

Union Calendar No. 83

118TH CONGRESS
1ST SESSION

H. R. 3799

[Report No. 118–107]

To amend the Internal Revenue Code of 1986 to provide for health reimbursement arrangements integrated with individual health insurance coverage.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2023

Mr. HERN introduced the following bill; which was referred to the Committee on Ways and Means

JUNE 12, 2023

Additional sponsor: Ms. MALLIOTAKIS

JUNE 12, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on June 5, 2023]

A BILL

To amend the Internal Revenue Code of 1986 to provide for health reimbursement arrangements integrated with individual health insurance coverage.

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 “Custom Health Option*
5 *and Individual Care Expense Arrangement Act” or the*
6 *“CHOICE Arrangement Act”.*

7 **SEC. 2. TREATMENT OF HEALTH REIMBURSEMENT AR-**
8 **RANGEMENTS INTEGRATED WITH INDI-**
9 **VIDUAL MARKET COVERAGE.**

10 *(a) IN GENERAL.—Section 9815(b) of the Internal*
11 *Revenue Code of 1986 is amended—*

12 *(1) by striking “EXCEPTION.—Notwithstanding*
13 *subsection (a)” and inserting the following: “EXCEP-*
14 *TIONS.—*

15 *“(1) SELF-INSURED GROUP HEALTH PLANS.—*
16 *Notwithstanding subsection (a)”, and*

17 *(2) by adding at the end the following new para-*
18 *graph:*

19 *“(2) CUSTOM HEALTH OPTION AND INDIVIDUAL*
20 *CARE EXPENSE ARRANGEMENTS.—*

21 *“(A) IN GENERAL.—For purposes of this*
22 *subchapter, a custom health option and indi-*
23 *vidual care expense arrangement shall be treated*
24 *as meeting the requirements of section 2711 and*

1 *2713 of title XXVII of the Public Health Service*
2 *Act.*

3 “(B) *CUSTOM HEALTH OPTION AND INDI-*
4 *VIDUAL CARE EXPENSE ARRANGEMENTS DE-*
5 *FINED.—For purposes of this section, the term*
6 *‘custom health option and individual care ex-*
7 *pense arrangement’ means a health reimburse-*
8 *ment arrangement—*

9 “(i) *which is an employer-provided*
10 *group health plan funded solely by employer*
11 *contributions to provide payments or reim-*
12 *bursements for medical care subject to a*
13 *maximum fixed dollar amount for a period,*

14 “(ii) *under which such payments or re-*
15 *imbursements may only be made for med-*
16 *ical care provided during periods during*
17 *which the individual is covered—*

18 “(I) *under individual health in-*
19 *surance coverage (other than coverage*
20 *that consists solely of excepted bene-*
21 *fits), or*

22 “(II) *under part A and B of title*
23 *XVIII of the Social Security Act or*
24 *part C of such title,*

1 “(iii) which meets the nondiscrimina-
2 tion requirements of subparagraph (C),

3 “(iv) which meets the substantiation
4 requirements of subparagraph (D), and

5 “(v) which meets the notice require-
6 ments of subparagraph (E).

7 “(C) NONDISCRIMINATION.—

8 “(i) IN GENERAL.—An arrangement
9 meets the requirements of this subparagraph
10 if an employer offering such arrangement to
11 an employee within a specified class of em-
12 ployee—

13 “(I) offers such arrangement to all
14 employees within such specified class
15 on the same terms, and

16 “(II) does not offer any other
17 group health plan to any employees
18 within such specified class.

19 “(ii) SPECIFIED CLASS OF EM-
20 PLOYEE.—For purposes of this subpara-
21 graph, any of the following may be des-
22 ignated as a specified class of employee:

23 “(I) Full-time employees.

24 “(II) Part-time employees.

25 “(III) Salaried employees.

1 “(IV) *Non-salaried employees.*

2 “(V) *Employees whose primary*
3 *site of employment is in the same rat-*
4 *ing area.*

5 “(VI) *Employees who are included*
6 *in a unit of employees covered under a*
7 *collective bargaining agreement to*
8 *which the employer is subject (deter-*
9 *mined under rules similar to the rules*
10 *of section 105(h)).*

11 “(VII) *Employees who have not*
12 *met a group health plan, or health in-*
13 *surance issuer offering group health in-*
14 *surance coverage, waiting period re-*
15 *quirement that satisfies the of section*
16 *2708 of the Public Health Service Act.*

17 “(VIII) *Seasonal employees.*

18 “(IX) *Employees who are non-*
19 *resident aliens and who receive no*
20 *earned income (within the meaning of*
21 *section 911(d)(2)) from the employer*
22 *which constitutes income from sources*
23 *within the United States (within the*
24 *meaning of section 861(a)(3)).*

