

HEALTH & WELFARE PLAN LUNCH GROUP

June 2, 2011

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112TH CONGRESS
1ST SESSION

S. _____

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded 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, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Family and Retirement Health Investment Act of 2011”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents is
4 as follows:

Sec. 1. Short title, etc.

TITLE I—PROVISIONS RELATING TO TAX-PREFERRED HEALTH ACCOUNTS

Sec. 101. Allow both spouses to make catch-up contributions to the same HSA
account.

Sec. 102. Provisions relating to Medicare.

Sec. 103. Individuals eligible for veterans benefits for a service-connected dis-
ability.

Sec. 104. Individuals eligible for Indian Health Service assistance.

Sec. 105. Individuals eligible for TRICARE coverage.

Sec. 106. Health FSA carryforwards.

Sec. 107. FSA and HRA interaction with HSAs.

Sec. 108. Allowance of distributions for prescription and over-the-counter medi-
cines and drugs.

Sec. 109. Purchase of health insurance from HSA account.

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Sec. 112. Equivalent bankruptcy protections for health savings accounts as re-
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Sec. 113. Administrative error correction before due date of return.

Sec. 114. Reauthorization of medicaid health opportunity accounts.

TITLE II—OTHER PROVISIONS

Sec. 121. Certain exercise equipment and physical fitness programs treated as
medical care.

Sec. 122. Certain nutritional and dietary supplements to be treated as medical
care.

Sec. 123. Certain provider fees to be treated as medical care.

Sec. 124. Repeal of annual limitations on deductibles for employer-sponsored
plans offered in small group market.

1 **TITLE I—PROVISIONS RELATING**
2 **TO TAX-PREFERRED HEALTH**
3 **ACCOUNTS**

4 **SEC. 101. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**
5 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

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

9 “(C) SPECIAL RULE WHERE BOTH
10 SPOUSES ARE ELIGIBLE INDIVIDUALS WITH 1
11 ACCOUNT.—If—

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

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

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

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

1 **SEC. 102. PROVISIONS RELATING TO MEDICARE.**

2 (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN
3 MEDICARE PART A.—Paragraph (7) of section 223(b) is
4 amended by adding at the end the following: “This para-
5 graph shall not apply to any individual during any period
6 for which the individual’s only entitlement to such benefits
7 is an entitlement to hospital insurance benefits under part
8 A of title XVIII of such Act pursuant to an enrollment
9 for such hospital insurance benefits under section
10 226(a)(1) of such Act.”.

11 (b) MEDICARE BENEFICIARIES PARTICIPATING IN
12 MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR
13 OWN MONEY TO THEIR MSA.—Subsection (b) of section
14 138 is amended by striking paragraph (2) and by redesignig-
15 nating paragraphs (3) and (4) as paragraphs (2) and (3),
16 respectively.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 the date of the enactment of this Act.

20 **SEC. 103. INDIVIDUALS ELIGIBLE FOR VETERANS BENE-**
21 **FITS FOR A SERVICE-CONNECTED DIS-**
22 **ABILITY.**

23 (a) IN GENERAL.—Paragraph (1) of section 223(c)
24 is amended by adding at the end the following new sub-
25 paragraph:

1 “(C) SPECIAL RULE FOR INDIVIDUALS ELI-
2 GIBLE FOR CERTAIN VETERANS BENEFITS.—
3 For purposes of subparagraph (A)(ii), an indi-
4 vidual shall not be treated as covered under a
5 health plan described in such subparagraph
6 merely because the individual receives periodic
7 hospital care or medical services for a service-
8 connected disability under any law administered
9 by the Secretary of Veterans Affairs but only if
10 the individual is not eligible to receive such care
11 or services for any condition other than a serv-
12 ice-connected disability.”.

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

16 **SEC. 104. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH**
17 **SERVICE ASSISTANCE.**

18 (a) IN GENERAL.—Paragraph (1) of section 223(c),
19 as amended by section 103, is amended by adding at the
20 end the following new subparagraph:

21 “(D) SPECIAL RULE FOR INDIVIDUALS EL-
22 IGIBLE FOR ASSISTANCE UNDER INDIAN
23 HEALTH SERVICE PROGRAMS.—For purposes of
24 subparagraph (A)(ii), an individual shall not be
25 treated as covered under a health plan de-

1 scribed in such subparagraph merely because
2 the individual receives hospital care or medical
3 services under a medical care program of the
4 Indian Health Service or of a tribal organiza-
5 tion.”.

