

116TH CONGRESS  
2D SESSION

# S. 3536

To provide for special enrollment periods during public health emergencies, coverage of services related to public health emergencies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 19, 2020

Mr. CASEY (for himself, Mr. BOOKER, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide for special enrollment periods during public health emergencies, coverage of services related to public health emergencies, 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 “Ensuring Coverage in  
5 Public Health Emergencies Act of 2020”.

1 **SEC. 2. SPECIAL ENROLLMENT PERIODS DURING PUBLIC**  
2 **HEALTH EMERGENCIES.**

3 (a) PUBLIC HEALTH SERVICE ACT.—Title XXVII of  
4 the Public Health Service Act (42 U.S.C. 300gg et seq.)  
5 is amended—

6 (1) in section 2702(b)(2) (42 U.S.C. 300gg–  
7 1(b)(2)), by inserting “, which shall include a special  
8 enrollment period of 30 days during a public health  
9 emergency declared under section 319, which period  
10 may be extended for such time as the Secretary may  
11 require” before the period at the end; and

12 (2) in section 2704(f) (42 U.S.C. 300gg–3(f)),  
13 by adding at the end the following:

14 “(4) PUBLIC HEALTH EMERGENCIES.—If the  
15 Secretary declares a public health emergency under  
16 section 319, group health plan, and a group health  
17 insurance issuer offering group health insurance cov-  
18 erage in connection with a group health plan, shall  
19 permit an employee who is eligible, but not enrolled,  
20 for coverage under the terms of the plan or coverage  
21 (or a dependent of such an employee if the depend-  
22 ent is eligible, but not enrolled, for coverage under  
23 such terms) to enroll for coverage under the terms  
24 of the plan or coverage during the special enrollment  
25 period required under section 2702(b)(2) of the Pub-  
26 lic Health Service Act (42 U.S.C. 300gg–1(b)(2)).”.

1 (b) ERISA.—Section 701(f) of the Employee Retirement  
2 ment Income Security Act of 1974 (29 U.S.C. 1181(f))  
3 is amended by adding at the end the following:

4 “(4) PUBLIC HEALTH EMERGENCIES.—If the  
5 Secretary of Health and Human Services declares a  
6 public health emergency under section 319 of the  
7 Public Health Service Act (42 U.S.C. 247d), a  
8 group health plan, or a health insurance issuer offer-  
9 ing group health insurance coverage in connection  
10 with such a plan, shall permit an employee who is  
11 eligible, but not enrolled, for coverage under the  
12 terms of the plan or coverage (or a dependent of  
13 such an employee if the dependent is eligible, but  
14 not enrolled, for coverage under such terms) to en-  
15 roll for coverage under the terms of the plan or cov-  
16 erage during the special enrollment period required  
17 under section 2702(b)(2) of the Public Health Serv-  
18 ice Act (42 U.S.C. 300gg–1(b)(2)).”.

19 (c) IRC.—Section 9801(f) of the Internal Revenue  
20 Code of 1986 (26 U.S.C. 9801(f)) is amended by adding  
21 at the end the following new paragraph:

22 “(4) PUBLIC HEALTH EMERGENCIES.—If the  
23 Secretary of Health and Human Services declares a  
24 public health emergency under section 319 of the  
25 Public Health Service Act (42 U.S.C. 247d), a

1 group health plan shall permit an employee who is  
 2 eligible, but not enrolled, for coverage under the  
 3 terms of the plan (or a dependent of such an em-  
 4 ployee if the dependent is eligible, but not enrolled,  
 5 for coverage under such terms) to enroll for coverage  
 6 under the terms of the plan during the special en-  
 7 rollment period required under section 2702(b)(2) of  
 8 the Public Health Service Act (42 U.S.C. 300gg-  
 9 1(b)(2)).”.

10 (d) **RULE OF CONSTRUCTION.**—Nothing in the  
 11 amendments made by subsections (a) and (b) shall be con-  
 12 strued to prevent group health plan or health insurance  
 13 issuer from offering a special enrollment period in addition  
 14 to any such period required under Federal law.

