

Union Calendar No. 493

114TH CONGRESS
2D SESSION

H. R. 5447

[Report No. 114-643, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2016

Mr. BOUSTANY (for himself and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 21, 2016

Additional sponsors: Mrs. NOEM, Mr. MEEHAN, Mr. DOLD, Mr. TIBERI, Mr. ROSKAM, Mr. PAULSEN, Mr. HOLDING, Mr. KELLY of Pennsylvania, Mr. NUNES, Mr. TOM PRICE of Georgia, Mr. MARCHANT, Mr. BUCHANAN, Mr. RENACCI, Ms. LINDA T. SÁNCHEZ of California, Mr. PASCRELL, Mr. BLUMENAUER, Mr. ASHFORD, Mr. SCHRADER, Ms. ESHOO, Mr. PETERSON, Mr. KIND, Mr. LARSON of Connecticut, Mrs. TORRES, Ms. SINEMA, Ms. BONAMICI, Mr. HECK of Washington, Mr. BLUM, Mrs. MCMORRIS RODGERS, Ms. MCSALLY, Mr. FLORES, Mr. COOPER, Mr. LOWENTHAL, and Mr. SWALWELL of California

JUNE 21, 2016

Reported from the Committee on Ways and Means with an amendment

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

JUNE 21, 2016

The Committees on Education and the Workforce and Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 10, 2016]

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 of 2016”.*

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

9 *(a) AMENDMENTS TO THE INTERNAL REVENUE CODE*
10 *OF 1986 AND THE PATIENT PROTECTION AND AFFORDABLE*
11 *CARE ACT.—*

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

15 *“(d) EXCEPTION FOR QUALIFIED SMALL EMPLOYER*
16 *HEALTH REIMBURSEMENT ARRANGEMENTS.—*

17 *“(1) IN GENERAL.—For purposes of this title (ex-*
18 *cept as provided in section 4980I(f)(4) and notwith-*
19 *standing any other provision of this title), the term*
20 *‘group health plan’ shall not include any qualified*
21 *small employer health reimbursement arrangement.*

22 *“(2) QUALIFIED SMALL EMPLOYER HEALTH RE-*
23 *IMBURSEMENT ARRANGEMENT.—For purposes of this*
24 *subsection—*

1 “(A) *IN GENERAL.*—*The term ‘qualified*
2 *small employer health reimbursement arrange-*
3 *ment’ means an arrangement which—*

4 “(i) *is described in subparagraph (B),*

5 *and*

6 “(ii) *is provided on the same terms to*
7 *all eligible employees of the eligible em-*
8 *ployer.*

9 “(B) *ARRANGEMENT DESCRIBED.*—*An ar-*
10 *rangement is described in this subparagraph if—*

11 “(i) *such arrangement is funded solely*
12 *by an eligible employer and no salary re-*
13 *duction contributions may be made under*
14 *such arrangement,*

15 “(ii) *such arrangement provides, after*
16 *the employee provides proof of coverage, for*
17 *the payment of, or reimbursement of, an eli-*
18 *gible employee for expenses for medical care*
19 *(as defined in section 213(d)) incurred by*
20 *the eligible employee or the eligible employ-*
21 *ee’s family members (as determined under*
22 *the terms of the arrangement), and*

23 “(iii) *the amount of payments and re-*
24 *imbursements described in clause (ii) for*
25 *any year do not exceed \$5,130 (\$10,260 in*

1 *the case of an arrangement that also pro-*
2 *vides for payments or reimbursements for*
3 *family members of the employee).*

4 “(C) *CERTAIN VARIATION PERMITTED.—For*
5 *purposes of subparagraph (A)(i), an arrange-*
6 *ment shall not fail to be treated as provided on*
7 *the same terms to each eligible employee merely*
8 *because the employee’s permitted benefits under*
9 *such arrangement vary in accordance with the*
10 *variation in the price of an insurance policy in*
11 *the relevant individual health insurance market*
12 *based on—*

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

18 “(ii) *the number of family members of*
19 *the eligible employee the medical expenses of*
20 *which are covered under such arrangement.*

21 *The variation permitted under the preceding sen-*
22 *tence shall be determined by reference to the*
23 *same insurance policy with respect to all eligible*
24 *employees.*

1 “(D) *RULES RELATING TO MAXIMUM DOL-*
2 *LAR LIMITATION.—*

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

15 “(ii) *INFLATION ADJUSTMENT.—In the*
16 *case of any year beginning after 2016, each*
17 *of the dollar amounts in subparagraph*
18 *(A)(iii) shall be increased by an amount*
19 *equal to—*

20 “(I) *such dollar amount, multi-*
21 *plied by*

22 “(II) *the cost-of-living adjustment*
23 *determined under section 1(f)(3) for*
24 *the calendar year in which the taxable*
25 *year begins, determined by substituting*

1 *‘calendar year 2015’ for ‘calendar year*
2 *1992’ in subparagraph (B) 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 this*
8 *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 plan*
22 *to any of its employees.*

