

.....
(Original Signature of Member)

114TH CONGRESS
2D SESSION

H. R. 5447

To provide an exception from certain group health plan requirements for qualified small employer health reimbursement arrangements.

IN THE HOUSE OF REPRESENTATIVES

Mr. BOUSTANY (for himself and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on

A BILL

To provide an exception from certain group health plan requirements for qualified small employer health reimbursement arrangements.

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 “Small Business Health
5 Care Relief Act”.

1 **SEC. 2. EXCEPTION FROM GROUP HEALTH PLAN REQUIRE-**
2 **MENTS FOR QUALIFIED SMALL EMPLOYER**
3 **HEALTH REIMBURSEMENT ARRANGEMENTS.**

4 (a) AMENDMENTS TO THE INTERNAL REVENUE
5 CODE OF 1986 AND THE PATIENT PROTECTION AND AF-
6 FORDABLE CARE ACT.—

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

10 “(d) EXCEPTION FOR QUALIFIED SMALL EMPLOYER
11 HEALTH REIMBURSEMENT ARRANGEMENTS.—

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

18 “(2) QUALIFIED SMALL EMPLOYER HEALTH
19 REIMBURSEMENT ARRANGEMENT.—For purposes of
20 this subsection—

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

24 “(i) is described in subparagraph (B),
25 and

1 “(ii) is provided on the same terms to
2 all eligible employees of the eligible em-
3 ployer.

4 “(B) ARRANGEMENT DESCRIBED.—An ar-
5 rangement is described in this subparagraph
6 if—

7 “(i) such arrangement is funded solely
8 by an eligible employer and no salary re-
9 duction contributions may be made under
10 such arrangement,

11 “(ii) such arrangement provides, after
12 the employee provides proof of coverage,
13 for the payment of, or reimbursement of,
14 an eligible employee for expenses for med-
15 ical care (as defined in section 213(d)) in-
16 curred by the eligible employee or the eligi-
17 ble employee’s family members (as deter-
18 mined under the terms of the arrange-
19 ment), and

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

1 “(C) CERTAIN VARIATION PERMITTED.—
2 For purposes of subparagraph (A)(ii), an ar-
3 rangement shall not fail to be treated as pro-
4 vided on the same terms to each eligible em-
5 ployee merely because the employee’s permitted
6 benefits under such arrangement vary in ac-
7 cordance with the variation in the price of an
8 insurance policy in the relevant individual
9 health insurance market based on—

10 “(i) the age of the eligible employee
11 (and, in the case of an arrangement which
12 covers medical expenses of the eligible em-
13 ployee’s family members, the age of such
14 family members), or

15 “(ii) the number of family members of
16 the eligible employee the medical expenses
17 of which are covered under such arrange-
18 ment.

19 The variation permitted under the preceding
20 sentence shall be determined by reference to the
21 same insurance policy with respect to all eligible
22 employees.

23 “(D) RULES RELATING TO MAXIMUM DOL-
24 LAR LIMITATION.—

1 “(i) AMOUNT PRORATED IN CERTAIN
2 CASES.—In the case of an individual who
3 is not covered by an arrangement for the
4 entire year, the limitation under subpara-
5 graph (A)(iii) for such year shall be an
6 amount which bears the same ratio to the
7 amount which would (but for this clause)
8 be in effect for such individual for such
9 year under subparagraph (A)(iii) as the
10 number of months for which such indi-
11 vidual is covered by the arrangement for
12 such year bears to 12.

13 “(ii) INFLATION ADJUSTMENT.—In
14 the case of any year beginning after 2016,
15 each of the dollar amounts in subpara-
16 graph (A)(iii) shall be increased by an
17 amount equal to—

18 “(I) such dollar amount, multi-
19 plied by

20 “(II) the cost-of-living adjust-
21 ment determined under section 1(f)(3)
22 for the calendar year in which the tax-
23 able year begins, determined by sub-
24 stituting ‘calendar year 2015’ for ‘cal-

1 endar year 1992’ in subparagraph (B)
2 thereof.

3 If any dollar amount increased under the
4 preceding sentence is not a multiple of
5 \$100, such dollar amount shall be rounded
6 to the next lowest multiple of \$100.

7 “(3) OTHER DEFINITIONS.—For purposes of
8 this subsection—

9 “(A) ELIGIBLE EMPLOYEE.—The term ‘eli-
10 gible employee’ means any employee of an eligi-
11 ble employer, except that the terms of the ar-
12 rangement may exclude from consideration em-
13 ployees described in any clause of section
14 105(h)(3)(B) (applied by substituting ‘90 days’
15 for ‘3 years’ in clause (i) thereof).

