

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

H. R. 1628

To provide for reconciliation pursuant to title II of the concurrent resolution on the budget for fiscal year 2017.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Obamacare Repeal
5 Reconciliation Act of 2017”.

6 **TITLE I**

7 SEC. 101. RECAPTURE EXCESS ADVANCE PAYMENTS OF
8 PREMIUM TAX CREDITS.

9 Subparagraph (B) of section 36B(f)(2) of the Inter-
10 nal Revenue Code of 1986 is amended by adding at the
11 end the following new clause:

1 “(iii) NONAPPLICABILITY OF LIMITA-
2 TION.—This subparagraph shall not apply
3 to taxable years ending after December 31,
4 2017, and before January 1, 2020.”.

5 **SEC. 102. PREMIUM TAX CREDIT.**

6 (a) PREMIUM TAX CREDIT.—

7 (1) MODIFICATION OF DEFINITION OF QUALI-
8 FIED HEALTH PLAN.—

9 (A) IN GENERAL.—Section 36B(c)(3)(A)
10 of the Internal Revenue Code of 1986 is
11 amended by inserting before the period at the
12 end the following: “or a plan that includes cov-
13 erage for abortions (other than any abortion
14 necessary to save the life of the mother or any
15 abortion with respect to a pregnancy that is the
16 result of an act of rape or incest)”.

17 (B) EFFECTIVE DATE.—The amendment
18 made by this paragraph shall apply to taxable
19 years beginning after December 31, 2017.

20 (2) REPEAL.—

21 (A) IN GENERAL.—Subpart C of part IV
22 of subchapter A of chapter 1 of the Internal
23 Revenue Code of 1986 is amended by striking
24 section 36B.

1 (B) EFFECTIVE DATE.—The amendment
2 made by this paragraph shall apply to taxable
3 years beginning after December 31, 2019.

4 (b) REPEAL OF ELIGIBILITY DETERMINATIONS.—

5 (1) IN GENERAL.—The following sections of the
6 Patient Protection and Affordable Care Act are re-
7 pealed:

8 (A) Section 1411 (other than subsection
9 (i), the last sentence of subsection (e)(4)(A)(ii),
10 and such provisions of such section solely to the
11 extent related to the application of the last sen-
12 tence of subsection (e)(4)(A)(ii)).

13 (B) Section 1412.

14 (2) EFFECTIVE DATE.—The repeals in para-
15 graph (1) shall take effect on January 1, 2020.

16 (c) PROTECTING AMERICANS BY REPEAL OF DISCLO-
17 SURE AUTHORITY TO CARRY OUT ELIGIBILITY REQUIRE-
18 MENTS FOR CERTAIN PROGRAMS.—

19 (1) IN GENERAL.—Paragraph (21) of section
20 6103(l) of the Internal Revenue Code of 1986 is
21 amended by adding at the end the following new
22 subparagraph:

23 “(D) TERMINATION.—No disclosure may
24 be made under this paragraph after December
25 31, 2019.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on January 1,
3 2020.

4 **SEC. 103. SMALL BUSINESS TAX CREDIT.**

5 (a) SUNSET.—

6 (1) IN GENERAL.—Section 45R of the Internal
7 Revenue Code of 1986 is amended by adding at the
8 end the following new subsection:

9 “(j) SHALL NOT APPLY.—This section shall not
10 apply with respect to amounts paid or incurred in taxable
11 years beginning after December 31, 2019.”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by this subsection shall apply to taxable years begin-
14 ning after December 31, 2019.

15 (b) DISALLOWANCE OF SMALL EMPLOYER HEALTH
16 INSURANCE EXPENSE CREDIT FOR PLAN WHICH IN-
17 CLUDES COVERAGE FOR ABORTION.—

18 (1) IN GENERAL.—Subsection (h) of section
19 45R of the Internal Revenue Code of 1986 is
20 amended—

21 (A) by striking “Any term” and inserting
22 the following:

23 “(1) IN GENERAL.—Any term”, and

24 (B) by adding at the end the following new
25 paragraph:

1 “(2) EXCLUSION OF HEALTH PLANS INCLUDING
2 COVERAGE FOR ABORTION.—The term ‘qualified
3 health plan’ does not include any health plan that
4 includes coverage for abortions (other than any
5 abortion necessary to save the life of the mother or
6 any abortion with respect to a pregnancy that is the
7 result of an act of rape or incest).”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply to taxable years begin-
10 ning after December 31, 2017.

