

Union Calendar No. 363

112TH CONGRESS
2D SESSION

H. R. 1004

[Report No. 112-515]

To amend the Internal Revenue Code of 1986 to increase participation in medical flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2011

Mr. BOUSTANY (for himself, Mr. LARSON of Connecticut, Mr. PAULSEN, Mr. JOHNSON of Illinois, Mr. BISHOP of Georgia, and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on Ways and Means

JUNE 5, 2012

Additional sponsors: Mr. SCHOCK, Ms. SPEIER, Mr. PAUL, Mr. REICHERT, Mr. HIMES, Mr. TIBERI, Mr. MURPHY of Connecticut, Mr. GERLACH, Mr. DAVIS of Kentucky, Mr. ROSKAM, Mr. AUSTRIA, Mr. GRIFFIN of Arkansas, Mr. CICILLINE, Mr. HARRIS, Ms. HERRERA BEUTLER, Mr. COURTNEY, Mr. HULTGREN, Mr. NUNES, Mrs. BLACK, Mr. BERG, Mr. SAM JOHNSON of Texas, Mr. BARTLETT, Mr. SCHILLING, Mr. TERRY, Mr. AMODEI, Mr. BUCHANAN, and Mr. WALSH of Illinois

JUNE 5, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Internal Revenue Code of 1986 to increase participation in medical flexible spending arrangements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medical FSA Improve-
5 ment Act of 2011”.

6 **SEC. 2. ADDITION OF TAXABLE DISTRIBUTIONS.**

7 (a) TREATMENT OF AMOUNTS EXPENDED FOR MED-
8 ICAL CARE.—Section 105 of the Internal Revenue Code
9 of 1986 (relating to amounts received under accident and
10 health plans) is amended by inserting at the end the fol-
11 lowing new subsection:

12 “(k) AMOUNTS PAID UNDER MEDICAL FLEXIBLE
13 SPENDING ARRANGEMENTS.—

14 “(1) APPLICATION OF SUBSECTION (b) AND
15 SECTION 106.—For purposes of subsection (b) and
16 section 106, a plan shall not fail to be treated as
17 flexible spending arrangement solely because such
18 plan, in addition to reimbursing expenses incurred
19 for medical care (as defined in subsection (b)) dur-
20 ing the plan year, distributes for the plan year all
21 or a portion of the employee’s balance.

22 “(2) LIMITATION.—Paragraph (1) shall apply
23 only in the case that the balance under such ar-
24 rangement for a plan year is distributed after the
25 close of the plan year to which the balance relates

1 and not later than the end of the 7th month fol-
2 lowing the close of such plan year.

3 ~~“(3) TAX TREATMENT OF DISTRIBUTION.—Any~~
4 ~~distribution to which paragraph (1) applies shall be~~
5 ~~treated as remuneration of the employee for employ-~~
6 ~~ment for the taxable year in which it is distributed.~~

7 ~~“(4) FLEXIBLE SPENDING ARRANGEMENT.—~~
8 ~~The term ‘flexible spending arrangement’ means a~~
9 ~~benefit program within the meaning of section~~
10 ~~106(c)(2) (relating to long-term care benefits).”.~~

11 ~~(b) ADDITIONAL DEFERRED COMPENSATION EXCEP-~~
12 ~~TION.—Paragraph (2) of section 125(d) of such Code (re-~~
13 ~~lating to deferred compensation under a cafeteria plan)~~
14 ~~is amended by inserting at the end the following new sub-~~
15 ~~paragraph:~~

16 ~~“(E) EXCEPTION FOR CERTAIN FLEXIBLE~~
17 ~~SPENDING ARRANGEMENTS.—Subparagraph (A)~~
18 ~~shall not apply to a flexible spending arrange-~~
19 ~~ment (within the meaning of section 106(c)(2))~~
20 ~~as a result of amounts being distributed to the~~
21 ~~covered employee in accordance with section~~
22 ~~105(k).”.~~

23 ~~(c) CONFORMING AMENDMENT.—Section 409A(d)(1)~~
24 ~~of such Code is amended by striking “and” at the end~~
25 ~~of subparagraph (A), by striking the period at the end~~

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

3 “(C) a flexible spending arrangement
4 which is subject to section 105(k).”.

