AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5447
OFFERED BY MR. BRADY OF TEXAS

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the "Small Business Health Care Relief Act of 2016".

SEC. 2. EXCEPTION FROM GROUP HEALTH PLAN REQUIREMENTS FOR QUALIFIED SMALL EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENTS.

(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) Exception for Qualified Small Employer Health Reimbursement Arrangements.—

“(1) In general.—For purposes of this title (except as provided in section 4980I(f)(4) and notwithstanding any other provision of this title), the term ‘group health plan’ shall not include any quali-
fied 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), and

“(ii) is provided 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,

“(ii) such arrangement provides, after the employee provides proof of coverage, for the payment of, or reimbursement of, an eligible employee for expenses for medical care (as defined in section 213(d)) in-
curred by the eligible employee or the eligi-
ble employee’s family members (as deter-
mined under the terms of the arrange-
ment), and

“(iii) the amount of payments and re-
imbursements described in clause (ii) for
any year do not exceed $5,130 ($10,260 in
the case of an arrangement that also pro-
vides for payments or reimbursements for
family members of the employee).

“(C) CERTAIN VARIATION PERMITTED.—
For purposes of subparagraph (A)(ii), an ar-
rangement shall not fail to be treated as pro-
vided on the same terms to each eligible em-
ployee merely because the employee’s permitted
benefits under such arrangement vary in ac-
cordance with the variation in the price of an
insurance policy in the relevant individual
health insurance market based on—

“(i) the age of the eligible employee
(and, in the case of an arrangement which
covers medical expenses of the eligible em-
ployee’s family members, the age of such
family members), or
“(ii) the number of family members of
the eligible employee the medical expenses
of which are covered under such arrange-
ment.

The variation permitted under the preceding
sentence shall be determined by reference to the
same insurance policy with respect to all eligible
employees.

“(D) Rules relating to maximum dollar limitation.—

“(i) Amount prorated in certain cases.—In the case of an individual who
is not covered by an arrangement for the
entire year, the limitation under subpara-
graph (A)(iii) for such year shall be an
amount which bears the same ratio to the
amount which would (but for this clause)
be in effect for such individual for such
year under subparagraph (A)(iii) as the
number of months for which such indi-
vidual is covered by the arrangement for
such year bears to 12.

“(ii) Inflation adjustment.—In
the case of any year beginning after 2016,
each of the dollar amounts in subpara-
graph (A)(iii) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2015’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any dollar amount increased under the preceding sentence is not a multiple of $100, such dollar amount shall be rounded to the next lowest multiple of $100.

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

“(A) ELIGIBLE EMPLOYEE.—The term ‘eligible employee’ means any employee of an eligible 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 to any of its employees.

“(C) PERMITTED BENEFIT.—The term ‘permitted benefit’ means, with respect to any eligible employee, the maximum dollar amount of payments and reimbursements which may be made under the terms of the qualified small employer health reimbursement arrangement for the year with respect to such employee.

“(4) NOTICE.—

“(A) IN GENERAL.—An employer funding a qualified small employer health reimbursement arrangement for any year shall, not later than 90 days before the beginning of such year (or, in the case of an employee who is not eligible to participate in the arrangement as of the beginning of such year, the date on which such employee is first so eligible), provide a written notice to each eligible employee which includes the information described in subparagraph (B).
“(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include each of the following:

“(i) A statement of the amount which would be such eligible employee’s permitted benefits under the arrangement for the year.

“(ii) A statement that the eligible employee should provide the information described in clause (i) to any health insurance exchange to which the employee applies for advance payment of the premium assistance tax credit.

“(iii) A statement that if the employee is not covered under minimum essential coverage for any month the employee may be subject to tax under section 5000A for such month and reimbursements under the arrangement may be includible in gross income.”.

(2) LIMITATION ON 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.—For purposes of this sec-
tion and section 105, payments or reimbursements from
a qualified small employer health reimbursement arrange-
ment (as defined in section 9831(d)) of an individual for
medical care (as defined in section 213(d)) shall not be
treated as paid or reimbursed under employer-provided
coverage for medical expenses under an accident or health
plan if for the month in which such medical care is pro-
vided the individual does not have minimum essential cov-
erage (within the meaning of section 5000A(f)).”.

