

118TH CONGRESS
1ST SESSION

H. R. 3799

AN ACT

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,*

1 **TITLE I—ASSOCIATION HEALTH**
2 **PLANS ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Association Health
5 Plans Act”.

6 **SEC. 102. TREATMENT OF GROUP OR ASSOCIATION OF EM-**
7 **PLOYERS.**

8 (a) IN GENERAL.—Section 3(5) of the Employee Re-
9 tirement Income Security Act of 1974 (29 U.S.C.
10 1002(5)) is amended—

11 (1) by striking “The term” and inserting “(A)
12 The term”; and

13 (2) by adding at the end the following:

14 “(B) For purposes of subparagraph (A), a group or
15 association of employers shall be treated as an ‘employer’,
16 regardless of whether the employers composing such group
17 or association are in the same industry, trade, or profes-
18 sion, if such group or association—

19 “(i)(I) has established and maintains an em-
20 ployee welfare benefit plan that is a group health
21 plan (as defined in section 733(a)(1));

22 “(II) provides coverage under such plan to at
23 least 51 employees after all of the employees em-
24 ployed by all of the employer members of such group

1 or association have been aggregated and counted to-
2 gether as described in subparagraph (D);

3 “(III) has been actively in existence for at least
4 2 years prior to establishing and maintaining an em-
5 ployer welfare benefit plan that is a group health
6 plan (as defined in section 733(a)(1));

7 “(IV) has been formed and maintained in good
8 faith for purposes other than providing medical care
9 (as defined in section 733(a)(2)) through the pur-
10 chase of insurance or otherwise;

11 “(V) does not condition membership in the
12 group or association on any health status-related
13 factor (as described in section 702(a)(1)) relating to
14 any individual;

15 “(VI) makes coverage under such plan available
16 to all employer members of such group or associa-
17 tion regardless of any health status-related factor
18 (as described in section 702(a)(1)) relating to such
19 employer members;

20 “(VII) does not provide coverage under such
21 plan to any individual other than an employee of an
22 employer member of such group or association;

23 “(VIII) has established a governing board with
24 by-laws or other similar indications of formality to
25 manage and operate such plan in both form and

1 substance, of which at least 75 percent of the board
2 members shall be made up of employer members of
3 such group or association participating in the plan
4 that are duly elected by each participating employer
5 member casting 1 vote during a scheduled election;

6 “(IX) is not a health insurance issuer (as de-
7 fined in section 733(b)(2)), and is not owned or con-
8 trolled by such a health insurance issuer or by a
9 subsidiary or affiliate of such a health insurance
10 issuer, other than to the extent such a health insur-
11 ance issuer—

12 “(aa) may participate in the group or asso-
13 ciation as a member; and

14 “(bb) may provide services such as assist-
15 ance with plan development, marketing, and ad-
16 ministrative services to such group or associa-
17 tion;

18 “(ii) meets any set of criteria to qualify for
19 such treatment in an advisory opinion issued by the
20 Secretary prior to the date of enactment of the As-
21 sociation Health Plans Act; or

22 “(iii) meets any other set of criteria to qualify
23 for such treatment that the Secretary by regulation
24 may provide.

1 “(C)(i) For purposes of subparagraph (B), a self-em-
2 ployed individual shall be treated as—

3 “(I) an employer who may become a member of
4 a group or association of employers;

5 “(II) an employee who may participate in an
6 employee welfare benefit plan established and main-
7 tained by such group or association; and

8 “(III) a participant of such plan subject to the
9 eligibility determination and monitoring require-
10 ments set forth in clause (iii).

11 “(ii) For purposes of this subparagraph, the term
12 ‘self-employed individual’ means an individual who—

13 “(I) does not have any common law employees;

14 “(II) has an ownership right in a trade or busi-
15 ness, regardless of whether such trade or business is
16 incorporated or unincorporated;

17 “(III) earns wages (as defined in section
18 3121(a) of the Internal Revenue Code of 1986) or
19 self-employment income (as defined in section
20 1402(b) of such Code) from such trade or business;
21 and

22 “(IV) works at least 10 hours per week or 40
23 hours per month providing personal services to such
24 trade or business.

