

**DESCRIPTION OF H.R. 1922,
THE “RESTORING ACCESS TO MEDICATION ACT OF 2019”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on October 23, 2019

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled on October 23, 2019, a committee markup of H.R. 1922, the “Restoring Access to Medication Act of 2019.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R.1922, the “Restoring Access to Medication Act of 2019”* (JCX-46-19), October 21, 2019. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Inclusion of Certain Over-the-Counter Medical Products As Qualified Medical Expenses

Present Law

Individual deduction for medical expenses

Under the rules relating to itemized deductions, an individual may deduct expenses for medical care, not compensated for by insurance or otherwise, to the extent the expenses exceed 10 percent of adjusted gross income (“AGI”).² Medical care generally is defined broadly as amounts paid for diagnoses, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure of the body.³

Under an explicit limitation in the Code, any amount paid during a taxable year for medicine or drugs is deductible as a medical expense only if the medicine or drug is a prescribed drug or insulin.⁴ The term prescribed drug means a drug or biological which requires a prescription of a physician for its use by an individual.⁵ Thus, any amount paid for a medicine or drug available without a prescription (“over-the-counter medicine”) is not deductible as a medical expense, including any medicine or drug prescribed or recommended by a physician.⁶

Exclusion for employer-provided health care

The Code generally provides that employees may exclude from gross income the value of employer-provided health coverage under an accident or health plan.⁷ In addition, any reimbursements under an accident or health plan for medical care expenses for employees, their spouses, and their dependents generally are excluded from gross income.⁸ An employer may reimburse expenses for medical care of its employees (and their spouses and dependents) not covered by a health insurance plan through a flexible spending account (“FSA”). An FSA allows such reimbursement not in excess of a specified dollar amount.⁹ Such dollar amount is either elected by an employee under a cafeteria plan¹⁰ (“health FSA”) or otherwise specified by the

² Sec. 213(a).

³ Sec. 213(d). There are certain limitations on the general definition including a rule that cosmetic surgery or similar procedures are generally not medical care.

⁴ Sec. 213(b).

⁵ Sec. 213(d)(3).

⁶ Rev. Rul. 2003-58, 2003-1 CB 959.

⁷ Sec 106.

⁸ Sec. 105(b).

⁹ Sec. 125(i). For 2019, this limit is \$2,700.

¹⁰ Sec. 125.

employer under a health reimbursement account ("HRA"). Reimbursements under these arrangements are also excludible from gross income as reimbursements for medical care under employer-provided health coverage.

Health savings accounts

An individual may establish a health savings account ("HSA") only if the individual is covered under a plan that meets the requirements for a high deductible health plan.¹¹ In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, an HSA is a tax-exempt trust or custodial account created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents.

Within limits,¹² contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA are excludible from income and employment taxes if made by the employer. Earnings in HSAs are not taxable.

Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20-percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (age 65). Similar rules apply for another type of medical savings arrangement called an Archer MSA.¹³

Medical care for excludible reimbursements and distributions

For purposes of the exclusion for reimbursements under employer-provided accident and health plans (including under health FSAs and HRAs), and for distributions from HSAs and Archer MSAs used for qualified medical expenses, the definition of medical care is generally the same as the definition that applies for the itemized deduction for the cost of medical care. However, prior to the enactment of the Patient Protection and Affordable Care Act ("PPACA"),¹⁴ the limitation (applicable to the itemized deduction) that only prescription medicines or drugs and insulin are taken into account did not apply. Thus, for example,

¹¹ A high deductible health plan is a health plan that has an annual deductible which is not less than \$1,350 (for 2019) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed \$6,750 (for 2019) for self-only coverage and twice this amount for family coverage. Sec. 223(c)(2).

¹² For 2019, the basic limit on annual contributions that can be made to an HSA is \$3,500 in the case of self-only coverage and \$7,000 in the case of family coverage. The basic annual contributions limits are increased by \$1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up" contributions).

¹³ Sec. 220.

¹⁴ Pub. L. No 111-148.

reimbursements from a health FSA or HRA or funds distributed from an HSA for expenses of nonprescription drugs, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, were excludable from income even though, if the taxpayer paid for such amounts directly the expenses could not be taken into account in determining the itemized deduction for medical expenses.¹⁵ For years beginning after December 31, 2010, the PPACA changed the definition of medical care for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and for distributions from HSAs and Archer MSAs used for qualified medical expenses to require that over-the-counter medicine (other than insulin) be prescribed by a physician in order for the medicine to be medical care for these purposes.¹⁶ Thus, a health FSA or an HRA is only permitted to treat a reimbursement for the cost of over-the-counter medicine as a qualified medical expense if the medicine or drug is prescribed by a physician, and a distribution from an HSA or an Archer MSA used to purchase over-the-counter medicine is not a qualified medical expense unless the medicine or drug is prescribed by a physician.

Description of Proposal

Under the proposal, distributions from an HSA that are qualified medical expenses are no longer limited only to those medicines and drugs which are prescribed, and include amounts paid for menstrual care products (defined as tampons, pads, liners, cups, sponges, or similar products used by individuals with respect to menstruation or other genital-tract secretions).

The proposal amends the definition of qualified medical expense for Archer MSAs to permit distributions for over-the-counter medicine and menstrual care products.

The proposal also amends the definition of qualified medical expense for health FSAs and HRAs to permit reimbursements for expenses incurred for over-the-counter medicine and menstrual care products.

Effective Date

The proposal applies to distributions from HSAs and MSAs for amounts paid after December 31, 2019.

The proposal applies to reimbursements from health FSAs and HRAs for expenses incurred after December 31, 2019.

¹⁵ Rev. Rul. 2003-102, 2993-2 C.B. 559, now obsolete by Rev. Rul. 2010-23, 2010-39 I.R.B. 388, September 3, 2010.

¹⁶ Sec. 9003 of the PPACA. Notice 2010-59, 2010-39 I.R.B. 388, provides guidance on this change to the definition of medical care for these purposes.

B. Estimated Revenue Effect of the Proposal

	Fiscal Years [Millions of Dollars]											
<u>Item</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2020-24</u>	<u>2020-29</u>
Inclusion of Certain Over- the-Counter Medical Products As Qualified Medical Expenses [1]..	-497	-729	-762	-801	-829	-858	-935	-984	-1,018	-1,045	-3,619	-8,458

NOTE: Details may not add to totals due to rounding.

[1] Estimate includes the following budget effects:

	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2020-24</u>	<u>2020-29</u>
On-budget.....	-353	-523	-548	-576	-597	-619	-688	-729	-755	-774	-2,597	-6,162
Off-budget....	-144	-206	-214	-225	-232	-239	-247	-255	-263	-271	-1,021	-2,296