

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.

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## 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

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## 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.”.



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

                  “Sec. 9816. Provision of prescription drug refill notifications during emer-  
                  gencies.”.

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

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

9                   (2) the emergency period relating to the public  
10 health emergency declared by the Secretary of  
11 Health and Human Services pursuant to section 319  
12 of the Public Health Service Act on January 31,  
13 2020, entitled “Determination that a Public Health  
14 Emergency Exists Nationwide as the Result of the  
15 2019 Novel Coronavirus”.

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