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

9 **SEC. 105. INDIVIDUALS ELIGIBLE FOR TRICARE COVERAGE.**

10 (a) IN GENERAL.—Paragraph (1) of section 223(c),
11 as amended by sections 103 and 104, is amended by add-
12 ing at the end the following new subparagraph:

13 “(E) SPECIAL RULE FOR INDIVIDUALS EL-
14 IGIBLE FOR ASSISTANCE UNDER TRICARE.—For
15 purposes of subparagraph (A)(ii), an individual
16 shall not be treated as covered under a health
17 plan described in such subparagraph merely be-
18 cause the individual is eligible to receive hos-
19 pital care, medical services, or prescription
20 drugs under TRICARE Extra or TRICARE
21 Standard and such individual is not enrolled in
22 TRICARE Prime.”.

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. 106. HEALTH FSA CARRYFORWARDS.**

2 (a) IN GENERAL.—Section 125 is amended by redese-
3 ignating subsections (i) and (j) as subsections (j) and (k),
4 respectively, and by inserting after subsection (h) the fol-
5 lowing new subsection:

6 “(i) SPECIAL RULES APPLICABLE TO HEALTH
7 FLEXIBLE SPENDING ARRANGEMENTS.—

8 “(1) IN GENERAL.—For purposes of this title,
9 a plan or other arrangement shall not fail to be
10 treated as a health flexible spending or similar ar-
11 rangement solely because under the plan or arrange-
12 ment a participant is permitted access to any unused
13 balance in the participant’s accounts under such
14 plan or arrangement in the manner provided under
15 paragraph (2).

16 “(2) CARRYFORWARD OF UNUSED BENEFITS IN
17 HEALTH ARRANGEMENTS.—

18 “(A) IN GENERAL.—A plan or arrange-
19 ment may permit a participant in a health flexi-
20 ble spending arrangement to elect to carry for-
21 ward any aggregate unused balances in the par-
22 ticipant’s accounts under such arrangement as
23 of the close of any year to the succeeding year.
24 Such carryforward shall be treated as having
25 occurred within 30 days of the close of the year.

1 “(B) DOLLAR LIMIT ON

2 CARRYFORWARDS.—

3 “(i) IN GENERAL.—The amount which
4 a participant may elect to carry forward
5 under subparagraph (A) from any year
6 shall not exceed \$500. For purposes of this
7 paragraph, all plans and arrangements
8 maintained by an employer or any related
9 person shall be treated as 1 plan.

10 “(ii) COST-OF-LIVING ADJUSTMENT.—
11 In the case of any taxable year beginning
12 in a calendar year after 2011, the \$500
13 amount under clause (i) shall be increased
14 by an amount equal to—

15 “(I) \$500, multiplied by

16 “(II) the cost-of-living adjust-
17 ment determined under section 1(f)(3)
18 for such calendar year, determined by
19 substituting ‘2010’ for ‘1992’ in sub-
20 paragraph (B) thereof.

21 If any dollar amount as increased under
22 this clause is not a multiple of \$100, such
23 amount shall be rounded to the next lowest
24 multiple of \$100.

1 “(C) EXCLUSION FROM GROSS INCOME.—

2 No amount shall be required to be included in
3 gross income under this chapter by reason of
4 any carryforward under this paragraph.

5 “(D) COORDINATION WITH LIMITS.—The
6 maximum amount which may be contributed to
7 a health flexible spending arrangement for any
8 year to which an unused amount is carried
9 under this paragraph shall be reduced by such
10 amount.

11 “(3) TERMS RELATING TO FLEXIBLE SPENDING
12 ARRANGEMENTS.—

13 “(A) FLEXIBLE SPENDING ARRANGE-
14 MENTS.—For purposes of this subsection, a
15 flexible spending arrangement is a benefit pro-
16 gram which provides employees with coverage
17 under which specified incurred expenses may be
18 reimbursed (subject to reimbursement maxi-
19 mums and other reasonable conditions).

20 “(B) HEALTH ARRANGEMENTS.—The term
21 ‘health flexible spending arrangement’ means
22 any flexible spending arrangement (or portion
23 thereof) which provides payments for expenses
24 incurred for medical care (as defined in section
25 213(d)).”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) The heading for section 125 of the Internal
3 Revenue Code of 1986 is amended by inserting
4 **“AND HEALTH FLEXIBLE SPENDING ARRANGE-**
5 **MENTS”** after **“PLANS”**.

6 (2) The item relating to section 125 in the table
7 of sections for part III of subchapter B of chapter
8 1 of such Code is amended by inserting “and health
9 flexible spending arrangements” after “plans”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on the date of the enactment
12 of this Act.

