

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5447  
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Health  
3 Care Relief Act of 2016”.

**4 SEC. 2. EXCEPTION FROM GROUP HEALTH PLAN REQUIRE-  
5 MENTS FOR QUALIFIED SMALL EMPLOYER  
6 HEALTH REIMBURSEMENT ARRANGEMENTS.**

7 (a) AMENDMENTS TO THE INTERNAL REVENUE  
8 CODE OF 1986 AND THE PATIENT PROTECTION AND AF-  
9 FORDABLE CARE ACT.—

10 (1) IN GENERAL.—Section 9831 of the Internal  
11 Revenue Code of 1986 is amended by adding at the  
12 end the following new subsection:

13 “(d) EXCEPTION FOR QUALIFIED SMALL EMPLOYER  
14 HEALTH REIMBURSEMENT ARRANGEMENTS.—

15 “(1) IN GENERAL.—For purposes of this title  
16 (except as provided in section 4980I(f)(4) and not-  
17 withstanding any other provision of this title), the  
18 term ‘group health plan’ shall not include any quali-

1       fied small employer health reimbursement arrange-  
2       ment.

3               “(2) QUALIFIED SMALL EMPLOYER HEALTH  
4       REIMBURSEMENT ARRANGEMENT.—For purposes of  
5       this subsection—

6               “(A) IN GENERAL.—The term ‘qualified  
7       small employer health reimbursement arrange-  
8       ment’ means an arrangement which—

9                       “(i) is described in subparagraph (B),  
10                      and

11                     “(ii) is provided on the same terms to  
12                     all eligible employees of the eligible em-  
13                     ployer.

14               “(B) ARRANGEMENT DESCRIBED.—An ar-  
15       rangement is described in this subparagraph  
16       if—

17                     “(i) such arrangement is funded solely  
18                     by an eligible employer and no salary re-  
19                     duction contributions may be made under  
20                     such arrangement,

21                     “(ii) such arrangement provides, after  
22                     the employee provides proof of coverage,  
23                     for the payment of, or reimbursement of,  
24                     an eligible employee for expenses for med-  
25                     ical care (as defined in section 213(d)) in-

1           curred by the eligible employee or the eligi-  
2           ble employee's family members (as deter-  
3           mined under the terms of the arrange-  
4           ment), and

5                   “(iii) the amount of payments and re-  
6                   imbursements described in clause (ii) for  
7                   any year do not exceed \$5,130 (\$10,260 in  
8                   the case of an arrangement that also pro-  
9                   vides for payments or reimbursements for  
10                  family members of the employee).

11                   “(C) CERTAIN VARIATION PERMITTED.—  
12                  For purposes of subparagraph (A)(ii), an ar-  
13                  rangement shall not fail to be treated as pro-  
14                  vided on the same terms to each eligible em-  
15                  ployee merely because the employee's permitted  
16                  benefits under such arrangement vary in ac-  
17                  cordance with the variation in the price of an  
18                  insurance policy in the relevant individual  
19                  health insurance market based on—

20                           “(i) the age of the eligible employee  
21                           (and, in the case of an arrangement which  
22                           covers medical expenses of the eligible em-  
23                           ployee's family members, the age of such  
24                           family members), or

1           “(ii) the number of family members of  
2           the eligible employee the medical expenses  
3           of which are covered under such arrange-  
4           ment.

5           The variation permitted under the preceding  
6           sentence shall be determined by reference to the  
7           same insurance policy with respect to all eligible  
8           employees.

9           “(D) RULES RELATING TO MAXIMUM DOL-  
10          LAR LIMITATION.—

11           “(i) AMOUNT PRORATED IN CERTAIN  
12          CASES.—In the case of an individual who  
13          is not covered by an arrangement for the  
14          entire year, the limitation under subpara-  
15          graph (A)(iii) for such year shall be an  
16          amount which bears the same ratio to the  
17          amount which would (but for this clause)  
18          be in effect for such individual for such  
19          year under subparagraph (A)(iii) as the  
20          number of months for which such indi-  
21          vidual is covered by the arrangement for  
22          such year bears to 12.

23           “(ii) INFLATION ADJUSTMENT.—In  
24          the case of any year beginning after 2016,  
25          each of the dollar amounts in subpara-

1 graph (A)(iii) shall be increased by an  
2 amount equal to—

3 “(I) such dollar amount, multi-  
4 plied by

5 “(II) the cost-of-living adjust-  
6 ment determined under section 1(f)(3)  
7 for the calendar year in which the tax-  
8 able year begins, determined by sub-  
9 stituting ‘calendar year 2015’ for ‘cal-  
10 endar year 1992’ in subparagraph (B)  
11 thereof.