16 “(B) ELIGIBLE EMPLOYER.—The term ‘eli-
17 gible employer’ means an employer that—

18 “(i) is not an applicable large em-
19 ployer as defined in section 4980H(c)(2),
20 and

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

23 “(C) PERMITTED BENEFIT.—The term
24 ‘permitted benefit’ means, with respect to any
25 eligible employee, the maximum dollar amount

1 of payments and reimbursements which may be
2 made under the terms of the qualified small
3 employer health reimbursement arrangement
4 for the year with respect to such employee.

5 “(4) NOTICE.—

6 “(A) IN GENERAL.—An employer funding
7 a qualified small employer health reimburse-
8 ment arrangement for any year shall, not later
9 than 90 days before the beginning of such year
10 (or, in the case of an employee who is not eligi-
11 ble to participate in the arrangement as of the
12 beginning of such year, the date on which such
13 employee is first so eligible), provide a written
14 notice to each eligible employee which includes
15 the information described in subparagraph (B).

16 “(B) CONTENTS OF NOTICE.—The notice
17 required under subparagraph (A) shall include
18 each of the following:

19 “(i) A statement of the amount which
20 would be such eligible employee’s permitted
21 benefits under the arrangement for the
22 year.

23 “(ii) A statement that the eligible em-
24 ployee should provide the information de-
25 scribed in clause (i) to any health insur-

1 ance exchange to which the employee ap-
2 plies for advance payment of the premium
3 assistance tax credit.

4 “(iii) A statement that if the employee
5 is not covered under minimum essential
6 coverage for any month the employee may
7 be subject to tax under section 5000A for
8 such month and reimbursements under the
9 arrangement may be includible in gross in-
10 come.”.

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

14 “(g) QUALIFIED SMALL EMPLOYER HEALTH REIM-
15 BURSEMENT ARRANGEMENT.—For purposes of this sec-
16 tion and section 105, payments or reimbursements from
17 a qualified small employer health reimbursement arrange-
18 ment (as defined in section 9831(d)) of an individual for
19 medical care (as defined in section 213(d)) shall not be
20 treated as paid or reimbursed under employer-provided
21 coverage for medical expenses under an accident or health
22 plan if for the month in which such medical care is pro-
23 vided the individual does not have minimum essential cov-
24 erage (within the meaning of section 5000A(f)).”.

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

5 “(4) SPECIAL RULES FOR QUALIFIED SMALL
6 EMPLOYER HEALTH REIMBURSEMENT ARRANGE-
7 MENTS.—

8 “(A) IN GENERAL.—The term ‘coverage
9 month’ shall not include any month with re-
10 spect to an employee (or any spouse or depend-
11 ent of such employee) if for such month the em-
12 ployee is provided a qualified small employer
13 health reimbursement arrangement which con-
14 stitutes affordable coverage.

15 “(B) DENIAL OF DOUBLE BENEFIT.—In
16 the case of any employee who is covered under
17 a qualified small employer health reimburse-
18 ment arrangement for any month, the credit
19 otherwise allowed under subsection (a) to the
20 taxpayer for such month shall be reduced (but
21 not below zero) by the amount described in sub-
22 paragraph (C)(i)(II) for such month.

23 “(C) AFFORDABLE COVERAGE.—For pur-
24 poses of subparagraph (A), a qualified small
25 employer health reimbursement arrangement

1 shall be treated as constituting affordable cov-
2 erage for a month if—

3 “(i) the excess of—

4 “(I) the amount that would be
5 paid by the employee as the premium
6 for such month for self-only coverage
7 under the second lowest cost silver
8 plan offered in the relevant individual
9 health insurance market, over

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

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

16 “(D) QUALIFIED SMALL EMPLOYER
17 HEALTH REIMBURSEMENT ARRANGEMENT.—
18 For purposes of this paragraph, the term
19 ‘qualified small employer health reimbursement
20 arrangement’ has the meaning given such term
21 by section 9831(d)(2).

22 “(E) INDEXING.—In the case of plan years
23 beginning in any calendar year after 2014, the
24 Secretary shall adjust the 9.5 percent amount
25 under subparagraph (C)(ii) in the same manner

1 as the percentages are adjusted under sub-
2 section (b)(3)(A)(ii).”.

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

5 (A) IN GENERAL.—Section 4980I(f)(4) of
6 such Code is amended by adding at the end the
7 following: “Section 9831(d)(1) shall not apply
8 for purposes of this section.”.

9 (B) DETERMINATION OF COST OF COV-
10 ERAGE.—Section 4980I(d)(2) of such Code is
11 amended by redesignating subparagraph (D) as
12 subparagraph (E) and by inserting after sub-
13 paragraph (C) the following new subparagraph:

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

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

1 “(o) FAILURE TO PROVIDE NOTICES WITH RESPECT
2 TO QUALIFIED SMALL EMPLOYER HEALTH REIMBURSE-
3 MENT ARRANGEMENTS.—In the case of each failure to
4 provide a written notice as required by section 9831(d)(4),
5 unless it is shown that such failure is due to reasonable
6 cause and not willful neglect, there shall be paid, on notice
7 and demand of the Secretary and in the same manner as
8 tax, by the person failing to provide such written notice,
9 an amount equal to \$50 per employee per incident of fail-
10 ure to provide such notice, but the total amount imposed
11 on such person for all such failures during any calendar
12 year shall not exceed \$2,500.”.

