

114TH CONGRESS
2D SESSION

S. 3060

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

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2016

Mr. GRASSLEY (for himself, Ms. HEITKAMP, Mr. PORTMAN, Mr. VITTER, Mr. GARDNER, Mr. ROBERTS, Mr. ISAKSON, Mr. JOHNSON, Mr. BENNET, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

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 provided a
17 qualified small employer health reimbursement
18 arrangement for any coverage month (deter-
19 mined without regard to subparagraph (A)), the
20 credit otherwise allowable under subsection (a)
21 to the taxpayer for such month shall be reduced
22 (but not below zero) by the amount described in
23 subparagraph (C)(i)(II) for such month.

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

1 employer health reimbursement arrangement
 2 shall be treated as constituting affordable cov-
 3 erage for a month if—

4 “(i) the excess of—

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

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

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

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

23 “(E) COVERAGE FOR LESS THAN ENTIRE
 24 YEAR.—In the case of an employee who is pro-
 25 vided a qualified small employer health reim-

1 bursement arrangement for less than an entire
2 year, subparagraph (C)(i)(II) shall be applied
3 by substituting ‘the number of months during
4 the year for which such arrangement was pro-
5 vided’ for ‘12’.

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

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

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

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

23 “(D) QUALIFIED SMALL EMPLOYER
24 HEALTH REIMBURSEMENT ARRANGEMENTS.—

25 In the case of applicable employer-sponsored

1 coverage consisting of coverage under any quali-
2 fied small employer health reimbursement ar-
3 rangement (as defined in section 9831(d)(2)),
4 the cost of coverage shall be equal to the
5 amount described in section 6051(a)(15).”.

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

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

21 (6) REPORTING.—

22 (A) W-2 REPORTING.—Section 6051(a) of
23 such Code is amended by striking “and” at the
24 end of paragraph (13), by striking the period at
25 the end of paragraph (14) and inserting “,

1 and”, and by inserting after paragraph (14) the
2 following new paragraph:

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

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

15 “(B) CERTAIN INDIVIDUAL HEALTH IN-
16 SURANCE POLICIES OBTAINED THROUGH SMALL
17 EMPLOYERS.—The amount of the enrollee’s
18 permitted benefit (as defined in section
19 9831(d)(3)(C) of the Internal Revenue Code of
20 1986) under a qualified small employer health
21 reimbursement arrangement (as defined in sec-
22 tion 9831(d)(2) of such Code).”.

23 (7) EFFECTIVE DATES.—

24 (A) IN GENERAL.—Except as otherwise
25 provided in this paragraph, the amendments

1 made by this subsection shall apply to years be-
2 ginning after the earlier of—

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

5 (ii) December 31, 2016.

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

10 (C) COORDINATION WITH HEALTH INSUR-
11 ANCE PREMIUM CREDIT.—The amendments
12 made by paragraph (3) shall apply to taxable
13 years beginning after the date described in sub-
14 paragraph (A).

15 (D) EMPLOYEE NOTICE.—The amend-
16 ments made by paragraph (5) shall apply to no-
17 tices with respect to years beginning after the
18 date described in subparagraph (A).

19 (E) W–2 REPORTING.—The amendments
20 made by paragraph (6)(A) shall apply to cal-
21 endar years beginning after December 31,
22 2016.

23 (F) INFORMATION PROVIDED BY EX-
24 CHANGE SUBSIDY APPLICANTS.—

1 (i) IN GENERAL.—The amendments
2 made by paragraph (6)(B) shall apply to
3 applications for enrollment made after the
4 date described in subparagraph (A).

5 (ii) VERIFICATION.—Verification
6 under section 1411 of the Patient Protec-
7 tion and Affordable Care Act of informa-
8 tion provided under section 1411(b)(3)(B)
9 of such Act shall apply with respect to
10 months beginning after October 2016.

11 (8) SUBSTANTIATION REQUIREMENTS.—The
12 Secretary of the Treasury (or his designee) may
13 issue substantiation requirements as necessary to
14 carry out this subsection.

15 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
16 INCOME SECURITY ACT OF 1974.—

17 (1) IN GENERAL.—Section 733(a)(1) of the
18 Employee Retirement Income Security Act of 1974
19 (29 U.S.C. 1191b(a)(1)) is amended by adding at
20 the end the following: “Such term shall not include
21 any qualified small employer health reimbursement
22 arrangement (as defined in section 9831(d)(2) of the
23 Internal Revenue Code of 1986).”.

24 (2) EXCEPTION FROM CONTINUATION COV-
25 ERAGE REQUIREMENTS, ETC.—Section 607(1) of

1 such Act (29 U.S.C. 1167(1)) is amended by adding
2 at the end the following: “Such term shall not in-
3 clude any qualified small employer health reimburse-
4 ment arrangement (as defined in section 9831(d)(2)
5 of the Internal Revenue Code of 1986).”.

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

9 (c) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
10 ACT.—

11 (1) IN GENERAL.—Section 2791(a)(1) of the
12 Public Health Service Act (42 U.S.C. 300gg-
13 91(a)(1)) is amended by adding at the end the fol-
14 lowing: “Except for purposes of part C of title XI
15 of the Social Security Act (42 U.S.C. 1320d et seq.),
16 such term shall not include any qualified small em-
17 ployer health reimbursement arrangement (as de-
18 fined in section 9831(d)(2) of the Internal Revenue
19 Code of 1986).”.

20 (2) EXCEPTION FROM CONTINUATION COV-
21 ERAGE REQUIREMENTS.—Section 2208(1) of the
22 Public Health Service Act (42 U.S.C. 300bb-8(1)) is
23 amended by adding at the end the following: “Such
24 term shall not include any qualified small employer
25 health reimbursement arrangement (as defined in

1 section 9831(d)(2) of the Internal Revenue Code of
2 1986).”.

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

○