

117TH CONGRESS
1ST SESSION

S. 263

To preserve health benefits for workers.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Mr. DURBIN (for himself, Ms. CORTEZ MASTO, Mrs. SHAHEEN, Mr. MERKLEY, Mr. BENNET, Ms. DUCKWORTH, Mr. BLUMENTHAL, Mr. MENENDEZ, Mr. REED, Mr. BROWN, Ms. ROSEN, Ms. SMITH, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To preserve health benefits for workers.

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 “Worker Health Cov-
5 erage Protection Act”.

6 **SEC. 2. PRESERVING HEALTH BENEFITS FOR WORKERS.**

7 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-
8 ATION COVERAGE AND FURLOUGHED CONTINUATION
9 COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

10 (1) PROVISION OF PREMIUM ASSISTANCE.—

1 (A) REDUCTION OF PREMIUMS PAY-
2 ABLE.—

3 (i) COBRA CONTINUATION COV-
4 ERAGE.—In the case of any premium for a
5 period of coverage during the period begin-
6 ning on March 1, 2020, and ending on
7 September 30, 2021 for COBRA continu-
8 ation coverage with respect to any assist-
9 ance eligible individual described in para-
10 graph (3)(A), such individual shall be
11 treated for purposes of any COBRA con-
12 tinuation provision as having paid the
13 amount of such premium if such individual
14 pays (and any person other than such indi-
15 vidual’s employer pays on behalf of such
16 individual) 0 percent of the amount of
17 such premium owed by such individual (as
18 determined without regard to this sub-
19 section).

20 (ii) FURLOUGHED CONTINUATION
21 COVERAGE.—In the case of any premium
22 for a period of coverage during the period
23 beginning on March 1, 2020, and ending
24 on September 30, 2021, for coverage under
25 a group health plan with respect to any as-

1 assistance eligible individual described in
2 paragraph (3)(B), such individual shall be
3 treated for purposes of coverage under the
4 plan offered by the plan sponsor in which
5 the individual is enrolled as having paid
6 the amount of such premium if such indi-
7 vidual pays (and any person other than
8 such individual's employer pays on behalf
9 of such individual) 0 percent of the
10 amount of such premium owed by such in-
11 dividual (as determined without regard to
12 this subsection).

13 (B) PLAN ENROLLMENT OPTION.—

14 (i) IN GENERAL.—Notwithstanding
15 the COBRA continuation provisions, any
16 assistance eligible individual who is en-
17 rolled in a group health plan offered by a
18 plan sponsor, not later than 90 days after
19 the date of notice of the plan enrollment
20 option described in this subparagraph, may
21 elect to enroll in coverage under a plan of-
22 fered by such plan sponsor that is different
23 than coverage under the plan in which
24 such individual was enrolled at the time—

1 (I) in the case of any assistance
2 eligible individual described in para-
3 graph (3)(A), the qualifying event
4 specified in section 603(2) of the Em-
5 ployee Retirement Income Security
6 Act of 1974 (29 U.S.C. 1163(2)), sec-
7 tion 4980B(f)(3)(B) of the Internal
8 Revenue Code of 1986, section
9 2203(2) of the Public Health Service
10 Act (42 U.S.C. 300bb-3(2)), or sec-
11 tion 8905a of title 5, United States
12 Code (except for the voluntary termi-
13 nation of such individual's employ-
14 ment by such individual), occurred,
15 and such coverage shall be treated as
16 COBRA continuation coverage for
17 purposes of the applicable COBRA
18 continuation coverage provision; or

19 (II) in the case of any assistance
20 eligible individual described in para-
21 graph (3)(B), the furlough period
22 began with respect to such individual.

23 (ii) REQUIREMENTS.—Any assistance
24 eligible individual may elect to enroll in

1 different coverage as described in clause (i)
2 only if—

3 (I) the employer involved has
4 made a determination that such em-
5 ployer will permit such assistance eli-
6 gible individual to enroll in different
7 coverage as provided under this sub-
8 paragraph;

9 (II) the premium for such dif-
10 ferent coverage does not exceed the
11 premium for coverage in which such
12 individual was enrolled at the time
13 such qualifying event occurred or im-
14 mediately before such furlough began;

15 (III) the different coverage in
16 which the individual elects to enroll is
17 coverage that is also offered to the ac-
18 tive employees of the employer, who
19 are not in a furlough period, at the
20 time at which such election is made;
21 and

22 (IV) the different coverage in
23 which the individual elects to enroll is
24 not—

1 (aa) coverage that provides
2 only dental, vision, counseling, or
3 referral services (or a combina-
4 tion of such services);

5 (bb) a qualified small em-
6 ployer health reimbursement ar-
7 rangement (as defined in section
8 9831(d)(2) of the Internal Rev-
9 enue Code of 1986);

10 (cc) a flexible spending ar-
11 rangement (as defined in section
12 106(c)(2) of the Internal Rev-
13 enue Code of 1986); or

14 (dd) benefits that provide
15 coverage for services or treat-
16 ments furnished in an on-site
17 medical facility maintained by
18 the employer and that consists
19 primarily of first-aid services,
20 prevention and wellness care, or
21 similar care (or a combination of
22 such care).

23 (C) PREMIUM REIMBURSEMENT.—For pro-
24 visions providing the payment of such premium,

1 see section 6432 of the Internal Revenue Code
2 of 1986, as added by paragraph (14).