13 **SEC. 107. FSA AND HRA INTERACTION WITH HSAS.**

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

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

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

19 (iii) and inserting “, and”, and

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

22 “(iv) coverage under a health flexible
23 spending arrangement or a health reim-
24 bursement arrangement in the plan year a
25 qualified HSA distribution as described in

1 section 106(e) is made on behalf of the in-
2 dividual if after the qualified HSA dis-
3 tribution is made and for the remaining
4 duration of the plan year, the coverage
5 provided under the health flexible spending
6 arrangement or health reimbursement ar-
7 rangement is converted to—

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

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

22 “(III) coverage that, after the
23 qualified HSA distribution is made,
24 pays or reimburses benefits for cov-
25 erage described in clause (ii) (but not

1 through insurance or for long-term
2 care services),

3 “(IV) coverage that, after the
4 qualified HSA distribution is made,
5 pays or reimburses benefits for per-
6 mitted insurance or coverage de-
7 scribed in clause (ii) (but not for long-
8 term care services),

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

15 “(VI) coverage that, after the
16 qualified HSA distribution is made, is
17 suspended, pursuant to an election
18 made on or before the date the indi-
19 vidual elects a qualified HSA distribu-
20 tion or, if later, on the date of the in-
21 dividual enrolls in a high deductible
22 health plan, that does not pay or re-
23 imburse, at any time, any medical ex-
24 pense incurred during the suspension

1 period except as defined in the pre-
2 ceding subclauses of this clause.”.

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

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

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

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

23 (d) SIMPLIFICATION OF LIMITATIONS ON FSA AND
24 HRA ROLLOVERS.—Paragraph (2) of section 106(e) is
25 amended to read as follows:

1 “(2) QUALIFIED HSA DISTRIBUTION.—

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

8 “(i) the balance in such arrangement
9 as of the date of such distribution, or

10 “(ii) the amount determined under
11 subparagraph (B).

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

14 “(B) DOLLAR LIMITATIONS.—

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

20 “(ii) DISTRIBUTIONS FROM A HEALTH
21 REIMBURSEMENT ARRANGEMENT.—A
22 qualified HSA distribution from a health
23 reimbursement arrangement shall not ex-
24 ceed—

1 “(I) the applicable amount di-
2 vided by 12, multiplied by

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

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

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

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

20 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE
21 TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COV-
22 ERAGE.—Subsection (e) of section 106 is amended—

23 (1) by striking paragraph (3) and redesignating
24 paragraphs (4) and (5) as paragraphs (3) and (4),
25 respectively, and

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

5 (f) LIMITED PURPOSE FSAS AND HRAS.—Sub-
6 section (e) of section 106, as amended by this section, is
7 amended by adding at the end the following new para-
8 graph:

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

24 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-
25 OF-LIVING.—Subsection (e) of section 106, as amended by

1 this section, is amended by adding at the end the following
2 new paragraph:

3 “(6) COST-OF-LIVING ADJUSTMENT.—

4 “(A) IN GENERAL.—In the case of any
5 taxable year beginning after December 31,
6 2011, each of the dollar amounts in paragraph
7 (2)(B)(iii) shall be increased by an amount
8 equal to such dollar amount, multiplied by the
9 cost-of-living adjustment determined under sec-
10 tion 1(f)(3) for the calendar year in which such
11 taxable year begins by substituting ‘calendar
12 year 2010’ for ‘calendar year 1992’ in subpara-
13 graph (B) thereof.

14 “(B) ROUNDING.—If any increase under
15 paragraph (1) is not a multiple of \$50, such in-
16 crease shall be rounded to the nearest multiple
17 of \$50.”.

18 (h) DISCLAIMER OF DISQUALIFYING COVERAGE.—
19 Subparagraph (B) of section 223(c)(1), as amended by
20 this section, is amended—

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

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

23 (iv) and inserting “, and”, and

24 (3) by inserting after clause (iv) the following

25 new clause:

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

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

15 **SEC. 108. ALLOWANCE OF DISTRIBUTIONS FOR PRESCRIP-**
16 **TION AND OVER-THE-COUNTER MEDICINES**
17 **AND DRUGS.**

18 (a) **REPEAL OF DISTRIBUTIONS FOR MEDICINE**
19 **QUALIFIED ONLY IF FOR PRESCRIBED DRUG OR INSU-**
20 **LIN.**—Section 9003 of the Patient Protection and Afford-
21 able Care Act (Public Law 111–148) and the amendments
22 made by such section are repealed and the Internal Rev-
23 enue Code of 1986 shall be applied as if such section and
24 amendments had never been enacted.

