

116TH CONGRESS
2^D SESSION

H. R. 5817

To amend title XXVII of the Public Health Service Act, the Internal Revenue Code of 1986, and the Employee Retirement Income Security Act of 1974 to require health plans to provide to participants, beneficiaries, and enrollees an advanced explanation of benefits with respect to items and services scheduled to be received from providers and facilities and to amend title XI of the Social Security Act to require health care providers and health care facilities to provide good faith estimates of the expected charges for furnishing such items and services.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2020

Mr. NUNES (for himself and Mr. PASCRELL) 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 title XXVII of the Public Health Service Act, the Internal Revenue Code of 1986, and the Employee Retirement Income Security Act of 1974 to require health plans to provide to participants, beneficiaries, and enrollees an advanced explanation of benefits with respect to items and services scheduled to be received from providers and facilities and to amend title XI of the Social Security Act to require health care providers and health care facilities to provide good faith estimates of

the expected charges for furnishing such items and services.

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 “Fair and Honest Ad-
5 vance Cost Estimate for Patients Act of 2020”.

6 **SEC. 2. ADVANCED EXPLANATION OF BENEFITS.**

7 (a) HEALTH PLAN REQUIREMENTS.—

8 (1) PUBLIC HEALTH SERVICE ACT AMEND-
9 MENT.—Subpart II of part A of title XXVII of the
10 Public Health Service Act (42 U.S.C. 300gg–11 et
11 seq.) is amended by adding at the end the following
12 new section:

13 **“SEC. 2730. ADVANCED EXPLANATION OF BENEFITS.**

14 “(a) IN GENERAL.—Beginning on January 1, 2022,
15 each health plan shall, with respect to a notification sub-
16 mitted under section 1128A(t)(1)(B) of the Social Secu-
17 rity Act by a health care provider or health care facility,
18 respectively, to the health plan for a participant, bene-
19 ficiary, or enrollee under such health plan scheduled to
20 receive an item or service from the provider or facility,
21 not later than 1 business day (or, in the case such item
22 or service was so scheduled at least 10 business days be-
23 fore such item or service is to be furnished (or in the case
24 such notification was made pursuant to a request by such

1 participant, beneficiary, or enrollee), 3 business days)
2 after the date on which the health plan receives such noti-
3 fication, provide to the participant, beneficiary, or enrollee
4 (through mail or electronic means, as requested by the
5 participant, beneficiary, or enrollee) a notification includ-
6 ing the following:

7 “(1) Whether or not the provider or facility is
8 a participating provider or a participating facility
9 with respect to the health plan with respect to the
10 furnishing of such item or service and—

11 “(A) in the case the provider or facility is
12 a participating provider or facility with respect
13 to the health plan with respect to the furnishing
14 of such item or service, the contracted rate
15 under such plan for such item or service; and

16 “(B) in the case the provider or facility is
17 a nonparticipating provider or facility with re-
18 spect to such plan, a description of how such
19 participant, beneficiary, or enrollee may obtain
20 information on providers and facilities that,
21 with respect to such health plan, are partici-
22 pating providers and facilities.

23 “(2) The good faith estimate included in the
24 notification received from the provider or facility.

1 “(3) A good faith estimate of the amount the
2 health plan is responsible for paying for items and
3 services included in the estimate described in para-
4 graph (2).

5 “(4) A good faith estimate of the amount of
6 any cost-sharing (including with respect to the de-
7 ductible and any copayment or coinsurance obliga-
8 tion) for which the participant, beneficiary, or en-
9 rollee would be responsible for such item or service
10 (as of the date of such notification).

11 “(5) A good faith estimate of the amount that
12 the participant, beneficiary, or enrollee has incurred
13 toward meeting the limit of the financial responsi-
14 bility (including with respect to deductibles and out-
15 of-pocket maximums) under the health plan (as of
16 the date of such notification).

