

116TH CONGRESS
2D SESSION

H. R. 8875

To amend the Patient Protection and Affordable Care Act and the Employee Retirement Income Security Act of 1974 to establish a special enrollment period for eligible individuals who are enrolled in non-compliant health plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2020

Mr. KENNEDY introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on 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 Patient Protection and Affordable Care Act and the Employee Retirement Income Security Act of 1974 to establish a special enrollment period for eligible individuals who are enrolled in non-compliant health plans, and for other purposes.

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 “Health Insurance
5 Lemon Law Act”.

1 **SEC. 2. ESTABLISHMENT OF A SPECIAL ENROLLMENT PE-**
2 **RIOD FOR ELIGIBLE INDIVIDUALS WHO ARE**
3 **ENROLLED IN A NON-COMPLIANT HEALTH**
4 **PLAN.**

5 (a) SPECIAL ENROLLMENT PERIODS FOR INDIVID-
6 UALS ENROLLED IN NON-COMPLIANT HEALTH PLANS.—

7 (1) OPTION FOR ELIGIBLE INDIVIDUALS TO EN-
8 ROLL IN EXCHANGE PLANS THROUGH A SPECIAL EN-
9 ROLLMENT PERIOD.—Section 1311(c) of the Patient
10 Protection and Affordable Care Act (42 U.S.C.
11 18031(c)) is amended—

12 (A) in paragraph (6)—

13 (i) in subparagraph (C), by striking at
14 the end “and”;

15 (ii) in subparagraph (D), by striking
16 the period at the end and inserting “;
17 and”; and

18 (iii) by adding at the end the fol-
19 lowing new subparagraph:

20 “(E) special enrollment periods described
21 in paragraph (8)(A).”; and

22 (B) by adding at the end the following new
23 paragraph:

24 “(8) SPECIAL ENROLLMENT PERIOD FOR INDIV-
25 IDUALS ENROLLED IN NON-COMPLIANT EXCHANGE

1 PLANS TO ENROLL IN DIFFERENT EXCHANGE
2 PLANS.—

3 “(A) IN GENERAL.—A special enrollment
4 period described in this subparagraph is, begin-
5 ning 60 days after the date of the enactment of
6 this paragraph, the 60-day period beginning on
7 the date an eligible individual confirms receiv-
8 ing a notification that the health plan in which
9 the eligible individual is enrolled is a non-com-
10 pliant health plan.

11 “(B) SELF-ATTESTATION.—For purposes
12 of qualifying for the special enrollment period
13 described in subparagraph (A), the receipt of a
14 notification that the health plan in which the el-
15 igible individual is enrolled is a non-compliant
16 health plan shall be determined by the self-at-
17 testation of an eligible individual.

18 “(C) DEFINITIONS.—In this paragraph:

19 “(i) ELIGIBLE INDIVIDUAL.—

20 “(I) IN GENERAL.—The term ‘el-
21 igible individual’ means a qualified in-
22 dividual who is enrolled in a non-com-
23 pliant health plan.

24 “(II) INCLUSION.—Such term in-
25 cludes a covered employee (as defined

1 in section 607(2) of the Employee Re-
2 tirement Income Security Act of
3 1974) who is enrolled in a non-compli-
4 ant health plan.

5 “(ii) NON-COMPLIANT HEALTH
6 PLAN.—The term ‘non-compliant health
7 plan’ means a group health plan or health
8 insurance coverage offered by a health in-
9 surance issuer in the individual or small
10 group market that is not so in compliance
11 (as applicable) with any of—

12 “(I) sections 2701, 2702, 2703,
13 2704, 2705, 2706, 2708, 2709, 2711,
14 2712, 2713, 2714, 2715, 2716, 2717,
15 2718, 2719, 2719A, 2725, 2726,
16 2727, 2728, or 2794 of the Public
17 Health Service Act;

18 “(II) sections 1302 or 1312 of
19 the Patient Protection and Affordable
20 Care Act;

21 “(III) section 105 of the Internal
22 Revenue Code of 1986; or

23 “(IV) sections 601 through 608
24 of the Employee Retirement Income
25 Security Act of 1974.”.

1 (2) OPTION FOR COVERED EMPLOYEES EN-
2 ROLLED IN NON-COMPLIANT GROUP HEALTH PLANS
3 TO ENROLL IN A DIFFERENT GROUP HEALTH
4 PLAN.—Section 701 of the Employee Retirement In-
5 come Security Act (29 U.S.C. 1181) is amended by
6 inserting after paragraph (6) the following new
7 paragraph:

8 “(7) SPECIAL ENROLLMENT PERIOD FOR COV-
9 ERED EMPLOYEES ENROLLED IN NON-COMPLIANT
10 GROUP HEALTH PLANS TO ENROLL IN A DIFFERENT
11 GROUP HEALTH PLAN.—

12 “(A) IN GENERAL.—Beginning 60 days
13 after the date of the enactment of this para-
14 graph, a group health plan shall permit an em-
15 ployee who is enrolled in the group health plan
16 that is not in compliance with a requirement
17 specified under clause (C)(ii) of section
18 1311(c)(8) of the Patient Protection and Af-
19 fordable Care Act (as applicable) to enroll in a
20 different group health plan offered by the em-
21 ployer for a 60-day period beginning on the
22 date the employee confirms receiving a notifica-
23 tion that the group health plan in which the
24 employee is not so in compliance.

1 “(B) SELF-ATTESTATION.—For purposes
2 of qualifying for the special enrollment period
3 described in subparagraph (A), the receipt of a
4 notification that the group health plan in which
5 the eligible individual is enrolled is a non-com-
6 pliant health plan shall be determined by the
7 self-attestation of an eligible individual.”.

