

117TH CONGRESS
2D SESSION

H. R. 8791

To amend part B of title XVIII of the Social Security Act to provide for a special enrollment period under Medicare for individuals enrolled in COBRA continuation coverage, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2022

Mr. SCHRADER (for himself, Mr. BILIRAKIS, Mr. THOMPSON of California, Mr. SMUCKER, Mr. WALBERG, and Ms. SHERRILL) 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 part B of title XVIII of the Social Security Act to provide for a special enrollment period under Medicare for individuals enrolled in COBRA continuation coverage, 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 “Medicare Enrollment
5 Protection Act of 2022”.

1 **SEC. 2. TREATMENT UNDER MEDICARE OF INDIVIDUALS**
2 **TRANSITIONING FROM COBRA CONTINU-**
3 **ATION COVERAGE.**

4 (a) **SPECIAL ENROLLMENT PERIOD FOR INDIVID-**
5 **UALS ENROLLED IN COBRA CONTINUATION COV-**
6 **ERAGE.**—Section 1837(i) of the Social Security Act (42
7 U.S.C. 1395p(i)) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(5)(A) In the case of an individual who—

10 “(i) at the time the individual first satis-
11 fies paragraph (1) or (2) of section 1836(a), is
12 enrolled in COBRA continuation coverage (as
13 defined in subparagraph (D)); or

14 “(ii) is enrolled in COBRA continuation
15 coverage and immediately prior to such enroll-
16 ment was an individual described in paragraph
17 (1) or (2) of this subsection,
18 there shall be a special enrollment period de-
19 scribed in subparagraph (B).

20 “(B) The special enrollment period referred to
21 in subparagraph (A) is the period that includes—

22 “(i) each month during any part of which
23 the individual is enrolled in COBRA continu-
24 ation coverage; and

1 “(ii) the 3-month period beginning with
2 the first month following the last month during
3 any part of which such individual is so enrolled.

4 “(C) An individual may only enroll during the
5 special enrollment period provided under subpara-
6 graph (A) one time during the individual’s lifetime.

7 “(D) For purposes of this paragraph, the term
8 ‘COBRA continuation coverage’ means continuation
9 coverage beginning on or after January 1, 2023—

10 “(i) under a COBRA continuation provi-
11 sion (as defined in section 2791(d)(4) of the
12 Public Health Service Act);

13 “(ii) pursuant to section 8905a of title 5,
14 United States Code; or

15 “(iii) under a similar State law that pro-
16 vides comparable continuation of group health
17 plan coverage.”.

18 (b) COVERAGE PERIOD FOR CERTAIN ELIGIBLE IN-
19 DIVIDUALS.—Section 1838(e) of the Social Security Act
20 (42 U.S.C. 1395q(e)) is amended—

21 (1) by striking “pursuant to section 1837(i)(3)
22 or 1837(i)(4)(B)” and inserting the following: “pur-
23 suant to—

24 “(1) section 1837(i)(3) or 1837(i)(4)(B)—”;

1 (2) by redesignating paragraphs (1) and (2) as
2 subparagraphs (A) and (B), respectively, and mov-
3 ing the indentation of each such subparagraph 2
4 ems to the right;

5 (3) by striking the period at the end of sub-
6 paragraph (B), as so redesignated, and inserting “;
7 or”; and

8 (4) by adding at the end the following new
9 paragraph:

10 “(2) section 1837(i)(5), the coverage period
11 shall begin on the first day of the month following
12 the month in which the individual so enrolls.”.

13 (c) NO INCREASE IN PREMIUM.—Section 1839(b) of
14 such Act (42 U.S.C. 1395r(b)) is amended—

15 (1) in the first sentence, by inserting “, (i)(5)”
16 after “subsection (i)(4)”;

17 (2) in the second sentence, by inserting before
18 the period at the end the following: “or months for
19 which the individual can demonstrate that the indi-
20 vidual was enrolled in COBRA continuation coverage
21 (as such term is defined in section 1837(i)(5)(D))”.

22 (d) COORDINATION OF BENEFITS.—

23 (1) ERISA.—Section 607 of the Employee Re-
24 tirement Income Security Act of 1974 (29 U.S.C.

