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

IN THE SENATE OF THE UNITED STATES

Mr. CARDIN (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

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

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Medical FSA Improvement Act of 2013”.

SEC. 2. ADDITION OF TAXABLE DISTRIBUTIONS.

(a) Treatment of Amounts Expended for Medical Care.—Section 105 of the Internal Revenue Code of 1986 is amended by inserting at the end the following new subsection:
“(k) Amounts Paid Under Medical Flexible Spending Arrangements.—

“(1) Application of subsection (b) and section 106.—For purposes of subsection (b) and section 106, a plan shall not fail to be treated as a flexible spending arrangement solely because such plan, in addition to reimbursing expenses incurred for medical care (as defined in subsection (b)) during the plan year, distributes to the employee all or a portion of the employee’s balance for the plan year.

“(2) Limitation.—Paragraph (1) shall apply only in the case that the balance under such arrangement for a plan year is distributed after the close of the plan year to which the balance relates and not later than the end of the 7th month following the close of such plan year.

“(3) Tax treatment of distribution.—Any distribution to which paragraph (1) applies shall be treated as remuneration of the employee for employment for the taxable year in which it is distributed.

“(4) Flexible spending arrangement.—The term ‘flexible spending arrangement’ means a benefit program within the meaning of section 106(c)(2) (relating to long-term care benefits).”.
(b) ADDITIONAL DEFERRED COMPENSATION EXCEPTION.—Paragraph (2) of section 125(d) of the Internal Revenue Code of 1986 is amended by inserting at the end the following new subparagraph:

“(E) EXCEPTION FOR CERTAIN FLEXIBLE SPENDING ARRANGEMENTS.—Amounts distributed to the covered employee from a flexible spending arrangement (within the meaning of section 106(c)(2)) in accordance with the limitations under section 105(k) shall not be treated as deferred compensation for purposes of subparagraph (A).”.

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

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2013.

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