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H.R. 4768 – Separation of Powers Restoration Act (SOPRA) (Rep. Ratcliffe, R-TX)

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FLOOR SCHEDULE:

Expected to be considered on July 6, 2016 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 4768](#) would reign in the Executive Branch by scaling back *Chevron* deference, and therefore deference to federal agencies, by requiring de novo review of agency actions for all relevant questions of law, including Constitutional and statutory interpretation. It would place judicial review back in the hands of the Judiciary, and make clear the lines between judicial interpretation of law and executive enforcement of the law.

COST:

The Congressional Budget Office (CBO) is unable to produce a cost [estimate](#) for this legislation.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No. The bill would reduce the ability of executive agencies to broadly interpret statutes outside of their Congressional intent.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The [Chevron doctrine](#) is used by the Judicial Branch in matters concerning statutory interpretation, requiring courts to defer to the interpretations of the federal agencies tasked with enforcing the statutes, so long as the interpretations are reasonable. *Chevron* applies if Congress has given interpretive authority to the agency as it pertains to the statute in question, and given the authority, typically when the agency issues a formal ruling on the interpretation. When *Chevron* applies, the court looks to the reasonableness of the interpretation and whether the statute in question unambiguously addresses the issue at hand; that is, whether Congress has “directly spoken to the precise question at issue,” with clear intent and in an unambiguous fashion. If the statute is unambiguously addressed, Congressional intent stands. If the statute is found to be ambiguous, the court examines whether the agency’s interpretation of the statute is based on a permissible interpretation of the statute that is not “arbitrary, capricious, or manifestly contrary to the statute.” This “permissible” standard is a relatively low standard, meaning the party opposing the agency action typically has a largely uphill battle to climb, and generally loses these challenges.

Critics of *Chevron* assert that the doctrine is frequently used as a tool to defer to executive branch interpretations when judicial authority is more appropriate. According to the [Committee Report](#), the *Chevron* doctrine has vastly increased the power of federal administrative agencies, with many believing that the doctrine is inconsistent with the basis for judicial review founded within *Marbury v. Madison* and inconsistent with the Framers’ intent for the separation of powers.

Many find the *Chevron* doctrine to provide far too much leeway to administrative agencies, giving them broad scope in interpreting Congressional action. Moreover, agency interpretation of their own regulations they themselves promulgated has also come under fire for having many of the same separation of powers issues, and for allowing agencies to purposefully issue vague rulings to maximize their power.

H.R. 4768 would alter the scope of judicial review of agency actions to allow courts reviewing those actions to decide de novo (without reference to previous legal conclusions or assumptions) any relevant questions of law, including those pertaining to the interpretation of constitutional and statutory provisions and rules.

AMENDMENTS:

1. [Rep. Johnson](#) (D-GA) – This amendment would provide an exemption for rules issued pursuant to an express grant of authority from Congress.
2. [Rep. Conyers](#) (D-MI) – This amendment would provide an exemption for rules issued by the Environmental Protection Agency that pertain to the regulation of lead or copper in drinking water.
3. [Rep. Cicilline](#) (D-RI) – This amendment would retain judicial deference to agency expertise during the review of rules pertaining to consumer safety by the Commissioner of the Food and Drug Administration.
4. [Rep. Jackson Lee](#) (D-TX) – This amendment would provide an exemption for rules pertaining to matters of national security that are issued by the Department of Homeland Security.
5. [Rep. Meeks](#) (D-TX) – This amendment would exempt from the bill, any rule issued by the Department of Housing and Urban Development.

COMMITTEE ACTION:

H.R. 4768 was introduced on March 16, 2016 and was referred to the House Committee on the Judiciary, where it was reported amended by voice vote on June 8, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article III, Section 1, Sentence 1, and Section 2, Clauses 1 and 4, of the Constitution, in that the legislation defines or affects judicial powers and cases that are subject to legislation by Congress; Article I, Section 1, Clause 1 of the United States Constitution, in that the legislation concerns the exercise of legislative powers generally granted to Congress by that section, including the exercise of those powers when delegated by Congress to the Executive; and, Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

H.R. 1270: Restoring Access to Medication Act of 2015, Rules Committee Print (Jenkins, R-KS)

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FLOOR SCHEDULE:

June 23, 2016 under a closed [rule](#) that provides for one hour of debate.

TOPLINE SUMMARY:

[H.R. 1270](#) would make several changes to health savings accounts (HSA) that would make the accounts easier and more advantageous to use.

COST:

The [Congressional Budget Office](#) (CBO) estimates this bill would have a net decrease of \$2.2 million over fiscal years 2016-2026.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Created in 2003 as part of the [Medicare Prescription Drug, Improvement and Modernization Act](#) (MMA), a HSA is a tax-advantaged medical account for individuals enrolled in a high-deductible health plan (HDHP). Funds contributed to a HSA roll over and accumulate each year, and are not subject federal income tax at the time of deposit. If used for [qualified medical expenses](#), there is no tax liability when these funds are withdrawn and spent. Conservatives have long known that consumer-directed health plans, such as HSAs, bend the cost curve because of a better use of resources coupled with more cost-conscious decision making.

First, this bill would remove the [requirement](#) that only prescription medications or over-the-counter medications purchased with a prescription would be considered a qualifying medical expense for HSA purposes. This reimbursement requirement was included as part of the Patient Protection and Affordable Care Act (PPACA).

Next, this bill would allow eligible spouses to make catch-up contributions to a single HSA. [Currently](#), the IRS views spouses as one tax unit; therefore, maximum contribution requirements apply even if each spouse has their own HDHP and corresponding HSA. In addition, if both spouses are eligible for an HSA they must contribute to their individual HSA instead of a joint account. This bill would streamline the operation of HSAs to allow spouses eligible for catch-up contributions to divide the annual contribution limit amounts of both spouses. This would allow the combined basic and catch-up contributions to be allocated to only one account.

This bill would allow certain expenses incurred after enrolling in a HDHP, but prior to establishing an HSA (as long as it is within 60 days), to be deemed as qualified medical expenses. Medical expenses in the 60-day window would be treated as if the HSA was established on the date of enrollment in the HDHP.

In 2016, the annual HSA contribution limit for an individual was \$3,350 and \$6,750 for a family. This bill would increase the maximum contribution to an HSA to the annual deductible and out-of-pocket limitation for a HDHP. In 2017, the limit would increase to \$6,500 for an individual and \$13,100 for a family.

Finally, the bill would amend provisions of the Internal Revenue Code to recoup overpayments from premium assistance under the PPACA.

Many of these provisions related to HSAs can be found in RSC's American Health Care Reform Act.

OUTSIDE GROUP SUPPORT:

- [Americans for Tax Reform](#)
- [National Taxpayers Union](#)

COMMITTEE ACTION:

This bill was introduced by Representative Jenkins and referred to the House Committee Ways and Means. The committee held a mark-up and bill was reported out, as amended, by voice vote.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.

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