15 **SEC. 3. COVERAGE OF PREVENTION AND TREATMENT RE-**  
 16 **LATED TO PUBLIC HEALTH EMERGENCIES.**

17 (a) **REQUIRED COVERAGE.**—

18 (1) **IN GENERAL.**—Subpart II of part A of title  
 19 XXVII of the Public Health Service Act (42 U.S.C.  
 20 300gg-11 et seq.) is amended by adding at the end  
 21 the following:

22 **“SEC. 2729A. COVERAGE OF PREVENTION AND TREATMENT**  
 23 **RELATED TO PUBLIC HEALTH EMERGENCIES.**

24 “(a) **IN GENERAL.**—A group health plan or a health  
 25 insurance issuer offering group or individual health insur-

1 ance coverage shall provide coverage for such services re-  
2 lated to a disease or condition relating to a public health  
3 emergency declared under section 319, which, as applica-  
4 ble, shall include any services for the prevention or treat-  
5 ment, of the disease or condition.

6 “(b) SCOPE OF BENEFITS.—The prevention and  
7 treatment measures for which coverage is required under  
8 subsection (a) shall—

9 “(1) be at the same level as benefits for the  
10 prevention or treatment of other similar or related  
11 diseases or conditions, if applicable, under the plan  
12 or coverage; and

13 “(2) include, with respect to the disease or con-  
14 dition reasonably related to the public health emer-  
15 gency, even if no diagnosis has been made and even  
16 if the enrollee ultimately is determined not to have  
17 the disease or condition, as applicable—

18 “(A) vaccines to prevent the disease or  
19 condition, if applicable;

20 “(B) testing for diagnosis of the disease or  
21 condition, if applicable;

22 “(C) care related to symptoms an enrollee  
23 may experience; and

24 “(D) treatments for the disease or condi-  
25 tion.

1       “(c) COST-SHARING.—Cost-sharing for services for  
2 which coverage is required under subsection (a) shall be  
3 comparable to similar such services that would be covered  
4 by the plan or coverage outside of a public health emer-  
5 gency.

6       “(d) WAIVER OF RESTRICTIONS.—

7           “(1) IN GENERAL.—A group health plan or  
8 health insurance issuer offering group or individual  
9 health insurance coverage shall waive any restriction  
10 (including any prior authorization requirement, limi-  
11 tation on filling or refilling prescription drugs, or  
12 other restrictions) on access to covered benefits re-  
13 quired under this section, if the service is deter-  
14 mined by a qualified health professional to be medi-  
15 cally necessary by the provider and the Secretary de-  
16 termines such restriction to be unduly burdensome  
17 in the context of the applicable public health emer-  
18 gency.

19           “(2) TERM OF WAIVER.—Any waiver of restric-  
20 tions pursuant to paragraph (1) shall apply only for  
21 the duration of the public health emergency, as de-  
22 clared under section 319.”.

23           (2) ERISA.—

24           (A) IN GENERAL.—Subpart B of part 7 of  
25 subtitle B of title I of the Employee Retirement

1           Income Security Act of 1974 (29 U.S.C. 1181  
2           et. seq.) is amended by adding at the end the  
3           following:

4   **“SEC. 716. COVERAGE OF PREVENTION AND TREATMENT**  
5                   **RELATED TO PUBLIC HEALTH EMERGENCIES.**

6           “(a) IN GENERAL.—A group health plan or a health  
7   insurance issuer offering group health insurance coverage,  
8   shall provide coverage for such services related to a disease  
9   or condition relating to a public health emergency declared  
10   under section 319 of the Public Health Service Act, which,  
11   as applicable, shall include any services for the prevention  
12   or treatment, of the disease or condition.

13          “(b) SCOPE OF BENEFITS.—The prevention and  
14   treatment measures for which coverage is required under  
15   subsection (a) shall—

16               “(1) be at the same level as benefits for the  
17   prevention or treatment of other similar or related  
18   diseases or conditions, if applicable, under the plan  
19   or coverage; and

20               “(2) include, with respect to the disease or con-  
21   dition reasonably related to the public health emer-  
22   gency, even if no diagnosis has been made and even  
23   if the enrollee ultimately is determined not to have  
24   the disease or condition, as applicable—

1           “(A) vaccines to prevent the disease or  
2           condition, if applicable;

3           “(B) testing for diagnosis of the disease or  
4           condition, if applicable;

5           “(C) care related to symptoms an enrollee  
6           may experience; and

7           “(D) treatments for the disease or condi-  
8           tion.

9           “(c) COST-SHARING.—Cost-sharing for services for  
10          which coverage is required under subsection (a) shall be  
11          comparable to similar such services that would be covered  
12          by the plan or coverage outside of a public health emer-  
13          gency.