1 (b) ALLOWANCE OF DISTRIBUTIONS FOR ALL MEDI-
2 CINES AND DRUGS.—

3 (1) HSAS.—Subparagraph (A) of section
4 223(d)(2) is amended by adding at the end the fol-
5 lowing: “Such term shall include an amount paid for
6 any prescription or over-the-counter medicine or
7 drug.”.

8 (2) ARCHER MSAS.—Subparagraph (A) of sec-
9 tion 220(d)(2) is amended by adding at the end the
10 following: “Such term shall include an amount paid
11 for any prescription or over-the-counter medicine or
12 drug.”.

13 (3) HEALTH FLEXIBLE SPENDING ARRANGE-
14 MENTS AND HEALTH REIMBURSEMENT ARRANGE-
15 MENTS.—Section 106 is amended by adding at the
16 end the following new subsection:

17 “(f) REIMBURSEMENTS FOR ALL MEDICINES AND
18 DRUGS.—For purposes of this section and section 105,
19 reimbursement for expenses incurred for any prescription
20 or over-the-counter medicine or drug shall be treated as
21 a reimbursement for medical expenses.”.

22 (4) EFFECTIVE DATES.—

23 (A) DISTRIBUTIONS FROM SAVINGS AC-
24 COUNTS.—The amendments made by para-
25 graphs (1) and (2) shall apply to amounts paid

1 with respect to taxable years beginning after
2 December 31, 2009.

3 (B) REIMBURSEMENTS.—The amendment
4 made by paragraph (3) shall apply to expenses
5 incurred with respect to taxable years beginning
6 after December 31, 2009.

7 **SEC. 109. PURCHASE OF HEALTH INSURANCE FROM HSA**
8 **ACCOUNT.**

9 (a) IN GENERAL.—Paragraph (2) of section 223(d)
10 is amended to read as follows:

11 “(2) QUALIFIED MEDICAL EXPENSES.—

12 “(A) IN GENERAL.—The term ‘qualified
13 medical expenses’ means, with respect to an ac-
14 count beneficiary, amounts paid by such bene-
15 ficiary for medical care (as defined in section
16 213(d)) for any individual covered by a high de-
17 ductible health plan of the account beneficiary,
18 but only to the extent such amounts are not
19 compensated for by insurance or otherwise.

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

1 “(C) EXCEPTIONS.—Subparagraph (B)
2 shall not apply to any expense for coverage
3 under—

4 “(i) a health plan during any period
5 of continuation coverage required under
6 any Federal law,

7 “(ii) a qualified long-term care insur-
8 ance contract (as defined in section
9 7702B(b)),

10 “(iii) a health plan during any period
11 in which the individual is receiving unem-
12 ployment compensation under any Federal
13 or State law,

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

15 “(v) any health insurance under title
16 XVIII of the Social Security Act, other
17 than a Medicare supplemental policy (as
18 defined in section 1882 of such Act).”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply with respect to insurance pur-
21 chased after the date of the enactment of this Act in tax-
22 able years beginning after such date.

1 **SEC. 110. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**
2 **INCURRED BEFORE ESTABLISHMENT OF AC-**
3 **COUNT.**

4 (a) IN GENERAL.—Paragraph (2) of section 223(d),
5 as amended by section 109, is amended by adding at the
6 end the following new subparagraph:

7 “(D) CERTAIN MEDICAL EXPENSES IN-
8 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
9 TREATED AS QUALIFIED.—An expense shall not
10 fail to be treated as a qualified medical expense
11 solely because such expense was incurred before
12 the establishment of the health savings account
13 if such expense was incurred—

14 “(i) during either—

15 “(I) the taxable year in which the
16 health savings account was estab-
17 lished, or

18 “(II) the preceding taxable year
19 in the case of a health savings ac-
20 count established after the taxable
21 year in which such expense was in-
22 curred but before the time prescribed
23 by law for filing the return for such
24 taxable year (not including extensions
25 thereof), and

1 “(ii) for medical care of an individual
2 during a period that such individual was
3 covered by a high deductible health plan
4 and met the requirements of subsection
5 (c)(1)(A)(ii) (after application of sub-
6 section (c)(1)(B)).”.

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

10 **SEC. 111. PREVENTIVE CARE PRESCRIPTION DRUG CLARI-**
11 **FICATION.**

12 (a) **CLARIFY USE OF DRUGS IN PREVENTIVE**
13 **CARE.**—Subparagraph (C) of section 223(c)(2) is amend-
14 ed by adding at the end the following: “Preventive care
15 shall include prescription and over-the-counter drugs and
16 medicines which have the primary purpose of preventing
17 the onset of, further deterioration from, or complications
18 associated with chronic conditions, illnesses, or diseases.”.