(3) COORDINATION WITH HEALTH INSURANCE
PREMIUM CREDIT.—Section 36B(e) of such Code is
amended by adding at the end the following new
paragraph:
“(4) SPECIAL RULES FOR QUALIFIED SMALL
EMPLOYER HEALTH REIMBURSEMENT ARRANGE-
MENTS.—
“(A) IN GENERAL.—The term ‘coverage
month’ shall not include any month with re-
spect to an employee (or any spouse or depend-
ext of such employee) if for such month the em-
ployee is provided a qualified small employer
health reimbursement arrangement which con-
stitutes affordable coverage.
“(B) DENIAL OF DOUBLE BENEFIT.—In
qualified small employer health reimbursement arrangement for any coverage month (determined without regard to subparagraph (A)), the credit otherwise allowable under subsection (a) to the taxpayer for such month shall be reduced (but not below zero) by the amount described in subparagraph (C)(i)(II) for such month.

“(C) AFFORDABLE COVERAGE.—For purposes of subparagraph (A), a qualified small employer health reimbursement arrangement shall be treated as constituting affordable coverage for a month if—

“(i) the excess of—

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

“(II) 1/12 of the employee’s permitted benefit (as defined in section 9831(d)(3)(C)) under such arrangement, does not exceed—

“(ii) 1/12 of 9.5 percent of the employee’s household income.
“(D) QUALIFIED SMALL EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENT.—For purposes of this paragraph, the term ‘qualified small employer health reimbursement arrangement’ has the meaning given such term by section 9831(d)(2).

“(E) COVERAGE FOR LESS THAN ENTIRE YEAR.—In the case of an employee who is provided a qualified small employer health reimbursement arrangement for less than an entire year, subparagraph (C)(i)(II) shall be applied by substituting ‘the number of months during the year for which such arrangement was provided’ for ‘12’.

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

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

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

(B) DETERMINATION OF COST OF 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 new subparagraph:

“(D) QUALIFIED SMALL EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENTS.—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 coverage shall be equal to the amount described in section 6051(a)(15).”.

(5) ENFORCEMENT OF NOTICE REQUIREMENT.—Section 6652 of such Code is amended by adding at the end the following new subsection:

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

(6) 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 permitted benefit (as defined in section 9831(d)(3)(C)) 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.—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 amount of the enrollee’s permitted benefit (as defined in section 9831(d)(3)(C) of the Internal Revenue Code of 1986) under a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of such Code).”.

(7) Effective dates.—

(A) In general.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to years beginning after the earlier of—

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


(B) Transition relief.—The relief under Treasury Notice 2015–17 shall be treated as applying to any plan year beginning on or before the date described in subparagraph (A).

(C) Coordination with health insurance premium credit.—The amendments made by paragraph (3) shall apply to taxable years beginning after the date described in subparagraph (A).
(D) **EMPLOYEE NOTICE.**—The amendments made by paragraph (5) shall apply to notices with respect to years beginning after the date described in subparagraph (A).

(E) **W–2 REPORTING.**—The amendments made by paragraph (6)(A) shall apply to calendar years beginning after December 31, 2016.

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

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

(ii) **VERIFICATION.**—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) **SUBSTANTIATION REQUIREMENTS.**—The Secretary of the Treasury (or his designee) may issue substantiation requirements as necessary to carry out this subsection.
(b) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) In general.—Section 733(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(a)(1)) is amended by adding at the end the following: “Such term shall not include 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, etc.—Section 607(1) of such Act (29 U.S.C. 1167(1)) is amended by adding at the end the following: “Such term shall not include any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).”.

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

c) Amendments to the Public Health Service Act.—

(1) In general.—Section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1)) is amended by adding at the end the following: “Except for purposes of part C of title XI
of the Social Security Act (42 U.S.C. 1320d et seq.),
such term shall not include any qualified small em-
ployer health reimbursement arrangement (as de-
fine in section 9831(d)(2) of the Internal Revenue
Code of 1986).”.

(2) Exception from continuation cov-
erage requirements.—Section 2208(1) of the
Public Health Service Act (42 U.S.C. 300bb–8(1)) is
amended by adding at the end the following: “Such
term shall not include any qualified small employer
health reimbursement arrangement (as defined in
section 9831(d)(2) of the Internal Revenue Code of
1986).”.

(3) Effective date.—The amendments made
by this subsection shall apply to plan years begin-
ing after the date described in subsection (a)(7)(A).