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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R.

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

Mrs. MCBATH introduced the following bill; which was referred to the
Committee on _____

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Emergency Advance
3 Refill Notification Act of 2020”.

4 **SEC. 2. REQUIRING PRESCRIPTION DRUG REFILL NOTIFI-**
5 **CATIONS DURING EMERGENCIES.**

6 (a) ERISA.—

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

12 **“SEC. 716. PROVISION OF PRESCRIPTION DRUG REFILL NO-**
13 **TIFICATIONS DURING EMERGENCIES.**

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

21 “(1) not later than 5 business days after the
22 date of the beginning of such period with respect to
23 such area (or, the case of the emergency period de-
24 scribed in section 2(d)(2) of the Emergency Advance
25 Refill Notification Act of 2020, not later than 5
26 business days after the date of the enactment of this

1 section), a notification (written in a manner that is
2 clear and understandable to the average participant
3 or beneficiary)—

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

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

18 “(2) in the case such plan or coverage elects to
19 so waive such restrictions during such period with
20 respect to such a participant or beneficiary after the
21 notification described in paragraph (1) has been pro-
22 vided with respect to such period, not later than 5
23 business days after such election, a notification of
24 such election the contains the information described
25 in subparagraph (B) of such paragraph.

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

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

9 “(2) a public health emergency declared by the
10 Secretary pursuant to section 319 of the Public
11 Health Service Act.”.

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

“Sec. 715. Additional market reforms.

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

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

20 **“SEC. 2730. PROVISION OF PRESCRIPTION DRUG REFILL**
21 **NOTIFICATIONS DURING EMERGENCIES.**

22 “(a) IN GENERAL.—A group health plan, and a
23 health insurance issuer offering group or individual health
24 insurance coverage, that provides benefits for prescription

1 drugs under such plan or such coverage shall provide to
2 each participant, beneficiary, or enrollee enrolled under
3 such plan or such coverage who resides in an emergency
4 area during an emergency period—

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

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

22 “(B) in the case that such plan or coverage
23 will waive such restrictions during such period
24 with respect to such a participant, beneficiary,
25 or enrollee, that contains information on how

1 such a participant, beneficiary, or enrollee may
2 obtain such a refill; and

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

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

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

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

21 (c) IRC.—

22 (1) IN GENERAL.—Subchapter B of chapter
23 100 of the Internal Revenue Code of 1986 is amend-
24 ed by adding at the end the following new section:

1 **“SEC. 9816. PROVISION OF PRESCRIPTION DRUG REFILL**
2 **NOTIFICATIONS DURING EMERGENCIES.**

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

13 “(1) a notification (written in a manner that is
14 clear and understandable to the average participant
15 or beneficiary)—

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

23 “(B) in the case that such plan will waive
24 such restrictions during such period with re-
25 spect to such a participant or beneficiary, that

1 contains information on how such a participant
2 or beneficiary may obtain such a refill; and

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

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

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

19 “(2) a public health emergency declared by the
20 Secretary pursuant to section 319 of the Public
21 Health Service Act.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions for subchapter B of chapter 100 of the Inter-
24 nal Revenue Code of 1986 is amended by adding at
25 the end the following new item:

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

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to—

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

5 (2) the emergency period relating to the public
6 health emergency declared by the Secretary of
7 Health and Human Services pursuant to section 319
8 of the Public Health Service Act on January 31,
9 2020, entitled “Determination that a Public Health
10 Emergency Exists Nationwide as the Result of the
11 2019 Novel Coronavirus”.