

RULES COMMITTEE PRINT 118–9

[Showing the texts of H.R. 3799 and H.R. 3798, as reported,
and H.R. 2868 and H.R. 2813, as ordered reported]

1 **TITLE I—ASSOCIATION HEALTH**
2 **PLANS ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Association Health
5 Plans Act”.

6 **SEC. 102. TREATMENT OF GROUP OR ASSOCIATION OF EM-**
7 **PLOYERS.**

8 (a) IN GENERAL.—Section 3(5) of the Employee Re-
9 tirement Income Security Act of 1974 (29 U.S.C.
10 1002(5)) is amended—

11 (1) by striking “The term” and inserting “(A)
12 The term”; and

13 (2) by adding at the end the following:

14 “(B) For purposes of subparagraph (A), a group or
15 association of employers shall be treated as an ‘employer’,
16 regardless of whether the employers composing such group
17 or association are in the same industry, trade, or profes-
18 sion, if such group or association—

19 “(i)(I) has established and maintains an em-
20 ployee welfare benefit plan that is a group health
21 plan (as defined in section 733(a)(1));

1 “(II) provides coverage under such plan to at
2 least 51 employees after all of the employees em-
3 ployed by all of the employer members of such group
4 or association have been aggregated and counted to-
5 gether as described in subparagraph (D);

6 “(III) has been actively in existence for at least
7 2 years prior to establishing and maintaining an em-
8 ployer welfare benefit plan that is a group health
9 plan (as defined in section 733(a)(1));

10 “(IV) has been formed and maintained in good
11 faith for purposes other than providing medical care
12 (as defined in section 733(a)(2)) through the pur-
13 chase of insurance or otherwise;

14 “(V) does not condition membership in the
15 group or association on any health status-related
16 factor (as described in section 702(a)(1)) relating to
17 any individual;

18 “(VI) makes coverage under such plan available
19 to all employer members of such group or associa-
20 tion regardless of any health status-related factor
21 (as described in section 702(a)(1)) relating to such
22 employer members;

23 “(VII) does not provide coverage under such
24 plan to any individual other than an employee of an
25 employer member of such group or association;

1 “(VIII) has established a governing board with
2 by-laws or other similar indications of formality to
3 manage and operate such plan in both form and
4 substance, of which at least 75 percent of the board
5 members shall be made up of employer members of
6 such group or association participating in the plan
7 that are duly elected by each participating employer
8 member casting 1 vote during a scheduled election;

9 “(IX) is not a health insurance issuer (as de-
10 fined in section 733(b)(2)), and is not owned or con-
11 trolled by such a health insurance issuer or by a
12 subsidiary or affiliate of such a health insurance
13 issuer, other than to the extent such a health insur-
14 ance issuer—

15 “(aa) may participate in the group or asso-
16 ciation as a member; and

17 “(bb) may provide services such as assist-
18 ance with plan development, marketing, and ad-
19 ministrative services to such group or associa-
20 tion;

21 “(ii) meets any set of criteria to qualify for
22 such treatment in an advisory opinion issued by the
23 Secretary prior to the date of enactment of the As-
24 sociation Health Plans Act; or

1 “(iii) meets any other set of criteria to qualify
2 for such treatment that the Secretary by regulation
3 may provide.

4 “(C)(i) For purposes of subparagraph (B), a self-em-
5 ployed individual shall be treated as—

6 “(I) an employer who may become a member of
7 a group or association of employers;

8 “(II) an employee who may participate in an
9 employee welfare benefit plan established and main-
10 tained by such group or association; and

11 “(III) a participant of such plan subject to the
12 eligibility determination and monitoring require-
13 ments set forth in clause (iii).

14 “(ii) For purposes of this subparagraph, the term
15 ‘self-employed individual’ means an individual who—

16 “(I) does not have any common law employees;

17 “(II) has an ownership right in a trade or busi-
18 ness, regardless of whether such trade or business is
19 incorporated or unincorporated;

20 “(III) earns wages (as defined in section
21 3121(a) of the Internal Revenue Code of 1986) or
22 self-employment income (as defined in section
23 1402(b) of such Code) from such trade or business;
24 and

1 “(IV) works at least 10 hours per week or 40
2 hours per month providing personal services to such
3 trade or business.