11 **SEC. 104. INDIVIDUAL MANDATE.**

12 (a) IN GENERAL.—Section 5000A(c) of the Internal
13 Revenue Code of 1986 is amended—

14 (1) in paragraph (2)(B)(iii), by striking “2.5
15 percent” and inserting “Zero percent”, and

16 (2) in paragraph (3)—

17 (A) by striking “\$695” in subparagraph

18 (A) and inserting “\$0”, and

19 (B) by striking subparagraph (D).

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to months beginning after Decem-
22 ber 31, 2015.

23 **SEC. 105. EMPLOYER MANDATE.**

24 (a) IN GENERAL.—

1 (1) Paragraph (1) of section 4980H(c) of the
2 Internal Revenue Code of 1986 is amended by in-
3 serting “(\$0 in the case of months beginning after
4 December 31, 2015)” after “\$2,000”.

5 (2) Paragraph (1) of section 4980H(b) of the
6 Internal Revenue Code of 1986 is amended by in-
7 serting “(\$0 in the case of months beginning after
8 December 31, 2015)” after “\$3,000”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to months beginning after Decem-
11 ber 31, 2015.

12 **SEC. 106. FEDERAL PAYMENTS TO STATES.**

13 (a) IN GENERAL.—Notwithstanding section 504(a),
14 1902(a)(23), 1903(a), 2002, 2005(a)(4), 2102(a)(7), or
15 2105(a)(1) of the Social Security Act (42 U.S.C. 704(a),
16 1396a(a)(23), 1396b(a), 1397a, 1397d(a)(4),
17 1397bb(a)(7), 1397ee(a)(1)), or the terms of any Med-
18 icaid waiver in effect on the date of enactment of this Act
19 that is approved under section 1115 or 1915 of the Social
20 Security Act (42 U.S.C. 1315, 1396n), for the 1-year pe-
21 riod beginning on the date of enactment of this Act, no
22 Federal funds provided from a program referred to in this
23 subsection that is considered direct spending for any year
24 may be made available to a State for payments to a pro-
25 hibited entity, whether made directly to the prohibited en-

1 tity or through a managed care organization under con-
2 tract with the State.

3 (b) DEFINITIONS.—In this section:

4 (1) PROHIBITED ENTITY.—The term “prohib-
5 ited entity” means an entity, including its affiliates,
6 subsidiaries, successors, and clinics—

7 (A) that, as of the date of enactment of
8 this Act—

9 (i) is an organization described in sec-
10 tion 501(c)(3) of the Internal Revenue
11 Code of 1986 and exempt from tax under
12 section 501(a) of such Code;

13 (ii) is an essential community provider
14 described in section 156.235 of title 45,
15 Code of Federal Regulations (as in effect
16 on the date of enactment of this Act), that
17 is primarily engaged in family planning
18 services, reproductive health, and related
19 medical care; and

20 (iii) provides for abortions, other than
21 an abortion—

22 (I) if the pregnancy is the result
23 of an act of rape or incest; or

24 (II) in the case where a woman
25 suffers from a physical disorder, phys-

1 ical injury, or physical illness that
2 would, as certified by a physician,
3 place the woman in danger of death
4 unless an abortion is performed, in-
5 cluding a life-endangering physical
6 condition caused by or arising from
7 the pregnancy itself; and

8 (B) for which the total amount of Federal
9 and State expenditures under the Medicaid pro-
10 gram under title XIX of the Social Security Act
11 in fiscal year 2014 made directly to the entity
12 and to any affiliates, subsidiaries, successors, or
13 clinics of the entity, or made to the entity and
14 to any affiliates, subsidiaries, successors, or
15 clinics of the entity as part of a nationwide
16 health care provider network, exceeded
17 \$1,000,000.