12 If any dollar amount increased under the  
13 preceding sentence is not a multiple of  
14 \$100, such dollar amount shall be rounded  
15 to the next lowest multiple of \$100.

16 “(3) OTHER DEFINITIONS.—For purposes of  
17 this subsection—

18 “(A) ELIGIBLE EMPLOYEE.—The term ‘eli-  
19 gible employee’ means any employee of an eligi-  
20 ble employer, except that the terms of the ar-  
21 rangement may exclude from consideration em-  
22 ployees described in any clause of section  
23 105(h)(3)(B) (applied by substituting ‘90 days’  
24 for ‘3 years’ in clause (i) thereof).

1           “(B) ELIGIBLE EMPLOYER.—The term ‘el-  
2           igible employer’ means an employer that—

3                   “(i) is not an applicable large em-  
4                   ployer as defined in section 4980H(c)(2),  
5                   and

6                   “(ii) does not offer a group health  
7                   plan to any of its employees.

8           “(C) PERMITTED BENEFIT.—The term  
9           ‘permitted benefit’ means, with respect to any  
10           eligible employee, the maximum dollar amount  
11           of payments and reimbursements which may be  
12           made under the terms of the qualified small  
13           employer health reimbursement arrangement  
14           for the year with respect to such employee.

15           “(4) NOTICE.—

16                   “(A) IN GENERAL.—An employer funding  
17                   a qualified small employer health reimburse-  
18                   ment arrangement for any year shall, not later  
19                   than 90 days before the beginning of such year  
20                   (or, in the case of an employee who is not eligi-  
21                   ble to participate in the arrangement as of the  
22                   beginning of such year, the date on which such  
23                   employee is first so eligible), provide a written  
24                   notice to each eligible employee which includes  
25                   the information described in subparagraph (B).

1           “(B) CONTENTS OF NOTICE.—The notice  
2           required under subparagraph (A) shall include  
3           each of the following:

4                   “(i) A statement of the amount which  
5                   would be such eligible employee’s permitted  
6                   benefits under the arrangement for the  
7                   year.

8                   “(ii) A statement that the eligible em-  
9                   ployee should provide the information de-  
10                  scribed in clause (i) to any health insur-  
11                  ance exchange to which the employee ap-  
12                  plies for advance payment of the premium  
13                  assistance tax credit.

14                  “(iii) A statement that if the employee  
15                  is not covered under minimum essential  
16                  coverage for any month the employee may  
17                  be subject to tax under section 5000A for  
18                  such month and reimbursements under the  
19                  arrangement may be includible in gross in-  
20                  come.”.

21           (2) LIMITATION ON EXCLUSION FROM GROSS  
22           INCOME.—Section 106 of such Code is amended by  
23           adding at the end the following:

24                   “(g) QUALIFIED SMALL EMPLOYER HEALTH REIM-  
25           BURSEMENT ARRANGEMENT.—For purposes of this sec-

1 tion and section 105, payments or reimbursements from  
2 a qualified small employer health reimbursement arrange-  
3 ment (as defined in section 9831(d)) of an individual for  
4 medical care (as defined in section 213(d)) shall not be  
5 treated as paid or reimbursed under employer-provided  
6 coverage for medical expenses under an accident or health  
7 plan if for the month in which such medical care is pro-  
8 vided the individual does not have minimum essential cov-  
9 erage (within the meaning of section 5000A(f)).”.

10 (3) COORDINATION WITH HEALTH INSURANCE  
11 PREMIUM CREDIT.—Section 36B(c) of such Code is  
12 amended by adding at the end the following new  
13 paragraph:

14 “(4) SPECIAL RULES FOR QUALIFIED SMALL  
15 EMPLOYER HEALTH REIMBURSEMENT ARRANGE-  
16 MENTS.—

17 “(A) IN GENERAL.—The term ‘coverage  
18 month’ shall not include any month with re-  
19 spect to an employee (or any spouse or depend-  
20 ent of such employee) if for such month the em-  
21 ployee is provided a qualified small employer  
22 health reimbursement arrangement which con-  
23 stitutes affordable coverage.

24 “(B) DENIAL OF DOUBLE BENEFIT.—In  
25 the case of any employee who is provided a



1 qualified small employer health reimbursement  
2 arrangement for any coverage month (deter-  
3 mined without regard to subparagraph (A)), the  
4 credit otherwise allowable under subsection (a)  
5 to the taxpayer for such month shall be reduced  
6 (but not below zero) by the amount described in  
7 subparagraph (C)(i)(II) for such month.

