

108TH CONGRESS  
1ST SESSION

# H. R. 2114

To amend the Internal Revenue Code of 1986 to expand medical savings accounts and to amend title XIX of the Social Security Act to provide for medical freedom accounts under the Medicaid and State children's health insurance programs.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. BURGESS (for himself and Mr. SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to expand medical savings accounts and to amend title XIX of the Social Security Act to provide for medical freedom accounts under the Medicaid and State children's health insurance programs.

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 "Health Access and  
5 Flexibility Act of 2003".

1 **SEC. 2. EXPANSION OF MEDICAL SAVINGS ACCOUNTS.**

2 (a) AVAILABILITY NOT LIMITED TO ACCOUNTS FOR  
3 EMPLOYEES OF SMALL EMPLOYERS AND SELF-EM-  
4 PLOYED INDIVIDUALS.—

5 (1) IN GENERAL.—Subparagraph (A) of section  
6 220(c)(1) of the Internal Revenue Code of 1986 (re-  
7 lating to eligible individual) is amended to read as  
8 follows:

9 “(A) IN GENERAL.—The term ‘eligible in-  
10 dividual’ means, with respect to any month, any  
11 individual if—

12 “(i) such individual is covered under a  
13 high deductible health plan as of the 1st  
14 day of such month, and

15 “(ii) such individual is not, while cov-  
16 ered under a high deductible health plan,  
17 covered under any health plan—

18 “(I) which is not a high deduct-  
19 ible health plan, and

20 “(II) which provides coverage for  
21 any benefit which is covered under the  
22 high deductible health plan.”.

23 (2) REPEAL OF LIMITATIONS ON NUMBER OF  
24 MEDICAL SAVINGS ACCOUNTS.—

25 (A) IN GENERAL.—Subsections (i) and (j)  
26 of section 220 are hereby repealed.

1 (B) CONFORMING AMENDMENTS.—

2 (i) Paragraph (1) of section 220(c) of  
3 such Code is amended by striking subpara-  
4 graph (D).

5 (ii) Section 138 of such Code is  
6 amended by striking subsection (f).

7 (3) CONFORMING AMENDMENTS.—

8 (A) Section 220(c)(1) of such Code is  
9 amended by striking subparagraph (C).

10 (B) Section 220(c) of such Code is amend-  
11 ed by striking paragraph (4) (defining small  
12 employer) and by redesignating paragraph (5)  
13 as paragraph (4).

14 (C) Section 220(b) of such Code is amend-  
15 ed by striking paragraph (4) (relating to deduc-  
16 tion limited by compensation) and by redesign-  
17 ating paragraphs (5), (6), and (7) as para-  
18 graphs (4), (5), and (6), respectively.

19 (b) REDUCTION OF PERMITTED DEDUCTIBLES  
20 UNDER HIGH DEDUCTIBLE HEALTH PLANS.—

21 (1) IN GENERAL.—Subparagraph (A) of section  
22 220(c)(2) of such Code (defining high deductible  
23 health plan) is amended—

24 (A) in clause (i) by striking “\$1,500” and  
25 inserting “\$1,000”, and

1 (B) in clause (ii) by striking “\$3,000” and  
2 inserting “\$2,000”.

3 (2) COST OF LIVING ADJUSTMENT.—Subsection  
4 (g) of section 220 of such Code is amended by strik-  
5 ing “each dollar amount in subsection (c)(2) shall be  
6 increased” and inserting “the \$2,250, \$4,500,  
7 \$3,000, and \$5,500 amounts in subsection (c)(2)(A)  
8 shall each be increased”.

9 (c) INCREASE IN AMOUNT OF DEDUCTION ALLOWED  
10 FOR CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

11 (1) IN GENERAL.—Paragraph (2) of section  
12 220(b) of such Code is amended to read as follows:

13 “(2) MONTHLY LIMITATION.—The monthly lim-  
14 itation for any month is the amount equal to  $\frac{1}{12}$  of  
15 the annual deductible under the type of coverage  
16 such individual has for such month.”

17 (2) CONFORMING AMENDMENT.—Clause (ii) of  
18 section 220(d)(1)(A) of such Code is amended by  
19 striking “75 percent of”.