23 “(C) *PERMITTED BENEFIT.—The term ‘per-*
24 *mitted benefit’ means, with respect to any eligi-*
25 *ble employee, the maximum dollar amount of*

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

5 “(4) NOTICE.—

6 “(A) IN GENERAL.—An employer funding a
7 *qualified small employer health reimbursement*
8 *arrangement for any year shall, not later than*
9 *90 days before the beginning of such year (or, in*
10 *the case of an employee who is not eligible to*
11 *participate in the arrangement as of the begin-*
12 *ning of such year, the date on which such em-*
13 *ployee is first so eligible), provide a written no-*
14 *tice to each eligible employee which includes the*
15 *information described in subparagraph (B).*

16 “(B) CONTENTS OF NOTICE.—The notice re-
17 *quired 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 year.*

22 “(ii) A statement that the eligible em-
23 *ployee should provide the information de-*
24 *scribed in clause (i) to any health insurance*
25 *exchange to which the employee applies for*

1 *advance payment of the premium assistance*
2 *tax credit.*

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

10 (2) *LIMITATION ON EXCLUSION FROM GROSS IN-*
11 *COME.—Section 106 of such Code is amended by add-*
12 *ing at the end the following:*

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

24 (3) *COORDINATION WITH HEALTH INSURANCE*
25 *PREMIUM CREDIT.—Section 36B(c) of such Code is*

1 *amended by adding at the end the following new*
2 *paragraph:*

3 “(4) *SPECIAL RULES FOR QUALIFIED SMALL EM-*
4 *PLOYER HEALTH REIMBURSEMENT ARRANGEMENTS.—*

5 “(A) *IN GENERAL.—The term ‘coverage*
6 *month’ shall not include any month with respect*
7 *to an employee (or any spouse or dependent of*
8 *such employee) if for such month the employee is*
9 *provided a qualified small employer health reim-*
10 *bursement arrangement which constitutes afford-*
11 *able coverage.*

12 “(B) *DENIAL OF DOUBLE BENEFIT.—In the*
13 *case of any employee who is provided a qualified*
14 *small employer health reimbursement arrange-*
15 *ment for any coverage month (determined with-*
16 *out regard to subparagraph (A)), the credit oth-*
17 *erwise allowable under subsection (a) to the tax-*
18 *payer for such month shall be reduced (but not*
19 *below zero) by the amount described in subpara-*
20 *graph (C)(i)(II) for such month.*

21 “(C) *AFFORDABLE COVERAGE.—For pur-*
22 *poses of subparagraph (A), a qualified small em-*
23 *ployer health reimbursement arrangement shall*
24 *be treated as constituting affordable coverage for*
25 *a month if—*

1 “(i) the excess of—

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

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

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

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

20 “(E) *COVERAGE FOR LESS THAN ENTIRE*
21 *YEAR.*—In the case of an employee who is pro-
22 vided a qualified small employer health reim-
23 bursement arrangement for less than an entire
24 year, subparagraph (C)(i)(II) shall be applied by
25 substituting ‘the number of months during the

1 year for which such arrangement was provided'
2 for '12'.

3 “(F) INDEXING.—In the case of plan years
4 beginning in any calendar year after 2014, the
5 Secretary shall adjust the 9.5 percent amount
6 under subparagraph (C)(ii) in the same manner
7 as the percentages are adjusted under subsection
8 (b)(3)(A)(ii).”.

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

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

15 (B) DETERMINATION OF COST OF COV-
16 ERAGE.—Section 4980I(d)(2) of such Code is
17 amended by redesignating subparagraph (D) as
18 subparagraph (E) and by inserting after sub-
19 paragraph (C) the following new subparagraph:

20 “(D) QUALIFIED SMALL EMPLOYER HEALTH
21 REIMBURSEMENT ARRANGEMENTS.—In the case
22 of applicable employer-sponsored coverage con-
23 sisting of coverage under any qualified small em-
24 ployer health reimbursement arrangement (as de-
25 fined in section 9831(d)(2)), the cost of coverage

1 *shall be equal to the amount described in section*
2 *6051(a)(15).”.*

3 (5) *ENFORCEMENT OF NOTICE REQUIREMENT.*—

4 *Section 6652 of such Code is amended by adding at*
5 *the end the following new subsection:*

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

18 (6) *REPORTING.*—

19 (A) *W-2 REPORTING.*—*Section 6051(a) of*
20 *such Code is amended by striking “and” at the*
21 *end of paragraph (13), by striking the period at*
22 *the end of paragraph (14) and inserting “, and”,*
23 *and by inserting after paragraph (14) the fol-*
24 *lowing new paragraph:*

1 “(15) the total amount of permitted benefit (as
2 defined in section 9831(d)(3)(C)) for the year under
3 a qualified small employer health reimbursement ar-
4 rangement (as defined in section 9831(d)(2)) with re-
5 spect to the employee.”.