8 (b) REQUIREMENT FOR FIRST DAY OF COVERAGE
9 FOR ELIGIBLE INDIVIDUALS ENROLLING DURING THE
10 SPECIAL ENROLLMENT PERIOD.—

11 (1) NON-COMPLIANT EXCHANGE PLANS.—Sec-
12 tion 1303 of the Patient Protection and Affordable
13 Care Act (42 U.S.C. 18023) is amended by adding
14 at the end the following new subsection:

15 “(e) REQUIREMENT FOR FIRST DAY OF COVERAGE
16 FOR ELIGIBLE INDIVIDUALS ENROLLING DURING THE
17 SPECIAL ENROLLMENT PERIOD.—

18 “(1) NOTIFICATION REQUIREMENT.—

19 “(A) IN GENERAL.—With respect to health
20 insurance coverage in the individual or small
21 group market group offered by a health insur-
22 ance issuer, any health insurance issuer of such
23 coverage that is not in compliance with a re-
24 quirement specified under clause (C)(ii) of sec-

tion 1311(c)(8) of the Patient Protection and
Affordable Care Act shall—

“(i) for the 30-day period beginning
on the date the issuer receives a notice
from the Secretary of Health and Human
Services that such coverage is not so in
compliance, attempt to receive confirma-
tion that each enrollee of such coverage is
eligible for the special enrollment period
described in section subparagraph (A) of
such section; and

“(ii) not later than 60 days after the
date the issuer receives the notice de-
scribed in clause (i), in the case the cov-
erage does not receive confirmation for an
enrollee pursuant to such clause, submit to
the Secretary of Health and Human Serv-
ices the name of the enrollee and efforts to
notify and receive confirmation from the
enrollee.

“(B) PRIVACY CONSIDERATIONS.—In car-
rying out this paragraph, the health insurance
issuer shall take measures to ensure that infor-
mation as may be specifically permitted or re-
quired under other applicable provisions of law,

including HIPAA privacy and security law as defined in section 3009(a) of the Public Health Service Act (42 U.S.C. 300jj–19(a)) is not made public under this paragraph.

“(2) REQUIREMENT FOR FIRST DAY OF COVERAGE.—In the case of an eligible individual (as defined in subparagraph (C) of section 1311(c)(8)) who enrolls in a qualified health plan through an Exchange during a month during the special enrollment period described in subparagraph (A) of such section—

“(A) coverage under health insurance coverage offered a health insurance issuer in the individual or small group market shall terminate on the last day of the such month in which the eligible individual so enrolls in the qualified health plan; and

“(B) coverage under the qualified health plan shall be effective beginning on the first day of the first month succeeding the month termination of coverage described in subparagraph (A).”.

(2) NON-COMPLIANT GROUP HEALTH PLANS.—

Section 701(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(7)), as

1 amended by subsection (a)(2), is further amended,
2 by inserting after subparagraph (B) the following
3 new subparagraphs:

4 “(C) NOTIFICATION REQUIREMENT.—

5 “(i) IN GENERAL.—A group health
6 plan that is not in compliance with a re-
7 quirement specified under subparagraph
8 (C)(ii) of section 1311(c)(8) of the Patient
9 Protection and Affordable Care Act shall—

10 “(I) for the 30-day period begin-
11 ning after the date the plan receives a
12 notice from the Secretary of Labor
13 that such plan is not in compliance,
14 attempt to receive confirmation that
15 each enrollee of such plan was so noti-
16 fied of the special enrolled period de-
17 scribed in subparagraph (A) of such
18 section and the special enrollment pe-
19 riod described in subparagraph (A);
20 and

21 “(II) not later than 60 days after
22 the date the plan receives the notice
23 described in clause (i), in the case the
24 plan does not receive confirmation for
25 an enrollee pursuant to such clause,

1 submit to the Secretary of Labor the
2 name of the enrollee and efforts to no-
3 tify and receive confirmation from the
4 enrollee.

5 “(ii) PRIVACY CONSIDERATIONS.—In
6 carrying out this subparagraph, the group
7 health plan shall take measures to ensure
8 that information as may be specifically
9 permitted or required under other applica-
10 ble provisions of law, including HIPAA pri-
11 vacy and security law as defined in section
12 3009(a) of the Public Health Service Act
13 (42 U.S.C. 300jj–19(a)) is not made public
14 under this subparagraph.

15 “(D) REQUIREMENT FOR FIRST DAY OF
16 COVERAGE.—In the case of an eligible indi-
17 vidual (as defined in subparagraph (C) of sec-
18 tion 1311(c)(8) of the Patient Protection and
19 Affordable Care Act) who is a covered employee
20 and who—

21 “(i) enrolls in a qualified health plan
22 through an Exchange during a month dur-
23 ing the special enrollment period described
24 in subparagraph (A) of such section—

1 “(I) coverage under a group
2 health plan shall terminate on the last
3 day of the such month in which the el-
4 igible individual so enrolls in the
5 qualified health plan; and

6 “(II) coverage under the qualified
7 health plan shall be determined in ac-
8 cordance with section 1303(e)(2) of
9 such Act; or

10 “(ii) enrolls in a different group
11 health plan offered by the employer of the
12 covered employee pursuant to the special
13 enrollment period described in subpara-
14 graph (A)—

15 “(I) coverage under a group
16 health plan shall terminate on the last
17 day of the such month in which the el-
18 igible individual so enrolls in the
19 qualified health plan; and

20 “(II) coverage under the different
21 group health plan offered by the em-
22 ployer of the qualified beneficiary
23 shall be effective beginning on the
24 first day of the first month succeeding

- 1 the month of termination of coverage
- 2 described in subclause (I).”.

○