1 “(iii) The board of a group or association of employ-
2 ers shall—

3 “(I) initially determine whether an individual
4 meets the requirements under clause (ii) to be con-
5 sidered a self-employed individual for the purposes
6 of being treated as an—

7 “(aa) employer member of such group or
8 association (in accordance with clause (i)(I));
9 and

10 “(bb) employee who may participate in the
11 employee welfare benefit plan established and
12 maintained by such group or association (in ac-
13 cordance with clause (i)(II));

14 “(II) through reasonable monitoring proce-
15 dures, periodically determine whether the individual
16 continues to meet such requirements; and

17 “(III) if the board determines that an indi-
18 vidual no longer meets such requirements, not make
19 such plan coverage available to such individual (or
20 dependents thereof) for any plan year following the
21 plan year during which the board makes such deter-
22 mination. If, subsequent to a determination that an
23 individual no longer meets such requirements, such
24 individual furnishes evidence of satisfying such re-

1 **“SEC. 736. RULES APPLICABLE TO GROUP HEALTH PLANS**
2 **ESTABLISHED AND MAINTAINED BY A GROUP**
3 **OR ASSOCIATION OF EMPLOYERS.**

4 “(a) PREMIUM RATES FOR A GROUP OR ASSOCIA-
5 TION OF EMPLOYERS.—

6 “(1)(A) In the case of a group health plan es-
7 tablished and maintained by a group or association
8 of employers described in section 3(5)(B), such plan
9 may—

10 “(i) establish base premium rates formed
11 on an actuarially sound, modified community
12 rating methodology that considers the pooling
13 of all plan participant claims; and

14 “(ii) utilize the specific risk profile of each
15 employer member of such group or association
16 to determine contribution rates for each such
17 employer member’s share of a premium by ac-
18 tuarially adjusting above or below the estab-
19 lished base premium rates.

20 “(B) For purposes of paragraph (1), the term
21 ‘employer member’ means—

22 “(i) an employer who is a member of such
23 group or association of employers and employs
24 at least 1 common law employee; or

25 “(ii) a group made up solely of self-em-
26 ployed individuals, within which all of the self-

1 employed individual members of such group or
2 association are aggregated together as a single
3 employer member group, provided the group in-
4 cludes at least 20 self-employed individual
5 members.

6 “(2) In the event a group or association is
7 made up solely of self-employed individuals (and no
8 employers with at least 1 common law employee are
9 members of such group or association), the group
10 health plan established by such group or association
11 shall—

12 “(A) treat all self-employed individuals
13 who are members of such group or association
14 as a single risk pool;

15 “(B) pool all plan participant claims; and

16 “(C) charge each plan participant the
17 same premium rate.

18 “(b) DISCRIMINATION AND PRE-EXISTING CONDI-
19 TION PROTECTIONS.—A group health plan established
20 and maintained by a group or association of employers de-
21 scribed in section 3(5)(B) shall be prohibited from—

22 “(1) establishing any rule for eligibility (includ-
23 ing continued eligibility) of any individual (including
24 an employee of an employer member or a self-em-
25 ployed individual, or a dependent of such employee

1 or self-employed individual) to enroll for benefits
2 under the terms of the plan that discriminates based
3 on any health status-related factor that relates to
4 such individual (consistent with the rules under sec-
5 tion 702(a)(1));

6 “(2) requiring an individual (including an em-
7 ployee of an employer member or a self-employed in-
8 dividual, or a dependent of such employee or self-
9 employed individual), as a condition of enrollment or
10 continued enrollment under the plan, to pay a pre-
11 mium or contribution that is greater than the pre-
12 mium or contribution for a similarly situated indi-
13 vidual enrolled in the plan based on any health sta-
14 tus-related factor that relates to such individual
15 (consistent with the rules under section 702(b)(1));
16 and

17 “(3) denying coverage under such plan on the
18 basis of a pre-existing condition (consistent with the
19 rules under section 2704 of the Public Health Serv-
20 ice Act).”.

21 **SEC. 104. RULE OF CONSTRUCTION.**

22 Nothing in this title shall be construed to exempt a
23 group health plan which is an employee welfare benefit
24 plan offered through a group or association of employers
25 from the requirements of part 7 of subtitle B of title I

1 of the Employee Retirement Income Security Act of 1974
 2 (29 U.S.C. 1181 et. seq.), including the provisions of part
 3 A of title XXVII of the Public Health Service Act as incor-
 4 porated by reference into this Act through section 715.

5 **TITLE II—CHOICE**
 6 **ARRANGEMENT ACT**

7 **SEC. 201. SHORT TITLE.**

8 This title may be cited as the “Custom Health Option
 9 and Individual Care Expense Arrangement Act” or the
 10 “CHOICE Arrangement Act”.