19 (b) **EFFECTIVE DATE.**—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2003.

1 **SEC. 112. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**
2 **HEALTH SAVINGS ACCOUNTS AS RETIRE-**
3 **MENT FUNDS.**

4 (a) IN GENERAL.—Section 522 of title 11, United
5 States Code, is amended by adding at the end the fol-
6 lowing new subsection:

7 “(r) TREATMENT OF HEALTH SAVINGS AC-
8 COUNTS.—For purposes of this section, any health savings
9 account (as described in section 223 of the Internal Rev-
10 enue Code of 1986) shall be treated in the same manner
11 as an individual retirement account described in section
12 408 of such Code.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to cases commencing under title
15 11, United States Code, after the date of the enactment
16 of this Act.

17 **SEC. 113. ADMINISTRATIVE ERROR CORRECTION BEFORE**
18 **DUE DATE OF RETURN.**

19 (a) IN GENERAL.—Paragraph (4) of section 223(f)
20 is amended by adding at the end the following new sub-
21 paragraph:

22 “(D) EXCEPTION FOR ADMINISTRATIVE
23 ERRORS CORRECTED BEFORE DUE DATE OF RE-
24 TURN.—Subparagraph (A) shall not apply if
25 any payment or distribution is made to correct

1 an administrative, clerical or payroll contribu-
2 tion error and if—

3 “(i) such distribution is received by
4 the individual on or before the last day
5 prescribed by law (including extensions of
6 time) for filing such individual’s return for
7 such taxable year, and

8 “(ii) such distribution is accompanied
9 by the amount of net income attributable
10 to such contribution.

11 Any net income described in clause (ii) shall be
12 included in the gross income of the individual
13 for the taxable year in which it is received.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall take effect on the date of the enactment
16 of this Act.

17 **SEC. 114. REAUTHORIZATION OF MEDICAID HEALTH OP-**
18 **PORTUNITY ACCOUNTS.**

19 (a) IN GENERAL.—Section 1938 of the Social Secu-
20 rity Act (42 U.S.C. 1396u–8) is amended—

21 (1) in subsection (a)—

22 (A) by striking paragraph (2) and insert-
23 ing the following:

24 “(2) INITIAL DEMONSTRATION.—The dem-
25 onstration program under this section shall begin on

1 January 1, 2007. The Secretary shall approve States
2 to conduct demonstration programs under this sec-
3 tion for a 5-year period, with each State demonstra-
4 tion program covering 1 or more geographic areas
5 specified by the State. With respect to a State, after
6 the initial 5-year period of any demonstration pro-
7 gram conducted under this section by the State, un-
8 less the Secretary finds, taking into account cost-ef-
9 fectiveness and quality of care, that the State dem-
10 onstration program has been unsuccessful, the dem-
11 onstration program may be extended or made per-
12 manent in the State.”; and

13 (B) in paragraph (3), in the matter pre-
14 ceding subparagraph (A)—

15 (i) by striking “not”; and

16 (ii) by striking “unless” and inserting
17 “if”;

18 (2) in subsection (b)—

19 (A) in paragraph (3), by inserting “clause
20 (i) through (vii), (viii) (without regard to the
21 amendment made by section 2004(c)(2) of Pub-
22 lic Law 111–148), (x), or (xi) of” after “de-
23 scribed in”; and

24 (B) by striking paragraphs (4), (5), and
25 (6);

1 (3) in subsection (c)—

2 (A) by striking paragraphs (3) and (4);

3 (B) by redesignating paragraphs (5)
4 through (8) as paragraphs (3) through (6), re-
5 spectively; and

6 (C) in paragraph (4) (as redesignated by
7 subparagraph (B)), by striking “Subject to sub-
8 paragraphs (D) and (E)” and inserting “Sub-
9 ject to subparagraph (D)”;

10 (4) in subsection (d)—

11 (A) in paragraph (2), by striking subpara-
12 graph (E); and

13 (B) in paragraph (3)—

14 (i) in subparagraph (A)(ii), by strik-
15 ing “Subject to subparagraph (B)(ii), in”
16 and inserting “In”; and

17 (ii) by striking subparagraph (B) and
18 inserting the following:

19 “(B) MAINTENANCE OF HEALTH OPPOR-
20 TUNITY ACCOUNT AFTER BECOMING INELI-
21 GIBLE FOR PUBLIC BENEFIT.—Notwithstanding
22 any other provision of law, if an account holder
23 of a health opportunity account becomes ineli-
24 gible for benefits under this title because of an
25 increase in income or assets—

1 “(i) no additional contribution shall be
2 made into the account under paragraph
3 (2)(A)(i); and

4 “(ii) the account shall remain avail-
5 able to the account holder for 3 years after
6 the date on which the individual becomes
7 ineligible for such benefits for withdrawals
8 under the same terms and conditions as if
9 the account holder remained eligible for
10 such benefits, and such withdrawals shall
11 be treated as medical assistance in accord-
12 ance with subsection (c)(4).”.