13 (6) REPORTING.—

14 (A) W-2 REPORTING.—Section 6051(a) of
15 such Code is amended by striking “and” at the
16 end of paragraph (13), by striking the period at
17 the end of paragraph (14) and inserting “,
18 and”, and by inserting after paragraph (14) the
19 following new paragraph:

20 “(15) the total amount of permitted benefits
21 (as defined in section 9831(d)(3)(C)) for the year
22 under a qualified small employer health reimburse-
23 ment arrangement (as defined in section 9831(d)(2))
24 with respect to the employee.”.

1 (B) INFORMATION REQUIRED TO BE PRO-
2 VIDED BY EXCHANGE SUBSIDY APPLICANTS.—
3 Section 1411(b)(3) of the Patient Protection
4 and Affordable Care Act is amended by redesignig-
5 nating subparagraph (B) as subparagraph (C)
6 and by inserting after subparagraph (A) the fol-
7 lowing new subparagraph:

8 “(B) CERTAIN INDIVIDUAL HEALTH IN-
9 SURANCE POLICIES OBTAINED THROUGH SMALL
10 EMPLOYERS.—The amount of the enrollee’s
11 permitted benefit (as defined in section
12 9831(d)(3)(C) of the Internal Revenue Code of
13 1986) under a qualified small employer health
14 reimbursement arrangement (as defined in sec-
15 tion 9831(d)(2) of such Code).”.

16 (7) EFFECTIVE DATES.—

17 (A) IN GENERAL.—Except as otherwise
18 provided in this paragraph, the amendments
19 made by this subsection shall apply to years be-
20 ginning after the earlier of—

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

23 (ii) December 31, 2016.

24 (B) TRANSITION RELIEF.—The relief
25 under Treasury Notice 2015–17 shall be treat-

1 ed as applying to any plan year beginning on or
2 before the date described in subparagraph (A).

3 (C) COORDINATION WITH HEALTH INSUR-
4 ANCE PREMIUM CREDIT.—The amendments
5 made by paragraph (3) shall apply to taxable
6 years beginning after the date described in sub-
7 paragraph (A).

8 (D) EMPLOYEE NOTICE.—The amend-
9 ments made by paragraph (5) shall apply to no-
10 tices with respect to years beginning after the
11 date described in subparagraph (A).

12 (E) W-2 REPORTING.—The amendments
13 made by paragraph (6)(A) shall apply to cal-
14 endar years beginning after December 31,
15 2016.

16 (F) INFORMATION PROVIDED BY EX-
17 CHANGE SUBSIDY APPLICANTS.—

18 (i) IN GENERAL.—The amendments
19 made by paragraph (6)(B) shall apply to
20 applications for enrollment made after the
21 date described in subparagraph (A).

22 (ii) VERIFICATION.—Verification
23 under section 1411 of the Patient Protec-
24 tion and Affordable Care Act of informa-
25 tion provided under section 1411(b)(3)(B)

1 of such Act shall apply with respect to
2 months beginning after October 2016.

3 (8) SUBSTANTIATION REQUIREMENTS.—The
4 Secretary of the Treasury (or his designee) may
5 issue substantiation requirements as necessary to
6 carry out this subsection.

7 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974.—

9 (1) IN GENERAL.—Section 733(a)(1) of the
10 Employee Retirement Income Security Act of 1974
11 (29 U.S.C. 1191b(a)(1)) is amended by adding at
12 the end the following: “Such term shall not include
13 any qualified small employer health reimbursement
14 arrangement (as defined in section 9831(d)(2) of the
15 Internal Revenue Code of 1986).”.

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

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

1 (c) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
2 ACT.—

3 (1) IN GENERAL.—Section 2791(a)(1) of the
4 Public Health Service Act (42 U.S.C. 300gg–
5 91(a)(1)) is amended by adding at the end the fol-
6 lowing: “Except for purposes of part C of title XI
7 of the Social Security Act (42 U.S.C. 1320d et seq.),
8 such term shall not include any qualified small em-
9 ployer health reimbursement arrangement (as de-
10 fined in section 9831(d)(2) of the Internal Revenue
11 Code of 1986).”.

12 (2) EXCEPTION FROM CONTINUATION COV-
13 ERAGE REQUIREMENTS.—Section 2208(1) of the
14 Public Health Service Act (42 U.S.C. 300bb–8(1)) is
15 amended by adding at the end the following: “Such
16 term shall not include any qualified small employer
17 health reimbursement arrangement (as defined in
18 section 9831(d)(2) of the Internal Revenue Code of
19 1986).”.

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