18 (2) DIRECT SPENDING.—The term “direct
19 spending” has the meaning given that term under
20 section 250(c) of the Balanced Budget and Emer-
21 gency Deficit Control Act of 1985 (2 U.S.C. 900(c)).

22 **SEC. 107. MEDICAID.**

23 The Social Security Act (42 U.S.C. 301 et seq.) is
24 amended—

25 (1) in section 1902—

1 (A) in subsection (a)(10)(A), in each of
2 clauses (i)(VIII) and (ii)(XX), by inserting
3 “and ending December 31, 2019,” after “Janu-
4 ary 1, 2014,”; and

5 (B) in subsection (a)(47)(B), by inserting
6 “and provided that any such election shall cease
7 to be effective on January 1, 2020, and no such
8 election shall be made after that date” before
9 the semicolon at the end;

10 (2) in section 1905—

11 (A) in the first sentence of subsection (b),
12 by inserting “(50 percent on or after January
13 1, 2020)” after “55 percent”;

14 (B) in subsection (y)(1), by striking the
15 semicolon at the end of subparagraph (D) and
16 all that follows through “thereafter”; and

17 (C) in subsection (z)(2)—

18 (i) in subparagraph (A), by inserting
19 “through 2019” after “each year there-
20 after”; and

21 (ii) in subparagraph (B)(ii)(VI), by
22 striking “and each subsequent year”;

23 (3) in section 1915(k)(2), by striking “during
24 the period described in paragraph (1)” and inserting

1 “on or after the date referred to in paragraph (1)
2 and before January 1, 2020”;

3 (4) in section 1920(e), by adding at the end the
4 following: “This subsection shall not apply after De-
5 cember 31, 2019.”;

6 (5) in section 1937(b)(5), by adding at the end
7 the following: “This paragraph shall not apply after
8 December 31, 2019.”; and

9 (6) in section 1943(a), by inserting “and before
10 January 1, 2020,” after “January 1, 2014,”.

11 **SEC. 108. REPEAL OF DSH ALLOTMENT REDUCTIONS.**

12 Section 1923(f) of the Social Security Act (42 U.S.C.
13 1396r-4(f)) is amended by striking paragraphs (7) and
14 (8).

15 **SEC. 109. REPEAL OF THE TAX ON EMPLOYEE HEALTH IN-**
16 **SURANCE PREMIUMS AND HEALTH PLAN**
17 **BENEFITS.**

18 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
19 enue Code of 1986 is amended by striking section 4980I.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to taxable years beginning after
22 December 31, 2019.

23 (c) SUBSEQUENT EFFECTIVE DATE.—The amend-
24 ment made by subsection (a) shall not apply to taxable
25 years beginning after December 31, 2025, and chapter 43

1 of the Internal Revenue Code of 1986 is amended to read
2 as such chapter would read if such subsection had never
3 been enacted.

4 **SEC. 110. REPEAL OF TAX ON OVER-THE-COUNTER MEDICA-**
5 **TIONS.**

6 (a) HSAs.—Subparagraph (A) of section 223(d)(2)
7 of the Internal Revenue Code of 1986 is amended by strik-
8 ing “Such term” and all that follows through the period.

9 (b) ARCHER MSAs.—Subparagraph (A) of section
10 220(d)(2) of the Internal Revenue Code of 1986 is amend-
11 ed by striking “Such term” and all that follows through
12 the period.

13 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
14 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
15 tion 106 of the Internal Revenue Code of 1986 is amended
16 by striking subsection (f).

17 (d) EFFECTIVE DATES.—

18 (1) DISTRIBUTIONS FROM SAVINGS AC-
19 COUNTS.—The amendments made by subsections (a)
20 and (b) shall apply to amounts paid with respect to
21 taxable years beginning after December 31, 2016.

22 (2) REIMBURSEMENTS.—The amendment made
23 by subsection (c) shall apply to expenses incurred
24 with respect to taxable years beginning after Decem-
25 ber 31, 2016.