17 “(6) In the case such item or service is subject
18 to a medical management technique (including con-
19 current review, prior authorization, and step-therapy
20 or fail-first protocols) for coverage under the health
21 plan, a disclaimer that coverage for such item or
22 service is subject to such medical management tech-
23 nique.

24 “(7) A disclaimer that the information provided
25 in the notification is only an estimate based on the

1 items and services reasonably expected, at the time
2 of scheduling (or requesting) the item or service, to
3 be furnished and is subject to change.

4 “(8) Any other information or disclaimer the
5 health plan determines appropriate that is consistent
6 with information and disclaimers required under this
7 section.

8 “(b) HEALTH PLAN DEFINED.—In this section, the
9 term ‘health plan’ means a group health plan and health
10 insurance coverage offered by a health insurance issuer in
11 the group or individual market and includes a grand-
12 fathered health plan (as defined in section 1251(e) of the
13 Patient Protection and Affordable Care Act).”.

14 (2) INTERNAL REVENUE CODE OF 1986 AMEND-
15 MENT.—

16 (A) IN GENERAL.—Subchapter B of chap-
17 ter 100 of the Internal Revenue Code of 1986
18 is amended by adding at the end the following
19 new section:

20 **“SEC. 9816. ADVANCED EXPLANATION OF BENEFITS.**

21 “(a) IN GENERAL.—Beginning on January 1, 2022,
22 each health plan shall, with respect to a notification sub-
23 mitted under section 1128A(t)(1)(B) of the Social Secu-
24 rity Act by a health care provider or health care facility,
25 respectively, to the health plan for a participant or bene-

1 beneficiary under such health plan scheduled to receive an item
2 or service from the provider or facility, not later than 1
3 business day (or, in the case such item or service was so
4 scheduled at least 10 business days before such item or
5 service is to be furnished (or in the case such notification
6 was made pursuant to a request by such participant or
7 beneficiary), 3 business days) after the date on which the
8 health plan receives such notification, provide to the par-
9 ticipant or beneficiary (through mail or electronic means,
10 as requested by the participant or beneficiary) a notifica-
11 tion including the following:

12 “(1) Whether or not the provider or facility is
13 a participating provider or a participating facility
14 with respect to the health plan with respect to the
15 furnishing of such item or service and—

16 “(A) in the case the provider or facility is
17 a participating provider or facility with respect
18 to the health plan with respect to the furnishing
19 of such item or service, the contracted rate
20 under such plan for such item or service; and

21 “(B) in the case the provider or facility is
22 a nonparticipating provider or facility with re-
23 spect to such plan, a description of how such
24 participant or beneficiary may obtain informa-
25 tion on providers and facilities that, with re-

1 spect to such health plan, are participating pro-
2 viders and facilities.

3 “(2) The good faith estimate included in the
4 notification received from the provider or facility.

5 “(3) A good faith estimate of the amount the
6 health plan is responsible for paying for items and
7 services included in the estimate described in para-
8 graph (2).

9 “(4) A good faith estimate of the amount of
10 any cost-sharing (including with respect to the de-
11 ductible and any copayment or coinsurance obliga-
12 tion) for which the participant or beneficiary would
13 be responsible for such item or service (as of the
14 date of such notification).

15 “(5) A good faith estimate of the amount that
16 the participant or beneficiary has incurred toward
17 meeting the limit of the financial responsibility (in-
18 cluding with respect to deductibles and out-of-pocket
19 maximums) under the health plan (as of the date of
20 such notification).

21 “(6) In the case such item or service is subject
22 to a medical management technique (including con-
23 current review, prior authorization, and step-therapy
24 or fail-first protocols) for coverage under the health
25 plan, a disclaimer that coverage for such item or

1 service is subject to such medical management tech-
2 nique.

3 “(7) A disclaimer that the information provided
4 in the notification is only an estimate based on the
5 items and services reasonably expected, at the time
6 of scheduling (or requesting) the item or service, to
7 be furnished and is subject to change.