1 1167)) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(6) COORDINATION OF BENEFITS.—Notwith-
4 standing any other provision of law, in the case that
5 an individual is enrolled in COBRA continuation
6 coverage (as defined in section 1837(i)(5)(D) of the
7 Social Security Act) and the individual is eligible for
8 but not enrolled in coverage under part B of title
9 XVIII of the Social Security Act, such COBRA con-
10 tinuation coverage shall not reduce or terminate ben-
11 efits under such COBRA continuation coverage with
12 respect to the individual on the basis that the indi-
13 vidual is eligible for coverage under such part B or
14 otherwise take into account such eligibility. Such
15 benefits under such COBRA continuation coverage
16 shall be provided to such an individual as if such in-
17 dividual were not so eligible for coverage under such
18 part B. Nothing in the preceding two sentences shall
19 require the provision of such COBRA continuation
20 coverage to an individual enrolled in coverage under
21 such part B or prohibit the termination of such con-
22 tinuation coverage or reduction of benefits under
23 such continuation coverage in the case of an indi-
24 vidual who enrolls under such part B.”.

1 (2) PHSA.—Section 2208 of the Public Health
2 Service Act (42 U.S.C. 300bb–8) is amended—

3 (A) by striking “**DEFINITIONS**” and in-
4 serting “**DEFINITIONS AND SPECIAL**
5 **RULES**”; and

6 (B) by adding at the end the following new
7 paragraph:

8 “(5) SPECIAL RULE FOR COORDINATION OF
9 BENEFITS.—Notwithstanding any other provision of
10 law, in the case that an individual is enrolled in
11 COBRA continuation coverage (as defined in section
12 1837(i)(5)(D) of the Social Security Act) and the in-
13 dividual is eligible for but not enrolled in coverage
14 under part B of title XVIII of the Social Security
15 Act, such COBRA continuation coverage shall not
16 reduce or terminate benefits under such COBRA
17 continuation coverage with respect to the individual
18 on the basis that the individual is eligible for cov-
19 erage under such part B or otherwise take into ac-
20 count such eligibility. Such benefits under such
21 COBRA continuation coverage shall be provided to
22 such an individual as if such individual were not so
23 eligible for coverage under such part B. Nothing in
24 the preceding two sentences shall require the provi-
25 sion of such COBRA continuation coverage to an in-

1 dividual enrolled in coverage under such part B or
2 prohibit the termination of such continuation cov-
3 erage or reduction of benefits under such continu-
4 ation coverage in the case of an individual who en-
5 rolls under such part B.”.

6 (3) IRC.—Section 4980B(g) of the Internal
7 Revenue Code of 1986 is amended—

8 (A) by striking “DEFINITIONS” and insert-
9 ing “DEFINITIONS AND SPECIAL RULES”; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(5) SPECIAL RULE FOR COORDINATION OF
13 BENEFITS.—Notwithstanding any other provision of
14 law, in the case that an individual is enrolled in
15 COBRA continuation coverage (as defined in section
16 1837(i)(5)(D) of the Social Security Act) and the in-
17 dividual is eligible for but not enrolled in coverage
18 under part B of title XVIII of the Social Security
19 Act, such COBRA continuation coverage shall not
20 reduce or terminate benefits under such COBRA
21 continuation coverage with respect to the individual
22 on the basis that the individual is eligible for cov-
23 erage under such part B or otherwise take into ac-
24 count such eligibility. Such benefits under such
25 COBRA continuation coverage shall be provided to

1 such an individual as if such individual were not so
2 eligible for coverage under such part B. Nothing in
3 the preceding two sentences shall require the provi-
4 sion of such COBRA continuation coverage to an in-
5 dividual enrolled in coverage under such part B or
6 prohibit the termination of such continuation cov-
7 erage or reduction of benefits under such continu-
8 ation coverage in the case of an individual who en-
9 rolls under such part B.”.

10 (e) UPDATING COBRA CONTINUATION COVERAGE
11 NOTIFICATIONS.—Not later than January 1, 2023, the
12 Secretary of Labor, in consultation with the Secretary of
13 Health and Human Services, shall update the written no-
14 tices required under section 606 of the Employee Retire-
15 ment Income Security Act of 1974 (29 U.S.C. 1166) to
16 include an explanation of the full scope of the Medicare
17 secondary payer rules under section 1862(b) of the Social
18 Security Act (42 U.S.C. 1395y(b)), including how such
19 rules apply with respect to COBRA continuation coverage
20 (as defined in section 1837(i)(5)(D) of the Social Security
21 Act (42 U.S.C. 1395p(i)(5)(D))).

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