5 (d) **EFFECTIVE DATE.**—The amendments made by
6 this section shall apply to plan years beginning after De-
7 cember 31, 2012.

8 (e) **TRANSITION RULES.**—In the case of plan years
9 that begin before the date of the enactment of this Act,
10 in implementing the amendments made by this section a
11 flexible spending arrangement may allow an individual to
12 make a new election or to revise an existing election under
13 such arrangement so long as such new or revised election
14 is made within 90 days after the date of the enactment
15 of this Act.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Health Flexible Spend-*
18 *ing Arrangements Improvements Act of 2012”.*

19 **SEC. 2. TAXABLE DISTRIBUTIONS OF UNUSED BALANCES**
20 **UNDER HEALTH FLEXIBLE SPENDING AR-**
21 **RANGEMENTS.**

22 (a) *IN GENERAL.*—Section 125 of the Internal Revenue
23 *Code of 1986 is amended by redesignating subsections (k)*
24 *and (l) as subsections (l) and (m), respectively, and by in-*
25 *serting after subsection (j) the following new subsection:*

1 “(k) *TAXABLE DISTRIBUTIONS OF UNUSED BALANCES*
2 *UNDER HEALTH FLEXIBLE SPENDING ARRANGEMENTS.*—

3 “(1) *IN GENERAL.*—*For purposes of this section*
4 *and sections 105(b) and 106, a plan or other arrange-*
5 *ment which (but for any qualified distribution) would*
6 *be a health flexible spending arrangement shall not*
7 *fail to be treated as a cafeteria plan or health flexible*
8 *spending arrangement (and shall not fail to be treat-*
9 *ed as an accident or health plan) merely because such*
10 *arrangement provides for qualified distributions.*

11 “(2) *QUALIFIED DISTRIBUTIONS.*—*For purposes*
12 *of this subsection, the term ‘qualified distribution’*
13 *means any distribution to an individual under the*
14 *arrangement referred to in paragraph (1) with re-*
15 *spect to any plan year if—*

16 “(A) *such distribution is made after the last*
17 *date on which requests for reimbursement under*
18 *such arrangement for such plan year may be*
19 *made and not later than the end of the 7th*
20 *month following the close of such plan year, and*

21 “(B) *such distribution does not exceed the*
22 *lesser of—*

23 “(i) \$500, or

24 “(ii) *the excess of—*

1 “(I) the salary reduction contribu-
2 tions made under such arrangement
3 for such plan year, over

4 “(II) the reimbursements for ex-
5 penses incurred for medical care made
6 under such arrangement for such plan
7 year.

8 “(3) TAX TREATMENT OF QUALIFIED DISTRIBUTIONS.—Qualified distributions shall be includible in
9 the gross income of the employee in the taxable year
10 in which distributed and shall be taken into account
11 as wages or compensation under the applicable provi-
12 sions of subtitle C when so distributed.

13 “(4) COORDINATION WITH QUALIFIED RESERVIST
14 DISTRIBUTIONS.—A qualified reservist distribution
15 (as defined in subsection (h)(2)) shall not be treated
16 as a qualified distribution and shall not be taken into
17 account in applying the limitation of paragraph
18 (2)(B)(i).”.

19 (b) CONFORMING AMENDMENT.—Paragraph (1) of sec-
20 tion 409A(d) of such Code is amended by striking “and”
21 at the end of subparagraph (A), by striking the period at
22 the end of subparagraph (B) and inserting “, and”, and
23 by adding at the end the following new subparagraph:
24

1 “(C) a health flexible spending arrangement
2 to which subsection (h) or (k) of section 125 ap-
3 plies.”.

4 (c) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to plan years beginning after December
6 31, 2012.

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