

JULY 19, 2018

RULES COMMITTEE PRINT 115-82
TEXT OF H.R. 6199, RESTORING ACCESS TO
MEDICATION AND MODERNIZING HEALTH
SAVINGS ACCOUNTS ACT OF 2018

[Showing the text of H.R. 6199, H.R. 6301, H.R. 6305, as reported, and H.R. 6312, and H.R. 6317 as reported with modifications; all by the Committee on Ways and Means]

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Restoring Access to Medication and Modernizing Health
4 Savings Accounts Act of 2018”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. First dollar coverage flexibility for high deductible health plans.
- Sec. 3. Treatment of direct primary care service arrangements.
- Sec. 4. Certain employment related services not treated as disqualifying coverage for purposes of health savings accounts.
- Sec. 5. Contributions permitted if spouse has a health flexible spending account.
- Sec. 6. FSA and HRA terminations or conversions to fund HSAs.
- Sec. 7. Inclusion of certain over-the-counter medical products as qualified medical expenses.
- Sec. 8. Certain amounts paid for physical activity, fitness, and exercise treated as amounts paid for medical care.

1 **SEC. 2. FIRST DOLLAR COVERAGE FLEXIBILITY FOR HIGH**
2 **DEDUCTIBLE HEALTH PLANS.**

3 (a) IN GENERAL.—Section 223(c)(2) of the Internal
4 Revenue Code of 1986 is amended by adding at the end
5 the following new subparagraph:

6 “(E) FIRST DOLLAR COVERAGE FLEXI-
7 BILITY.—

8 “(i) IN GENERAL.—A plan shall not
9 fail to be treated as a high deductible
10 health plan by reason of failing to have a
11 deductible for not more than \$250 of spec-
12 ified services for self-only coverage (twice
13 such amount in the case of family cov-
14 erage) during a plan year.

15 “(ii) SPECIFIED SERVICES.—For pur-
16 poses of this subparagraph, the term ‘spec-
17 ified services’ means, with respect to a
18 plan, services other than preventive care
19 (within the meaning of subparagraph (C))
20 identified under the terms of the plan as
21 being services to which clause (i) applies.”.

22 (b) INFLATION ADJUSTMENT.—Section 223(g)(1) of
23 such Code is amended—

24 (1) by striking “and (c)(2)(A)” each place it
25 appears and inserting “, (c)(2)(A), and (c)(2)(E)”,
26 and

1 (2) in subparagraph (B)—

2 (A) by striking “such taxable year” in the
3 matter preceding clause (i) and inserting “the
4 taxable year (plan year in the case of the dollar
5 amount in subsection (c)(2)(E))”, and

6 (B) by striking “clause (ii)” and inserting
7 “clauses (ii) and (iii)” in clause (i), by striking
8 “and” at the end of clause (i), by striking the
9 period at the end of clause (ii) and inserting “,
10 and”, and by inserting after clause (ii) the fol-
11 lowing new clause:

12 “(iii) in the case of the dollar amount
13 in subsection (c)(2)(E) for plan years be-
14 ginning in calendar years after 2019, ‘cal-
15 endar year 2018’.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to plan years begin-
18 ning after December 31, 2018.

19 **SEC. 3. TREATMENT OF DIRECT PRIMARY CARE SERVICE**
20 **ARRANGEMENTS.**

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

24 “(D) TREATMENT OF DIRECT PRIMARY
25 CARE SERVICE ARRANGEMENTS.—

1 “(i) IN GENERAL.—A direct primary
2 care service arrangement shall not be
3 treated as a health plan for purposes of
4 subparagraph (A)(ii).

5 “(ii) DIRECT PRIMARY CARE SERVICE
6 ARRANGEMENT.—For purposes of this
7 paragraph—

8 “(I) IN GENERAL.—The term ‘di-
9 rect primary care service arrange-
10 ment’ means, with respect to any indi-
11 vidual, an arrangement under which
12 such individual is provided medical
13 care (as defined in section 213(d))
14 consisting solely of primary care serv-
15 ices provided by primary care practi-
16 tioners (as defined in section
17 1833(x)(2)(A) of the Social Security
18 Act, determined without regard to
19 clause (ii) thereof), if the sole com-
20 pensation for such care is a fixed peri-
21 odic fee.

22 “(II) LIMITATION.—With respect
23 to any individual for any month, such
24 term shall not include any arrange-
25 ment if the aggregate fees for all di-

1 rect primary care service arrange-
2 ments (determined without regard to
3 this subclause) with respect to such
4 individual for such month exceed
5 \$150 (twice such dollar amount in the
6 case of an individual with any direct
7 primary care service arrangement (as
8 so determined) that covers more than
9 one individual).

