

118TH CONGRESS
1ST SESSION

H. R. 3799

To amend the Internal Revenue Code of 1986 to provide for health reimbursement arrangements integrated with individual health insurance coverage.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2023

Mr. HERN introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for health reimbursement arrangements integrated with individual health insurance coverage.

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 “Custom Health Option
5 and Individual Care Expense Arrangement Act” or the
6 “CHOICE Arrangement Act”.

1 **SEC. 2. TREATMENT OF HEALTH REIMBURSEMENT AR-**
2 **RANGEMENTS INTEGRATED WITH INDI-**
3 **VIDUAL MARKET COVERAGE.**

4 (a) IN GENERAL.—Section 9815(b) of the Internal
5 Revenue Code of 1986 is amended—

6 (1) by striking “EXCEPTION.—Notwithstanding
7 subsection (a)” and inserting the following: “EXCEP-
8 TIONS.—

9 “(1) SELF-INSURED GROUP HEALTH PLANS.—
10 Notwithstanding subsection (a)”, and

11 (2) by adding at the end the following new
12 paragraph:

13 “(2) CUSTOM HEALTH OPTION AND INDIVIDUAL
14 CARE EXPENSE ARRANGEMENTS.—

15 “(A) IN GENERAL.—For purposes of this
16 subchapter, a custom health option and indi-
17 vidual care expense arrangement shall be treat-
18 ed as meeting the requirements of sections
19 2711 and 2713 of title XXVII of the Public
20 Health Service Act.

21 “(B) CUSTOM HEALTH OPTION AND INDI-
22 VIDUAL CARE EXPENSE ARRANGEMENTS DE-
23 FINED.—For purposes of this section, the term
24 ‘custom health option and individual care ex-
25 pense arrangement’ means a health reimburse-
26 ment arrangement—

1 “(i) which is an employer-provided
2 group health plan funded solely by em-
3 ployer contributions to provide payments
4 or reimbursements for medical care subject
5 to a maximum fixed dollar amount for a
6 period,

7 “(ii) under which such payments or
8 reimbursements may only be made for
9 medical care provided during periods dur-
10 ing which the individual is covered—

11 “(I) under individual health in-
12 surance coverage (other than coverage
13 that consists solely of excepted bene-
14 fits), or

15 “(II) under parts A and B of
16 title XVIII of the Social Security Act
17 or part C of such title,

18 “(iii) which meets the nondiscrimina-
19 tion requirements of subparagraph (C),

20 “(iv) which meets the substantiation
21 requirements of subparagraph (D), and

22 “(v) which meets the notice require-
23 ments of subparagraph (E).

24 “(C) NONDISCRIMINATION.—

1 “(i) IN GENERAL.—An arrangement
2 meets the requirements of this subpara-
3 graph if an employer offering such ar-
4 rangement to an employee within a speci-
5 fied class of employee—

6 “(I) offers such arrangement to
7 all employees within such specified
8 class on the same terms, and

9 “(II) does not offer any other
10 group health plan to any employees
11 within such specified class.

12 “(ii) SPECIFIED CLASS OF EM-
13 PLOYEE.—For purposes of this subpara-
14 graph, any of the following may be des-
15 ignated as a specified class of employee:

16 “(I) Full-time employees.

17 “(II) Part-time employees.

18 “(III) Salaried employees.

19 “(IV) Non-salaried employees.

20 “(V) Employees whose primary
21 site of employment is in the same rat-
22 ing area.

23 “(VI) Employees who are in-
24 cluded in a unit of employees covered
25 under a collective bargaining agree-

1 ment to which the employer is subject
2 (determined under rules similar to the
3 rules of section 105(h)).

4 “(VII) Employees who have not
5 met a group health plan, or health in-
6 surance issuer offering group health
7 insurance coverage, waiting period re-
8 quirement that satisfies the require-
9 ments of section 2708 of the Public
10 Health Service Act.

11 “(VIII) Seasonal employees.

12 “(IX) Employees who are non-
13 resident aliens and who receive no
14 earned income (within the meaning of
15 section 911(d)(2)) from the employer
16 which constitutes income from sources
17 within the United States (within the
18 meaning of section 861(a)(3)).

19 “(X) Such other classes of em-
20 ployees as the Secretary may des-
21 ignated.