3 (2) LIMITATION OF PERIOD OF PREMIUM AS-
4 SISTANCE.—

5 (A) ELIGIBILITY FOR ADDITIONAL COV-
6 ERAGE.—Paragraph (1)(A) shall not apply with
7 respect to—

8 (i) any assistance eligible individual
9 described in paragraph (3)(A) for months
10 of coverage beginning on or after the ear-
11 lier of—

12 (I) the first date that such indi-
13 vidual is eligible for coverage under
14 any other group health plan (other
15 than coverage consisting of only den-
16 tal, vision, counseling, or referral serv-
17 ices (or a combination thereof), cov-
18 erage under a flexible spending ar-
19 rangement (as defined in section
20 106(c)(2) of the Internal Revenue
21 Code of 1986), coverage of treatment
22 that is furnished in an on-site medical
23 facility maintained by the employer
24 and that consists primarily of first-aid
25 services, prevention and wellness care,

1 or similar care (or a combination
2 thereof)), or eligible for benefits under
3 the Medicare program under title
4 XVIII of the Social Security Act (42
5 U.S.C. 1395 et seq.); or

6 (II) the earlier of—

7 (aa) the date following the
8 expiration of the maximum pe-
9 riod of continuation coverage re-
10 quired under the applicable
11 COBRA continuation coverage
12 provision; or

13 (bb) the date following the
14 expiration of the period of con-
15 tinuation coverage allowed under
16 paragraph (4)(B)(ii); or

17 (ii) any assistance eligible individual
18 described in paragraph (3)(B) for months
19 of coverage beginning on or after the ear-
20 lier of—

21 (I) the first date that such indi-
22 vidual is eligible for coverage under
23 any other group health plan (other
24 than coverage consisting of only den-
25 tal, vision, counseling, or referral serv-

1 ices (or a combination thereof), cov-
2 erage under a flexible spending ar-
3 rangement (as defined in section
4 106(c)(2) of the Internal Revenue
5 Code of 1986), coverage of treatment
6 that is furnished in an on-site medical
7 facility maintained by the employer
8 and that consists primarily of first-aid
9 services, prevention and wellness care,
10 or similar care (or a combination
11 thereof)), or eligible for benefits under
12 the Medicare program under title
13 XVIII of the Social Security Act (42
14 U.S.C. 1395 et seq.); or

15 (II) the first date that such indi-
16 vidual is no longer in the furlough pe-
17 riod.

18 (B) NOTIFICATION REQUIREMENT.—Any
19 assistance eligible individual shall notify the
20 group health plan with respect to which para-
21 graph (1)(A) applies if such paragraph ceases
22 to apply by reason of clause (i)(I) or (ii)(I) of
23 subparagraph (A) (as applicable). Such notice
24 shall be provided to the group health plan in

1 such time and manner as may be specified by
2 the Secretary of Labor.

3 (C) SPECIAL ENROLLMENT PERIOD FOL-
4 LOWING EXPIRATION OF PREMIUM ASSIST-
5 ANCE.—Notwithstanding section 1311 of the
6 Patient Protection and Affordable Care Act (42
7 U.S.C. 18031), the expiration of premium as-
8 sistance pursuant to a limitation specified
9 under subparagraph (A) shall be treated as a
10 qualifying event for which any assistance eligi-
11 ble individual is eligible to enroll in a qualified
12 health plan offered through an Exchange under
13 title I of such Act (42 U.S.C. 18001 et seq.)
14 during a special enrollment period.

15 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
16 purposes of this section, the term “assistance eligible
17 individual” means, with respect to a period of cov-
18 erage during the period beginning on March 1,
19 2020, and ending on September 30, 2021—

20 (A) any individual that is a qualified bene-
21 ficiary that—

22 (i) is eligible for COBRA continuation
23 coverage by reason of a qualifying event
24 specified in section 603(2) of the Employee
25 Retirement Income Security Act of 1974

1 (29 U.S.C. 1163(2)), section
2 4980B(f)(3)(B) of the Internal Revenue
3 Code of 1986, section 2203(2) of the Pub-
4 lic Health Service Act (42 U.S.C. 300bb-
5 3(2)), or section 8905a of title 5, United
6 States Code (except for the voluntary ter-
7 mination of such individual's employment
8 by such individual); and

9 (ii) elects such coverage; or

10 (B) any covered employee that is in a fur-
11 lough period that remains eligible for coverage
12 under a group health plan offered by the em-
13 ployer of such covered employee.

14 (4) EXTENSION OF ELECTION PERIOD AND EF-
15 FECT ON COVERAGE.—

16 (A) IN GENERAL.—For purposes of apply-
17 ing section 605(a) of the Employee Retirement
18 Income Security Act of 1974 (29 U.S.C.
19 1165(a)), section 4980B(f)(5)(A) of the Inter-
20 nal Revenue Code of 1986, section 2205(a) of
21 the Public Health Service Act (42 U.S.C.
22 300bb-5(a)), and section 8905a(e)(2) of title 5,
23 United States Code, in the case of—

24 (i) an individual who does not have an
25 election of COBRA continuation coverage

1 in effect on the date of the enactment of
2 this Act but who would be an assistance el-
3 igible individual described in paragraph
4 (3)(A) if such election were so in effect; or

5 (ii) an individual who elected COBRA
6 continuation coverage on or after March 1,
7 2020, and discontinued from such coverage
8 before the date of the enactment of this
9 Act,

10 such individual may elect the COBRA continu-
11 ation coverage under the COBRA continuation
12 coverage provisions containing such provisions
13 during the period beginning on the date of the
14 enactment of this Act and ending 60 days after
15 the date on which the notification required
16 under paragraph (7)(C) is provided to such in-
17 dividual.

18 (B) COMMENCEMENT OF COBRA CONTINU-
19 ATION COVERAGE.—Any COBRA continuation
20 coverage elected by a qualified beneficiary dur-
21 ing an extended election period under subpara-
22 graph (A)—

23 (i) shall apply as if such qualified ben-
24 eficiary had been covered as of the date of
25 a qualifying event specified in section

1 603(2) of the Employee Retirement In-
2 come Security Act of 1974 (29 U.S.C.
3 1163(2)), section 4980B(f)(3)(B) of the
4 Internal Revenue Code of 1986, section
5 2203(2) of the Public Health Service Act
6 (42 U.S.C. 300bb-3(2)), or section 8905a
7 of title 5, United States Code, except for
8 the voluntary termination of such bene-
9 ficiary's employment by such beneficiary,
10 that occurs no earlier than March 1, 2020
11 (including the treatment of premium pay-
12 ments under paragraph (1)(A) and any
13 cost-sharing requirements for items and
14 services under a group health plan); and

15 (ii) shall not extend beyond the period
16 of COBRA continuation coverage that
17 would have been required under the appli-
18 cable COBRA continuation coverage provi-
19 sion if the coverage had been elected as re-
20 quired under such provision.

