

116TH CONGRESS
2D SESSION

H. R. 6411

To amend the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide notices relating to prescription drug refills to individuals covered under such plans or coverage who reside in emergency areas during emergency periods.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2020

Mrs. MCBATH (for herself and Ms. KUSTER of New Hampshire) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide notices relating to prescription drug refills to individuals covered under such plans or coverage who reside in emergency areas during emergency periods.

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 “Emergency Advance
5 Refill Notification Act of 2020”.

6 **SEC. 2. REQUIRING PRESCRIPTION DRUG REFILL NOTIFI-**
7 **CATIONS DURING EMERGENCIES.**

8 (a) ERISA.—

9 (1) IN GENERAL.—Subpart B of part 7 of sub-
10 title B of title I of the Employee Retirement Income
11 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
12 amended by adding at the end the following new sec-
13 tion:

14 **“SEC. 716. PROVISION OF PRESCRIPTION DRUG REFILL NO-**
15 **TIFICATIONS DURING EMERGENCIES.**

16 “(a) IN GENERAL.—A group health plan, and a
17 health insurance issuer offering health insurance coverage
18 in connection with a group health plan, that provides bene-
19 fits for prescription drugs under such plan or such cov-
20 erage shall provide to each participant or beneficiary
21 under such plan or such coverage who resides in an emer-
22 gency area during an emergency period—

23 “(1) not later than 5 business days after the
24 date of the beginning of such period with respect to
25 such area (or, the case of the emergency period de-

1 scribed in section 2(d)(2) of the Emergency Advance
2 Refill Notification Act of 2020, not later than 5
3 business days after the date of the enactment of this
4 section), a notification (written in a manner that is
5 clear and understandable to the average participant
6 or beneficiary)—

7 “(A) of whether such plan or coverage will
8 waive, during such period with respect to such
9 a participant or beneficiary, any time restric-
10 tions under such plan or coverage on any au-
11 thorized refills for such drugs to enable such re-
12 fills in advance of when such refills would oth-
13 erwise have been permitted under such plan or
14 coverage; and

15 “(B) in the case that such plan or coverage
16 will waive such restrictions during such period
17 with respect to such a participant or bene-
18 ficiary, that contains information on how such
19 a participant or beneficiary may obtain such a
20 refill; and

21 “(2) in the case such plan or coverage elects to
22 so waive such restrictions during such period with
23 respect to such a participant or beneficiary after the
24 notification described in paragraph (1) has been pro-
25 vided with respect to such period, not later than 5

1 business days after such election, a notification of
 2 such election that contains the information described
 3 in subparagraph (B) of such paragraph.

4 “(b) EMERGENCY AREA; EMERGENCY PERIOD.—For
 5 purposes of this section, an ‘emergency area’ is a geo-
 6 graphical area in which, and an ‘emergency period’ is the
 7 period during which, there exists—

8 “(1) an emergency or disaster declared by the
 9 President pursuant to the National Emergencies Act
 10 or the Robert T. Stafford Disaster Relief and Emer-
 11 gency Assistance Act; and

12 “(2) a public health emergency declared by the
 13 Secretary pursuant to section 319 of the Public
 14 Health Service Act.”.

15 (2) CLERICAL AMENDMENT.—The table of con-
 16 tents of the Employee Retirement Income Security
 17 Act of 1974 is amended by inserting after the item
 18 relating to section 714 the following:

“Sec. 715. Additional market reforms.

“Sec. 716. Provision of prescription drug refill notifications during emer-
 gencies.”.

19 (b) PHSA.—Subpart II of part A of title XXVII of
 20 the Public Health Service Act (42 U.S.C. 300gg–11 et
 21 seq.) is amended by adding at the end the following new
 22 section:

1 **“SEC. 2730. PROVISION OF PRESCRIPTION DRUG REFILL**
2 **NOTIFICATIONS DURING EMERGENCIES.**

3 “(a) IN GENERAL.—A group health plan, and a
4 health insurance issuer offering group or individual health
5 insurance coverage, that provides benefits for prescription
6 drugs under such plan or such coverage shall provide to
7 each participant, beneficiary, or enrollee enrolled under
8 such plan or such coverage who resides in an emergency
9 area during an emergency period—