22 An employer may designate (in such man-
23 ner as is prescribed by the Secretary) two
24 or more of the classes described in the pre-
25 ceding subclauses as the specified class of

1 employees to which the arrangement is of-
2 ferred for purposes of applying this sub-
3 paragraph.

4 “(iii) SPECIAL RULE FOR NEW
5 HIRES.—An employer may designate pro-
6 spectively so much of a specified class of
7 employees as are hired after a date set by
8 the employer. Such subclass of employees
9 shall be treated as the specified class for
10 purposes of applying clause (i).

11 “(iv) RULES FOR DETERMINING TYPE
12 OF EMPLOYEE.—For purposes of clause
13 (ii), any determination of full-time, part-
14 time, or seasonal employment status shall
15 be made under rules similar to the rules of
16 section 105(h) or 4980H, whichever the
17 employer elects for the plan year. Such
18 election shall apply with respect to all em-
19 ployees of the employer for the plan year.

20 “(v) PERMITTED VARIATION.—For
21 purposes of clause (i)(I), an arrangement
22 shall not fail to be treated as provided on
23 the same terms within a specified class
24 merely because the maximum dollar
25 amount of payments and reimbursements

1 which may be made under the terms of the
2 arrangement for the year with respect to
3 each employee within such class—

4 “(I) increases as additional de-
5 pendents of the employee are covered
6 under the arrangement, and

7 “(II) increases with respect to a
8 participant as the age of the partici-
9 pant increases, but not in excess of an
10 amount equal to 300 percent of the
11 lowest maximum dollar amount with
12 respect to such a participant deter-
13 mined without regard to age.

14 “(D) SUBSTANTIATION REQUIREMENTS.—

15 An arrangement meets the requirements of this
16 subparagraph if the arrangement has reason-
17 able procedures to substantiate—

18 “(i) that the participant is, or will be,
19 enrolled in coverage described in subpara-
20 graph (B)(ii) as of the beginning of the
21 plan year of the arrangement (or as of the
22 beginning of coverage under the arrange-
23 ment in the case of an employee who first
24 becomes eligible to participate in the ar-
25 rangement after the date notice is given

1 with respect to the plan under subpara-
2 graph (E) (determined without regard to
3 clause (iii) thereof), and

4 “(ii) any requests made for payment
5 or reimbursement of medical care under
6 the arrangement and that the participant
7 remains so enrolled.

8 “(E) NOTICE.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in clause (iii), an arrangement meets
11 the requirements of this subparagraph if,
12 under the arrangement, each employee eli-
13 gible to participate is, not later than 90
14 days before the beginning of the plan year,
15 given written notice of the employee’s
16 rights and obligations under the arrange-
17 ment which—

18 “(I) is sufficiently accurate and
19 comprehensive to appraise the em-
20 ployee of such rights and obligations,
21 and

22 “(II) is written in a manner cal-
23 culated to be understood by the aver-
24 age employee eligible to participate.

1 “(ii) NOTICE REQUIREMENTS.—Such
2 notice shall include such information as the
3 Secretary may by regulation prescribe.

4 “(iii) NOTICE DEADLINE FOR CER-
5 TAIN EMPLOYEES.—In the case of an em-
6 ployee—

7 “(I) who first becomes eligible to
8 participate in the arrangement after
9 the date notice is given with respect
10 to the plan under clause (i) (deter-
11 mined without regard to this clause),
12 or

13 “(II) whose employer is first es-
14 tablished fewer than 120 days before
15 the beginning of the first plan year of
16 the arrangement,

17 the requirements of this subparagraph
18 shall be treated as met if the notice re-
19 quired under clause (i) is provided not
20 later than the date the arrangement may
21 take effect with respect to such em-
22 ployee.”.

23 (b) NO INFERENCE.—To the extent not inconsistent
24 with the amendments made by this section—

1 (1) no inference shall be made from such
2 amendments with respect to the rules prescribed in
3 the Federal Register on June 20, 2019 (84 Fed.
4 Reg. 28888), relating to health reimbursement ar-
5 rangements and other account-based group health
6 plans, and

7 (2) any reference to custom health option and
8 individual care expense arrangements shall for pur-
9 poses of such rules be treated as including a ref-
10 erence to individual coverage health reimbursement
11 arrangements.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this subsection shall apply to plan years beginning after
14 December 31, 2023.

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