

## H.R.6111

### Tax Relief and Health Care Act of 2006 (Enrolled as Agreed to or Passed by Both House and Senate)

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#### TITLE III--HEALTH SAVINGS ACCOUNTS

##### SEC. 301. SHORT TITLE.

This title may be cited as the 'Health Opportunity Patient Empowerment Act of 2006'.

##### SEC. 302. FSA AND HRA TERMINATIONS TO FUND HSAS.

(a) In General- Section 106 (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

`(e) FSA and HRA Terminations to Fund HSAs-

`(1) IN GENERAL- A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

`(2) QUALIFIED HSA DISTRIBUTION- The term 'qualified HSA distribution' means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution--

`(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

`(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

`(3) ADDITIONAL TAX FOR FAILURE TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COVERAGE-

`(A) IN GENERAL- If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution--

`(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

`(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

`(B) EXCEPTION FOR DISABILITY OR DEATH- Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72(m)(7)).

`(4) DEFINITIONS AND SPECIAL RULES- For purposes of this subsection--

`(A) TESTING PERIOD- The term 'testing period' means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

`(B) ELIGIBLE INDIVIDUAL- The term `eligible individual' has the meaning given such term by section 223(c)(1).

`(C) TREATMENT AS ROLLOVER CONTRIBUTION- A qualified HSA distribution shall be treated as a rollover contribution described in section 223(f)(5).

`(5) TAX TREATMENT RELATING TO DISTRIBUTIONS- For purposes of this title--

`(A) IN GENERAL- A qualified HSA distribution shall be treated as a payment described in subsection (d).

`(B) COMPARABILITY EXCISE TAX-

`(i) IN GENERAL- Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

`(ii) FAILURE TO OFFER TO ALL EMPLOYEES- In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G(d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G(b).'

(b) Certain FSA Coverage Disregarded Coverage- Subparagraph (B) of section 223(c)(1) (relating to certain coverage disregarded) is amended by striking `and' at the end of clause (i), by striking the period at the end of clause (ii) and inserting `, and', and by inserting after clause (ii) the following new clause:

`(iii) for taxable years beginning after December 31, 2006, coverage under a health flexible spending arrangement during any period immediately following the end of a plan year of such arrangement during which unused benefits or contributions remaining at the end of such plan year may be paid or reimbursed to plan participants for qualified benefit expenses incurred during such period if--

`(I) the balance in such arrangement at the end of such plan year is zero, or

`(II) the individual is making a qualified HSA distribution (as defined in section 106(e)) in an amount equal to the remaining balance in such arrangement as of the end of such plan year, in accordance with rules prescribed by the Secretary.'

(c) Application of Section-

(1) SUBSECTION (a)- The amendment made by subsection (a) shall apply to distributions on or after the date of the enactment of this Act.

(2) SUBSECTION (b)- The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

### **SEC. 303. REPEAL OF ANNUAL DEDUCTIBLE LIMITATION ON HSA CONTRIBUTIONS.**

(a) In General- Paragraph (2) of section 223(b) (relating to monthly limitation) is amended--

(1) in subparagraph (A) by striking 'the lesser of--' and all that follows and inserting '\$2,250.', and

(2) in subparagraph (B) by striking 'the lesser of--' and all that follows and inserting '\$4,500.'

(b) Conforming Amendment- Section 223(d)(1)(A)(ii)(I) is amended by striking 'subsection (b)(2)(B)(ii)' and inserting 'subsection (b)(2)(B)'.

(c) Effective Date- The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

#### **SEC. 304. MODIFICATION OF COST-OF-LIVING ADJUSTMENT.**

Paragraph (1) of section 223(g) (relating to cost-of-living adjustment) is amended by adding at the end the following new flush sentence:

'In the case of adjustments made for any taxable year beginning after 2007, section 1(f)(4) shall be applied for purposes of this paragraph by substituting 'March 31' for 'August 31', and the Secretary shall publish the adjusted amounts under subsections (b)(2) and (c)(2)(A) for taxable years beginning in any calendar year no later than June 1 of the preceding calendar year.'