20 (d) BOTH EMPLOYERS AND EMPLOYEES MAY CON-  
21 TRIBUTE TO MEDICAL SAVINGS ACCOUNTS.—Paragraph  
22 (4) of section 220(b) of such Code (as redesignated by  
23 subsection (b)(2)(C)) is amended to read as follows:

24 “(4) COORDINATION WITH EXCLUSION FOR EM-  
25 PLOYER CONTRIBUTIONS.—The limitation which

1 would (but for this paragraph) apply under this sub-  
2 section to the taxpayer for any taxable year shall be  
3 reduced (but not below zero) by the amount which  
4 would (but for section 106(b)) be includible in the  
5 taxpayer's gross income for such taxable year.”.

6 (e) ROLLOVERS TO ARCHER MSAs FROM HEALTH  
7 FLEXIBLE SPENDING ARRANGEMENTS.—

8 (1) IN GENERAL.—Subsection (d) of section  
9 220 of the Internal Revenue Code of 1986 (defining  
10 Archer MSA) is amended by redesignating para-  
11 graph (4) as paragraph (5) and by inserting after  
12 paragraph (3) the following new paragraph:

13 “(4) SPECIAL RULE FOR ROLLOVERS FROM  
14 HEALTH FLEXIBLE SPENDING ACCOUNTS.—A roll-  
15 over contribution described in this paragraph is a  
16 transfer from a flexible spending account (as defined  
17 in section 125(h)) to the extent the amount received  
18 is paid into an Archer MSA for the benefit of such  
19 holder not later than the 60th day after the day on  
20 which the holder receives the payment or distribu-  
21 tion.”.

22 (2) ROLLOVER OF UNUSED HEALTH BENEFITS  
23 IN CAFETERIA PLANS AND FLEXIBLE SPENDING AR-  
24 RANGEMENTS.—

1           (A) IN GENERAL.—Section 125 of such  
2           Code (relating to cafeteria plans) is amended by  
3           redesignating subsections (h) and (i) as sub-  
4           sections (i) and (j), respectively, and by insert-  
5           ing after subsection (g) the following:

6           “(h) ROLLOVER TO ARCHER MEDICAL SAVINGS AC-  
7           COUNTS OF CERTAIN UNUSED HEALTH BENEFITS.—

8           “(1) IN GENERAL.—For purposes of this title,  
9           a plan or other arrangement shall not fail to be  
10          treated as a cafeteria plan solely because qualified  
11          benefits under such plan include a health flexible  
12          spending arrangement under which, with respect to  
13          any plan year, health benefits which are unused at  
14          the end of such year may be transferred to an Ar-  
15          cher MSA of the employee.

16          “(2) TAX TREATMENT OF UNUSED HEALTH  
17          BENEFITS.—Amounts transferred under paragraph  
18          (1) to an Archer MSA shall not be includible in  
19          gross income for such taxable year and shall not be  
20          treated as a contribution for purposes of section  
21          220(a).

22          “(3) HEALTH FLEXIBLE SPENDING ARRANGE-  
23          MENT.—For purposes of this subsection, the term  
24          ‘health flexible spending arrangement’ means a flexi-  
25          ble spending arrangement (as defined in section

1 106(c)) that is a qualified benefit and only permits  
2 reimbursement for expenses for medical care (as de-  
3 fined in section 213(d)(1) (without regard to sub-  
4 paragraphs (C) and (D) thereof).

5 “(4) UNUSED HEALTH BENEFITS.—For pur-  
6 poses of this subsection, the term ‘unused health  
7 benefits’ means the excess of—

8 “(A) the maximum amount of reimburse-  
9 ment allowable for a plan year under a health  
10 flexible spending arrangement, over

11 “(B) the actual amount of reimbursement  
12 for such year under such arrangement.”.

13 (B) CONFORMING AMENDMENT.—Section  
14 220(d)(1)(A) of such Code is amended by in-  
15 sserting “described in paragraph (4) or” after  
16 “contribution”.

17 (f) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2003.

