

112TH CONGRESS  
1ST SESSION

# S. 1404

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

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IN THE SENATE OF THE UNITED STATES

JULY 21, 2011

Mr. CARDIN (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 is amended by inserting at the end the following  
10 new subsection:

1       “(k) AMOUNTS PAID UNDER MEDICAL FLEXIBLE  
2 SPENDING ARRANGEMENTS.—

3           “(1) APPLICATION OF SUBSECTION (b) AND  
4 SECTION 106.—For purposes of subsection (b) and  
5 section 106, a plan shall not fail to be treated as a  
6 flexible spending arrangement solely because such  
7 plan, in addition to reimbursing expenses incurred  
8 for medical care (as defined in subsection (b)) dur-  
9 ing the plan year, distributes to the employee all or  
10 a portion of the employee’s balance for the plan  
11 year.

12           “(2) LIMITATION.—Paragraph (1) shall apply  
13 only in the case that the balance under such ar-  
14 rangement for a plan year is distributed after the  
15 close of the plan year to which the balance relates  
16 and not later than the end of the 7th month fol-  
17 lowing the close of such plan year.

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

22           “(4) FLEXIBLE SPENDING ARRANGEMENT.—  
23 The term ‘flexible spending arrangement’ means a  
24 benefit program within the meaning of section  
25 106(c)(2) (relating to long-term care benefits).”.

1 (b) ADDITIONAL DEFERRED COMPENSATION EXCEP-  
2 TION.—Paragraph (2) of section 125(d) of the Internal  
3 Revenue Code of 1986 is amended by inserting at the end  
4 the following new subparagraph:

5 “(E) EXCEPTION FOR CERTAIN FLEXIBLE  
6 SPENDING ARRANGEMENTS.—Amounts distrib-  
7 uted to the covered employee from a flexible  
8 spending arrangement (within the meaning of  
9 section 106(c)(2)) in accordance with the limi-  
10 tations under section 105(k) shall not be treat-  
11 ed as deferred compensation for purposes of  
12 subparagraph (A).”.

13 (c) CONFORMING AMENDMENT.—Section 409A(d)(1)  
14 of such Code is amended by striking “and” at the end  
15 of subparagraph (A), by striking the period at the end  
16 of subparagraph (B) and inserting “, and”, and by adding  
17 at the end the following:

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

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to plan years beginning after De-  
22 cember 31, 2012.

23 (e) TRANSITION RULES.—In the case of plan years  
24 that begin before the date of the enactment of this Act,  
25 in implementing the amendments made by this section a

1 flexible spending arrangement may allow an individual to  
2 make a new election or to revise an existing election under  
3 such arrangement so long as such new or revised election  
4 is made within 90 days after the date of the enactment  
5 of this Act.

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