1 **SEC. 111. REPEAL OF TAX ON HEALTH SAVINGS ACCOUNTS.**

2 (a) HSAs.—Section 223(f)(4)(A) of the Internal
3 Revenue Code of 1986 is amended by striking “20 per-
4 cent” and inserting “10 percent”.

5 (b) ARCHER MSAs.—Section 220(f)(4)(A) of the In-
6 ternal Revenue Code of 1986 is amended by striking “20
7 percent” and inserting “15 percent”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to distributions made after Decem-
10 ber 31, 2016.

11 **SEC. 112. REPEAL OF LIMITATIONS ON CONTRIBUTIONS TO**
12 **FLEXIBLE SPENDING ACCOUNTS.**

13 (a) IN GENERAL.—Section 125 of the Internal Rev-
14 enue Code of 1986 is amended by striking subsection (i).

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2017.

18 **SEC. 113. REPEAL OF TAX ON PRESCRIPTION MEDICA-**
19 **TIONS.**

20 Subsection (j) of section 9008 of the Patient Protec-
21 tion and Affordable Care Act is amended to read as fol-
22 lows:

23 “(j) REPEAL.—This section shall apply to calendar
24 years beginning after December 31, 2010, and ending be-
25 fore January 1, 2018.”.

1 **SEC. 114. REPEAL OF MEDICAL DEVICE EXCISE TAX.**

2 Section 4191 of the Internal Revenue Code of 1986
3 is amended by adding at the end the following new sub-
4 section:

5 “(d) APPLICABILITY.—The tax imposed under sub-
6 section (a) shall not apply to sales after December 31,
7 2017.”.

8 **SEC. 115. REPEAL OF HEALTH INSURANCE TAX.**

9 Subsection (j) of section 9010 of the Patient Protec-
10 tion and Affordable Care Act is amended by striking “,
11 and” at the end of paragraph (1) and all that follows
12 through “2017”.

13 **SEC. 116. REPEAL OF ELIMINATION OF DEDUCTION FOR**
14 **EXPENSES ALLOCABLE TO MEDICARE PART D**
15 **SUBSIDY.**

16 (a) IN GENERAL.—Section 139A of the Internal Rev-
17 enue Code of 1986 is amended by adding at the end the
18 following new sentence: “This section shall not be taken
19 into account for purposes of determining whether any de-
20 duction is allowable with respect to any cost taken into
21 account in determining such payment.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years beginning after
24 December 31, 2016.

1 **SEC. 117. REPEAL OF CHRONIC CARE TAX.**

2 (a) IN GENERAL.—Subsection (a) of section 213 of
3 the Internal Revenue Code of 1986 is amended by striking
4 “10 percent” and inserting “7.5 percent”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to taxable years beginning after
7 December 31, 2016.

8 **SEC. 118. REPEAL OF MEDICARE TAX INCREASE.**

9 (a) IN GENERAL.—Subsection (b) of section 3101 of
10 the Internal Revenue Code of 1986 is amended to read
11 as follows:

12 “(b) HOSPITAL INSURANCE.—In addition to the tax
13 imposed by the preceding subsection, there is hereby im-
14 posed on the income of every individual a tax equal to 1.45
15 percent of the wages (as defined in section 3121(a)) re-
16 ceived by such individual with respect to employment (as
17 defined in section 3121(b)).”.

18 (b) SECA.—Subsection (b) of section 1401 of the In-
19 ternal Revenue Code of 1986 is amended to read as fol-
20 lows:

21 “(b) HOSPITAL INSURANCE.—In addition to the tax
22 imposed by the preceding subsection, there shall be im-
23 posed for each taxable year, on the self-employment in-
24 come of every individual, a tax equal to 2.9 percent of the
25 amount of the self-employment income for such taxable
26 year.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to remuneration re-
3 ceived after, and taxable years beginning after, December
4 31, 2017.

5 **SEC. 119. REPEAL OF TANNING TAX.**

6 (a) IN GENERAL.—The Internal Revenue Code of
7 1986 is amended by striking chapter 49.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to services performed after Sep-
10 tember 30, 2017.

11 **SEC. 120. REPEAL OF NET INVESTMENT TAX.**

12 (a) IN GENERAL.—Subtitle A of the Internal Rev-
13 enue Code of 1986 is amended by striking chapter 2A.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2016.