8 “(C) AFFORDABLE COVERAGE.—For pur-  
9 poses of subparagraph (A), a qualified small  
10 employer health reimbursement arrangement  
11 shall be treated as constituting affordable cov-  
12 erage for a month if—

13 “(i) the excess of—

14 “(I) the amount that would be  
15 paid by the employee as the premium  
16 for such month for self-only coverage  
17 under the second lowest cost silver  
18 plan offered in the relevant individual  
19 health insurance market, over

20 “(II)  $\frac{1}{12}$  of the employee’s per-  
21 mitted benefit (as defined in section  
22 9831(d)(3)(C)) under such arrange-  
23 ment, does not exceed—

24 “(ii)  $\frac{1}{12}$  of 9.5 percent of the employ-  
25 ee’s household income.

1           “(D) QUALIFIED SMALL EMPLOYER  
2 HEALTH REIMBURSEMENT ARRANGEMENT.—  
3 For purposes of this paragraph, the term  
4 ‘qualified small employer health reimbursement  
5 arrangement’ has the meaning given such term  
6 by section 9831(d)(2).

7           “(E) COVERAGE FOR LESS THAN ENTIRE  
8 YEAR.—In the case of an employee who is pro-  
9 vided a qualified small employer health reim-  
10 bursement arrangement for less than an entire  
11 year, subparagraph (C)(i)(II) shall be applied  
12 by substituting ‘the number of months during  
13 the year for which such arrangement was pro-  
14 vided’ for ‘12’.

15           “(F) INDEXING.—In the case of plan years  
16 beginning in any calendar year after 2014, the  
17 Secretary shall adjust the 9.5 percent amount  
18 under subparagraph (C)(ii) in the same manner  
19 as the percentages are adjusted under sub-  
20 section (b)(3)(A)(ii).”.

21           (4) APPLICATION OF EXCISE TAX ON HIGH  
22 COST EMPLOYER-SPONSORED HEALTH COVERAGE.—

23           (A) IN GENERAL.—Section 4980I(f)(4) of  
24 such Code is amended by adding at the end the

1 following: “Section 9831(d)(1) shall not apply  
2 for purposes of this section.”.

3 (B) DETERMINATION OF COST OF COV-  
4 ERAGE.—Section 4980I(d)(2) of such Code is  
5 amended by redesignating subparagraph (D) as  
6 subparagraph (E) and by inserting after sub-  
7 paragraph (C) the following new subparagraph:

8 “(D) QUALIFIED SMALL EMPLOYER  
9 HEALTH REIMBURSEMENT ARRANGEMENTS.—  
10 In the case of applicable employer-sponsored  
11 coverage consisting of coverage under any quali-  
12 fied small employer health reimbursement ar-  
13 rangement (as defined in section 9831(d)(2)),  
14 the cost of coverage shall be equal to the  
15 amount described in section 6051(a)(15).”.

16 (5) ENFORCEMENT OF NOTICE REQUIRE-  
17 MENT.—Section 6652 of such Code is amended by  
18 adding at the end the following new subsection:

19 “(o) FAILURE TO PROVIDE NOTICES WITH RESPECT  
20 TO QUALIFIED SMALL EMPLOYER HEALTH REIMBURSE-  
21 MENT ARRANGEMENTS.—In the case of each failure to  
22 provide a written notice as required by section 9831(d)(4),  
23 unless it is shown that such failure is due to reasonable  
24 cause and not willful neglect, there shall be paid, on notice  
25 and demand of the Secretary and in the same manner as

1 tax, by the person failing to provide such written notice,  
2 an amount equal to \$50 per employee per incident of fail-  
3 ure to provide such notice, but the total amount imposed  
4 on such person for all such failures during any calendar  
5 year shall not exceed \$2,500.”.

6 (6) REPORTING.—

7 (A) W-2 REPORTING.—Section 6051(a) of  
8 such Code is amended by striking “and” at the  
9 end of paragraph (13), by striking the period at  
10 the end of paragraph (14) and inserting “,  
11 and”, and by inserting after paragraph (14) the  
12 following new paragraph:

13 “(15) the total amount of permitted benefit (as  
14 defined in section 9831(d)(3)(C)) for the year under  
15 a qualified small employer health reimbursement ar-  
16 rangement (as defined in section 9831(d)(2)) with  
17 respect to the employee.”.

18 (B) INFORMATION REQUIRED TO BE PRO-  
19 VIDED BY EXCHANGE SUBSIDY APPLICANTS.—  
20 Section 1411(b)(3) of the Patient Protection  
21 and Affordable Care Act is amended by redesign-  
22 ating subparagraph (B) as subparagraph (C)  
23 and by inserting after subparagraph (A) the fol-  
24 lowing new subparagraph:

1           “(B) CERTAIN INDIVIDUAL HEALTH IN-  
2 SURANCE POLICIES OBTAINED THROUGH SMALL  
3 EMPLOYERS.—The amount of the enrollee’s  
4 permitted benefit (as defined in section  
5 9831(d)(3)(C) of the Internal Revenue Code of  
6 1986) under a qualified small employer health  
7 reimbursement arrangement (as defined in sec-  
8 tion 9831(d)(2) of such Code).”.