11 **SEC. 202. TREATMENT OF HEALTH REIMBURSEMENT AR-**
 12 **RANGEMENTS INTEGRATED WITH INDI-**
 13 **VIDUAL MARKET COVERAGE.**

14 (a) IN GENERAL.—Section 9815(b) of the Internal
 15 Revenue Code of 1986 is amended—

16 (1) by striking “EXCEPTION.—Notwithstanding
 17 subsection (a)” and inserting the following: “EXCEP-
 18 TIONS.—

19 “(1) SELF-INSURED GROUP HEALTH PLANS.—
 20 Notwithstanding subsection (a)”, and

21 (2) by adding at the end the following new
 22 paragraph:

23 “(2) CUSTOM HEALTH OPTION AND INDIVIDUAL
 24 CARE EXPENSE ARRANGEMENTS.—

1 “(A) IN GENERAL.—For purposes of this
2 subchapter, a custom health option and indi-
3 vidual care expense arrangement shall be treat-
4 ed as meeting the requirements of sections
5 2711 and 2713 of title XXVII of the Public
6 Health Service Act.

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

13 “(i) which is an employer-provided
14 group health plan funded solely by em-
15 ployer contributions to provide payments
16 or reimbursements for medical care subject
17 to a maximum fixed dollar amount for a
18 period,

19 “(ii) under which such payments or
20 reimbursements may only be made for
21 medical care provided during periods dur-
22 ing which the individual is covered—

23 “(I) under individual health in-
24 surance coverage (other than coverage

1 that consists solely of excepted bene-
2 fits), or

3 “(II) under part A and B of title
4 XVIII of the Social Security Act or
5 part C of such title,

6 “(iii) which meets the nondiscrimina-
7 tion requirements of subparagraph (C),

8 “(iv) which meets the substantiation
9 requirements of subparagraph (D), and

10 “(v) which meets the notice require-
11 ments of subparagraph (E).

12 “(C) NONDISCRIMINATION.—

13 “(i) IN GENERAL.—An arrangement
14 meets the requirements of this subpara-
15 graph if an employer offering such ar-
16 rangement to an employee within a speci-
17 fied class of employee—

18 “(I) offers such arrangement to
19 all employees within such specified
20 class on the same terms, and

21 “(II) does not offer any other
22 group health plan to any employees
23 within such specified class.

24 “(ii) SPECIFIED CLASS OF EM-
25 PLOYEE.—For purposes of this subpara-

1 graph, any of the following may be des-
2 ignated as a specified class of employee:

3 “(I) Full-time employees.

4 “(II) Part-time employees.

5 “(III) Salaried employees.

6 “(IV) Non-salaried employees.

7 “(V) Employees whose primary
8 site of employment is in the same rat-
9 ing area.

10 “(VI) Employees who are in-
11 cluded in a unit of employees covered
12 under a collective bargaining agree-
13 ment to which the employer is subject
14 (determined under rules similar to the
15 rules of section 105(h)).

16 “(VII) Employees who have not
17 met a group health plan, or health in-
18 surance issuer offering group health
19 insurance coverage, waiting period re-
20 quirement that satisfies the of section
21 2708 of the Public Health Service
22 Act.

23 “(VIII) Seasonal employees.

24 “(IX) Employees who are non-
25 resident aliens and who receive no

1 earned income (within the meaning of
2 section 911(d)(2)) from the employer
3 which constitutes income from sources
4 within the United States (within the
5 meaning of section 861(a)(3)).

6 “(X) Such other classes of em-
7 ployees as the Secretary may des-
8 ignate.

9 An employer may designate (in such man-
10 ner as is prescribed by the Secretary) two
11 or more of the classes described in the pre-
12 ceding subclauses as the specified class of
13 employees to which the arrangement is of-
14 fered for purposes of applying this sub-
15 paragraph.

16 “(iii) SPECIAL RULE FOR NEW
17 HIRES.—An employer may designate pro-
18 spectively so much of a specified class of
19 employees as are hired after a date set by
20 the employer. Such subclass of employees
21 shall be treated as the specified class for
22 purposes of applying clause (i).

23 “(iv) RULES FOR DETERMINING TYPE
24 OF EMPLOYEE.—For purposes for clause
25 (ii), any determination of full-time, part-

1 time, or seasonal employment status shall
2 be made under rules similar to the rules of
3 section 105(h) or 4980H, whichever the
4 employer elects for the plan year. Such
5 election shall apply with respect to all em-
6 ployees of the employer for the plan year.

7 “(v) PERMITTED VARIATION.—For
8 purposes of clause (i)(I), an arrangement
9 shall not fail to be treated as provided on
10 the same terms within a specified class
11 merely because the maximum dollar
12 amount of payments and reimbursements
13 which may be made under the terms of the
14 arrangement for the year with respect to
15 each employee within such class—

16 “(I) increases as additional de-
17 pendants of the employee are covered
18 under the arrangement, and

19 “(II) increases with respect to a
20 participant as the age of the partici-
21 pant increases, but not in excess of an
22 amount equal to 300 percent the low-
23 est maximum dollar amount with re-
24 spect to such a participant determined
25 without regard to age.