1 “(X) *Such other classes of employ-*
2 *ees as the Secretary may designate.*

3 *An employer may designate (in such man-*
4 *ner as is prescribed by the Secretary) two or*
5 *more of the classes described in the pre-*
6 *ceding subclauses as the specified class of*
7 *employees to which the arrangement is of-*
8 *fered for purposes of applying this subpara-*
9 *graph.*

10 “(iii) *SPECIAL RULE FOR NEW*
11 *HIRES.—An employer may designate pro-*
12 *spectively so much of a specified class of*
13 *employees as are hired after a date set by*
14 *the employer. Such subclass of employees*
15 *shall be treated as the specified class for*
16 *purposes of applying clause (i).*

17 “(iv) *RULES FOR DETERMINING TYPE*
18 *OF EMPLOYEE.—For purposes for clause*
19 *(ii), any determination of full-time, part-*
20 *time, or seasonal employment status shall be*
21 *made under rules similar to the rules of sec-*
22 *tion 105(h) or 4980H, whichever the em-*
23 *ployer elects for the plan year. Such election*
24 *shall apply with respect to all employees of*
25 *the employer for the plan year.*

1 “(v) *PERMITTED VARIATION.*—*For*
2 *purposes of clause (i)(I), an arrangement*
3 *shall not fail to be treated as provided on*
4 *the same terms within a specified class*
5 *merely because the maximum dollar amount*
6 *of payments and reimbursements which*
7 *may be made under the terms of the ar-*
8 *rangement for the year with respect to each*
9 *employee within such class—*

10 “(I) *increases as additional de-*
11 *pendents of the employee are covered*
12 *under the arrangement, and*

13 “(II) *increases with respect to a*
14 *participant as the age of the partici-*
15 *part increases, but not in excess of an*
16 *amount equal to 300 percent the lowest*
17 *maximum dollar amount with respect*
18 *to such a participant determined with-*
19 *out regard to age.*

20 “(D) *SUBSTANTIATION REQUIREMENTS.*—
21 *An arrangement meets the requirements of this*
22 *subparagraph if the arrangement has reasonable*
23 *procedures to substantiate—*

24 “(i) *that the participant is, or will be,*
25 *enrolled in coverage described in subpara-*

1 *graph (B)(ii) as of the beginning of the*
2 *plan year of the arrangement (or as of the*
3 *beginning of coverage under the arrange-*
4 *ment in the case of an employee who first*
5 *becomes eligible to participate in the ar-*
6 *rangement after the date notice is given*
7 *with respect to the plan under subpara-*
8 *graph (E) (determined without regard to*
9 *clause (iii) thereof), and*

10 *“(ii) any requests made for payment*
11 *or reimbursement of medical care under the*
12 *arrangement and that the participant re-*
13 *mains so enrolled.*

14 *“(E) NOTICE.—*

15 *“(i) IN GENERAL.—Except as provided*
16 *in clause (iii), an arrangement meets the*
17 *requirements of this subparagraph if, under*
18 *the arrangement, each employee eligible to*
19 *participate is, not later than 90 days before*
20 *the beginning of the plan year, given writ-*
21 *ten notice of the employee’s rights and obli-*
22 *gations under the arrangement which—*

23 *“(I) is sufficiently accurate and*
24 *comprehensive to appraise the em-*

1 *ployee of such rights and obligations,*
2 *and*

3 *“(II) is written in a manner cal-*
4 *culated to be understood by the average*
5 *employee eligible to participate.*

6 *“(ii) NOTICE REQUIREMENTS.—Such*
7 *notice shall include such information as the*
8 *Secretary may by regulation prescribe.*

9 *“(iii) NOTICE DEADLINE FOR CERTAIN*
10 *EMPLOYEES.—In the case of an employee—*

11 *“(I) who first becomes eligible to*
12 *participate in the arrangement after*
13 *the date notice is given with respect to*
14 *the plan under clause (i) (determined*
15 *without regard to this clause), or*

16 *“(II) whose employer is first es-*
17 *tablished fewer than 120 days before*
18 *the beginning of the first plan year of*
19 *the arrangement,*

20 *the requirements of this subparagraph shall*
21 *be treated as met if the notice required*
22 *under clause (i) is provided not later than*
23 *the date the arrangement may take effect*
24 *with respect to such employee.”.*

1 **(b) NO INFERENCE.**—*To the extent not inconsistent*
2 *with the amendments made by this section—*

3 *(1) no inference shall be made from such amend-*
4 *ments with respect to the rules prescribed in the Fed-*
5 *eral Register on June 20, 2019, (84 Fed. Reg. 28888)*
6 *relating to health reimbursement arrangements and*
7 *other account-based group health plans, and*

8 *(2) any reference to custom health option and in-*
9 *dividual care expense arrangements shall for purposes*
10 *of such rules be treated as including a reference to in-*
11 *dividual coverage health reimbursement arrange-*
12 *ments.*

13 **(c) EFFECTIVE DATE.**—*The amendments made by this*
14 *section shall apply to plan years beginning after December*
15 *31, 2023.*

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[Report No. 118-1071]

A BILL

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