#### **SEC. 305. CONTRIBUTION LIMITATION NOT REDUCED FOR PART-YEAR COVERAGE.**

(a) Increase in Limit for Individuals Becoming Eligible Individuals After Beginning of the Year- Subsection (b) of section 223 (relating to limitations) is amended by adding at the end the following new paragraph:

'(8) INCREASE IN LIMIT FOR INDIVIDUALS BECOMING ELIGIBLE INDIVIDUALS AFTER THE BEGINNING OF THE YEAR-

'(A) IN GENERAL- For purposes of computing the limitation under paragraph (1) for any taxable year, an individual who is an eligible individual during the last month of such taxable year shall be treated--

'(i) as having been an eligible individual during each of the months in such taxable year, and

'(ii) as having been enrolled, during each of the months such individual is treated as an eligible individual solely by reason of clause (i), in the same high deductible health plan in which the individual was enrolled for the last month of such taxable year.

'(B) FAILURE TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COVERAGE-

'(i) IN GENERAL- If, at any time during the testing period, the individual is not an eligible individual, then--

'(I) gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual is increased by the aggregate amount of all contributions to the health savings account of the individual which could not have been made but for subparagraph (A), and

`(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount of such increase.

`(ii) EXCEPTION FOR DISABILITY OR DEATH- Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

`(iii) TESTING PERIOD- The term `testing period' means the period beginning with the last month of the taxable year referred to in subparagraph (A) and ending on the last day of the 12th month following such month.'

(b) Effective Date- The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

### **SEC. 306. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.**

(a) In General- Section 4980G (relating to failure of employer to make comparable health savings account contributions) is amended by adding at the end the following new subsection:

`(d) Exception- For purposes of applying section 4980E to a contribution to a health savings account of an employee who is not a highly compensated employee (as defined in section 414(q)), highly compensated employees shall not be treated as comparable participating employees.'

(b) Effective Date- The amendment made by this section shall apply to taxable years beginning after December 31, 2006.

### **SEC. 307. ONE-TIME DISTRIBUTION FROM INDIVIDUAL RETIREMENT PLANS TO FUND HSAs.**

(a) In General- Subsection (d) of section 408 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new paragraph:

`(9) DISTRIBUTION FOR HEALTH SAVINGS ACCOUNT FUNDING-

`(A) IN GENERAL- In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

`(B) QUALIFIED HSA FUNDING DISTRIBUTION- For purposes of this paragraph, the term `qualified HSA funding distribution' means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

`(C) LIMITATIONS-

`(i) MAXIMUM DOLLAR LIMITATION- The amount excluded from gross income by subparagraph (A) shall not exceed the excess of--

`(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

`(II) in the case of a distribution described in clause (ii)(II), the amount of the earlier qualified HSA funding distribution.

`(ii) ONE-TIME TRANSFER-

`(I) IN GENERAL- Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

`(II) CONVERSION FROM SELF-ONLY TO FAMILY COVERAGE- If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

`(D) FAILURE TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COVERAGE-

`(i) IN GENERAL- If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)--

`(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

`(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

`(ii) EXCEPTION FOR DISABILITY OR DEATH- Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

`(iii) TESTING PERIOD- The term `testing period' means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) APPLICATION OF SECTION 72- Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.'

(b) Coordination With Limitation on Contributions to HSAs- Section 223(b)(4) (relating to coordination with other contributions) is amended by striking 'and' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ', and', and by inserting after subparagraph (B) the following new subparagraph:

(C) the aggregate amount contributed to health savings accounts of such individual for such taxable year under section 408(d)(9) (and such amount shall not be allowed as a deduction under subsection (a)).'

(c) Effective Date- The amendments made by this section shall apply to taxable years beginning after December 31, 2006.