10 “(iii) CERTAIN SERVICES SPECIFI-
11 CALLY EXCLUDED FROM TREATMENT AS
12 PRIMARY CARE SERVICES.—For purposes
13 of this paragraph, the term ‘primary care
14 services’ shall not include—

15 “(I) procedures that require the
16 use of general anesthesia,

17 “(II) prescription drugs (other
18 than vaccines), and

19 “(III) laboratory services not
20 typically administered in an ambula-
21 tory primary care setting.

22 The Secretary, after consultation with the
23 Secretary of Health and Human Services,
24 shall issue regulations or other guidance
25 regarding the application of this clause.”.

1 (b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT
2 FEES TREATED AS MEDICAL EXPENSES.—Section
3 223(d)(2)(C) is amended by striking “or” at the end of
4 clause (iii), by striking the period at the end of clause (iv)
5 and inserting “, or”, and by adding at the end the fol-
6 lowing new clause:

7 “(v) any direct primary care service
8 arrangement.”.

9 (c) INFLATION ADJUSTMENT.—Section 223(g)(1) of
10 such Code, as amended by section 2(b), is amended—

11 (1) by inserting “(c)(1)(D)(ii)(II),” after
12 “(b)(2),” each place it appears, and

13 (2) in subparagraph (B), by striking “and (iii)”
14 and inserting “, (iii) and (iv)” in clause (i), by strik-
15 ing “and” at the end of clause (ii), by striking the
16 period at the end of clause (iii) and inserting “,
17 and”, and by inserting after clause (iii) the following
18 new clause:

19 “(iv) in the case of the dollar amount
20 in subsection (c)(1)(D)(ii)(II) for taxable
21 years beginning in calendar years after
22 2019, ‘calendar year 2018’.”.

23 (d) REPORTING OF DIRECT PRIMARY CARE SERVICE
24 ARRANGEMENT FEES ON W-2.—Section 6051(a) of such
25 Code is amended by striking “and” at the end of para-

1 graph (16), by striking the period at the end of paragraph
2 (17) and inserting “, and”, and by inserting after para-
3 graph (17) the following new paragraph:

4 “(18) in the case of a direct primary care serv-
5 ice arrangement (as defined in section
6 223(c)(1)(D)(ii)) which is provided in connection
7 with employment, the aggregate fees for such ar-
8 rangement for such employee.”.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to months beginning after Decem-
11 ber 31, 2018, in taxable years ending after such date.

12 **SEC. 4. CERTAIN EMPLOYMENT RELATED SERVICES NOT**
13 **TREATED AS DISQUALIFYING COVERAGE FOR**
14 **PURPOSES OF HEALTH SAVINGS ACCOUNTS.**

15 (a) IN GENERAL.—Section 223(c)(1) of the Internal
16 Revenue Code of 1986, as amended by section 3(a), is
17 amended by adding at the end the following new subpara-
18 graph:

19 “(E) SPECIAL RULE FOR QUALIFIED
20 ITEMS AND SERVICES.—

21 “(i) IN GENERAL.—An individual
22 shall not be treated as covered under a
23 health plan for purposes of subparagraph
24 (A)(ii) merely because the individual, in
25 connection with the employment of the in-

1 dividual or the individual’s spouse, receives
2 (or is eligible to receive) qualified items
3 and services at—

4 “(I) a healthcare facility located
5 at a facility owned or leased by the
6 employer of the individual (or of the
7 individual’s spouse), or operated pri-
8 marily for the benefit of such employ-
9 er’s employees, or

10 “(II) a healthcare facility located
11 within a supermarket, pharmacy, or
12 similar retail establishment.

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

17 “(I) Physical examinations.

18 “(II) Immunizations, including
19 injections of antigens provided by em-
20 ployees.

21 “(III) Drugs other than a pre-
22 scribed drug (as such term is defined
23 in section 213(d)(3)).

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

1 “(V) Drug testing, if required as
2 a condition of employment.

3 “(VI) Hearing or vision
4 screenings.

5 “(VII) Other similar items and
6 services that do not provide signifi-
7 cant benefits in the nature of medical
8 care.

9 “(iii) AGGREGATION.—For purposes
10 of clause (i)(I), all persons treated as a
11 single employer under subsection (b), (c),
12 (m), or (o) of section 414 shall be treated
13 as a single employer.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to months beginning after Decem-
16 ber 31, 2018, in taxable years ending after such date.