21 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
22 MIUM ASSISTANCE.—In any case in which an indi-
23 vidual requests treatment as an assistance eligible
24 individual described in subparagraph (A) or (B) of
25 paragraph (3) and is denied such treatment by the

1 group health plan, the Secretary of Labor (or the
2 Secretary of Health and Human Services in connec-
3 tion with COBRA continuation coverage which is
4 provided other than pursuant to part 6 of subtitle B
5 of title I of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C. 1161 et seq.)), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary, in consultation
12 with the Secretary of Treasury. Such Secretary shall
13 make a determination regarding such individual's
14 eligibility within 15 business days after receipt of
15 such individual's application for review under this
16 paragraph. Either Secretary's determination upon
17 review of the denial shall be de novo and shall be the
18 final determination of such Secretary. A reviewing
19 court shall grant deference to such Secretary's deter-
20 mination. The provisions of this paragraph, para-
21 graphs (1) through (4), and paragraphs (7) through
22 (9) shall be treated as provisions of title I of the
23 Employee Retirement Income Security Act of 1974
24 (29 U.S.C. 1001 et seq.) for purposes of part 5 of
25 subtitle B of such title.

1 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
2 OF FEDERAL AND STATE PROGRAMS.—Notwith-
3 standing any other provision of law, any premium
4 assistance with respect to an assistance eligible indi-
5 vidual under this subsection shall not be considered
6 income, in-kind support, or resources for purposes of
7 determining the eligibility of the recipient (or the re-
8 cipient’s spouse or family) for benefits or assistance,
9 or the amount or extent of benefits or assistance, or
10 any other benefit provided under any Federal pro-
11 gram or any program of a State or political subdivi-
12 sion thereof financed in whole or in part with Fed-
13 eral funds.

14 (7) COBRA-SPECIFIC NOTICE.—

15 (A) GENERAL NOTICE.—

16 (i) IN GENERAL.—In the case of no-
17 tices provided under section 606(a)(4) of
18 the Employee Retirement Income Security
19 Act of 1974 (29 U.S.C. 1166(4)), section
20 4980B(f)(6)(D) of the Internal Revenue
21 Code of 1986, section 2206(4) of the Pub-
22 lic Health Service Act (42 U.S.C. 300bb-
23 6(4)), or section 8905a(f)(2)(A) of title 5,
24 United States Code, with respect to indi-
25 viduals who, during the period described in

1 paragraph (3), become entitled to elect
2 COBRA continuation coverage, the re-
3 quirements of such provisions shall not be
4 treated as met unless such notices include
5 an additional notification to the recipient a
6 written notice in clear and understandable
7 language of—

8 (I) the availability of premium
9 assistance with respect to such cov-
10 erage under this subsection; and

11 (II) the option to enroll in dif-
12 ferent coverage if the employer per-
13 mits assistance eligible individuals de-
14 scribed in paragraph (3)(A) to elect
15 enrollment in different coverage (as
16 described in paragraph (1)(B)).

17 (ii) ALTERNATIVE NOTICE.—In the
18 case of COBRA continuation coverage to
19 which the notice provision under such sec-
20 tions does not apply, the Secretary of
21 Labor, in consultation with the Secretary
22 of the Treasury and the Secretary of
23 Health and Human Services, shall, in con-
24 sultation with administrators of the group
25 health plans (or other entities) that provide

1 or administer the COBRA continuation
2 coverage involved, provide rules requiring
3 the provision of such notice.

4 (iii) FORM.—The requirement of the
5 additional notification under this subpara-
6 graph may be met by amendment of exist-
7 ing notice forms or by inclusion of a sepa-
8 rate document with the notice otherwise
9 required.

10 (B) SPECIFIC REQUIREMENTS.—Each ad-
11 ditional notification under subparagraph (A)
12 shall include—

13 (i) the forms necessary for estab-
14 lishing eligibility for premium assistance
15 under this subsection;

16 (ii) the name, address, and telephone
17 number necessary to contact the plan ad-
18 ministrator and any other person main-
19 taining relevant information in connection
20 with such premium assistance;

21 (iii) a description of the extended elec-
22 tion period provided for in paragraph
23 (4)(A);

24 (iv) a description of the obligation of
25 the qualified beneficiary under paragraph

1 (2)(B) and the penalty provided under sec-
2 tion 6720C of the Internal Revenue Code
3 of 1986 for failure to carry out the obliga-
4 tion;

5 (v) a description, displayed in a
6 prominent manner, of the qualified bene-
7 ficiary's right to a reduced premium and
8 any conditions on entitlement to the re-
9 duced premium;

10 (vi) a description of the option of the
11 qualified beneficiary to enroll in different
12 coverage if the employer permits such ben-
13 eficiary to elect to enroll in such different
14 coverage under paragraph (1)(B); and

15 (vii) information regarding any Ex-
16 change established under title I of the Pa-
17 tient Protection and Affordable Care Act
18 (42 U.S.C. 18001 et seq.) through which a
19 qualified beneficiary may be eligible to en-
20 roll in a qualified health plan, including—

21 (I) the publicly accessible inter-
22 net website address for such Ex-
23 change;

24 (II) the publicly accessible inter-
25 net website address for the Find

1 Local Help directory maintained by
2 the Department of Health and
3 Human Services on the healthcare.gov
4 internet website (or a successor
5 website);