10 “(1) not later than 5 business days after the
11 date of the beginning of such period with respect to
12 such area (or, the case of the emergency period de-
13 scribed in section 2(d)(2) of the Emergency Advance
14 Refill Notification Act of 2020, not later than 5
15 business days after the date of the enactment of this
16 section), a notification (written in a manner that is
17 clear and understandable to the average participant,
18 beneficiary, or enrollee)—

19 “(A) of whether such plan or coverage will
20 waive, during such period with respect to such
21 a participant, beneficiary, or enrollee, any time
22 restrictions under such plan or coverage on any
23 authorized refills for such drugs to enable such
24 refills in advance of when such refills would
25 otherwise have been permitted under such plan
26 or coverage; and

1 “(B) in the case that such plan or coverage
2 will waive such restrictions during such period
3 with respect to such a participant, beneficiary,
4 or enrollee, that contains information on how
5 such a participant, beneficiary, or enrollee may
6 obtain such a refill; and

7 “(2) in the case such plan or coverage elects to
8 so waive such restrictions during such period with
9 respect to such a participant, beneficiary, or enrollee
10 after the notification described in paragraph (1) has
11 been provided with respect to such period, not later
12 than 5 business days after such election, a notifica-
13 tion of such election that contains the information
14 described in subparagraph (B) of such paragraph.

15 “(b) EMERGENCY AREA; EMERGENCY PERIOD.—For
16 purposes of this section, an ‘emergency area’ is a geo-
17 graphical area in which, and an ‘emergency period’ is the
18 period during which, there exists—

19 “(1) an emergency or disaster declared by the
20 President pursuant to the National Emergencies Act
21 or the Robert T. Stafford Disaster Relief and Emer-
22 gency Assistance Act; and

23 “(2) a public health emergency declared by the
24 Secretary pursuant to section 319.”.

25 (c) IRC.—

1 (1) IN GENERAL.—Subchapter B of chapter
2 100 of the Internal Revenue Code of 1986 is amend-
3 ed by adding at the end the following new section:

4 **“SEC. 9816. PROVISION OF PRESCRIPTION DRUG REFILL**
5 **NOTIFICATIONS DURING EMERGENCIES.**

6 “(a) IN GENERAL.—A group health plan that pro-
7 vides benefits for prescription drugs under such plan shall
8 provide to each participant or beneficiary enrolled under
9 such plan who resides in an emergency area during an
10 emergency period, not later than 5 business days after the
11 date of the beginning of such period with respect to such
12 area (or, the case of the emergency period described in
13 section 2(d)(2) of the Emergency Advance Refill Notifica-
14 tion Act of 2020, not later than 5 business days after the
15 date of the enactment of this section)—

16 “(1) a notification (written in a manner that is
17 clear and understandable to the average participant
18 or beneficiary)—

19 “(A) of whether such plan will waive, dur-
20 ing such period with respect to such a partici-
21 pant or beneficiary, any time restrictions under
22 such plan on any authorized refills for such
23 drugs to enable such refills in advance of when
24 such refills would otherwise have been per-
25 mitted under such plan; and

1 “(B) in the case that such plan will waive
2 such restrictions during such period with re-
3 spect to such a participant or beneficiary, that
4 contains information on how such a participant
5 or beneficiary may obtain such a refill; and

6 “(2) in the case such plan elects to so waive
7 such restrictions during such period with respect to
8 such a participant or beneficiary after the notifica-
9 tion described in paragraph (1) has been provided
10 with respect to such period, not later than 5 busi-
11 ness days after such election, a notification of such
12 election that contains the information described in
13 subparagraph (B) of such paragraph.

14 “(b) EMERGENCY AREA; EMERGENCY PERIOD.—For
15 purposes of this section, an ‘emergency area’ is a geo-
16 graphical area in which, and an ‘emergency period’ is the
17 period during which, there exists—

18 “(1) an emergency or disaster declared by the
19 President pursuant to the National Emergencies Act
20 or the Robert T. Stafford Disaster Relief and Emer-
21 gency Assistance Act; and

22 “(2) a public health emergency declared by the
23 Secretary pursuant to section 319 of the Public
24 Health Service Act.”.

“Sec. 9816. Provision of prescription drug refill notifications during emergencies.”.

(1) emergency periods beginning on or after the date of the enactment of this Act; and