustment determined under sec-
12 tion 1(f)(3) for the calendar year in which such
13 taxable year begins by substituting ‘calendar
14 year 2009’ for ‘calendar year 1992’ in subpara-
15 graph (B) thereof.

16 “(B) ROUNDING.—If any increase under
17 subparagraph (A) is not a multiple of \$50, such
18 increase shall be rounded to the nearest mul-
19 tiple of \$50.”.

20 (h) DISCLAIMER OF DISQUALIFYING COVERAGE.—
21 Section 223(c)(1)(B), as amended by this section, is
22 amended—

23 (1) by striking “and” at the end of clause (iii),

24 (2) by striking the period at the end of clause

25 (iv) and inserting “, and”, and

1 (3) by inserting after clause (iv) the following
2 new clause:

3 “(v) any coverage (including prospec-
4 tive coverage) under a health plan that is
5 not a high deductible health plan which is
6 disclaimed in writing, at the time of the
7 creation or organization of the health sav-
8 ings account, including by execution of a
9 trust described in subsection (d)(1)
10 through a governing instrument that in-
11 cludes such a disclaimer, or by acceptance
12 of an amendment to such a trust that in-
13 cludes such a disclaimer.”.

14 (i) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

17 **SEC. 7. PURCHASE OF HEALTH INSURANCE FROM HSA AC-**
18 **COUNT.**

19 (a) IN GENERAL.—Paragraph (2) of section 223(d)
20 (defining qualified medical expenses) is amended to read
21 as follows:

22 “(2) QUALIFIED MEDICAL EXPENSES.—

23 “(A) IN GENERAL.—The term ‘qualified
24 medical expenses’ means, with respect to an ac-
25 count beneficiary, amounts paid by such bene-

1 beneficiary for medical care (as defined in section
2 213(d)) for any individual covered by a high de-
3 ductible health plan of the account beneficiary,
4 but only to the extent such amounts are not
5 compensated for by insurance or otherwise.

6 “(B) HEALTH INSURANCE MAY NOT BE
7 PURCHASED FROM ACCOUNT.—Except as pro-
8 vided in subparagraph (C), subparagraph (A)
9 shall not apply to any payment for insurance.

10 “(C) EXCEPTIONS.—Subparagraph (B)
11 shall not apply to any expense for coverage
12 under—

13 “(i) a health plan during any period
14 of continuation coverage required under
15 any Federal law,

16 “(ii) a qualified long-term care insur-
17 ance contract (as defined in section
18 7702B(b)),

19 “(iii) a health plan during any period
20 in which the individual is receiving unem-
21 ployment compensation under any Federal
22 or State law,

23 “(iv) a high deductible health plan, or

24 “(v) any health insurance under title
25 XVIII of the Social Security Act, other

1 than a Medicare supplemental policy (as
2 defined in section 1882 of such Act).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply with respect to insurance pur-
5 chased after the date of the enactment of this Act in tax-
6 able years beginning after such date.

7 **SEC. 8. CERTAIN EXERCISE EQUIPMENT AND PHYSICAL**
8 **FITNESS PROGRAMS TREATED AS MEDICAL**
9 **CARE.**

10 (a) **IN GENERAL.**—Subsection (d) of section 213 is
11 amended by adding at the end the following new para-
12 graph:

13 “(12) **EXERCISE EQUIPMENT AND PHYSICAL**
14 **FITNESS PROGRAMS.**—

15 “(A) **IN GENERAL.**—The term ‘medical
16 care’ shall include amounts paid—

17 “(i) to purchase or use equipment
18 used in a program (including a self-di-
19 rected program) of physical exercise,

20 “(ii) to participate, or receive instruc-
21 tion, in a program of physical exercise, and

22 “(iii) for membership dues in a fitness
23 club the primary purpose of which is to
24 provide access to equipment and facilities
25 for physical exercise.

1 “(B) LIMITATION.—Amounts treated as
2 medical care under subparagraph (A) shall not
3 exceed \$1,200 with respect to any individual for
4 any taxable year.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to taxable years beginning after
7 the date of the enactment of this Act.

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