6 (III) a clear explanation that—

7 (aa) an individual who is eli-
8 gible for continuation coverage
9 may also be eligible to enroll,
10 with financial assistance, in a
11 qualified health plan offered
12 through such Exchange, but, in
13 the case that such individual
14 elects to enroll in such continu-
15 ation coverage and subsequently
16 elects to terminate such continu-
17 ation coverage before the period
18 of such continuation coverage ex-
19 pires, such termination does not
20 initiate a special enrollment pe-
21 riod (absent a qualifying event
22 specified in section 603(2) of the
23 Employee Retirement Income Se-
24 curity Act of 1974 (29 U.S.C.
25 1163(2)), section 4980B(f)(3)(B)

1 of the Internal Revenue Code of
2 1986, section 2203(2) of the
3 Public Health Service Act (42
4 U.S.C. 300bb-3(2)), or section
5 8905a of title 5, United States
6 Code, with respect to such indi-
7 vidual); and

8 (bb) an individual who elects
9 to enroll in continuation coverage
10 will remain eligible to enroll in a
11 qualified health plan offered
12 through such Exchange during
13 an open enrollment period and
14 may be eligible for financial as-
15 sistance with respect to enrolling
16 in such a qualified health plan;

17 (IV) information on consumer
18 protections with respect to enrolling in
19 a qualified health plan offered
20 through such Exchange, including the
21 requirement for such a qualified
22 health plan to provide coverage for es-
23 sential health benefits (as defined in
24 section 1302(b) of such Act (42
25 U.S.C. 18022(b))) and the require-

1 ments applicable to such a qualified
2 health plan under part A of title
3 XXVII of the Public Health Service
4 Act (42 U.S.C. 300gg et seq.);

5 (V) information on the avail-
6 ability of financial assistance with re-
7 spect to enrolling in a qualified health
8 plan, including the maximum income
9 limit for eligibility for the premium
10 tax credit under section 36B of the
11 Internal Revenue Code of 1986; and

12 (VI) information on any special
13 enrollment periods during which any
14 assistance eligible individual described
15 in paragraph (3)(A)(i) may be eligible
16 to enroll, with financial assistance, in
17 a qualified health plan offered
18 through such Exchange (including a
19 special enrollment period for which an
20 individual may be eligible due to the
21 expiration of premium assistance pur-
22 suant to a limitation specified under
23 paragraph (2)(A)).

24 (C) NOTICE IN CONNECTION WITH EX-
25 TENDED ELECTION PERIODS.—In the case of

1 any assistance eligible individual described in
2 paragraph (3)(A) (or any individual described
3 in paragraph (4)(A)) who became entitled to
4 elect COBRA continuation coverage before the
5 date of the enactment of this Act, the adminis-
6 trator of the applicable group health plan (or
7 other entity) shall provide (within 60 days after
8 the date of enactment of this Act) for the addi-
9 tional notification required to be provided under
10 subparagraph (A) and failure to provide such
11 notice shall be treated as a failure to meet the
12 notice requirements under the applicable
13 COBRA continuation provision.

14 (D) MODEL NOTICES.—Not later than 30
15 days after the date of enactment of this Act,
16 with respect to any assistance eligible individual
17 described in paragraph (3)(A)—

18 (i) the Secretary of Labor, in con-
19 sultation with the Secretary of the Treas-
20 ury and the Secretary of Health and
21 Human Services, shall prescribe models for
22 the additional notification required under
23 this paragraph (other than the additional
24 notification described in clause (ii)); and

1 (ii) in the case of any additional noti-
2 fication provided pursuant to subpara-
3 graph (A) under section 8905a(f)(2)(A) of
4 title 5, United States Code, the Office of
5 Personnel Management shall prescribe a
6 model for such additional notification.

7 (8) FURLOUGH-SPECIFIC NOTICE.—

8 (A) IN GENERAL.—With respect to any as-
9 sistance eligible individual described in para-
10 graph (3)(B) who, during the period described
11 in such paragraph, becomes eligible for assist-
12 ance pursuant to paragraph (1)(A)(ii), the re-
13 quirements of section 606(a)(4) of the Em-
14 ployee Retirement Income Security Act of 1974
15 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of
16 the Internal Revenue Code of 1986, section
17 2206(4) of the Public Health Service Act (42
18 U.S.C. 300bb-6(4)), or section 8905a(f)(2)(A)
19 of title 5, United States Code, shall not be
20 treated as met unless the group health plan ad-
21 ministrators, in accordance with the timing re-
22 quirement specified under subparagraph (B),
23 provides to the individual a written notice in
24 clear and understandable language of—

1 (i) the availability of premium assist-
2 ance with respect to such coverage under
3 this subsection;

4 (ii) the option of the qualified bene-
5 ficiary to enroll in different coverage if the
6 employer permits such beneficiary to elect
7 to enroll in such different coverage under
8 paragraph (1)(B); and

9 (iii) the information specified under
10 paragraph (7)(B) (as applicable).

11 (B) TIMING SPECIFIED.—For purposes of
12 subparagraph (A), the timing requirement spec-
13 ified in this subparagraph is—

14 (i) with respect to such an individual
15 who is within a furlough period during the
16 period beginning on March 1, 2020, and
17 ending on the date of the enactment of this
18 Act, 30 days after the date of such enact-
19 ment; and

20 (ii) with respect to such an individual
21 who is within a furlough period during the
22 period beginning on the first day after the
23 date of the enactment of this Act and end-
24 ing on September 30, 2021, 30 days after

1 the date of the beginning of such furlough
2 period.

3 (C) MODEL NOTICES.—Not later than 30
4 days after the date of enactment of this Act,
5 with respect to any assistance eligible individual
6 described in paragraph (3)(B)—

7 (i) the Secretary of Labor, in con-
8 sultation with the Secretary of the Treas-
9 ury and the Secretary of Health and
10 Human Services, shall prescribe models for
11 the notification required under this para-
12 graph (other than the notification de-
13 scribed in clause (ii)); and

14 (ii) in the case of any notification pro-
15 vided pursuant to subparagraph (A) under
16 section 8905a(f)(2)(A) of title 5, United
17 States Code, the Office of Personnel Man-
18 agement shall prescribe a model for such
19 notification.