4 “(iii) The board of a group or association of employ-
5 ers shall—

6 “(I) initially determine whether an individual
7 meets the requirements under clause (ii) to be con-
8 sidered a self-employed individual for the purposes
9 of being treated as an—

10 “(aa) employer member of such group or
11 association (in accordance with clause (i)(I));
12 and

13 “(bb) employee who may participate in the
14 employee welfare benefit plan established and
15 maintained by such group or association (in ac-
16 cordance with clause (i)(II));

17 “(II) through reasonable monitoring proce-
18 dures, periodically determine whether the individual
19 continues to meet such requirements; and

20 “(III) if the board determines that an indi-
21 vidual no longer meets such requirements, not make
22 such plan coverage available to such individual (or
23 dependents thereof) for any plan year following the
24 plan year during which the board makes such deter-
25 mination. If, subsequent to a determination that an

1 individual no longer meets such requirements, such
2 individual furnishes evidence of satisfying such re-
3 quirements, such individual (and dependents thereof)
4 shall be eligible to receive plan coverage.

5 “(D) For purposes of subparagraph (B), all of the
6 employees (including self-employed individuals) employed
7 by all of the employer members (including self-employed
8 individuals) of a group or association of employers shall
9 be—

10 “(i) treated as employed by a single employer;

11 and

12 “(ii) aggregated and counted together for pur-
13 poses of any regulation of an employee welfare ben-
14 efit plan established and maintained by such group
15 or association.”.

16 (b) DETERMINATION OF EMPLOYER OR JOINT EM-
17 PLOYER STATUS.—The provision of employee welfare ben-
18 efit plan coverage by a group or association of employers
19 shall not be construed as evidence for establishing an em-
20 ployer or joint employer relationship under any Federal
21 or State law.

1 **SEC. 103. RULES APPLICABLE TO GROUP HEALTH PLANS**
2 **ESTABLISHED AND MAINTAINED BY A GROUP**
3 **OR ASSOCIATION OF EMPLOYERS.**

4 Part 7 of subtitle B of title I of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C. 1181, et
6 seq.) is amended by adding at the end the following:

7 **“SEC. 736. RULES APPLICABLE TO GROUP HEALTH PLANS**
8 **ESTABLISHED AND MAINTAINED BY A GROUP**
9 **OR ASSOCIATION OF EMPLOYERS.**

10 “(a) PREMIUM RATES FOR A GROUP OR ASSOCIA-
11 TION OF EMPLOYERS.—

12 “(1)(A) In the case of a group health plan es-
13 tablished and maintained by a group or association
14 of employers described in section 3(5)(B), such plan
15 may—

16 “(i) establish base premium rates formed
17 on an actuarially sound, modified community
18 rating methodology that considers the pooling
19 of all plan participant claims; and

20 “(ii) utilize the specific risk profile of each
21 employer member of such group or association
22 to determine contribution rates for each such
23 employer member’s share of a premium by ac-
24 tuarially adjusting above or below the estab-
25 lished base premium rates.

1 “(B) For purposes of paragraph (1), the term
2 ‘employer member’ means—

3 “(i) an employer who is a member of such
4 group or association of employers and employs
5 at least 1 common law employee; or

6 “(ii) a group made up solely of self-em-
7 ployed individuals, within which all of the self-
8 employed individual members of such group or
9 association are aggregated together as a single
10 employer member group, provided the group in-
11 cludes at least 20 self-employed individual
12 members.

13 “(2) In the event a group or association is
14 made up solely of self-employed individuals (and no
15 employers with at least 1 common law employee are
16 members of such group or association), the group
17 health plan established by such group or association
18 shall—

19 “(A) treat all self-employed individuals
20 who are members of such group or association
21 as a single risk pool;

22 “(B) pool all plan participant claims; and

23 “(C) charge each plan participant the
24 same premium rate.