1 “(D) SUBSTANTIATION REQUIREMENTS.—

2 An arrangement meets the requirements of this
3 subparagraph if the arrangement has reason-
4 able procedures to substantiate—

5 “(i) that the participant is, or will be,
6 enrolled in coverage described in subpara-
7 graph (B)(ii) as of the beginning of the
8 plan year of the arrangement (or as of the
9 beginning of coverage under the arrange-
10 ment in the case of an employee who first
11 becomes eligible to participate in the ar-
12 rangement after the date notice is given
13 with respect to the plan under subpara-
14 graph (E) (determined without regard to
15 clause (iii) thereof), and

16 “(ii) any requests made for payment
17 or reimbursement of medical care under
18 the arrangement and that the participant
19 remains so enrolled.

20 “(E) NOTICE.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (iii), an arrangement meets
23 the requirements of this subparagraph if,
24 under the arrangement, each employee eli-
25 gible to participate is, not later than 90

1 days before the beginning of the plan year,
2 given written notice of the employee's
3 rights and obligations under the arrange-
4 ment which—

5 “(I) is sufficiently accurate and
6 comprehensive to appraise the em-
7 ployee of such rights and obligations,
8 and

9 “(II) is written in a manner cal-
10 culated to be understood by the aver-
11 age employee eligible to participate.

12 “(ii) NOTICE REQUIREMENTS.—Such
13 notice shall include such information as the
14 Secretary may by regulation prescribe.

15 “(iii) NOTICE DEADLINE FOR CER-
16 TAIN EMPLOYEES.—In the case of an em-
17 ployee—

18 “(I) who first becomes eligible to
19 participate in the arrangement after
20 the date notice is given with respect
21 to the plan under clause (i) (deter-
22 mined without regard to this clause),
23 or

24 “(II) whose employer is first es-
25 tablished fewer than 120 days before

1 the beginning of the first plan year of
2 the arrangement,
3 the requirements of this subparagraph
4 shall be treated as met if the notice re-
5 quired under clause (i) is provided not
6 later than the date the arrangement may
7 take effect with respect to such em-
8 ployee.”.

9 (b) NO INFERENCE.—To the extent not inconsistent
10 with the amendments made by this section—

11 (1) no inference shall be made from such
12 amendments with respect to the rules prescribed in
13 the Federal Register on June 20, 2019, (84 Fed.
14 Reg. 28888) relating to health reimbursement ar-
15 rangements and other account-based group health
16 plans, and

17 (2) any reference to custom health option and
18 individual care expense arrangements shall for pur-
19 poses of such rules be treated as including a ref-
20 erence to individual coverage health reimbursement
21 arrangements.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plan years beginning after De-
24 cember 31, 2023.

1 **TITLE III—SELF-INSURANCE**
2 **PROTECTION ACT**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “Self-Insurance Protec-
5 tion Act”.

6 **SEC. 302. FINDINGS.**

7 Congress finds the following:

8 (1) Small and large employers offer health ben-
9 efit plan coverage to employees in self-funded ar-
10 rangements using company assets or a fund, or by
11 paying premiums to purchase fully-insured coverage
12 from a health insurance company.

13 (2) Employers that self-fund health benefit
14 plans will often purchase stop-loss insurance as a fi-
15 nancial risk management tool to protect against ex-
16 cess or unexpected catastrophic health plan claims
17 losses that arise above projected costs paid out of
18 company assets.

19 (3) Stop-loss coverage insures the employer
20 sponsoring the health benefit plan against unfore-
21 seen health plan claims, does not insure the em-
22 ployee health benefit plan itself, and does not pay
23 health care providers for medical services provided to
24 the employees.

1 (4) Employer-sponsored health benefit plans are
2 regulated under the Employee Retirement Income
3 Security Act of 1974, however, States regulate the
4 availability and the coverage terms of stop-loss in-
5 surance coverage that employers purchase to protect
6 company assets and to protect a fund against excess
7 or unexpected claims losses.

8 (5) Both large and small employers that choose
9 to self-fund must also be able to protect company as-
10 sets or a fund against excess or unexpected claims
11 losses and States must reasonably regulate stop-loss
12 insurance to assure its availability to both large and
13 small employers.