20 (9) NOTICE OF EXPIRATION OF PERIOD OF
21 PREMIUM ASSISTANCE.—

22 (A) IN GENERAL.—With respect to any as-
23 sistance eligible individual, subject to subpara-
24 graph (B), the requirements of section
25 606(a)(4) of the Employee Retirement Income

1 Security Act of 1974 (29 U.S.C. 1166(4)), sec-
2 tion 4980B(f)(6)(D) of the Internal Revenue
3 Code of 1986, section 2206(4) of the Public
4 Health Service Act (42 U.S.C. 300bb-6(4)), or
5 section 8905a(f)(2)(A) of title 5, United States
6 Code, shall not be treated as met unless the
7 employer of the individual, during the period
8 specified under subparagraph (C), provides to
9 such individual a written notice in clear and un-
10 derstandable language—

11 (i) that the premium assistance for
12 such individual will expire soon and the
13 prominent identification of the date of
14 such expiration;

15 (ii) that such individual may be eligi-
16 ble for coverage without any premium as-
17 sistance through—

18 (I) COBRA continuation cov-
19 erage; or

20 (II) coverage under a group
21 health plan;

22 (iii) that the expiration of premium
23 assistance is treated as a qualifying event
24 for which any assistance eligible individual
25 is eligible to enroll in a qualified health

1 plan offered through an Exchange under
2 title I of such Act (42 U.S.C. 18001 et
3 seq.) during a special enrollment period;
4 and

5 (iv) the information specified in para-
6 graph (7)(B)(vii).

7 (B) EXCEPTION.—The requirement for the
8 group health plan administrator to provide the
9 written notice under subparagraph (A) shall be
10 waived in the case the premium assistance for
11 such individual expires pursuant to clause (i)(I)
12 or (ii)(I) of paragraph (2)(A).

13 (C) PERIOD SPECIFIED.—For purposes of
14 subparagraph (A), the period specified in this
15 subparagraph is, with respect to the date of ex-
16 piration of premium assistance for any assist-
17 ance eligible individual pursuant to a limitation
18 requiring a notice under this paragraph, the pe-
19 riod beginning on the day that is 45 days before
20 the date of such expiration and ending on the
21 day that is 15 days before the date of such ex-
22 piration.

23 (D) MODEL NOTICES.—Not later than 30
24 days after the date of enactment of this Act,

1 with respect to any assistance eligible indi-
2 vidual—

3 (i) the Secretary of Labor, in con-
4 sultation with the Secretary of the Treas-
5 ury and the Secretary of Health and
6 Human Services, shall prescribe models for
7 the notification required under this para-
8 graph (other than the notification de-
9 scribed in clause (ii)); and

10 (ii) in the case of any notification pro-
11 vided pursuant to subparagraph (A) under
12 section 8905a(f)(2)(A) of title 5, United
13 States Code, the Office of Personnel Man-
14 agement shall prescribe a model for such
15 notification.

16 (10) REGULATIONS.—The Secretary of the
17 Treasury and the Secretary of Labor may jointly
18 prescribe such regulations or other guidance as may
19 be necessary or appropriate to carry out the provi-
20 sions of this subsection, including the prevention of
21 fraud and abuse under this subsection, except that
22 the Secretary of Labor and the Secretary of Health
23 and Human Services may prescribe such regulations
24 (including interim final regulations) or other guid-
25 ance as may be necessary or appropriate to carry

1 out the provisions of paragraphs (5), (7), (8), (9),
2 and (11).

3 (11) OUTREACH.—

4 (A) IN GENERAL.—The Secretary of
5 Labor, in consultation with the Secretary of the
6 Treasury and the Secretary of Health and
7 Human Services, shall provide outreach con-
8 sisting of public education and enrollment as-
9 sistance relating to premium assistance pro-
10 vided under this subsection. Such outreach shall
11 target employers, group health plan administra-
12 tors, public assistance programs, States, insur-
13 ers, and other entities as determined appro-
14 priate by such Secretaries. Such outreach shall
15 include an initial focus on those individuals
16 electing continuation coverage who are referred
17 to in paragraph (7)(C). Information on such
18 premium assistance, including enrollment, shall
19 also be made available on websites of the De-
20 partments of Labor, Treasury, and Health and
21 Human Services.

22 (B) ENROLLMENT UNDER MEDICARE.—

23 The Secretary of Health and Human Services
24 shall provide outreach consisting of public edu-
25 cation. Such outreach shall target individuals

1 who lose health insurance coverage. Such out-
2 reach shall include information regarding en-
3 rollment for benefits under title XVIII of the
4 Social Security Act (42 U.S.C. 1395 et seq.) for
5 purposes of preventing mistaken delays of such
6 enrollment by such individuals, including life-
7 time penalties for failure of timely enrollment.

8 (12) DEFINITIONS.—For purposes of this sec-
9 tion:

10 (A) ADMINISTRATOR.—The term “admin-
11 istrator” has the meaning given such term in
12 section 3(16)(A) of the Employee Retirement
13 Income Security Act of 1974.

14 (B) COBRA CONTINUATION COVERAGE.—
15 The term “COBRA continuation coverage”
16 means continuation coverage provided pursuant
17 to part 6 of subtitle B of title I of the Em-
18 ployee Retirement Income Security Act of 1974
19 (other than under section 609), title XXII of
20 the Public Health Service Act, section 4980B of
21 the Internal Revenue Code of 1986 (other than
22 subsection (f)(1) of such section insofar as it
23 relates to pediatric vaccines), or section 8905a
24 of title 5, United States Code, or under a State
25 program that provides comparable continuation

1 coverage. Such term does not include coverage
2 under a health flexible spending arrangement
3 under a cafeteria plan within the meaning of
4 section 125 of the Internal Revenue Code of
5 1986.

6 (C) COBRA CONTINUATION PROVISION.—
7 The term “COBRA continuation provision”
8 means the provisions of law described in sub-
9 paragraph (B).