14          “(d) WAIVER OF RESTRICTIONS.—

15                 “(1) IN GENERAL.—A group health plan or  
16          health insurance issuer offering group health insur-  
17          ance coverage shall waive any restriction (including  
18          any prior authorization requirement, limitation on  
19          filling or refilling prescription drugs, or other re-  
20          strictions) on access to covered benefits required  
21          under this section, if the service is determined by a  
22          qualified health professional to be medically nec-  
23          essary by the provider and the Secretary determines  
24          such restriction to be unduly burdensome in the con-  
25          text of the applicable public health emergency.

1           “(2) TERM OF WAIVER.—Any waiver of restric-  
 2           tions pursuant to paragraph (1) shall apply only for  
 3           the duration of the public health emergency, as de-  
 4           clared under section 319 of the Public Health Serv-  
 5           ice Act.”.

6           (B) CLERICAL AMENDMENT.—The table of  
 7           sections for subpart B of part 7 of subtitle B  
 8           of title I of the Employee Retirement Income  
 9           Security Act of 1974 is amended by adding at  
 10          the end the following:

“Sec. 715. Additional market reforms.

“Sec. 716. Coverage of prevention and treatment related to public health emer-  
 gencies.”.

11          (3) IRC.—

12           (A) IN GENERAL.—Subchapter B of chap-  
 13           ter 100 of the Internal Revenue Code of 1986  
 14           is amended by adding at the end the following  
 15           new section:

16          **“SEC. 9816. COVERAGE OF PREVENTION AND TREATMENT**  
 17           **RELATED TO PUBLIC HEALTH EMERGENCIES.**

18           “(a) IN GENERAL.—A group health plan shall pro-  
 19           vide coverage for such services related to a disease or con-  
 20           dition relating to a public health emergency declared  
 21           under section 319 of the Public Health Service Act, which,  
 22           as applicable, shall include any services for the prevention  
 23           or treatment, of the disease or condition.

1       “(b) SCOPE OF BENEFITS.—The prevention and  
2 treatment measures for which coverage is required under  
3 subsection (a) shall—

4           “(1) be at the same level as benefits for the  
5 prevention or treatment of other similar or related  
6 diseases or conditions, if applicable, under the plan;  
7 and

8           “(2) include, with respect to the disease or con-  
9 dition reasonably related to the public health emer-  
10 gency, even if no diagnosis has been made and even  
11 if the enrollee ultimately is determined not to have  
12 the disease or condition, as applicable—

13           “(A) vaccines to prevent the disease or  
14 condition, if applicable;

15           “(B) testing for diagnosis of the disease or  
16 condition, if applicable;

17           “(C) care related to symptoms an enrollee  
18 may experience; and

19           “(D) treatments for the disease or condi-  
20 tion.

21       “(c) COST-SHARING.—Cost-sharing for services for  
22 which coverage is required under subsection (a) shall be  
23 comparable to similar such services that would be covered  
24 by the plan outside of a public health emergency.

25       “(d) WAIVER OF RESTRICTIONS.—

1           “(1) IN GENERAL.—A group health plan shall  
 2           waive any restriction (including any prior authoriza-  
 3           tion requirement, limitation on filling or refilling  
 4           prescription drugs, or other restrictions) on access to  
 5           covered benefits required under this section, if the  
 6           service is determined by a qualified health profes-  
 7           sional to be medically necessary by the provider and  
 8           the Secretary determines such restriction to be un-  
 9           duly burdensome in the context of the applicable  
 10          public health emergency.

11           “(2) TERM OF WAIVER.—Any waiver of restric-  
 12          tions pursuant to paragraph (1) shall apply only for  
 13          the duration of the public health emergency, as de-  
 14          clared under section 319 of the Public Health Serv-  
 15          ice Act.”.

16           (B) CLERICAL AMENDMENT.—The table of  
 17          sections for subchapter B of chapter 100 of  
 18          such Code is amended by adding at the end the  
 19          following new item:

“Sec. 9816. Coverage of prevention and treatment related to public health  
 emergencies.”.

20 **SEC. 4. EFFECTIVE DATE; APPLICATION.**

21          The amendments made by this Act shall take effect  
 22          on the date of enactment of this Act and shall apply with  
 23          respect to plans years in effect on the date of enactment

1 of this Act, and plan years beginning on or after such  
2 date.

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