

114TH CONGRESS
1ST SESSION

S. 1697

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 SENATE OF THE UNITED STATES

JUNE 25, 2015

Mr. GRASSLEY (for himself and Ms. HEITKAMP) 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 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.

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
5 Healthcare Relief Act”.

1 **SEC. 2. EXCEPTION FROM GROUP HEALTH PLAN REQUIRE-**
 2 **MENTS TO ALLOW SMALL BUSINESSES TO**
 3 **USE PRE-TAX DOLLARS TO ASSIST EMPLOY-**
 4 **EES IN THE PURCHASE OF HEALTH INSUR-**
 5 **ANCE IN THE INDIVIDUAL MARKET.**

6 (a) AMENDMENTS TO THE INTERNAL REVENUE
 7 CODE OF 1986 AND THE PATIENT PROTECTION AND AF-
 8 FORDABLE CARE ACT.—

9 (1) IN GENERAL.—Section 9831 of the Internal
 10 Revenue Code of 1986 is amended by adding at the
 11 end the following new subsection:

12 “(d) CERTAIN INDIVIDUAL HEALTH INSURANCE
 13 POLICIES OBTAINED THROUGH SMALL EMPLOYERS.—

14 “(1) IN GENERAL.—The requirements of this
 15 chapter shall not apply to any qualified small em-
 16 ployer health reimbursement arrangement.

17 “(2) QUALIFIED SMALL EMPLOYER HEALTH
 18 REIMBURSEMENT ARRANGEMENT.—For purposes of
 19 this subsection—

20 “(A) IN GENERAL.—The term ‘qualified
 21 small employer health reimbursement arrange-
 22 ment’ means an arrangement which—

23 “(i) is described in subparagraph (B),
 24 and

1 “(ii) is offered 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, and

11 “(ii) such arrangement provides, after
12 the employee provides proof of coverage to
13 the employer, for the payment of, or reim-
14 bursement of, an eligible employee for—

15 “(I) expenses for medical care
16 (as defined by subparagraphs (A),
17 (B), and (C) section 213(d)) incurred
18 by the eligible employee or the eligible
19 employee’s family members (as deter-
20 mined under the terms of the arrange-
21 ment), and

22 “(II) including for—

23 “(aa) insurance (within the
24 meaning of section 213(d)(1)(D))

1 purchased on the individual
2 health insurance market, and

3 “(bb) premiums under part
4 B of title XVIII of the Social Se-
5 curity Act and any medicare sup-
6 plemental policy under section
7 1882 of such Act.

8 “(C) PAYMENTS FOR OTHER INSURANCE
9 NOT PERMITTED UNDER ARRANGEMENT.—An
10 arrangement shall not be treated as described
11 in subparagraph (B) if the arrangement per-
12 mits the employee to pay premiums for health
13 insurance coverage for the employee under the
14 employee’s spouse or other family member
15 health insurance coverage.

16 “(D) CERTAIN VARIATION PERMITTED.—
17 For purposes of subparagraph (A)(ii), an ar-
18 rangement shall not fail to be treated as offered
19 on the same terms to all eligible employees
20 merely because the employer contributions
21 under such arrangement vary based on the
22 number of individuals covered under such pol-
23 icy. The preceding sentence shall not apply un-
24 less such variation is consistently applied to all
25 eligible employees and is consistent with the

1 price variation of coverage under health insur-
2 ance obtained in the relevant individual health
3 insurance market.

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

6 “(A) ELIGIBLE EMPLOYEE.—The term ‘eli-
7 gible employee’ means any employee of the em-
8 ployer except that the terms of the arrangement
9 may exclude from consideration employees de-
10 scribed in any clause of section 105(h)(3)(B)
11 (applied by substituting ‘90 days’ for ‘3 years’
12 in clause (i) thereof).

13 “(B) ELIGIBLE EMPLOYER.—The term ‘el-
14 igible employer’ means an employer that—

15 “(i) is not an applicable large em-
16 ployer as defined in section 4980H(c)(2),
17 and

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

22 “(C) INDIVIDUAL HEALTH INSURANCE
23 POLICY.—The term ‘individual health insurance
24 policy’ means individual health insurance cov-
25 erage (as defined in section 2791(b) of the Pub-

1 lic Health Service Act) which is offered by a
2 health insurance issuer (as so defined in such
3 section).”.

4 (2) EXCLUSION FROM GROSS INCOME.—Section
5 106 of such Code is amended by adding at the end
6 the following:

7 “(g) QUALIFIED SMALL EMPLOYER HEALTH REIM-
8 BURSEMENT ARRANGEMENT.—

9 “(1) IN GENERAL.—In the case of an individual
10 who is an eligible employee (as defined in paragraph
11 (3)(A) of section 9831(d)) with respect to an eligible
12 employer (as defined in paragraph (3)(B) of such
13 section), the applicable percentage of the aggregate
14 contributions made for the taxable year by the eligi-
15 ble employer under a qualified small employer health
16 reimbursement arrangement (as defined in para-
17 graph (2) of such section) with respect to the em-
18 ployee shall be treated as employer-provided cov-
19 erage for medical expenses under an accident or
20 health plan.