20 **SEC. 3. MEDICAL FREEDOM ACCOUNTS UNDER THE MED-**  
21 **ICAID PROGRAM AND UNDER THE STATE**  
22 **CHILDREN’S HEALTH INSURANCE PROGRAM**  
23 **(SCHIP).**

24 (a) IN GENERAL.—Title XIX of the Social Security  
25 Act is amended—

1           (1) by redesignating section 1935 as section  
2           1936; and

3           (2) by inserting after section 1934 the following  
4           new section:

5                     “MEDICAL FREEDOM ACCOUNTS

6           “SEC. 1935. (a) AUTHORITY.—

7                     “(1) IN GENERAL.—Notwithstanding any other  
8           provision of this title, a State may amend its State  
9           plan under this title (including in a Statewide waiver  
10          under section 1115 relating to this title) to provide  
11          in accordance with this section for the provision of  
12          alternative benefits consistent with subsection (c) for  
13          eligible population groups in one or more geographic  
14          areas of the State specified by the State. An amend-  
15          ment under the previous sentence is referred to in  
16          this section as a ‘State plan amendment’.

17                    “(2) APPROVAL.—The Secretary shall not ap-  
18          prove a State plan amendment under paragraph (1)  
19          unless the amendment incorporates the following:

20                           “(A) Creating patient awareness of the  
21                           high cost of medical care.

22                           “(B) Providing incentives to patients to  
23                           seek preventive care services.

24                           “(C) Reduction in inappropriate use of  
25                           health care services.

1           “(D) Enabling patients to take responsi-  
2           bility for health outcomes.

3           “(b) ELIGIBLE POPULATIONS GROUPS.—The State  
4 plan amendment under this section shall specify the eligi-  
5 ble population groups.

6           “(c) ALTERNATIVE BENEFITS.—

7           “(1) IN GENERAL.—The alternative benefits  
8 provided under this section shall consist of at  
9 least—

10           “(A) coverage for medical expenses in a  
11 year after a catastrophic deductible has been  
12 met; and

13           “(B) contribution into a medical freedom  
14 account.

15           “(2) OVERRIDING EXISTING BENEFITS.—The  
16 provisions of this title relating to mandated benefits  
17 or cost-sharing or comparability of benefits (includ-  
18 ing sections 1902(a)(10) and 1916) shall not apply  
19 to an individual or family being provided alternative  
20 benefits under this section.

21           “(3) TREATMENT AS MEDICAL ASSISTANCE.—  
22 Payments for alternative benefits under this section  
23 (including contributions into a medical freedom ac-  
24 count) shall be treated as medical assistance for pur-  
25 poses of section 1903(a).

1 “(d) MEDICAL FREEDOM ACCOUNT.—

2 “(1) IN GENERAL.—For purposes of this sec-  
3 tion, the term ‘medical freedom account’ means an  
4 account that meets the requirements of this sub-  
5 section.

6 “(2) CONTRIBUTIONS.—

7 “(A) IN GENERAL.—No contribution may  
8 be made into a medical freedom account ex-  
9 cept—

10 “(i) contributions by the State under  
11 this title; and

12 “(ii) contributions by an employer,  
13 which may not exceed, in the case of an in-  
14 dividual otherwise eligible for benefits  
15 under this title, \$1,000 per account per  
16 year.

17 “(B) LIMITATION.—In no case may a con-  
18 tribution be made into a medical freedom ac-  
19 count if the balance in such account exceeds  
20 \$3,500, in the case of an account for an indi-  
21 vidual, or \$5,500, in the case of an account for  
22 a family.

23 “(3) USE.—

24 “(A) IN GENERAL.—Subject to the suc-  
25 ceeding provisions of this paragraph, amounts

1 in a medical freedom account may be used only  
2 for the payment of medical care (as defined by  
3 section 213(d) of the Internal Revenue Code of  
4 1986), and may only be used for expenses in  
5 the year in which the contribution was made.  
6 The State plan amendment shall provide for a  
7 method whereby withdrawals may be made from  
8 the account for such purposes using an elec-  
9 tronic benefits transfer (EBT) system.

10 “(B) ROLLOVER PERMITTED.—

11 “(i) IN GENERAL.—Subject to clause  
12 (ii), amounts in a medical freedom account  
13 at the end of a year may be rolled over and  
14 used in the following year.

15 “(ii) PREVENTIVE CARE MAY BE RE-  
16 QUIRED FOR ROLLOVER FOR MEDICAID  
17 BENEFICIARIES.—In the case of an ac-  
18 count holder who is eligible for benefits  
19 under this title in December of a year,  
20 amounts in the medical freedom account at  
21 the end of the year may be rolled over and  
22 used in the following year only apply if the  
23 account holder meets such preventive care  
24 requirements as is provided under the  
25 State plan amendment.