8 “(8) Any other information or disclaimer the
9 health plan determines appropriate that is consistent
10 with information and disclaimers required under this
11 section.

12 “(b) HEALTH PLAN DEFINED.—In this section, the
13 term ‘health plan’ means a group health plan, including
14 any group health plan that is a grandfathered health plan
15 (as defined in section 1251(e) of the Patient Protection
16 and Affordable Care Act).”.

17 (B) CONFORMING AMENDMENT.—Section
18 9815(a) of the Internal Revenue Code of 1986
19 is amended—

20 (i) in paragraph (1), by striking “(as
21 amended by the Patient Protection and Af-
22 fordable Care Act)” and inserting “(other
23 than the provisions of section 2730 of such
24 Act)”; and

1 (ii) in paragraph (2), by inserting
2 “(other than the provisions of section 2730
3 of such Act)” after “a provision of such
4 part A”.

5 (C) CLERICAL AMENDMENT.—The table of
6 sections for such subchapter is amended by
7 adding at the end the following new item:

“Sec. 9816. Advanced explanation of benefits.”.

8 (3) EMPLOYEE RETIREMENT INCOME SECURITY
9 ACT OF 1974 AMENDMENT.—

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

15 **“SEC. 716. ADVANCED EXPLANATION OF BENEFITS.**

16 “(a) IN GENERAL.—Beginning on January 1, 2022,
17 each health plan shall, with respect to a notification sub-
18 mitted under section 1128A(t)(1)(B) of the Social Secu-
19 rity Act by a health care provider or health care facility,
20 respectively, to the health plan for a participant or bene-
21 ficiary under such health plan scheduled to receive an item
22 or service from the provider or facility, not later than 1
23 business day (or, in the case such item or service was so
24 scheduled at least 10 business days before such item or
25 service is to be furnished (or in the case such notification

1 was made pursuant to a request by such participant or
2 beneficiary), 3 business days) after the date on which the
3 health plan receives such notification, provide to the par-
4 ticipant or beneficiary (through mail or electronic means,
5 as requested by the participant or beneficiary) a notifica-
6 tion including the following:

7 “(1) Whether or not the provider or facility is
8 a participating provider or a participating facility
9 with respect to the health plan with respect to the
10 furnishing of such item or service and—

11 “(A) in the case the provider or facility is
12 a participating provider or facility with respect
13 to the health plan with respect to the furnishing
14 of such item or service, the contracted rate
15 under such plan for such item or service; and

16 “(B) in the case the provider or facility is
17 a nonparticipating provider or facility with re-
18 spect to such plan, a description of how such
19 participant or beneficiary may obtain informa-
20 tion on providers and facilities that, with re-
21 spect to such health plan, are participating pro-
22 viders and facilities.

23 “(2) The good faith estimate included in the
24 notification received from the provider or facility.

1 “(3) A good faith estimate of the amount the
2 health plan is responsible for paying for items and
3 services included in the estimate described in para-
4 graph (2).

5 “(4) A good faith estimate of the amount of
6 any cost-sharing (including with respect to the de-
7 ductible and any copayment or coinsurance obliga-
8 tion) for which the participant or beneficiary would
9 be responsible for such item or service (as of the
10 date of such notification).

11 “(5) A good faith estimate of the amount that
12 the participant or beneficiary has incurred toward
13 meeting the limit of the financial responsibility (in-
14 cluding with respect to deductibles and out-of-pocket
15 maximums) under the health plan (as of the date of
16 such notification).

17 “(6) In the case such item or service is subject
18 to a medical management technique (including con-
19 current review, prior authorization, and step-therapy
20 or fail-first protocols) for coverage under the health
21 plan, a disclaimer that coverage for such item or
22 service is subject to such medical management tech-
23 nique.

24 “(7) A disclaimer that the information provided
25 in the notification is only an estimate based on the

1 items and services reasonably expected, at the time
2 of scheduling (or requesting) the item or service, to
3 be furnished and is subject to change.

