To provide an exception from certain group health plan requirements to allow small businesses to use pre-tax dollars to assist employees in the purchase of policies in the individual health insurance market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2015

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 Energy and Commerce and Education and the Workforce, 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

A BILL

To provide an exception from certain group health plan requirements to allow small businesses to use pre-tax dollars to assist employees in the purchase of policies in the individual health insurance market, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Healthcare Relief Act”.

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SEC. 2. EXCEPTION FROM GROUP HEALTH PLAN REQUIREMENTS TO ALLOW SMALL BUSINESSES TO USE PRE-TAX DOLLARS TO ASSIST EMPLOYEES IN THE PURCHASE OF HEALTH INSURANCE IN THE INDIVIDUAL MARKET.

(a) Amendments to the Internal Revenue Code of 1986 and the Patient Protection and Affordable Care Act.—

(1) In general.—Section 9831 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(d) Certain Individual Health Insurance Policies Obtained Through Small Employers.—

“(1) In general.—The requirements of this chapter shall not apply to any qualified small employer health reimbursement arrangement.

“(2) Qualified small employer health reimbursement arrangement.—For purposes of this subsection—

“(A) In general.—The term ‘qualified small employer health reimbursement arrangement’ means an arrangement which—

“(i) is described in subparagraph (B),
“(ii) is offered on the same terms to all eligible employees of the eligible employer.

“(B) ARRANGEMENT DESCRIBED.—An arrangement is described in this subparagraph if—

“(i) such arrangement is funded solely by an eligible employer and no salary reduction contributions may be made under such arrangement, and

“(ii) such arrangement provides, after the employee provides proof of coverage to the employer, for the payment of, or reimbursement of, an eligible employee for—

“(I) expenses for medical care (as defined by subparagraphs (A), (B), and (C) section 213(d)) incurred by the eligible employee or the eligible employee’s family members (as determined under the terms of the arrangement), and

“(II) including for—

“(aa) insurance (within the meaning of section 213(d)(1)(D))
purchased on the individual health insurance market, and

“(bb) premiums under part B of title XVIII of the Social Security Act and any medicare supplemental policy under section 1882 of such Act.

“(C) Payments for other insurance not permitted under arrangement.—An arrangement shall not be treated as described in subparagraph (B) if the arrangement permits the employee to pay premiums for health insurance coverage for the employee under the employee’s spouse or other family member health insurance coverage.

“(D) Certain variation permitted.—For purposes of subparagraph (A)(ii), an arrangement shall not fail to be treated as offered on the same terms to all eligible employees merely because the employer contributions under such arrangement vary based on the number of individuals covered under such policy. The preceding sentence shall not apply unless such variation is consistently applied to all eligible employees and is consistent with the
price variation of coverage under health insurance obtained in the relevant individual health insurance market.

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

“(A) ELIGIBLE EMPLOYEE.—The term ‘eligible employee’ means any employee of the employer except that the terms of the arrangement may exclude from consideration employees described in any clause of section 105(h)(3)(B) (applied by substituting ‘90 days’ for ‘3 years’ in clause (i) thereof).

“(B) ELIGIBLE EMPLOYER.—The term ‘eligible employer’ means an employer that—

“(i) is not an applicable large employer as defined in section 4980H(c)(2), and

“(ii) does not offer a group health plan (other than a qualified small employer health reimbursement arrangement) to any of its employees.

“(C) INDIVIDUAL HEALTH INSURANCE POLICY.—The term ‘individual health insurance policy’ means individual health insurance coverage (as defined in section 2791(b) of the Pub-
lic Health Service Act) which is offered by a health insurance issuer (as so defined in such section).”.

(2) Exclusion from gross income.—Section 106 of such Code is amended by adding at the end the following:

“(g) Qualified small employer health reimbursement arrangement.—

“(1) In general.—In the case of an individual who is an eligible employee (as defined in paragraph (3)(A) of section 9831(d)) with respect to an eligible employer (as defined in paragraph (3)(B) of such section), the applicable percentage of the aggregate contributions made for the taxable year by the eligible employer under a qualified small employer health reimbursement arrangement (as defined in paragraph (2) of such section) with respect to the employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan.

“(2) Applicable percentage.—For purposes of paragraph (1) the applicable percentage shall be—

“(A) 25 percent if the employee is covered for less than 3 months in the taxable year by
the qualified health plan and the employee
draws amounts from the arrangement in any
month during which the employee is not so cov-
ered,

“(B) 50 percent if the employee is covered
for more than 3 months but less than 6 months
in the taxable year by the qualified health plan
and the employee draws amounts from the ar-
rangement in any month during which the em-
ployee is not so covered,

“(C) 75 percent if the employee is covered
for more than 6 months but less than 9 months
in the taxable year by the qualified health plan
and the employee draws amounts from the ar-
rangement in any month during which the em-
ployee is not so covered, and

“(D) 100 percent if the employee is cov-
ered for more than 9 months in the taxable
year by the qualified health plan.

“(3) Rule for special enrollment.—In the
case of an employee who first becomes covered under
the qualified small employer health reimbursement
arrangement by reason of enrollment during a spe-
cial enrollment period for qualifying events (under
section 603 of Employee Retirement Income and Se-
security Act), in lieu of paragraph (2) the applicable percentage shall be the ratio (expressed as a percentage) that—

“(A) the number of the months in the taxable year for which such employee is covered by such arrangement, bears to

“(B) the total number of months in the taxable year for which such employee is eligible to be covered by such arrangement.”.