17 **SEC. 121. REMUNERATION.**

18 Paragraph (6) of section 162(m) of the Internal Rev-
19 enue Code of 1986 is amended by adding at the end the
20 following new subparagraph:

21 “(I) TERMINATION.—This paragraph shall
22 not apply to taxable years beginning after De-
23 cember 31, 2016.”.

TITLE II

SEC. 201. THE PREVENTION AND PUBLIC HEALTH FUND.

Subsection (b) of section 4002 of the Patient Protection and Affordable Care Act (42 U.S.C. 300u–11) is amended—

(1) in paragraph (3), by striking “each of fiscal years 2018 and 2019” and inserting “fiscal year 2018”; and

(2) by striking paragraphs (4) through (8).

SEC. 202. SUPPORT FOR STATE RESPONSE TO SUBSTANCE ABUSE PUBLIC HEALTH CRISIS AND URGENT MENTAL HEALTH NEEDS.

(a) IN GENERAL.—There are authorized to be appropriated, and are appropriated, out of monies in the Treasury not otherwise obligated, \$750,000,000 for each of fiscal years 2018 and 2019, to the Secretary of Health and Human Services (referred to in this section as the “Secretary”) to award grants to States to address the substance abuse public health crisis or to respond to urgent mental health needs within the State. In awarding grants under this section, the Secretary may give preference to States with an incidence or prevalence of substance use disorders that is substantial relative to other States or to States that identify mental health needs within their communities that are urgent relative to such needs of other

1 States. Funds appropriated under this subsection shall re-
2 main available until expended.

3 (b) USE OF FUNDS.—Grants awarded to a State
4 under subsection (a) shall be used for one or more of the
5 following public health-related activities:

6 (1) Improving State prescription drug moni-
7 toring programs.

8 (2) Implementing prevention activities, and
9 evaluating such activities to identify effective strate-
10 gies to prevent substance abuse.

11 (3) Training for health care practitioners, such
12 as best practices for prescribing opioids, pain man-
13 agement, recognizing potential cases of substance
14 abuse, referral of patients to treatment programs,
15 and overdose prevention.

16 (4) Supporting access to health care services
17 provided by Federally certified opioid treatment pro-
18 grams or other appropriate health care providers to
19 treat substance use disorders or mental health
20 needs.

21 (5) Other public health-related activities, as the
22 State determines appropriate, related to addressing
23 the substance abuse public health crisis or respond-
24 ing to urgent mental health needs within the State.

1 **SEC. 203. COMMUNITY HEALTH CENTER PROGRAM.**

2 Effective as if included in the enactment of the Medi-
3 care Access and CHIP Reauthorization Act of 2015 (Pub-
4 lic Law 114–10, 129 Stat. 87), paragraph (1) of section
5 221(a) of such Act is amended by inserting “, and an ad-
6 ditional \$422,000,000 for fiscal year 2017” after “2017”.

7 **SEC. 204. FUNDING FOR COST-SHARING PAYMENTS.**

8 There is appropriated to the Secretary of Health and
9 Human Services, out of any money in the Treasury not
10 otherwise appropriated, such sums as may be necessary
11 for payments for cost-sharing reductions authorized by the
12 Patient Protection and Affordable Care Act (including ad-
13 justments to any prior obligations for such payments) for
14 the period beginning on the date of enactment of this Act
15 and ending on December 31, 2019. Notwithstanding any
16 other provision of this Act, payments and other actions
17 for adjustments to any obligations incurred for plan years
18 2018 and 2019 may be made through December 31, 2020.

19 **SEC. 205. REPEAL OF COST-SHARING SUBSIDY PROGRAM.**

20 (a) IN GENERAL.—Section 1402 of the Patient Pro-
21 tection and Affordable Care Act (42 U.S.C. 18071) is re-
22 pealed.

23 (b) EFFECTIVE DATE.—The repeal made by sub-
24 section (a) shall apply to cost-sharing reductions (and pay-
25 ments to issuers for such reductions) for plan years begin-
26 ning after December 31, 2019.