1 “(b) DISCRIMINATION AND PRE-EXISTING CONDI-
2 TION PROTECTIONS.—A group health plan established
3 and maintained by a group or association of employers de-
4 scribed in section 3(5)(B) shall be prohibited from—

5 “(1) establishing any rule for eligibility (includ-
6 ing continued eligibility) of any individual (including
7 an employee of an employer member or a self-em-
8 ployed individual, or a dependent of such employee
9 or self-employed individual) to enroll for benefits
10 under the terms of the plan that discriminates based
11 on any health status-related factor that relates to
12 such individual (consistent with the rules under sec-
13 tion 702(a)(1));

14 “(2) requiring an individual (including an em-
15 ployee of an employer member or a self-employed in-
16 dividual, or a dependent of such employee or self-
17 employed individual), as a condition of enrollment or
18 continued enrollment under the plan, to pay a pre-
19 mium or contribution that is greater than the pre-
20 mium or contribution for a similarly situated indi-
21 vidual enrolled in the plan based on any health sta-
22 tus-related factor that relates to such individual
23 (consistent with the rules under section 702(b)(1));
24 and

1 “(3) denying coverage under such plan on the
2 basis of a pre-existing condition (consistent with the
3 rules under section 2704 of the Public Health Serv-
4 ice Act).”.

5 **SEC. 104. RULE OF CONSTRUCTION.**

6 Nothing in this title shall be construed to exempt a
7 group health plan which is an employee welfare benefit
8 plan offered through a group or association of employers
9 from the requirements of part 7 of subtitle B of title I
10 of the Employee Retirement Income Security Act of 1974
11 (29 U.S.C. 1181 et. seq.), including the provisions of part
12 A of title XXVII of the Public Health Service Act as incor-
13 porated by reference into this Act through section 715.

14 **TITLE II—CHOICE**
15 **ARRANGEMENT ACT**

16 **SEC. 201. SHORT TITLE.**

17 This title may be cited as the “Custom Health Option
18 and Individual Care Expense Arrangement Act” or the
19 “CHOICE Arrangement Act”.

20 **SEC. 202. TREATMENT OF HEALTH REIMBURSEMENT AR-**
21 **RANGEMENTS INTEGRATED WITH INDI-**
22 **VIDUAL MARKET COVERAGE.**

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

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

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

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) CUSTOM HEALTH OPTION AND INDIVIDUAL
9 CARE EXPENSE ARRANGEMENTS.—

10 “(A) IN GENERAL.—For purposes of this
11 subchapter, a custom health option and indi-
12 vidual care expense arrangement shall be treat-
13 ed as meeting the requirements of sections
14 2711 and 2713 of title XXVII of the Public
15 Health Service Act.

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

22 “(i) which is an employer-provided
23 group health plan funded solely by em-
24 ployer contributions to provide payments
25 or reimbursements for medical care subject

1 to a maximum fixed dollar amount for a
2 period,

3 “(ii) under which such payments or
4 reimbursements may only be made for
5 medical care provided during periods dur-
6 ing which the individual is covered—

7 “(I) under individual health in-
8 surance coverage (other than coverage
9 that consists solely of excepted bene-
10 fits), or

11 “(II) under part A and B of title
12 XVIII of the Social Security Act or
13 part C of such title,

14 “(iii) which meets the nondiscrimina-
15 tion requirements of subparagraph (C),

16 “(iv) which meets the substantiation
17 requirements of subparagraph (D), and

18 “(v) which meets the notice require-
19 ments of subparagraph (E).

20 “(C) NONDISCRIMINATION.—

21 “(i) IN GENERAL.—An arrangement
22 meets the requirements of this subpara-
23 graph if an employer offering such ar-
24 rangement to an employee within a speci-
25 fied class of employee—

1 “(I) offers such arrangement to
2 all employees within such specified
3 class on the same terms, and

4 “(II) does not offer any other
5 group health plan to any employees
6 within such specified class.

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

11 “(I) Full-time employees.

12 “(II) Part-time employees.

13 “(III) Salaried employees.

14 “(IV) Non-salaried employees.

15 “(V) Employees whose primary
16 site of employment is in the same rat-
17 ing area.

18 “(VI) Employees who are in-
19 cluded in a unit of employees covered
20 under a collective bargaining agree-
21 ment to which the employer is subject
22 (determined under rules similar to the
23 rules of section 105(h)).

