

117TH CONGRESS
2D SESSION

H. R. 8270

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

JULY 1, 2022

Mrs. MCBATH (for herself and Ms. KUSTER) 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 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 2022”.

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. 726. 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 1135(g)(1)(B) of the Social Secu-
2 rity Act, not later than 5 business days after the
3 date of the enactment of this section), a notification
4 (written in a manner that is clear and understand-
5 able to the average participant or beneficiary)—

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

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

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

1 such election that contains the information described
 2 in subparagraph (B) of such paragraph.

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

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

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

14 (2) CLERICAL AMENDMENT.—The table of con-
 15 tents of the Employee Retirement Income Security
 16 Act of 1974 is amended by inserting after the item
 17 relating to section 725 the following:

“Sec. 726. Provision of prescription drug refill notifications during emer-
 gencies.”.

18 (b) PHSA.—Part D of title XXVII of the Public
 19 Health Service Act (42 U.S.C. 300gg–111 et seq.) is
 20 amended by adding at the end the following new section:

21 **“SEC. 2799A-11. PROVISION OF PRESCRIPTION DRUG RE-**
 22 **FILL NOTIFICATIONS DURING EMERGENCIES.**

23 “(a) IN GENERAL.—A group health plan, and a
 24 health insurance issuer offering group or individual health

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

6 “(1) not later than 5 business days after the
7 date of the beginning of such period with respect to
8 such area (or, the case of the emergency period de-
9 scribed in section 1135(g)(1)(B) of the Social Secu-
10 rity Act, not later than 5 business days after the
11 date of the enactment of this section), a notification
12 (written in a manner that is clear and understand-
13 able to the average participant, beneficiary, or en-
14 rollee)—

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

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

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

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

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

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

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

22 (c) IRC.—

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

1 **“SEC. 9826. 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 described in section 1135(g)(1)(B) of the Social Security
11 Act, not later than 5 business days after the date of the
12 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 a 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 that 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. 9826. 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 described in section
6 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
7 1320b–5(g)(1)(B)).

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