

112TH CONGRESS  
1ST SESSION

# H. R. 1004

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

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## 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

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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 (relating to amounts received under accident and

1 health plans) is amended by inserting at the end the fol-  
2 lowing new subsection:

3 “(k) AMOUNTS PAID UNDER MEDICAL FLEXIBLE  
4 SPENDING ARRANGEMENTS.—

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

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

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

23 “(4) FLEXIBLE SPENDING ARRANGEMENT.—  
24 The term ‘flexible spending arrangement’ means a

1 benefit program within the meaning of section  
2 106(c)(2) (relating to long-term care benefits).”.

3 (b) ADDITIONAL DEFERRED COMPENSATION EXCEP-  
4 TION.—Paragraph (2) of section 125(d) of such Code (re-  
5 lating to deferred compensation under a cafeteria plan)  
6 is amended by inserting at the end the following new sub-  
7 paragraph:

8 “(E) EXCEPTION FOR CERTAIN FLEXIBLE  
9 SPENDING ARRANGEMENTS.—Subparagraph (A)  
10 shall not apply to a flexible spending arrange-  
11 ment (within the meaning of section 106(c)(2))  
12 as a result of amounts being distributed to the  
13 covered employee in accordance with section  
14 105(k).”.

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

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

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

1       (e) TRANSITION RULES.—In the case of plan years  
2 that begin before the date of the enactment of this Act,  
3 in implementing the amendments made by this section a  
4 flexible spending arrangement may allow an individual to  
5 make a new election or to revise an existing election under  
6 such arrangement so long as such new or revised election  
7 is made within 90 days after the date of the enactment  
8 of this Act.

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