17 **SEC. 5. CONTRIBUTIONS PERMITTED IF SPOUSE HAS A**
18 **HEALTH FLEXIBLE SPENDING ACCOUNT.**

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

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

12 (b) **EFFECTIVE DATE.**—The amendment made by
13 this section shall apply to plan years beginning after De-
14 cember 31, 2018.

15 **SEC. 6. FSA AND HRA TERMINATIONS OR CONVERSIONS TO**
16 **FUND HSAS.**

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

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

21 “(A) **IN GENERAL.**—The term ‘qualified
22 HSA distribution’ means, with respect to any
23 employee, a distribution from a health flexible
24 spending arrangement or health reimbursement

1 arrangement of such employee directly to a
2 health savings account of such employee if—

3 “(i) such distribution is made in con-
4 nection with such employee establishing
5 coverage under a high deductible health
6 plan (as defined in section 223(c)(2)) after
7 a significant period of not having such cov-
8 erage, and

9 “(ii) such arrangement is described in
10 section 223(c)(1)(B)(iii) with respect to
11 the portion of the plan year after such dis-
12 tribution is made.

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

24 (b) PARTIAL REDUCTION OF LIMITATION ON DE-
25 DUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of

1 such Code is amended by striking “and” at the end of
2 subparagraph (B), by striking the period at the end of
3 subparagraph (C) and inserting “, and”, and by inserting
4 after subparagraph (C) the following new subparagraph:

5 “(D) so much of any qualified HSA dis-
6 tribution (as defined in section 106(e)(2)) made
7 to a health savings account of such individual
8 during the taxable year as does not exceed the
9 aggregate increases in the balance of the ar-
10 rangement from which such distribution is
11 made which occur during the portion of the
12 plan year which precedes such distribution
13 (other than any balance carried over to such
14 plan year and determined without regard to any
15 decrease in such balance during such portion of
16 the plan year).”.

17 (c) CONVERSION TO HSA-COMPATIBLE ARRANGE-
18 MENT FOR REMAINDER OF PLAN YEAR.—Section
19 223(c)(1)(B)(iii) of such Code, as amended by section
20 5(a), is amended to read as follows:

21 “(iii) coverage under a health flexible
22 spending arrangement or health reimburse-
23 ment arrangement for the portion of the
24 plan year after a qualified HSA distribu-
25 tion (as defined in section 106(e)(2) deter-

1 mined without regard to subparagraph
2 (A)(ii) thereof) is made, if the terms of
3 such arrangement which apply for such
4 portion of the plan year are such that, if
5 such terms applied for the entire plan
6 year, then such arrangement would not be
7 taken into account under subparagraph
8 (A)(ii) of this paragraph for such plan
9 year, and”.

10 (d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS
11 ON W-2.—

12 (1) IN GENERAL.—Section 6051(a) of such
13 Code, as amended by section 3(d), is amended by
14 striking “and” at the end of paragraph (17), by
15 striking the period at the end of paragraph (18) and
16 inserting “, and”, and by inserting after paragraph
17 (18) the following new paragraph:

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

21 (2) CONFORMING AMENDMENT.—Section
22 6051(a)(12) of such Code is amended by inserting
23 “(other than any qualified HSA distribution, as de-
24 fined in section 106(e)(2))” before the comma at the
25 end.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to distributions made after Decem-
3 ber 31, 2018, in taxable years ending after such date.

4 **SEC. 7. INCLUSION OF CERTAIN OVER-THE-COUNTER MED-**
5 **ICAL PRODUCTS AS QUALIFIED MEDICAL EX-**
6 **PENSES.**

7 (a) HSAs.—Section 223(d)(2) of the Internal Rev-
8 enue Code of 1986 is amended—

9 (1) by striking the last sentence of subpara-
10 graph (A) and inserting the following: “For pur-
11 poses of this subparagraph, amounts paid for men-
12 strual care products shall be treated as paid for
13 medical care.”, and

14 (2) by adding at the end the following new sub-
15 paragraph:

16 “(D) MENSTRUAL CARE PRODUCT.—For
17 purposes of this paragraph, the term ‘menstrual
18 care product’ means a tampon, pad, liner, cup,
19 sponge, or similar product used by women with
20 respect to menstruation or other genital-tract
21 secretions.”.

22 (b) ARCHER MSAs.—Section 220(d)(2)(A) of such
23 Code is amended by striking the last sentence and insert-
24 ing the following: “For purposes of this subparagraph,
25 amounts paid for menstrual care products (as defined in

1 section 223(d)(2)(D)) shall be treated as paid for medical
2 care.”.

