

**DESCRIPTION OF H.R. 1270,  
THE “RESTORING ACCESS TO MEDICATION ACT OF 2015”**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on September 17, 2015

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



September 16, 2015  
JCX-114-15

## CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
A. Repeal of the Disqualification of Expenses for Over-the-Counter Drugs under Certain Accounts and Arrangements .....	2
B. Estimated Revenue Effects .....	6

## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 1270, the “Restoring Access to Medication Act of 2015,” on September 17, 2015. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

---

<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 1270, the “Restoring Access to Medication Act of 2015”* (JCX-114-15), September 16, 2015. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov).

## **A. Repeal of the Disqualification of Expenses for Over-the-Counter Drugs under Certain Accounts and Arrangements**

### **Present Law**

#### **Individual deduction for medical expenses**

Expenses for medical care, not compensated for by insurance or otherwise, are deductible by an individual under the rules relating to itemized deductions to the extent the expenses exceed 10 percent of adjusted gross income (“AGI”) in a given year.<sup>2</sup> Medical care generally is defined broadly as amounts paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure of the body.<sup>3</sup>

Under an explicit limitation, 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.<sup>4</sup> Prescribed drug for this purpose means a drug or biological which requires a prescription of a physician for its use by an individual.<sup>5</sup> Thus, any amount paid for medicine available without a prescription (“over-the-counter medicine”) is not deductible as a medical expense, including any medicine prescribed or recommended by a physician.<sup>6</sup>

#### **Exclusion for employer-provided health benefits**

Employees are not taxed on (that is, may exclude from gross income and from wages for payroll tax purposes) the value of employer-provided health coverage under an accident or health plan.<sup>7</sup> In addition, any reimbursements under an employer-provided accident or health plan for medical care expenses for employees, their spouses, their dependents, and adult children under age 27 generally are excludible from gross income (and from wages for payroll tax purposes).<sup>8</sup> An employer may agree to reimburse expenses for medical care of its employees (and their spouses and dependents), not covered by a health insurance plan, through a flexible spending arrangement (“FSA”) which allows reimbursement not in excess of a specified dollar amount. The amounts available for reimbursement must be exclusively for reimbursement for medical

---

<sup>2</sup> Sec. 213(a). The threshold is 7.5 percent for taxable years beginning before January 1, 2017, with respect to a taxpayer if the taxpayer or the taxpayer’s spouse has attained age 65 before the close of the taxable year. Except where otherwise stated, all references are to the Internal Revenue Code of 1986, as amended.

<sup>3</sup> 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.

<sup>4</sup> Sec. 213(b).

<sup>5</sup> Sec. 213(d)(3).

<sup>6</sup> Rev. Rul. 2003-58, 2003-1 CB 959.

<sup>7</sup> Secs. 106 and 3121(a)(2).

<sup>8</sup> Sec. 105(b).

care because the exclusion does not apply to amounts which the employee would be entitled to irrespective of whether he or she incurs expenses for medical care.<sup>9</sup>

The amount available for reimbursement is either elected by an employee under a cafeteria plan (“health FSA”) or otherwise specified by the employer under a health reimbursement arrangement (“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 with a high deductible health plan (and no other health plan other than a plan that provides certain permitted insurance or permitted coverage) may establish a health savings account (“HSA”).<sup>10</sup> 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, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents. Thus, earnings on amounts in HSAs are not taxable.

Subject to limits,<sup>11</sup> contributions made to an HSA by an employer, including contributions made through a cafeteria plan through salary reduction, are excludible from income (and from wages for payroll tax purposes). Contributions made by individuals are deductible for income tax purposes, regardless of whether the individuals itemize deductions. Distributions from an HSA that are used for qualified medical expenses are excludible from 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 (*i.e.*, age 65). Similar rules apply for another type of medical savings arrangement called an Archer medical savings account (“Archer MSA”).<sup>12</sup>

### **Medical care for excludible reimbursements**

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

---

<sup>9</sup> Treas. Reg. sec. 1.105-2.

<sup>10</sup> Sec. 223.

<sup>11</sup> For 2015, the maximum aggregate annual contribution that can be made to an HSA is \$3,350 in the case of self-only coverage and \$6,650 in the case of family coverage. The annual contribution 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”). Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.

<sup>12</sup> Sec. 220.

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 (referred to as the “Affordable Care Act”),<sup>13</sup> 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, amounts paid from a Health FSA or HRA, or funds distributed from an HSA to reimburse a taxpayer for over-the-counter medicine, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, were excludible from income even though, if the taxpayer paid for such amounts directly (without such reimbursement), the expenses could not be taken into account in determining the itemized deduction for medical expenses.<sup>14</sup>

For years beginning after December 31, 2010, the Affordable Care Act 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.<sup>15</sup> Thus, under present law, preferential treatment under a Health FSA or an HRA is available only on reimbursements for the cost of over-the-counter medicine if the medicine is prescribed by a physician, and distributions from an HSA or an Archer MSA used to purchase over-the-counter medicine are not a qualified medical expense unless the medicine is prescribed by a physician.<sup>16</sup>

### **Description of Proposal**

The proposal repeals the change to the definition of medical care made by the Affordable Care Act for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and for distributions from HSAs or Archer MSAs used for qualified medical expenses that requires 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. Thus, for example, amounts paid from a Health FSA or HRA, or funds distributed from an HSA or an Archer MSA to reimburse a taxpayer for over-the-counter medicine, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, are excludible from income even though, if the taxpayer paid for such amounts directly (without such reimbursement), the expenses could not be taken into account in determining the itemized deduction for medical expenses.

---

<sup>13</sup> The Patient Protection and Affordable Care Act, Pub. L. No 111-148, enacted March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, enacted March 30, 2010, are collectively referred to as the Affordable Care Act..

<sup>14</sup> Rev. Rul. 2003-102, 2993-2 C.B. 559, obsoleted by Rev. Rul. 2010-23, 2010-39 I.R.B. 388.

<sup>15</sup> Sec. 9003 of the Affordable Care Act. Notice 2010-59, 2010-39 I.R.B. 388, provides guidance on this change to the definition of medical care for these purposes.

<sup>16</sup> This rule still differs from the rule in section 213(a) and (d)(3) disallowing the medical expense deduction for over-the-counter medicine. Under the section 213 rule, the expense for any medicine available without a prescription (other than insulin) is not deductible even if the particular individual has a prescription.

**Effective Date**

The proposal is effective with respect to expenses incurred after December 31, 2014.

**B. Estimated Revenue Effects[1]**

---

<b>Fiscal Years</b>											
<b>[Millions of Dollars]</b>											
<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2016-20</u>	<u>2016-25</u>
-376	-527	-561	-600	-645	-695	-744	-796	-852	-909	-2,709	-6,704

---

**NOTE:** Details do not add to totals due to rounding.

[1] Estimate includes the following change in off-budget receipts:

<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2016-20</u>	<u>2016-25</u>
-101	-142	-151	-162	-174	-188	-201	-215	-230	-245	-731	-1,810