10 (D) COVERED EMPLOYEE.—The term
11 “covered employee” has the meaning given such
12 term in section 607(2) of the Employee Retirement
13 Income Security Act of 1974.

14 (E) QUALIFIED BENEFICIARY.—The term
15 “qualified beneficiary” has the meaning given
16 such term in section 607(3) of the Employee
17 Retirement Income Security Act of 1974.

18 (F) GROUP HEALTH PLAN.—The term
19 “group health plan” has the meaning given
20 such term in section 607(1) of the Employee
21 Retirement Income Security Act of 1974.

22 (G) STATE.—The term “State” includes
23 the District of Columbia, the Commonwealth of
24 Puerto Rico, the Virgin Islands, Guam, Amer-

1 ican Samoa, and the Commonwealth of the
2 Northern Mariana Islands.

3 (H) PERIOD OF COVERAGE.—Any ref-
4 erence in this subsection to a period of coverage
5 shall be treated as a reference to a monthly or
6 shorter period of coverage with respect to which
7 premiums are charged with respect to such cov-
8 erage.

9 (I) PLAN SPONSOR.—The term “plan
10 sponsor” has the meaning given such term in
11 section 3(16)(B) of the Employee Retirement
12 Income Security Act of 1974.

13 (J) FURLOUGH PERIOD.—

14 (i) IN GENERAL.—The term “furlough
15 period” means, with respect to an indi-
16 vidual and an employer of such individual,
17 a period—

18 (I) beginning with the first
19 month beginning on or after March 1,
20 2020 and before September 30, 2021,
21 during which such individual’s em-
22 ployer reduces such individual’s work
23 hours (due to a lack of work, funds,
24 or other nondisciplinary reason) to an

1 amount that is less than 70 percent of
2 the base month amount; and

3 (II) ending with the earlier of—

4 (aa) the first month begin-
5 ning after September 30, 2021;

6 or

7 (bb) the month following the
8 first month during which work
9 hours of such employee are great-
10 er than 80 percent of work hours
11 of the base month amount.

12 (ii) BASE MONTH AMOUNT.—For pur-
13 poses of clause (i), the term “base month
14 amount” means, with respect to an indi-
15 vidual and an employer of such individual,
16 the greater of—

17 (I) such individual’s work hours
18 in the month prior (or in the case
19 such individual had no work hours in
20 the month prior and had work hours
21 in the 3 months prior, the last month
22 with work hours within the prior 3
23 months); and

24 (II) such individual’s work hours
25 during the period beginning January

1 1, 2020 and ending January 31,
2 2020.

3 (13) REPORTS.—

4 (A) INTERIM REPORT.—The Secretary of
5 the Treasury and the Secretary of Labor shall
6 jointly submit an interim report to the Com-
7 mittee on Education and Labor, the Committee
8 on Ways and Means, and the Committee on En-
9 ergy and Commerce of the House of Represent-
10 atives and the Committee on Health, Edu-
11 cation, Labor, and Pensions and the Committee
12 on Finance of the Senate regarding the pre-
13 mium assistance provided under this subsection
14 that includes—

15 (i) the number of individuals provided
16 such assistance as of the date of the re-
17 port; and

18 (ii) the total amount of expenditures
19 incurred (with administrative expenditures
20 noted separately) in connection with such
21 assistance as of the date of the report.

22 (B) FINAL REPORT.—As soon as prac-
23 ticable after the last period of COBRA continu-
24 ation coverage for which premium assistance is
25 provided under this section, the Secretary of the

1 Treasury and the Secretary of Labor shall
 2 jointly submit a final report to each Committee
 3 referred to in subparagraph (A) that includes—

4 (i) the number of individuals provided
 5 premium assistance under this section;

6 (ii) the average dollar amount
 7 (monthly and annually) of premium assist-
 8 ance provided to such individuals; and

9 (iii) the total amount of expenditures
 10 incurred (with administrative expenditures
 11 noted separately) in connection with pre-
 12 mium assistance under this section.

13 (14) COBRA PREMIUM ASSISTANCE.—

14 (A) IN GENERAL.—Subchapter B of chap-
 15 ter 65 of the Internal Revenue Code of 1986 is
 16 amended by adding at the end the following
 17 new section:

18 **“SEC. 6432. CONTINUATION COVERAGE PREMIUM ASSIST-**
 19 **ANCE.**

20 “(a) IN GENERAL.—The person to whom premiums
 21 are payable for continuation coverage under section
 22 2(a)(1) of the Worker Health Coverage Protection Act
 23 shall be allowed as a credit against the tax imposed by
 24 section 3111(a), or so much of the taxes imposed under
 25 section 3221(a) as are attributable to the rate in effect

1 under section 3111(a), for each calendar quarter an
2 amount equal to the premiums not paid by assistance eligi-
3 ble individuals for such coverage by reason of such section
4 2(a)(1) with respect to such calendar quarter.

5 “(b) PERSON TO WHOM PREMIUMS ARE PAYABLE.—
6 For purposes of subsection (a), except as otherwise pro-
7 vided by the Secretary, the person to whom premiums are
8 payable under such continuation coverage shall be treated
9 as being—

10 “(1) in the case of any group health plan which
11 is a multiemployer plan (as defined in section 3(37)
12 of the Employee Retirement Income Security Act of
13 1974), the plan,

14 “(2) in the case of any group health plan not
15 described in paragraph (1)—

16 “(A) which provides furlough continuation
17 coverage described in section 2(a)(1)(A)(ii) of
18 the Worker Health Coverage Protection Act or
19 subject to the COBRA continuation provisions
20 contained in—

21 “(i) this title,

22 “(ii) the Employee Retirement Income
23 Security Act of 1974,

24 “(iii) the Public Health Service Act,

25 or

1 “(iv) title 5, United States Code, or
2 “(B) under which some or all of the cov-
3 erage is not provided by insurance,
4 the employer maintaining the plan, and
5 “(3) in the case of any group health plan not
6 described in paragraph (1) or (2), the insurer pro-
7 viding the coverage under the group health plan.