24 “(VII) Employees who have not
25 met a group health plan, or health in-

1 insurance issuer offering group health
2 insurance coverage, waiting period re-
3 quirement that satisfies the of section
4 2708 of the Public Health Service
5 Act.

6 “(VIII) Seasonal employees.

7 “(IX) Employees who are non-
8 resident aliens and who receive no
9 earned income (within the meaning of
10 section 911(d)(2)) from the employer
11 which constitutes income from sources
12 within the United States (within the
13 meaning of section 861(a)(3)).

14 “(X) Such other classes of em-
15 ployees as the Secretary may des-
16 ignate.

17 An employer may designate (in such man-
18 ner as is prescribed by the Secretary) two
19 or more of the classes described in the pre-
20 ceding subclauses as the specified class of
21 employees to which the arrangement is of-
22 fered for purposes of applying this sub-
23 paragraph.

24 “(iii) SPECIAL RULE FOR NEW
25 HIRES.—An employer may designate pro-

1 spectively so much of a specified class of
2 employees as are hired after a date set by
3 the employer. Such subclass of employees
4 shall be treated as the specified class for
5 purposes of applying clause (i).

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

15 “(v) PERMITTED VARIATION.—For
16 purposes of clause (i)(I), an arrangement
17 shall not fail to be treated as provided on
18 the same terms within a specified class
19 merely because the maximum dollar
20 amount of payments and reimbursements
21 which may be made under the terms of the
22 arrangement for the year with respect to
23 each employee within such class—

1 “(I) increases as additional de-
2 pendents of the employee are covered
3 under the arrangement, and

4 “(II) increases with respect to a
5 participant as the age of the partici-
6 pant increases, but not in excess of an
7 amount equal to 300 percent the low-
8 est maximum dollar amount with re-
9 spect to such a participant determined
10 without regard to age.

11 “(D) SUBSTANTIATION REQUIREMENTS.—
12 An arrangement meets the requirements of this
13 subparagraph if the arrangement has reason-
14 able procedures to substantiate—

15 “(i) that the participant is, or will be,
16 enrolled in coverage described in subpara-
17 graph (B)(ii) as of the beginning of the
18 plan year of the arrangement (or as of the
19 beginning of coverage under the arrange-
20 ment in the case of an employee who first
21 becomes eligible to participate in the ar-
22 rangement after the date notice is given
23 with respect to the plan under subpara-
24 graph (E) (determined without regard to
25 clause (iii) thereof), and

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

5 “(E) NOTICE.—

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

15 “(I) is sufficiently accurate and
16 comprehensive to appraise the em-
17 ployee of such rights and obligations,
18 and

19 “(II) is written in a manner cal-
20 culated to be understood by the aver-
21 age employee eligible to participate.

22 “(ii) NOTICE REQUIREMENTS.—Such
23 notice shall include such information as the
24 Secretary may by regulation prescribe.

1 “(iii) NOTICE DEADLINE FOR CER-
2 TAIN EMPLOYEES.—In the case of an em-
3 ployee—

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

10 “(II) whose employer is first es-
11 tablished fewer than 120 days before
12 the beginning of the first plan year of
13 the arrangement,
14 the requirements of this subparagraph
15 shall be treated as met if the notice re-
16 quired under clause (i) is provided not
17 later than the date the arrangement may
18 take effect with respect to such em-
19 ployee.”.

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

22 (1) no inference shall be made from such
23 amendments with respect to the rules prescribed in
24 the Federal Register on June 20, 2019, (84 Fed.
25 Reg. 28888) relating to health reimbursement ar-

1 rangements and other account-based group health
2 plans, and

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

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to plan years beginning after De-
10 cember 31, 2023.

11 **TITLE III—SELF-INSURANCE** 12 **PROTECTION ACT**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “Self-Insurance Protec-
15 tion Act”.

16 **SEC. 302. FINDINGS.**

17 Congress finds the following:

18 (1) Small and large employers offer health ben-
19 efit plan coverage to employees in self-funded ar-
20 rangements using company assets or a fund, or by
21 paying premiums to purchase fully-insured coverage
22 from a health insurance company.

23 (2) Employers that self-fund health benefit
24 plans will often purchase stop-loss insurance as a fi-
25 nancial risk management tool to protect against ex-

1 cess or unexpected catastrophic health plan claims
2 losses that arise above projected costs paid out of
3 company assets.