21 “(2) APPLICABLE PERCENTAGE.—For purposes
22 of paragraph (1) the applicable percentage shall
23 be—

24 “(A) 25 percent if the employee is covered
25 for less than 3 months in the taxable year by

1 the qualified small employer health reimburse-
2 ment arrangement and the employee draws
3 amounts from the arrangement in any month
4 during which the employee is not so covered,

5 “(B) 50 percent if the employee is covered
6 for more than 3 months but less than 6 months
7 in the taxable year by the qualified small em-
8 ployer health reimbursement arrangement and
9 the employee draws amounts from the arrange-
10 ment in any month during which the employee
11 is not so covered,

12 “(C) 75 percent if the employee is covered
13 for more than 6 months but less than 9 months
14 in the taxable year by the qualified small em-
15 ployer health reimbursement arrangement and
16 the employee draws amounts from the arrange-
17 ment in any month during which the employee
18 is not so covered, and

19 “(D) 100 percent if the employee is cov-
20 ered for more than 9 months in the taxable
21 year by the qualified small employer health re-
22 imbursement arrangement.

23 “(3) RULE FOR SPECIAL ENROLLMENT.—In the
24 case of an employee who first becomes covered under
25 the qualified small employer health reimbursement

1 arrangement by reason of enrollment during a spe-
2 cial enrollment period for qualifying events (under
3 section 603 of Employee Retirement Income and Se-
4 curity Act), in lieu of paragraph (2) the applicable
5 percentage shall be the ratio (expressed as a per-
6 centage) that—

7 “(A) the number of the months in the tax-
8 able year for which such employee is covered by
9 such arrangement, bears to

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

13 (3) EXCEPTION FROM CONTINUATION COV-
14 ERAGE REQUIREMENTS.—Section 4980B(d) of such
15 Code is amended by striking “or” at the end of
16 paragraph (2), by striking the period at the end of
17 paragraph (3) and inserting “, or”, and by adding
18 at the end the following new paragraph:

19 “(4) any qualified small employer health reim-
20 bursement arrangement (as defined in section
21 9831(d)(2)).”.

22 (4) EXCEPTION FROM EXCISE TAX ON HIGH
23 COST EMPLOYER-SPONSORED HEALTH COVERAGE.—
24 Section 4980I(d)(2) of such Code is amended by re-
25 designating subparagraph (D) as subparagraph (E)

1 and by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) In the case of applicable employer-
4 sponsored coverage consisting of coverage under
5 any qualified small employer health reimburse-
6 ment arrangement (as defined in section
7 9831(d)(2)), the cost of the coverage shall be
8 the amount reported under section
9 6051(a)(15).”.

10 (5) PREVENTION OF DOUBLE BENEFIT UNDER
11 HEALTH INSURANCE PREMIUM CREDIT.—Section
12 36B(e)(2) of such Code is amended by adding at the
13 end the following new subparagraph:

14 “(E) SPECIAL RULE FOR CERTAIN INDI-
15 VIDUAL HEALTH INSURANCE POLICIES OB-
16 TAINED THROUGH SMALL EMPLOYERS.—

17 “(i) IN GENERAL.—The term ‘cov-
18 erage month’ shall not include any month
19 with respect to an employee if for such
20 month the employee is offered affordable
21 coverage under an individual health insur-
22 ance policy (as defined under section
23 9831(d)(3)(C)) under a qualified small em-
24 ployer health reimbursement arrangement
25 (as defined in section 9831(d)(2)).

1 “(ii) AFFORDABLE.—For purposes of
2 clause (i), coverage shall be treated as af-
3 fordable for a month if—

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

13 “(II) the employee’s cost for cov-
14 erage under the individual health in-
15 surance policy under the qualified
16 small employer health reimbursement
17 arrangement for a year does not ex-
18 ceed the 9.5 percent of the employee’s
19 household income.”.

20 (6) EMPLOYEE NOTICE.—Section 101 of the
21 Employee Retirement Income Security Act of 1974
22 (29 U.S.C. 1021) is amended by adding at the end
23 the following:

24 “(o) NOTICE RELATING TO HEALTH REIMBURSE-
25 MENT ARRANGEMENTS.—An employer maintaining a

1 qualified small employer health reimbursement arrange-
2 ment (as defined in section 9831(d)(2) of the Internal
3 Revenue Code of 1986) shall, upon an election by an em-
4 ployee to participate in such qualified small employer
5 health reimbursement arrangement, provide notice to the
6 employee that if the employee is not covered under such
7 arrangement for at least 9 of 12 months in the plan year,
8 any funds under such arrangement may be includible in
9 gross income.”.

10 (7) REPORTING.—

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

17 “(15) the total amount of employer contribu-
18 tions made for the year under a qualified small em-
19 ployer health reimbursement arrangement (as de-
20 fined in section 9831(d)(2)) with respect to the em-
21 ployee.”.