(3) Exception from continuation coverage requirements.—Section 4980B(d) of such Code is amended by striking “or” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “, or”, and by adding at the end the following new paragraph:

“(4) any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2)).”.

(4) Exception from excise tax on high cost employer-sponsored health coverage.—Section 4980I(d)(2) of such Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:
“(D) In the case of applicable employer-sponsored coverage consisting of coverage under any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2)), the cost of the coverage shall be the amount reported under section 6051(a)(15).”.

(5) PREVENTION OF DOUBLE BENEFIT UNDER HEALTH INSURANCE PREMIUM CREDIT.—Section 36B(c)(2) of such Code is amended by adding at the end the following new subparagraph:

“(E) SPECIAL RULE FOR CERTAIN INDIVIDUAL HEALTH INSURANCE POLICIES OBTAINED THROUGH SMALL EMPLOYERS.—

“(i) IN GENERAL.—The term ‘coverage month’ shall not include any month with respect to an employee if for such month the employee is offered affordable coverage under an individual health insurance policy (as defined under section 9831(d)(3)(C)) under a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2)).
“(ii) AFFORDABLE.—For purposes of clause (i), coverage shall be treated as afford-able for a month if—

“(I) \( \frac{1}{12} \) of the employer’s con-trIBUTiOn to the employee for a year under such arrangement is not less than the amount that would be paid by the employee for the premium for such month for the applicable second lowest cost self-only silver plan for self-only coverage with respect to the employee’s individual market, and

“(II) the employee’s cost for cover-age under the individual health in-surance policy under the qualified small employer health reimbursement arrangement for a year does not ex-ceed the 9.5 percent of the employee’s household income.”.

(6) EMPLOYEE NOTICE.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by adding at the end the following:

“(o) NOTICE RELATING TO HEALTH REIMBURSE-MENT ARRANGEMENTS.—An employer maintaining a
qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986) shall, upon an election by an employee to participate in such qualified small employer health reimbursement arrangement, provide notice to the employee that if the employee is not covered under such arrangement for at least 9 of 12 months in the plan year, any funds under such arrangement may be includible in gross income.”.

(7) Reporting.—

(A) W–2 Reporting.—Section 6051(a) of such Code is amended by striking “and” at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting “, and”, and by inserting after paragraph (14) the following new paragraph:

“(15) the total amount of employer contributions made for the year under a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2)) with respect to the employee.”.

(B) Information Required to be Provided by Exchange Subsidy Applicants.—

(i) In General.—Section 1411(b)(3) of the Patient Protection and Affordable
Care Act is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) CERTAIN INDIVIDUAL HEALTH INSURANCE POLICIES OBTAINED THROUGH SMALL EMPLOYERS.—The months (if any) which the enrollee has or expects to have coverage under an individual health insurance policy (as defined in section 9831(d)(3)(C) of the Internal Revenue Code of 1986) provided under a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of such Code).”.

(ii) SPECIAL RULE RELATING TO VERIFICATION OF INFORMATION REQUIRED TO BE PROVIDED BY EXCHANGE APPLICANTS.—Verification under section 1411 of the Patient Protection and Affordable Care Act of information provided under section 1411(b)(3)(B) of such Act shall apply with respect to months beginning after October 2016.
(8) Effective date.—The amendments made by this subsection shall apply to months beginning after the date of the enactment of this Act.

(b) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) In general.—Section 732 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) Exception for certain individual health insurance policies obtained through small employers.—The requirements of this part shall not apply to any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).”.

(2) Exception from continuation coverage requirements.—Section 601 of such Act (29 U.S.C. 1161) is amended by adding at the end the following new subsection:

“(c) Exception for certain individual health insurance policies obtained through small employers.—Subsection (a) shall not apply to any qualified small employer health reimbursement arrangement (as de-
fined in section 9831(d)(2) of the Internal Revenue Code of 1986).”.

(3) Exception from certain other group health plan requirements.—Section 609 of such Act (29 U.S.C. 1169) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) Exception for certain individual health insurance policies obtained through small employers.—The requirements of this section shall not apply to any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).”.

(4) Effective date.—The amendments made by this subsection shall apply to months beginning after the date of the enactment of this Act.

(c) Amendments to Public Health Service Act.—

(1) In general.—Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–91 et seq.) is amended by adding at the end the following new section:
“SEC. 2796. EXCEPTION FOR CERTAIN SMALL EMPLOYER PLANS TO PROVIDE INDIVIDUAL HEALTH INSURANCE POLICIES.

“(a) In General.—The requirements of this title shall not apply to any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).

“(b) Exception Not Applicable to Individual Health Insurance Offered Under the Plan or Arrangement.—Subsection (a) shall not apply with respect to any individual health insurance policy (as defined in section 9831(d)(3)(C) of such Code) offered under any such arrangement.”.

(2) Exception from Continuation Coverage Requirements.—Title XXII of the Public Health Service Act (42 U.S.C. 300bb–1 et seq.) is amended by adding at the end the following new section:

“SEC. 2209. EXCEPTION FOR CERTAIN SMALL EMPLOYER PLANS TO PROVIDE INDIVIDUAL HEALTH INSURANCE POLICIES.

“The requirements of this title shall not apply to any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).”.

•HR 2911 IH
(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to months beginning after the date of the enactment of this Act.