9           (7) EFFECTIVE DATES.—

10           (A) IN GENERAL.—Except as otherwise  
11 provided in this paragraph, the amendments  
12 made by this subsection shall apply to years be-  
13 ginning after the earlier of—

14                   (i) the date that is 90 days after the  
15 date of the enactment of this Act, or

16                   (ii) December 31, 2016.

17           (B) TRANSITION RELIEF.—The relief  
18 under Treasury Notice 2015–17 shall be treat-  
19 ed as applying to any plan year beginning on or  
20 before the date described in subparagraph (A).

21           (C) COORDINATION WITH HEALTH INSUR-  
22 ANCE PREMIUM CREDIT.—The amendments  
23 made by paragraph (3) shall apply to taxable  
24 years beginning after the date described in sub-  
25 paragraph (A).

1 (D) EMPLOYEE NOTICE.—The amend-  
2 ments made by paragraph (5) shall apply to no-  
3 tices with respect to years beginning after the  
4 date described in subparagraph (A).

5 (E) W-2 REPORTING.—The amendments  
6 made by paragraph (6)(A) shall apply to cal-  
7 endar years beginning after December 31,  
8 2016.

9 (F) INFORMATION PROVIDED BY EX-  
10 CHANGE SUBSIDY APPLICANTS.—

11 (i) IN GENERAL.—The amendments  
12 made by paragraph (6)(B) shall apply to  
13 applications for enrollment made after the  
14 date described in subparagraph (A).

15 (ii) VERIFICATION.—Verification  
16 under section 1411 of the Patient Protec-  
17 tion and Affordable Care Act of informa-  
18 tion provided under section 1411(b)(3)(B)  
19 of such Act shall apply with respect to  
20 months beginning after October 2016.

21 (8) SUBSTANTIATION REQUIREMENTS.—The  
22 Secretary of the Treasury (or his designee) may  
23 issue substantiation requirements as necessary to  
24 carry out this subsection.

1 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
2 INCOME SECURITY ACT OF 1974.—

3 (1) IN GENERAL.—Section 733(a)(1) of the  
4 Employee Retirement Income Security Act of 1974  
5 (29 U.S.C. 1191b(a)(1)) is amended by adding at  
6 the end the following: “Such term shall not include  
7 any qualified small employer health reimbursement  
8 arrangement (as defined in section 9831(d)(2) of the  
9 Internal Revenue Code of 1986).”.

10 (2) EXCEPTION FROM CONTINUATION COV-  
11 ERAGE REQUIREMENTS, ETC.—Section 607(1) of  
12 such Act (29 U.S.C. 1167(1)) is amended by adding  
13 at the end the following: “Such term shall not in-  
14 clude any qualified small employer health reimburse-  
15 ment arrangement (as defined in section 9831(d)(2)  
16 of the Internal Revenue Code of 1986).”.

17 (3) EFFECTIVE DATE.—The amendments made  
18 by this subsection shall apply to plan years begin-  
19 ning after the date described in subsection (a)(7)(A).

20 (c) AMENDMENTS TO THE PUBLIC HEALTH SERVICE  
21 ACT.—

22 (1) IN GENERAL.—Section 2791(a)(1) of the  
23 Public Health Service Act (42 U.S.C. 300gg-  
24 91(a)(1)) is amended by adding at the end the fol-  
25 lowing: “Except for purposes of part C of title XI

1 of the Social Security Act (42 U.S.C. 1320d et seq.),  
2 such term shall not include any qualified small em-  
3 ployer health reimbursement arrangement (as de-  
4 fined in section 9831(d)(2) of the Internal Revenue  
5 Code of 1986).”.

6 (2) EXCEPTION FROM CONTINUATION COV-  
7 ERAGE REQUIREMENTS.—Section 2208(1) of the  
8 Public Health Service Act (42 U.S.C. 300bb–8(1)) is  
9 amended by adding at the end the following: “Such  
10 term shall not include any qualified small employer  
11 health reimbursement arrangement (as defined in  
12 section 9831(d)(2) of the Internal Revenue Code of  
13 1986).”.

14 (3) EFFECTIVE DATE.—The amendments made  
15 by this subsection shall apply to plan years begin-  
16 ning after the date described in subsection (a)(7)(A).