13 (b) CONFORMING AMENDMENT.—Section 613 of
14 Public Law 111–3 is repealed.

15 **TITLE II—OTHER PROVISIONS**

16 **SEC. 121. CERTAIN EXERCISE EQUIPMENT AND PHYSICAL** 17 **FITNESS PROGRAMS TREATED AS MEDICAL** 18 **CARE.**

19 (a) IN GENERAL.—Subsection (d) of section 213 is
20 amended by adding at the end the following new para-
21 graph:

22 “(12) EXERCISE EQUIPMENT AND PHYSICAL
23 FITNESS PROGRAMS.—

24 “(A) IN GENERAL.—The term ‘medical
25 care’ shall include amounts paid—

1 “(i) to purchase or use equipment
2 used in a program (including a self-di-
3 rected program) of physical exercise,

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

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

“(B) LIMITATION.—Amounts treated as medical care under subparagraph (A) shall not exceed \$1,000 with respect to any individual for any taxable year.”.

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

17 SEC. 122. CERTAIN NUTRITIONAL AND DIETARY SUPPLE-
18 MENTS TO BE TREATED AS MEDICAL CARE.

19 (a) IN GENERAL.—Subsection (d) of section 213, as
20 amended by section 121, is amended by adding at the end
21 the following new paragraph:

22 “(13) NUTRITIONAL AND DIETARY SUPPLE-
23 MENTS.—

24 “(A) IN GENERAL.—The term ‘medical
25 care’ shall include amounts paid to purchase

1 herbs, vitamins, minerals, homeopathic rem-
2 edies, meal replacement products, and other di-
3 etary and nutritional supplements.

4 “(B) LIMITATION.—Amounts treated as
5 medical care under subparagraph (A) shall not
6 exceed \$1,000 with respect to any individual for
7 any taxable year.

8 “(C) MEAL REPLACEMENT PRODUCT.—
9 For purposes of this paragraph, the term ‘meal
10 replacement product’ means any product that—

11 “(i) is permitted to bear labeling mak-
12 ing a claim described in section 403(r)(3)
13 of the Federal Food, Drug, and Cosmetic
14 Act, and

15 “(ii) is permitted to claim under such
16 section that such product is low in fat and
17 is a good source of protein, fiber, and mul-
18 tiple essential vitamins and minerals.”.

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

1 **SEC. 123. CERTAIN PROVIDER FEES TO BE TREATED AS**
2 **MEDICAL CARE.**

3 (a) IN GENERAL.—Subsection (d) of section 213, as
4 amended by sections 121 and 122, is amended by adding
5 at the end the following new paragraph:

6 “(14) PERIODIC PROVIDER FEES.—The term
7 ‘medical care’ shall include periodic fees paid to a
8 primary physician, physician assistant, or nurse
9 practitioner for the right to receive medical services
10 on an as-needed basis.”.

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

14 **SEC. 124. REPEAL OF ANNUAL LIMITATIONS ON**
15 **DEDUCTIBLES FOR EMPLOYER-SPONSORED**
16 **PLANS OFFERED IN SMALL GROUP MARKET.**

17 Section 1302(c)(2) of the Patient Protection and Af-
18 fordable Care Act (Public Law 111–148) is repealed.

The Family and Retirement Health Investment Act of 2011

United States Senator Orrin Hatch & Congressman Erik Paulsen

This bill simplifies and enhances Health Savings Accounts (HSAs) and Health Flexible Spending Accounts (FSAs) by addressing some of the questions and concerns that have been raised since HSAs were first enacted in 2003, but were not addressed by the HOPE Act of 2006.

TITLE I – PROVISIONS RELATING TO TAX-PREFERED HEALTH ACCOUNTS

Section 101 — Allow both spouses to make catch-up contributions to same HSA account

Current law allows HSA-eligible individuals age 55 or older to make additional catch-up contributions each year. However, the contributions must be deposited into separate HSA accounts even if both spouses are eligible to make catch-up contributions. This section would allow the spouse who is the HSA account holder to double their catch-up contribution to account for their eligible spouse.