14 **SEC. 303. CERTAIN MEDICAL STOP-LOSS INSURANCE OB-**
15 **TAINED BY CERTAIN PLAN SPONSORS OF**
16 **GROUP HEALTH PLANS NOT INCLUDED**
17 **UNDER THE DEFINITION OF HEALTH INSUR-**
18 **ANCE COVERAGE.**

19 Section 733(b)(1) of the Employee Retirement In-
20 come Security Act of 1974 (29 U.S.C. 1191b(b)(1)) is
21 amended by adding at the end the following sentence:
22 “Such term shall not include a stop-loss policy obtained
23 by a self-insured group health plan or a plan sponsor of
24 a group health plan that self-insures the health risks of
25 its plan participants to reimburse the plan or sponsor for

1 losses that the plan or sponsor incurs in providing health
2 or medical benefits to such plan participants in excess of
3 a predetermined level set forth in the stop-loss policy ob-
4 tained by such plan or sponsor.”.

5 **SEC. 304. EFFECT ON OTHER LAWS.**

6 Section 514(b) of the Employee Retirement Income
7 Security Act of 1974 (29 U.S.C. 1144(b)) is amended by
8 adding at the end the following:

9 “(10) The provisions of this title (including part 7
10 relating to group health plans) shall preempt State laws
11 insofar as they may now or hereafter prevent an employee
12 benefit plan that is a group health plan from insuring
13 against the risk of excess or unexpected health plan claims
14 losses.”.

15 **TITLE IV—SMALL BUSINESS**
16 **FLEXIBILITY ACT**

17 **SEC. 401. SHORT TITLE.**

18 This title may be cited as the “Small Business Flexi-
19 bility Act”.

20 **SEC. 402. NOTIFICATION OF FLEXIBLE HEALTH INSURANCE**
21 **BENEFITS.**

22 (a) IN GENERAL.—Subchapter C of chapter 100 of
23 the Internal Revenue Code of 1986 is amended by adding
24 at the end the following new section:

1 **“SEC. 9835. NOTIFICATION OF FLEXIBLE HEALTH INSUR-**
2 **ANCE BENEFITS.**

3 “(a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this section, the Secretary shall no-
5 tify employers of the availability of tax-advantaged flexible
6 health insurance benefits, with an initial focus on small
7 businesses, particularly in rural areas (as defined in sec-
8 tion 1393(a)(2)).

9 “(b) DEFINITIONS.—In this section:

10 “(1) EMPLOYER.—The term ‘employer’ has the
11 meaning given such term in section 3(5) of the Em-
12 ployee Retirement Income Security Act (29 U.S.C.
13 1002(5)).

14 “(2) FLEXIBLE HEALTH INSURANCE BENE-
15 FITS.—The term ‘flexible health insurance benefits’
16 means—

17 “(A) an individual contribution health re-
18 imbursement arrangement (as described in the
19 rule entitled ‘Health Reimbursement Arrange-
20 ments and Other Account-Based Group Health
21 Plans’ (84 Fed. Reg. 28888 (June 20, 2019)));

22 “(B) a qualified small employer health re-
23 imbursement arrangement (as defined in sec-
24 tion 9831(d)(2)); and

25 “(C) the small employer health insurance
26 credit determined under section 45R.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for subchapter C of chapter 100 of such Code is amended
 3 by adding at the end the following new item:

“Sec. 9835. Notification of flexible health insurance benefits.”.

4 **TITLE V—RESCISSIONS**

5 **SEC. 501. PREVENTION AND PUBLIC HEALTH FUND.**

6 Section 4002(b)(7) of the Patient Protection and Af-
 7 fordable Care Act (42 U.S.C. 300u–11(b)(7)) is amended
 8 by striking “for each of fiscal years 2024 and 2025,
 9 \$1,300,000,000” and inserting “for fiscal year 2024,
 10 \$1,055,000,000, and for fiscal year 2025,
 11 \$1,300,000,000”.

12 **TITLE VI—SENSE OF CONGRESS** 13 **THAT AMERICANS SHALL** 14 **HAVE HEALTHCARE FREE-** 15 **DOM**

16 **SEC. 601. SENSE OF CONGRESS THAT HEALTHCARE FREE-** 17 **DOM IS THE FUTURE.**

18 It is the sense of Congress that—

19 (1) the future of healthcare lies in healthcare
 20 freedom, not in socialized medicine;

21 (2) Congress should take steps to address the
 22 broken healthcare system by restoring free market
 23 practices to lower costs;

1 (3) coverage is not care, and expanding direct
2 access to healthcare should be prioritized over ex-
3 panding access to coverage; and

4 (4) patients and doctors, not government bu-
5 reaucrats or insurance bureaucrats, should make
6 healthcare decisions.

Passed the House of Representatives June 21, 2023.

Attest:

Clerk.

118TH CONGRESS
1ST SESSION

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AN ACT

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