8 “(c) LIMITATIONS AND REFUNDABILITY.—

9 “(1) CREDIT LIMITED TO CERTAIN EMPLOY-
10 MENT TAXES.—The credit allowed by subsection (a)
11 with respect to any calendar quarter shall not exceed
12 the tax imposed by section 3111(a), or so much of
13 the taxes imposed under section 3221(a) as are at-
14 tributable to the rate in effect under section
15 3111(a), for such calendar quarter (reduced by any
16 credits allowed under subsections (e) and (f) of sec-
17 tion 3111, sections 7001 and 7003 of the Families
18 First Coronavirus Response Act, section 2301 of the
19 CARES Act, and sections 20204 and 20212 of the
20 COVID–19 Tax Relief Act of 2020 for such quarter)
21 on the wages paid with respect to the employment
22 of all employees of the employer.

23 “(2) REFUNDABILITY OF EXCESS CREDIT.—

24 “(A) CREDIT IS REFUNDABLE.—If the
25 amount of the credit under subsection (a) ex-

1 ceeds the limitation of paragraph (1) for any
2 calendar quarter, such excess shall be treated
3 as an overpayment that shall be refunded under
4 sections 6402(a) and 6413(b).

5 “(B) CREDIT MAY BE ADVANCED.—In an-
6 ticipation of the credit, including the refundable
7 portion under subparagraph (A), the credit may
8 be advanced, according to forms and instruc-
9 tions provided by the Secretary, up to an
10 amount calculated under subsection (a) through
11 the end of the most recent payroll period in the
12 quarter.

13 “(C) TREATMENT OF DEPOSITS.—The
14 Secretary shall waive any penalty under section
15 6656 for any failure to make a deposit of the
16 tax imposed by section 3111(a), or so much of
17 the taxes imposed under section 3221(a) as are
18 attributable to the rate in effect under section
19 3111(a), if the Secretary determines that such
20 failure was due to the anticipation of the credit
21 allowed under this section.

22 “(D) TREATMENT OF PAYMENTS.—For
23 purposes of section 1324 of title 31, United
24 States Code, any amounts due to an employer
25 under this paragraph shall be treated in the

1 same manner as a refund due from a credit
2 provision referred to in subsection (b)(2) of
3 such section.

4 “(3) LIMITATION ON REIMBURSEMENT FOR
5 FURLOUGHED EMPLOYEES.—In the case of an indi-
6 vidual who for any month is an assistance eligible
7 individual described in section 2(a)(3)(B) of the
8 Worker Health Coverage Protection Act with respect
9 to any coverage, the credit determined with respect
10 to such individual under subsection (a) for any such
11 month ending during a calendar quarter shall not
12 exceed the amount of premium the individual would
13 have paid for a full month of such coverage for the
14 month preceding the first month for which an indi-
15 vidual is such an assistance eligible individual.

16 “(d) GOVERNMENTAL ENTITIES.—For purposes of
17 this section, the term ‘person’ includes any governmental
18 entity or Indian tribal government (as defined in section
19 139E(c)(1)).

20 “(e) DENIAL OF DOUBLE BENEFIT.—For purposes
21 of chapter 1, the gross income of any person allowed a
22 credit under this section shall be increased for the taxable
23 year which includes the last day of any calendar quarter
24 with respect to which such credit is allowed by the amount
25 of such credit. No amount for which a credit is allowed

1 under this section shall be taken into account as qualified
2 wages under section 2301 of the CARES Act or as quali-
3 fied health plan expenses under section 7001(d) or
4 7003(d) of the Families First Coronavirus Response Act.

5 “(f) REPORTING.—Each person entitled to reim-
6 bursement under subsection (a) for any period shall sub-
7 mit such reports (at such time and in such manner) as
8 the Secretary may require, including—

9 “(1) an attestation of involuntary termination
10 of employment, reduction of hours, or furloughing,
11 for each assistance eligible individual on the basis of
12 whose termination, reduction of hours, or fur-
13 loughing entitlement to reimbursement is claimed
14 under subsection (a),

15 “(2) a report of the amount of payroll taxes off-
16 set under subsection (a) for the reporting period,
17 and

18 “(3) a report containing the TINs of all covered
19 employees, the amount of subsidy reimbursed with
20 respect to each employee, and a designation with re-
21 spect to each employee as to whether the subsidy re-
22 imbursement is for coverage of 1 individual or 2 or
23 more individuals.

1 “(g) REGULATIONS.—The Secretary shall issue such
2 regulations or other guidance as may be necessary or ap-
3 propriate to carry out this section, including—

4 “(1) the requirement to report information or
5 the establishment of other methods for verifying the
6 correct amounts of reimbursements under this sec-
7 tion,

8 “(2) the application of this section to group
9 health plans that are multiemployer plans (as de-
10 fined in section 3(37) of the Employee Retirement
11 Income Security Act of 1974),

12 “(3) to allow the advance payment of the credit
13 determined under subsection (a), subject to the limi-
14 tations provided in this section, based on such infor-
15 mation as the Secretary shall require,

16 “(4) to provide for the reconciliation of such
17 advance payment with the amount of the credit at
18 the time of filing the return of tax for the applicable
19 quarter or taxable year, and

20 “(5) with respect to the application of the cred-
21 it to third party payors (including professional em-
22 ployer organizations, certified professional employer
23 organizations, or agents under section 3504).”.

24 (B) SOCIAL SECURITY TRUST FUNDS HELD
25 HARMLESS.—There are hereby appropriated to

1 the Federal Old-Age and Survivors Insurance
2 Trust Fund and the Federal Disability Insur-
3 ance Trust Fund established under section 201
4 of the Social Security Act (42 U.S.C. 401) and
5 the Social Security Equivalent Benefit Account
6 established under section 15A(a) of the Rail-
7 road Retirement Act of 1974 (45 U.S.C. 231n-
8 1(a)) amounts equal to the reduction in reve-
9 nues to the Treasury by reason of this section
10 (without regard to this subparagraph).
11 Amounts appropriated by the preceding sen-
12 tence shall be transferred from the general fund
13 at such times and in such manner as to rep-
14 licate to the extent possible the transfers which
15 would have occurred to such Trust Fund or Ac-
16 count had this section not been enacted.