22 (B) INFORMATION REQUIRED TO BE PRO-
23 VIDED BY EXCHANGE SUBSIDY APPLICANTS.—

24 (i) IN GENERAL.—Section 1411(b)(3)
25 of the Patient Protection and Affordable

1 Care Act is amended by redesignating sub-
2 paragraph (B) as subparagraph (C) and by
3 inserting after subparagraph (A) the fol-
4 lowing new subparagraph:

5 “(B) CERTAIN INDIVIDUAL HEALTH IN-
6 SURANCE POLICIES OBTAINED THROUGH SMALL
7 EMPLOYERS.—The months (if any) which the
8 enrollee has or expects to have coverage under
9 an individual health insurance policy (as de-
10 fined in section 9831(d)(3)(C) of the Internal
11 Revenue Code of 1986) provided under a quali-
12 fied small employer health reimbursement ar-
13 rangement (as defined in section 9831(d)(2) of
14 such Code).”.

15 (ii) SPECIAL RULE RELATING TO
16 VERIFICATION OF INFORMATION REQUIRED
17 TO BE PROVIDED BY EXCHANGE APPLI-
18 CANTS.—Verification under section 1411
19 of the Patient Protection and Affordable
20 Care Act of information provided under
21 section 1411(b)(3)(B) of such Act shall
22 apply with respect to months beginning
23 after October 2016.

1 (8) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to months beginning
3 after the date of the enactment of this Act.

4 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
5 INCOME SECURITY ACT OF 1974.—

6 (1) IN GENERAL.—Section 732 of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1191a) is amended by redesignating subsection (d)
9 as subsection (e) and by inserting after subsection
10 (c) the following new subsection:

11 “(d) EXCEPTION FOR CERTAIN INDIVIDUAL HEALTH
12 INSURANCE POLICIES OBTAINED THROUGH SMALL EM-
13 PLOYERS.—The requirements of this part shall not apply
14 to any qualified small employer health reimbursement ar-
15 rangement (as defined in section 9831(d)(2) of the Inter-
16 nal Revenue Code of 1986).”.

17 (2) EXCEPTION FROM CONTINUATION COV-
18 ERAGE REQUIREMENTS.—Section 601 of such Act
19 (29 U.S.C. 1161) is amended by adding at the end
20 the following new subsection:

21 “(c) EXCEPTION FOR CERTAIN INDIVIDUAL HEALTH
22 INSURANCE POLICIES OBTAINED THROUGH SMALL EM-
23 PLOYERS.—Subsection (a) shall not apply to any qualified
24 small employer health reimbursement arrangement (as de-

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

3 (3) EXCEPTION FROM CERTAIN OTHER GROUP
4 HEALTH PLAN REQUIREMENTS.—Section 609 of
5 such Act (29 U.S.C. 1169) is amended by redesignig-
6 nating subsection (e) as subsection (f) and by insert-
7 ing after subsection (d) the following new sub-
8 section:

9 “(e) EXCEPTION FOR CERTAIN INDIVIDUAL HEALTH
10 INSURANCE POLICIES OBTAINED THROUGH SMALL EM-
11 PLOYERS.—The requirements of this section shall not
12 apply to any qualified small employer health reimburse-
13 ment arrangement (as defined in section 9831(d)(2) of the
14 Internal Revenue Code of 1986).”.

15 (4) EFFECTIVE DATE.—The amendments made
16 by this subsection shall apply to months beginning
17 after the date of the enactment of this Act.

18 (c) AMENDMENTS TO PUBLIC HEALTH SERVICE
19 ACT.—

20 (1) IN GENERAL.—Part C of title XXVII of the
21 Public Health Service Act (42 U.S.C. 300gg–91 et
22 seq.) is amended by adding at the end the following
23 new section:

1 **“SEC. 2796. EXCEPTION FOR CERTAIN SMALL EMPLOYER**
 2 **PLANS TO PROVIDE INDIVIDUAL HEALTH IN-**
 3 **SURANCE POLICIES.**

4 “(a) IN GENERAL.—The requirements of this title
 5 shall not apply to any qualified small employer health re-
 6 imbursement arrangement (as defined in section
 7 9831(d)(2) of the Internal Revenue Code of 1986).

8 “(b) EXCEPTION NOT APPLICABLE TO INDIVIDUAL
 9 HEALTH INSURANCE OFFERED UNDER THE PLAN OR
 10 ARRANGEMENT.—Subsection (a) shall not apply with re-
 11 spect to any individual health insurance policy (as defined
 12 in section 9831(d)(3)(C) of such Code) offered under any
 13 such arrangement.”.

14 (2) EXCEPTION FROM CONTINUATION COV-
 15 ERAGE REQUIREMENTS.—Title XXII of the Public
 16 Health Service Act (42 U.S.C. 300bb–1 et seq.) is
 17 amended by adding at the end the following new sec-
 18 tion:

19 **“SEC. 2209. EXCEPTION FOR CERTAIN SMALL EMPLOYER**
 20 **PLANS TO PROVIDE INDIVIDUAL HEALTH IN-**
 21 **SURANCE POLICIES.**

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

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to months beginning
3 after the date of the enactment of this Act.

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