4 “(8) Any other information or disclaimer the
5 health plan determines appropriate that is consistent
6 with information and disclaimers required under this
7 section.

8 “(b) HEALTH PLAN DEFINED.—In this section, the
9 term ‘health plan’ means a group health plan and health
10 insurance coverage offered by a health insurance issuer
11 in the group market and includes a grandfathered health
12 plan (as defined in section 1251(e) of the Patient Protec-
13 tion and Affordable Care Act) that is such a plan or cov-
14 erage.”.

15 (B) CONFORMING AMENDMENT.—Section
16 715(a) of the Employee Retirement Income Se-
17 curity Act of 1974 (29 U.S.C. 1185d(a)) is
18 amended—

19 (i) in paragraph (1), by striking “(as
20 amended by the Patient Protection and Af-
21 fordable Care Act)” and inserting “(other
22 than the provisions of section 2730 of such
23 Act)”; and

24 (ii) in paragraph (2), by inserting
25 “(other than the provisions of section 2730

1 of such Act)” after “a provision of such
2 part A”.

3 (C) CLERICAL AMENDMENT.—The table of
4 contents in section 1 of the Employee Retirement
5 Income Security Act of 1974 is amended
6 by inserting after the item relating to section
7 714 the following new items:

“Sec. 715. Additional market reforms.

“Sec. 716. Advanced explanation of benefits.”.

8 (b) HEALTH CARE PROVIDERS AND FACILITIES.—
9 Section 1128A of the Social Security Act (42 U.S.C.
10 1320a–7a) is amended by adding at the end the following
11 new subsection:

12 “(t)(1) Each health care provider and health care fa-
13 cility shall, beginning January 1, 2022, in the case of an
14 individual who schedules an item or service to be furnished
15 to such individual by such provider or facility at least 3
16 business days before the date such item or service is to
17 be so furnished, not later than 1 business day after the
18 date of such scheduling (or, in the case of such an item
19 or service scheduled at least 10 business days before the
20 date such item or service is to be so furnished (or if re-
21 quested by the individual), not later than 3 business days
22 after the date of such scheduling or such request)—

23 “(A) inquire if such individual is enrolled in a
24 group health plan, group or individual health insur-

1 ance coverage offered by a health insurance issuer,
2 or a Federal health care program (and if is so en-
3 rolled in such plan or coverage, seeking to have a
4 claim for such item or service submitted to such
5 plan or coverage); and

6 “(B) provide a notification of the good faith es-
7 timate of the expected charges for furnishing such
8 item or service (including any item or service that is
9 reasonably expected to be provided in conjunction
10 with such scheduled item or service) to—

11 “(i) in the case the individual is enrolled in
12 such a plan or such coverage (and is seeking to
13 have a claim for such item or service submitted
14 to such plan or coverage), such plan or issuer
15 of such coverage; and

16 “(ii) in the case the individual is not de-
17 scribed in clause (i) and not enrolled in a Fed-
18 eral health care program, the individual.

19 “(2) Each health care provider or health care facility
20 that fails to provide the estimate as required under para-
21 graph (1) shall be subject to a civil monetary penalty in
22 an amount not to exceed \$10,000 for each such failure.
23 The provisions of this section (other than subsection (a),
24 subsection (b), the first sentence of subsection (c)(1), and
25 subsection (o)) shall apply to a civil monetary penalty im-

1 posed under the preceding sentence in the same manner
2 as such provisions apply to a penalty or proceeding under
3 subsection (a).

4 “(3) In this subsection—

5 “(A) the terms ‘health insurance issuer’, ‘group
6 health plan’, ‘group health insurance coverage’, and
7 ‘individual health insurance coverage’ have the
8 meaning given such terms, respectively, in section
9 2791 of the Public Health Service Act; and

10 “(B) the term ‘Federal health care program’
11 has the meaning given such term in section
12 1128B(f).”.

○