

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3799  
OFFERED BY MR. SMITH OF MISSOURI**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Custom Health Option  
3 and Individual Care Expense Arrangement Act” or the  
4 “CHOICE Arrangement Act”.

**5 SEC. 2. TREATMENT OF HEALTH REIMBURSEMENT AR-  
6                   RANGEMENTS INTEGRATED WITH INDI-  
7                   VIDUAL MARKET COVERAGE.**

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

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

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

15           (2) by adding at the end the following new  
16 paragraph:

17           “(2) CUSTOM HEALTH OPTION AND INDIVIDUAL  
18 CARE EXPENSE ARRANGEMENTS.—

1           “(A) IN GENERAL.—For purposes of this  
2 subchapter, a custom health option and indi-  
3 vidual care expense arrangement shall be treat-  
4 ed as meeting the requirements of section 2711  
5 and 2713 of title XXVII of the Public Health  
6 Service Act.

7           “(B) CUSTOM HEALTH OPTION AND INDI-  
8 VIDUAL CARE EXPENSE ARRANGEMENTS DE-  
9 FINED.—For purposes of this section, the term  
10 ‘custom health option and individual care ex-  
11 pense arrangement’ means a health reimburse-  
12 ment arrangement—

13           “(i) which is an employer-provided  
14 group health plan funded solely by em-  
15 ployer contributions to provide payments  
16 or reimbursements for medical care subject  
17 to a maximum fixed dollar amount for a  
18 period,

19           “(ii) under which such payments or  
20 reimbursements may only be made for  
21 medical care provided during periods dur-  
22 ing which the individual is covered—

23           “(I) under individual health in-  
24 surance coverage (other than coverage

1 that consists solely of excepted bene-  
2 fits), or

3 “(II) under part A and B of title  
4 XVIII of the Social Security Act or  
5 part C of such title,

6 “(iii) which meets the nondiscrimina-  
7 tion requirements of subparagraph (C),

8 “(iv) which meets the substantiation  
9 requirements of subparagraph (D), and

10 “(v) which meets the notice require-  
11 ments of subparagraph (E).

12 “(C) NONDISCRIMINATION.—

13 “(i) IN GENERAL.—An arrangement  
14 meets the requirements of this subpara-  
15 graph if an employer offering such ar-  
16 rangement to an employee within a speci-  
17 fied class of employee—

18 “(I) offers such arrangement to  
19 all employees within such specified  
20 class on the same terms, and

21 “(II) does not offer any other  
22 group health plan to any employees  
23 within such specified class.

24 “(ii) SPECIFIED CLASS OF EM-  
25 PLOYEE.—For purposes of this subpara-

1 graph, any of the following may be des-  
2 ignated as a specified class of employee:

3 “(I) Full-time employees.

4 “(II) Part-time employees.

5 “(III) Salaried employees.

6 “(IV) Non-salaried employees.

7 “(V) Employees whose primary  
8 site of employment is in the same rat-  
9 ing area.

10 “(VI) Employees who are in-  
11 cluded in a unit of employees covered  
12 under a collective bargaining agree-  
13 ment to which the employer is subject  
14 (determined under rules similar to the  
15 rules of section 105(h)).

16 “(VII) Employees who have not  
17 met a group health plan, or health in-  
18 surance issuer offering group health  
19 insurance coverage, waiting period re-  
20 quirement that satisfies the of section  
21 2708 of the Public Health Service  
22 Act.

23 “(VIII) Seasonal employees.

24 “(IX) Employees who are non-  
25 resident aliens and who receive no

1           earned income (within the meaning of  
2           section 911(d)(2)) from the employer  
3           which constitutes income from sources  
4           within the United States (within the  
5           meaning of section 861(a)(3)).

6                   “(X) Such other classes of em-  
7                   ployees as the Secretary may des-  
8                   ignated.

9           An employer may designate (in such man-  
10          ner as is prescribed by the Secretary) two  
11          or more of the classes described in the pre-  
12          ceding subclauses as the specified class of  
13          employees to which the arrangement is of-  
14          fered for purposes of applying this sub-  
15          paragraph.