Section 102 — Provisions relating to Medicare

(1) HSA-eligible seniors enrolled in Medicare Part A only may continue to contribute to their Health Savings Accounts

Current law restricts HSA participation by Medicare beneficiaries, which means that once a person turns 65 they usually may no longer contribute to their HSA (although they may continue to spend money from an existing HSA). For most seniors, enrollment in Medicare Part A is automatic when receiving Social Security, and it is difficult to delay or decline enrollment. However, the current deductible for hospital coverage under Medicare Part A is very high, over \$1,000 per admission, nearly equal to the minimum deductible required for HSA-qualified plans. Section 102(a) allows Medicare beneficiaries enrolled only in Part A to continue to contribute to their HSA accounts after turning 65 if they are otherwise eligible to contribute to an HSA.

(2) Medicare enrollees may contribute their own money to their Medicare Medical Savings Accounts (MSAs)

Current law prohibits Medicare beneficiaries enrolled in Medicare Medical Savings Account from contributing their own money to their MSAs. Although created in the 1997 Balanced Budget Act, Medicare MSAs are a relatively new type of plan under the Medicare Advantage program. MSA plans allow seniors to enroll in a high-deductible plan and receive tax-free contributions from the federal government to HSA-like accounts. However, the government contribution is significantly lower than the plan deductible, and the beneficiary may not contribute any of their own money to fill in the gap. Section 102(b) allows Medicare beneficiaries participating in a Medicare MSA plan to contribute their own tax-deductible money to their MSAs to cover the annual shortfall.

Section 103 — Individuals eligible for veterans' benefits for a service-connected disability

IRS regulations prohibit veterans from contributing to their HSAs if they have utilized VA medical services in the past three months. The bill would remove those restrictions and allow veterans with a service-connected disability to contribute to their HSAs regardless of utilization of VA medical services.

Section 104 — Individuals eligible for Indian Health Service assistance

Current law prohibits Native Americans from contributing to their HSAs if they have utilized medical services of the Indian Health Service (IHS) or a tribal organization. The bill would remove those restrictions and allow Native Americans to contribute to their HSAs regardless of utilization of IHS or tribal medical services.

Section 105 — Individuals eligible for TRICARE coverage

Current law prohibits individuals who are eligible to receive hospital care, medical services, or prescription drugs under TRICARE Extra or TRICARE Standard from contributing to their HSA. This bill would remove this restriction.

Section 106 — Health FSA carryforwards

Under current law health FSAs operate as 'use it or lose it' accounts, with individuals forfeiting any unused savings at the end of the year. This bill would permit up to \$500 of unspent FSA funds to carry forward to the following year.

Sections 107 — FSA and HRA interactions with HSAs

The HOPE Act of 2006 (H.R. 6111) allowed employers that offered Flexible Spending Arrangements (FSAs) or Health Reimbursement Arrangements (HRAs) to roll over unused funds to an HSA as employees transitioned to an HSA for the first time. However, the unused funds may not be rolled over to HSAs unless the employer offers a "grace period" that allows medical expenses to be reimbursed from an FSA through March 15 of the following year (instead of the usual "use or lose" by December 31). In addition, the amount that may be rolled over to the HSA cannot exceed the amount in such an account as of September 21, 2006. This provision effectively limits most employees from ever being able to use unused funds in an FSA or an HRA to help fund their HSAs. This section clarifies current law to provide employers greater opportunity to roll-over funds from employees' FSAs or HRAs to their HSAs in a future year in order to ease the transition from FSAs and HRAs to HSAs.

Section 108 — Allowance of distributions for prescription and over-the-counter medicines and drugs

Under PPACA, effective January 1, 2011, funds in an FSA, HSA, or HRA may not be used to purchase over-the-counter medications without a prescription (insulin is exempt from the requirement). This section restores over-the-counter drug purchases as a qualified medical expense without a prescription for FSAs, HSAs, HRAs, and Archer MSAs.

Section 109 — Purchase of health insurance from HSA account

Under current law, people can only use their HSA to pay for health insurance premiums when they are receiving federal or state unemployment benefits or are covered by a COBRA continuation policy from a former employer. In addition, HSA funds may not be used to pay for a spouse's Medicare premiums unless the HSA holder is age 65 or older. This section allows HSA account funds to be used to pay premiums for long-term care insurance, COBRA coverage, and HSA-qualified policies. This section also clarifies that Medicare premiums for a spouse on Medicare are reimbursable from an HSA even though the HSA holder is not age 65.