1           “(C) MAINTENANCE OF MEDICAL FREE-  
2           DOM ACCOUNT AFTER BECOMING INELIGIBLE  
3           FOR PUBLIC BENEFIT.—Notwithstanding any  
4           other provision of law, if an account holder of  
5           a medical freedom account becomes ineligible  
6           for benefits under this title because of an in-  
7           crease in income or assets, no additional con-  
8           tribution shall be made into the account under  
9           paragraph (2)(A)(i) but the account shall re-  
10          main available to the account holder for with-  
11          drawals under the same terms and conditions  
12          as if the account holder remained eligible for  
13          such benefits, except that the amounts in the  
14          account shall be available for the purchase of  
15          health insurance coverage. An account holder of  
16          a medical freedom account, after becoming so  
17          ineligible, is not required to purchase high-de-  
18          ductible or other insurance as a condition of  
19          maintaining or using the account.

20          “(4) ADMINISTRATION.—A State shall coordi-  
21          nate administration of medical freedom accounts  
22          through the use of a third party administrator.

23          “(5) TREATMENT.—Amounts in a medical free-  
24          dom account shall not be counted as income or as-

1 sets for purposes of determining eligibility for bene-  
2 fits under this title.

3 “(6) UNAUTHORIZED WITHDRAWALS.—A State  
4 may establish procedures—

5 “(A) to penalize or remove an individual  
6 from the medical freedom account program  
7 based on nonqualified withdrawals by the indi-  
8 vidual from such an account; and

9 “(B) to recoup costs that derive from such  
10 nonqualified withdrawals.”.

11 (b) APPLICATION UNDER THE STATE CHILDREN’S  
12 HEALTH INSURANCE PROGRAM (SCHIP).—Section  
13 2107(e)(1) of the Social Security Act (42 U.S.C.  
14 1397gg(e)(1)) is amended by adding at the end the fol-  
15 lowing new subparagraph:

16 “(E) Section 1935 (relating to medical  
17 freedom accounts).”.

18 (c) EXCLUSION FROM GROSS INCOME FOR EM-  
19 PLOYER CONTRIBUTIONS TO MEDICAL FREEDOM AC-  
20 COUNTS.—Section 106 of the Internal Revenue Code of  
21 1986 (relating to contributions by employer to accident  
22 and health plans) is amended by adding at the end the  
23 following new subsection:

24 “(d) CONTRIBUTIONS TO MEDICAL FREEDOM AC-  
25 COUNTS.—

1           “(1) IN GENERAL.—In the case of an employee  
2           who is an eligible individual, amounts contributed by  
3           such employee’s employer to any medical freedom  
4           account of such employee shall be treated as em-  
5           ployer-provided coverage for medical expenses under  
6           an accident or health plan to the extent such  
7           amounts do not exceed the limitation under section  
8           1935(d)(2) of the Social Security Act which is appli-  
9           cable to such employee for such taxable year.

10           “(2) NO CONSTRUCTIVE RECEIPT.—No amount  
11           shall be included in the gross income of any em-  
12           ployee solely because the employee may choose be-  
13           tween the contributions referred to in paragraph (1)  
14           and employer contributions to another health plan of  
15           the employer.

16           “(3) EMPLOYER MEDICAL FREEDOM ACCOUNT  
17           CONTRIBUTION REQUIRED TO BE SHOWN ON RE-  
18           TURN.—Every individual required to file a return  
19           under section 6012 for the taxable year shall include  
20           on such return the aggregate amount contributed by  
21           employers to the medical freedom accounts of such  
22           individual or such individual’s spouse for such tax-  
23           able year.

1           “(4) CONTRIBUTIONS NOT PART OF COBRA  
2           COVERAGE.—Paragraph (1) shall not apply for pur-  
3           poses of section 4980B.

4           “(5) DEFINITIONS.—For purposes of this sub-  
5           section—

6                   “(A) ELIGIBLE INDIVIDUAL.—The term  
7                   ‘eligible individual’ means an individual for  
8                   whose benefit a medical freedom account is es-  
9                   tablished under section 1935 of the Social Secu-  
10                  rity Act.

11                  “(B) MEDICAL FREEDOM ACCOUNT.—The  
12                  term ‘medical freedom account’ has the mean-  
13                  ing given to such term by section 1935 of the  
14                  Social Security Act.”.

○