16                   “(iii) SPECIAL RULE FOR NEW  
17                   HIRES.—An employer may designate pro-  
18                   spectively so much of a specified class of  
19                   employees as are hired after a date set by  
20                   the employer. Such subclass of employees  
21                   shall be treated as the specified class for  
22                   purposes of applying clause (i).

23                   “(iv) RULES FOR DETERMINING TYPE  
24                   OF EMPLOYEE.—For purposes for clause  
25                   (ii), any determination of full-time, part-

1 time, or seasonal employment status shall  
2 be made under rules similar to the rules of  
3 section 105(h) or 4980H, whichever the  
4 employer elects for the plan year. Such  
5 election shall apply with respect to all em-  
6 ployees of the employer for the plan year.

7 “(v) PERMITTED VARIATION.—For  
8 purposes of clause (i)(I), an arrangement  
9 shall not fail to be treated as provided on  
10 the same terms within a specified class  
11 merely because the maximum dollar  
12 amount of payments and reimbursements  
13 which may be made under the terms of the  
14 arrangement for the year with respect to  
15 each employee within such class—

16 “(I) increases as additional de-  
17 pendants of the employee are covered  
18 under the arrangement, and

19 “(II) increases with respect to a  
20 participant as the age of the partici-  
21 pant increases, but not in excess of an  
22 amount equal to 300 percent the low-  
23 est maximum dollar amount with re-  
24 spect to such a participant determined  
25 without regard to age.

1           “(D) SUBSTANTIATION REQUIREMENTS.—

2           An arrangement meets the requirements of this  
3           subparagraph if the arrangement has reason-  
4           able procedures to substantiate—

5                   “(i) that the participant is, or will be,  
6                   enrolled in coverage described in subpara-  
7                   graph (B)(ii) as of the beginning of the  
8                   plan year of the arrangement (or as of the  
9                   beginning of coverage under the arrange-  
10                  ment in the case of an employee who first  
11                  becomes eligible to participate in the ar-  
12                  rangement after the date notice is given  
13                  with respect to the plan under subpara-  
14                  graph (E) (determined without regard to  
15                  clause (iii) thereof), and

16                   “(ii) any requests made for payment  
17                   or reimbursement of medical care under  
18                   the arrangement and that the participant  
19                   remains so enrolled.

20           “(E) NOTICE.—

21                   “(i) IN GENERAL.—Except as pro-  
22                   vided in clause (iii), an arrangement meets  
23                   the requirements of this subparagraph if,  
24                   under the arrangement, each employee eli-  
25                   gible to participate is, not later than 90

1 days before the beginning of the plan year,  
2 given written notice of the employee's  
3 rights and obligations under the arrange-  
4 ment which—

5 “(I) is sufficiently accurate and  
6 comprehensive to appraise the em-  
7 ployee of such rights and obligations,  
8 and

9 “(II) is written in a manner cal-  
10 culated to be understood by the aver-  
11 age employee eligible to participate.

12 “(ii) NOTICE REQUIREMENTS.—Such  
13 notice shall include such information as the  
14 Secretary may by regulation prescribe.

15 “(iii) NOTICE DEADLINE FOR CER-  
16 TAIN EMPLOYEES.—In the case of an em-  
17 ployee—

18 “(I) who first becomes eligible to  
19 participate in the arrangement after  
20 the date notice is given with respect  
21 to the plan under clause (i) (deter-  
22 mined without regard to this clause),  
23 or

24 “(II) whose employer is first es-  
25 tablished fewer than 120 days before



1 the beginning of the first plan year of  
2 the arrangement,  
3 the requirements of this subparagraph  
4 shall be treated as met if the notice re-  
5 quired under clause (i) is provided not  
6 later than the date the arrangement may  
7 take effect with respect to such em-  
8 ployee.”.

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

11 (1) no inference shall be made from such  
12 amendments with respect to the rules prescribed in  
13 the Federal Register on June 20, 2019, (84 Fed.  
14 Reg. 28888) relating to health reimbursement ar-  
15 rangements and other account-based group health  
16 plans, and

17 (2) any reference to custom health option and  
18 individual care expense arrangements shall for pur-  
19 poses of such rules be treated as including a ref-  
20 erence to individual coverage health reimbursement  
21 arrangements.

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