Section 110 — Special rule for certain medical expenses incurred before establishment of account

When people enroll in an HSA-qualified plan, some let a few months elapse between the time when their coverage starts (e.g., January) and when the health savings bank account is set up and becomes operational (e.g., March). However, the IRS does not allow for medical expenses incurred in that gap (between January and March) to be reimbursed with HSA funds. This section allows all "qualified medical expenses" (as defined under the tax code) incurred after HSA-qualified coverage begins to be reimbursed from an HSA account as long as the account is established by April 15 of the following year.

Section 111 — Preventive care prescription drug clarification

Current law allows "preventive care" services to be paid by HSA-qualified plans without being subject to the policy deductible. Although IRS guidance allowed certain types of prescription drugs to be considered "preventive care," the guidance generally does not permit plans to include drugs that prevent complications resulting from chronic conditions. Section 111 expands the definition of "preventive care" to include medications that prevent worsening of or complications from chronic conditions. This will provide additional flexibility to health plans that want to provide coverage for these medications and remove a perceived barrier to HSAs for people with chronic conditions.

Section 112 — Equivalent bankruptcy protections for health savings accounts as retirement funds

Funds in an HSA are not considered part of the protected estate in a bankruptcy and, as a result, the money is available to creditors. This lack of protection may result in the seizure of funds that were specifically set aside to pay for medical costs for the individual and/or their family. The change clarifies that bankruptcy proceedings should not result in the loss of health care savings, providing HSAs bankruptcy protection similar to that available for IRAs.

Section 113 — Administrative error correction before due date of return

HSA contribution errors are infrequent, but they are problematic for employees who are responsible for taxes and penalties if the error is corrected. This provision allows for limited corrective distributions, without penalty, in the event of contribution errors.

Sections 114 — Reauthorization of Medicaid health opportunity accounts

Provides the states with the flexibility to provide Health Opportunity Accounts for their Medicaid populations.

TITLE II – OTHER PROVISIONS

Sections 121-123 — Expanded definition of “qualified medical expenses”

To encourage exercise and better diet, and to promote wellness, Sections 121-123 modify the definition of “qualified medical expenses” in Section 213(d) of the Internal Revenue Code to include the cost of:

- Exercise and physical fitness programs, up to \$1,000 per year (Sec. 121);
- Nutritional and dietary supplements, including meal replacement products, up to \$1,000 per year (Sec. 122); and
- Periodic fees paid to medical practitioners for access to medical care (Sec. 123).

The modifications made by these sections would affect all health care programs using the definition, including HSAs, HRAs, FSAs, and the medical expense deduction when taxpayers itemize.

Section 124 — Repeal of annual limitations on deductibles for employer-sponsored plans offered in small group market

Section 1302(c)(2) of the health reform law imposed a new limit on deductibles for health insurance plans sold to small employers. The limit is \$2,000 for single coverage and \$4,000 for family coverage. The limits prohibit small employers from purchasing plans for the employees with higher deductibles unless the employer offers a flexible spending arrangement to reimburse the difference above the limits. This section repeals this provision of the health reform law so small employers can continue to offer more affordable plans to their employees.

The Family and Retirement Health Investment Act of 2011

United States Senator Orrin Hatch & Congressman Erik Paulsen

This bill simplifies and enhances Health Savings Accounts (HSAs) and Health Flexible Spending Accounts (FSAs) by addressing some of the questions and concerns that have been raised since HSAs were first enacted in 2003, but were not addressed by the HOPE Act of 2006.

Catch-up Contributions

Allows the spouse of an HSA account holder to double their catch-up contribution to account for their eligible spouse.

Contributions for Medicare Part A eligible

Allows seniors enrolled in Medicare Part A only to continue contributing to their HSAs.

FSA Rollover

Permits up to \$500 of unspent FSA funds to carry forward to the following year.

Transition to HSAs

To ease transition to HSAs, clarifies current law to provide employers greater opportunity to roll-over funds from employees' FSAs or HRAs to HSAs.

Removes OTC Restrictions

Repeals restrictions on use of HSA/FSA/HRA dollars for the purchase of over-the-counter medications without a prescription.

Purchase of Health Insurance from HSA

Allows purchase of COBRA coverage, long-term care insurance, and HSA-qualified policies from an HSA.

Medicaid Health Opportunity Accounts

Provides states with the flexibility to create Health Opportunity Accounts for their Medicaid population.

Lifts Limits on Deductibles for Employer-Sponsored Plans in the Small Group Market

Repeals the recently enacted deductible limits of \$2,000 for single coverage and \$4,000 for family coverage for plans sold to small employers.

Expanded Definition of Qualified Medical Expenses

Modifies the definition of "qualified medical expenses" to promote wellness, and encourage exercise and better diet, by allowing HSA and FSA dollars to be used for gym memberships and meal replacement products.