6 (B) *INFORMATION REQUIRED TO BE PRO-*
7 *VIDED BY EXCHANGE SUBSIDY APPLICANTS.—*
8 *Section 1411(b)(3) of the Patient Protection and*
9 *Affordable Care Act is amended by redesignating*
10 *subparagraph (B) as subparagraph (C) and by*
11 *inserting after subparagraph (A) the following*
12 *new subparagraph:*

13 “(B) *CERTAIN INDIVIDUAL HEALTH INSUR-*
14 *ANCE POLICIES OBTAINED THROUGH SMALL EM-*
15 *PLOYERS.—The amount of the enrollee’s per-*
16 *mitted benefit (as defined in section*
17 *9831(d)(3)(C) of the Internal Revenue Code of*
18 *1986) under a qualified small employer health*
19 *reimbursement arrangement (as defined in sec-*
20 *tion 9831(d)(2) of such Code).”.*

21 (7) *EFFECTIVE DATES.—*

22 (A) *IN GENERAL.—Except as otherwise pro-*
23 *vided in this paragraph, the amendments made*
24 *by this subsection shall apply to years beginning*
25 *after the earlier of—*

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

3 (ii) December 31, 2016.

4 (B) *TRANSITION RELIEF.*—The relief under
5 Treasury Notice 2015–17 shall be treated as ap-
6 plying to any plan year beginning on or before
7 the date described in subparagraph (A).

8 (C) *COORDINATION WITH HEALTH INSUR-*
9 *ANCE PREMIUM CREDIT.*—The amendments made
10 by paragraph (3) shall apply to taxable years be-
11 ginning after the date described in subparagraph
12 (A).

13 (D) *EMPLOYEE NOTICE.*—The amendments
14 made by paragraph (5) shall apply to notices
15 with respect to years beginning after the date de-
16 scribed in subparagraph (A).

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

20 (F) *INFORMATION PROVIDED BY EXCHANGE*
21 *SUBSIDY APPLICANTS.*—

22 (i) *IN GENERAL.*—The amendments
23 made by paragraph (6)(B) shall apply to
24 applications for enrollment made after the
25 date described in subparagraph (A).

1 (ii) *VERIFICATION.*—*Verification under*
2 *section 1411 of the Patient Protection and*
3 *Affordable Care Act of information provided*
4 *under section 1411(b)(3)(B) of such Act*
5 *shall apply with respect to months begin-*
6 *ning after October 2016.*

7 (8) *SUBSTANTIATION REQUIREMENTS.*—*The Sec-*
8 *retary of the Treasury (or his designee) may issue*
9 *substantiation requirements as necessary to carry out*
10 *this subsection.*

11 (b) *AMENDMENTS TO THE EMPLOYEE RETIREMENT*
12 *INCOME SECURITY ACT OF 1974.*—

13 (1) *IN GENERAL.*—*Section 733(a)(1) of the Em-*
14 *ployee Retirement Income Security Act of 1974 (29*
15 *U.S.C. 1191b(a)(1)) is amended by adding at the end*
16 *the following: “Such term shall not include any quali-*
17 *fied small employer health reimbursement arrange-*
18 *ment (as defined in section 9831(d)(2) of the Internal*
19 *Revenue Code of 1986).”.*

20 (2) *EXCEPTION FROM CONTINUATION COVERAGE*
21 *REQUIREMENTS, ETC.*—*Section 607(1) of such Act (29*
22 *U.S.C. 1167(1)) is amended by adding at the end the*
23 *following: “Such term shall not include any qualified*
24 *small employer health reimbursement arrangement*

1 *(as defined in section 9831(d)(2) of the Internal Rev-*
2 *enue Code of 1986).”.*

3 (3) *EFFECTIVE DATE.*—*The amendments made*
4 *by this subsection shall apply to plan years beginning*
5 *after the date described in subsection (a)(7)(A).*

6 (c) *AMENDMENTS TO THE PUBLIC HEALTH SERVICE*
7 *ACT.*—

8 (1) *IN GENERAL.*—*Section 2791(a)(1) of the*
9 *Public Health Service Act (42 U.S.C. 300gg–91(a)(1))*
10 *is amended by adding at the end the following: “Ex-*
11 *cept for purposes of part C of title XI of the Social*
12 *Security Act (42 U.S.C. 1320d et seq.), such term*
13 *shall not include any qualified small employer health*
14 *reimbursement arrangement (as defined in section*
15 *9831(d)(2) of the Internal Revenue Code of 1986).”.*

16 (2) *EXCEPTION FROM CONTINUATION COVERAGE*
17 *REQUIREMENTS.*—*Section 2208(1) of the Public*
18 *Health Service Act (42 U.S.C. 300bb–8(1)) is amend-*
19 *ed by adding at the end the following: “Such term*
20 *shall not include any qualified small employer health*
21 *reimbursement arrangement (as defined in section*
22 *9831(d)(2) of the Internal Revenue Code of 1986).”.*

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

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