3 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
4 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
5 tion 106 of such Code is amended by striking subsection
6 (f) and inserting the following new subsection:

7 “(f) REIMBURSEMENTS FOR MENSTRUAL CARE
8 PRODUCTS.—For purposes of this section and section
9 105, expenses incurred for menstrual care products (as
10 defined in section 223(d)(2)(D)) shall be treated as in-
11 curred for medical care.”.

12 (d) EFFECTIVE DATES.—

13 (1) DISTRIBUTIONS FROM HEALTH SAVINGS AC-
14 COUNTS.—The amendments made by subsections (a)
15 and (b) shall apply to amounts paid after December
16 31, 2018.

17 (2) REIMBURSEMENTS.—The amendment made
18 by subsection (c) shall apply to expenses incurred
19 after December 31, 2018.

20 **SEC. 8. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY,**
21 **FITNESS, AND EXERCISE TREATED AS**
22 **AMOUNTS PAID FOR MEDICAL CARE.**

23 (a) IN GENERAL.—Section 213(d)(1) of the Internal
24 Revenue Code of 1986 is amended by striking “or” at the
25 end of subparagraph (C), by striking the period at the end

1 of subparagraph (D) and inserting “, or”, and by adding
2 at the end the following new subparagraph:

3 “(E) for qualified sports and fitness ex-
4 penses.”.

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

8 “(12) QUALIFIED SPORTS AND FITNESS EX-
9 PENSES.—

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

13 “(i) membership at a fitness facility,

14 “(ii) participation or instruction in a
15 program of qualified physical activity, or

16 “(iii) safety equipment for use in a
17 program (including a self-directed pro-
18 gram) of qualified physical activity.

19 “(B) LIMITATIONS.—

20 “(i) OVERALL DOLLAR LIMITATION.—

21 The aggregate amount treated as qualified
22 sports and fitness expenses with respect to
23 any taxpayer for any taxable year shall not
24 exceed \$500 (twice such amount in the

1 case of a joint return or a head of house-
2 hold (as defined in section 2(b)).

3 “(ii) DOLLAR LIMITATION ON SAFETY
4 EQUIPMENT.—The amount treated as
5 qualified sports and fitness expenses with
6 respect to any item of safety equipment de-
7 scribed in subparagraph (A)(iii) shall not
8 exceed \$250.

9 “(iii) EXCLUSION OF EXERCISE VID-
10 EOS, ETC.—Qualified sports and fitness ex-
11 penses shall not include videos, books, or
12 similar materials.

13 “(C) QUALIFIED PHYSICAL ACTIVITY.—

14 For purposes of this paragraph—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), the term ‘qualified
17 physical activity’ means any physical exer-
18 cise or physical activity.

19 “(ii) EXCLUSIONS.—The Secretary,
20 after consultation with the Secretary of
21 Health and Human Services, shall issue
22 guidance to determine for purposes of this
23 paragraph what does not constitute a
24 qualified physical activity, including golf,

1 hunting, sailing, horseback riding, and
2 other similar activities.

3 “(D) FITNESS FACILITY DEFINED.—For
4 purposes of subparagraph (A)(i), the term ‘fit-
5 ness facility’ means a facility—

6 “(i) providing instruction in a pro-
7 gram of qualified physical activity or facili-
8 ties for qualified physical activity,

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

11 “(iii) whose health or fitness facility is
12 not incidental to its overall function and
13 purpose, and

14 “(iv) which is fully compliant with ap-
15 plicable State and Federal anti-discrimina-
16 tion laws.

17 “(E) PROGRAMS WHICH INCLUDE COMPO-
18 NENTS OTHER QUALIFIED PHYSICAL ACTIV-
19 ITY.—Rules similar to the rules of paragraph
20 (6) shall apply in the case of any program or
21 facility that includes qualified physical activity
22 (or facilities therefore) and also other compo-
23 nents. For purposes of the preceding sentence,
24 travel and accommodations shall be treated as
25 an other component.

1 “(F) INFLATION ADJUSTMENT.—In the
2 case of any taxable year beginning in a calendar
3 year after 2019, the \$500 amount in subpara-
4 graph (B)(i) and the \$250 amount in subpara-
5 graph (B)(ii) shall each be increased by an
6 amount equal to—

7 “(i) such dollar amount, multiplied by

8 “(ii) the cost-of-living adjustment de-
9 termined under section 1(f)(3) for the cal-
10 endar year in which such taxable year be-
11 gins, determined by substituting ‘calendar
12 year 2018’ for ‘calendar year 2016’ in sub-
13 paragraph (A)(ii) thereof.

14 If any increase determined under the preceding
15 sentence is not a multiple of \$10, such increase
16 shall be rounded to the next lowest multiple of
17 \$10.”.

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