4 (3) Stop-loss coverage insures the employer
5 sponsoring the health benefit plan against unfore-
6 seen health plan claims, does not insure the em-
7 ployee health benefit plan itself, and does not pay
8 health care providers for medical services provided to
9 the employees.

10 (4) Employer-sponsored health benefit plans are
11 regulated under the Employee Retirement Income
12 Security Act of 1974, however, States regulate the
13 availability and the coverage terms of stop-loss in-
14 surance coverage that employers purchase to protect
15 company assets and to protect a fund against excess
16 or unexpected claims losses.

17 (5) Both large and small employers that choose
18 to self-fund must also be able to protect company as-
19 sets or a fund against excess or unexpected claims
20 losses and States must reasonably regulate stop-loss
21 insurance to assure its availability to both large and
22 small employers.

1 **SEC. 303. CERTAIN MEDICAL STOP-LOSS INSURANCE OB-**
2 **TAINED BY CERTAIN PLAN SPONSORS OF**
3 **GROUP HEALTH PLANS NOT INCLUDED**
4 **UNDER THE DEFINITION OF HEALTH INSUR-**
5 **ANCE COVERAGE.**

6 Section 733(b)(1) of the Employee Retirement In-
7 come Security Act of 1974 (29 U.S.C. 1191b(b)(1)) is
8 amended by adding at the end the following sentence:
9 “Such term shall not include a stop-loss policy obtained
10 by a self-insured group health plan or a plan sponsor of
11 a group health plan that self-insures the health risks of
12 its plan participants to reimburse the plan or sponsor for
13 losses that the plan or sponsor incurs in providing health
14 or medical benefits to such plan participants in excess of
15 a predetermined level set forth in the stop-loss policy ob-
16 tained by such plan or sponsor.”.

17 **SEC. 304. EFFECT ON OTHER LAWS.**

18 Section 514(b) of the Employee Retirement Income
19 Security Act of 1974 (29 U.S.C. 1144(b)) is amended by
20 adding at the end the following:

21 “(10) The provisions of this title (including part 7
22 relating to group health plans) shall preempt State laws
23 insofar as they may now or hereafter prevent an employee
24 benefit plan that is a group health plan from insuring
25 against the risk of excess or unexpected health plan claims
26 losses.”.

1 **TITLE IV—SMALL BUSINESS**
2 **FLEXIBILITY ACT**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Small Business Flexi-
5 bility Act”.

6 **SEC. 402. NOTIFICATION OF FLEXIBLE HEALTH INSURANCE**
7 **BENEFITS.**

8 (a) IN GENERAL.—Subchapter C of chapter 100 of
9 the Internal Revenue Code of 1986 is amended by adding
10 at the end the following new section:

11 **“SEC. 9835. NOTIFICATION OF FLEXIBLE HEALTH INSUR-**
12 **ANCE BENEFITS.**

13 “(a) IN GENERAL.—Not later than 1 year after the
14 date of enactment of this section, the Secretary shall no-
15 tify employers of the availability of tax-advantaged flexible
16 health insurance benefits, with an initial focus on small
17 businesses.

18 “(b) DEFINITIONS.—In this section:

19 “(1) EMPLOYER.—The term ‘employer’ has the
20 meaning given such term in section 3(5) of the Em-
21 ployee Retirement Income Security Act (29 U.S.C.
22 1002(5)).

23 “(2) FLEXIBLE HEALTH INSURANCE BENE-
24 FITS.—The term ‘flexible health insurance benefits’
25 means—

1 “(A) an individual contribution health re-
2 imbursement arrangement (as described in the
3 rule entitled ‘Health Reimbursement Arrange-
4 ments and Other Account-Based Group Health
5 Plans’ (84 Fed. Reg. 28888 (June 20, 2019)));

6 “(B) a qualified small employer health re-
7 imbursement arrangement (as defined in sec-
8 tion 9831(d)(2)); and

9 “(C) the small employer health insurance
10 credit determined under section 45R.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 for subchapter C of chapter 100 of such Code is amended
13 by adding at the end the following new item:

“Sec. 9835. Notification of flexible health insurance benefits.”.