17 (C) CLERICAL AMENDMENT.—The table of
18 sections for subchapter B of chapter 65 of the
19 Internal Revenue Code of 1986 is amended by
20 adding at the end the following new item:

“Sec. 6432. Continuation coverage premium assistance.”.

21 (D) EFFECTIVE DATE.—The amendments
22 made by this paragraph shall apply to pre-
23 miums to which paragraph (1)(A) applies.

1 (E) SPECIAL RULE IN CASE OF EMPLOYEE
2 PAYMENT THAT IS NOT REQUIRED UNDER THIS
3 SECTION.—

4 (i) IN GENERAL.—In the case of an
5 assistance eligible individual who pays,
6 with respect any period of coverage to
7 which paragraph (1)(A) applies, the
8 amount of the premium for such coverage
9 that the individual would have (but for this
10 Act) been required to pay, the person to
11 whom such payment is payable shall reim-
12 burse such individual for the amount of
13 such premium paid.

14 (ii) CREDIT OF REIMBURSEMENT.—A
15 person to which clause (i) applies shall be
16 allowed a credit in the manner provided
17 under section 6432 of the Internal Rev-
18 enue Code of 1986 for any payment made
19 to the employee under such clause.

20 (iii) PAYMENT OF CREDITS.—Any
21 person to which clause (i) applies shall
22 make the payment required under such
23 clause to the individual not later than 60
24 days after the date on which such indi-

1 vidual elects continuation coverage under
2 paragraph (1).

3 (15) PENALTY FOR FAILURE TO NOTIFY
4 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
5 PREMIUM ASSISTANCE.—

6 (A) IN GENERAL.—Part I of subchapter B
7 of chapter 68 of the Internal Revenue Code of
8 1986 is amended by adding at the end the fol-
9 lowing new section:

10 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
11 **PLAN OF CESSATION OF ELIGIBILITY FOR**
12 **CONTINUATION COVERAGE PREMIUM ASSIST-**
13 **ANCE.**

14 “(a) IN GENERAL.—Except in the case of failure de-
15 scribed in subsection (b) or (c), any person required to
16 notify a group health plan under section 2(a)(2)(B) of the
17 Worker Health Coverage Protection Act who fails to make
18 such a notification at such time and in such manner as
19 the Secretary of Labor may require shall pay a penalty
20 of \$250.

21 “(b) INTENTIONAL FAILURE.—In the case of any
22 such failure that is fraudulent, such person shall pay a
23 penalty equal to the greater of—

24 “(1) \$250, or

1 “(2) 110 percent of the premium assistance
2 provided under section 2(a)(1)(A) of such Act after
3 termination of eligibility under such section.

4 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
5 shall be imposed under this section with respect to any
6 failure if it is shown that such failure is due to reasonable
7 cause and not to willful neglect.”.

8 (B) CLERICAL AMENDMENT.—The table of
9 sections of part I of subchapter B of chapter 68
10 of such Code is amended by adding at the end
11 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility
for continuation coverage premium assistance.”.

12 (16) COORDINATION WITH HCTC.—

13 (A) IN GENERAL.—Section 35(g)(9) of the
14 Internal Revenue Code of 1986 is amended to
15 read as follows:

16 “(9) CONTINUATION COVERAGE PREMIUM AS-
17 SISTANCE.—In the case of an assistance eligible in-
18 dividual who receives premium assistance for con-
19 tinuation coverage under section 2(a)(1) of the
20 Worker Health Coverage Protection Act for any
21 month during the taxable year, such individual shall
22 not be treated as an eligible individual, a certified
23 individual, or a qualifying family member for pur-

1 poses of this section or section 7527 with respect to
2 such month.”.

3 (B) EFFECTIVE DATE.—The amendment
4 made by subparagraph (A) shall apply to tax-
5 able years ending after the date of the enact-
6 ment of this Act.

7 (17) EXCLUSION OF CONTINUATION COVERAGE
8 PREMIUM ASSISTANCE FROM GROSS INCOME.—

9 (A) IN GENERAL.—Part III of subchapter
10 B of chapter 1 of the Internal Revenue Code of
11 1986 is amended by inserting after section
12 139H the following new section:

13 **“SEC. 139I. CONTINUATION COVERAGE PREMIUM ASSIST-**
14 **ANCE.**

15 “In the case of an assistance eligible individual (as
16 defined in subsection (a)(3) of section 2 of the Worker
17 Health Coverage Protection Act), gross income does not
18 include any premium assistance provided under subsection
19 (a)(1) of such section.”.

20 (B) CLERICAL AMENDMENT.—The table of
21 sections for part III of subchapter B of chapter
22 1 of such Code is amended by inserting after
23 the item relating to section 139H the following
24 new item:

“Sec. 139I. Continuation coverage premium assistance.”.

1 (C) EFFECTIVE DATE.—The amendments
2 made by this paragraph shall apply to taxable
3 years ending after the date of the enactment of
4 this Act.

5 (18) DEADLINES WITH RESPECT TO NO-
6 TICES.—Notwithstanding section 518 of the Em-
7 ployee Retirement Income Security Act of 1974 (29
8 U.S.C. 1148) and section 7508A of the Internal
9 Revenue Code of 1986, the Secretary of Labor and
10 the Secretary of the Treasury, respectively, may not
11 waive or extend any deadline with respect to the pro-
12 vision of notices described in paragraphs (7), (8),
13 and (9).

14 (b) RULE OF CONSTRUCTION.—In all matters of in-
15 terpretation, rules, and operational procedures, the lan-
16 guage of this section shall be interpreted broadly for the
17 benefit of workers and their families.

○