

106TH CONGRESS  
2D SESSION

# H. R. 3631

To amend title XVIII of the Social Security Act, the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide for an election for retirees 55-to-65 years of age who lose employer-based coverage to acquire health care coverage under the Medicare Program or under COBRA continuation benefits, and to amend the Employee Retirement Income Security Act of 1974 to provide for advance notice of material reductions in covered services under group health plans.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2000

Mr. KLECZKA introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, and Education and the Workforce, 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

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## A BILL

To amend title XVIII of the Social Security Act, the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide for an election for retirees 55-to-65 years of age who lose employer-based coverage to acquire health care coverage under the Medicare Program or under COBRA continuation benefits, and to amend the Employee Retirement Income Security Act

of 1974 to provide for advance notice of material reductions in covered services under group health plans.

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 “Broken Promises Re-  
 5 tiree Health Coverage Act of 2000”.

6 **TITLE I—ACCESS TO MEDICARE**  
 7 **FOR INDIVIDUALS LOSING**  
 8 **RETIREE HEALTH COVERAGE**

9 **SEC. 101. ACCESS TO MEDICARE FOR INDIVIDUALS LOSING**  
 10 **RETIREE HEALTH COVERAGE.**

11 (a) IN GENERAL.—Title XVIII of the Social Security  
 12 Act is amended by inserting after section 1818A the fol-  
 13 lowing new section:

14 “MEDICARE BENEFITS FOR CERTAIN INDIVIDUALS WHO  
 15 ARE 55 TO 65 YEARS OF AGE

16 “SEC. 1818B. (a) ELIGIBILITY TO ENROLL.—

17 “(1) IN GENERAL.—Subject to paragraph (2),  
 18 an individual who meets the following requirements  
 19 with respect to a month is eligible to enroll in the  
 20 insurance program under this part with respect to  
 21 such month:

22 “(A) AGE.—As of the last day of the  
 23 month, the individual has attained 55 years of  
 24 age, but has not attained 65 years of age.

1           “(B) MEDICARE ELIGIBILITY (BUT FOR  
2           AGE).—The individual would be eligible for ben-  
3           efits under this part for the month if the indi-  
4           vidual were 65 years of age.

5           “(C) NOT ELIGIBLE FOR COVERAGE  
6           UNDER GROUP HEALTH PLANS OR FEDERAL  
7           HEALTH INSURANCE PROGRAMS.—The indi-  
8           vidual is not eligible for benefits or coverage  
9           under a Federal health insurance program (as  
10          defined in subsection (e)(2), other than under  
11          this section) or under a group health plan (in-  
12          cluding such eligibility merely through a Fed-  
13          eral or State COBRA continuation provision) as  
14          of the last day of the month involved.

15          “(D) LOSS OF RETIREE HEALTH COV-  
16          ERAGE.—The individual was covered under a  
17          group health plan as a qualified retiree, but a  
18          termination of such coverage occurred not more  
19          than 90 days before the date the individual  
20          seeks enrollment under this section.

21          “(E) NOT IMPRISONED.—As of the first  
22          day of such month, the individual is not impris-  
23          oned under Federal, State, or local authority.

24          “(2) LIMITATION ON ELIGIBILITY IF TERMI-  
25          NATED ENROLLMENT.—If an individual described in

1 paragraph (1) enrolls under this section and cov-  
2 erage of the individual is terminated under sub-  
3 section (d) (other than because of age), the indi-  
4 vidual is not again eligible to enroll under this sec-  
5 tion unless the following requirements are met:

6 “(A) NEW COVERAGE UNDER GROUP  
7 HEALTH PLAN OR FEDERAL HEALTH INSUR-  
8 ANCE PROGRAM.—After the date of termination  
9 of coverage under such paragraph, the indi-  
10 vidual obtains coverage under a group health  
11 plan or under a Federal health insurance pro-  
12 gram (other than under this section).

13 “(B) SUBSEQUENT LOSS OF NEW COV-  
14 ERAGE.—The individual subsequently loses eli-  
15 gibility for the coverage described in subpara-  
16 graph (A) and exhausts any eligibility the indi-  
17 vidual may subsequently have for coverage  
18 under a Federal or State COBRA continuation  
19 provision.

20 “(3) CHANGE IN HEALTH PLAN ELIGIBILITY  
21 DOES NOT AFFECT COVERAGE.—In the case of an  
22 individual who is eligible for and enrolls under this  
23 section, the individual’s continued entitlement to  
24 benefits under this part shall not be affected by the  
25 individual’s subsequent eligibility for benefits or cov-

1       erage described in paragraph (1)(C), or entitlement  
2       to such benefits or coverage.

3       “(b) ENROLLMENT PROCESS.—

4               “(1) IN GENERAL.—An individual may enroll  
5       under this section only in such manner and form as  
6       may be prescribed by regulations, and only during  
7       an enrollment period prescribed by the Secretary  
8       consistent with the provisions of this subsection.  
9       Such regulations shall provide a process under which  
10      individuals eligible to enroll as of a month are per-  
11      mitted to pre-enroll during a prior month within an  
12      enrollment period described in paragraph (2).

13       “(2) ENROLLMENT PERIODS.—

14               “(A) IN GENERAL.—

15                       “(i) INITIAL ENROLLMENT PERIOD.—

16               If the individual is eligible to enroll under  
17               this section for October 1, 2000, the en-  
18               rollment period shall begin on August 1,  
19               2000, and shall end on December 31,  
20               2000. Any such enrollment before October  
21               1, 2000, is conditioned upon compliance  
22               with the conditions of eligibility for Octo-  
23               ber 1, 2000.

24                       “(ii) SUBSEQUENT PERIODS.—If the  
25               individual is eligible to enroll under such

1 section for a month after October 2000,  
2 the enrollment period shall begin on the  
3 first day of the second month before the  
4 month in which the individual first is eligi-  
5 ble to so enroll and shall end four months  
6 later. Any such enrollment before the first  
7 day of the third month of such enrollment  
8 period is conditioned upon compliance with  
9 the conditions of eligibility for such third  
10 month.

11 “(B) AUTHORITY TO CORRECT FOR GOV-  
12 ERNMENT ERRORS.—The provisions of section  
13 1837(h) apply with respect to enrollment under  
14 this part in the same manner as they apply to  
15 enrollment under part B.

16 “(c) DATE COVERAGE BEGINS.—

17 “(1) IN GENERAL.—The period during which  
18 an individual is entitled to benefits pursuant to an  
19 enrollment under this section shall begin as follows,  
20 but in no case earlier than October 1, 2000:

21 “(A) In the case of an individual who en-  
22 rolls (including pre-enrolls) before the month in  
23 which the individual satisfies eligibility for en-  
24 rollment under subsection (a), the first day of  
25 such month of eligibility.

1           “(B) In the case of an individual who en-  
2           rolls during or after the month in which the in-  
3           dividual first satisfies eligibility for enrollment  
4           under such subsection, the first day of the fol-  
5           lowing month.

6           “(2) AUTHORITY TO PROVIDE FOR PARTIAL  
7           MONTHS OF COVERAGE.—Under regulations, the  
8           Secretary may, in the Secretary’s discretion, provide  
9           for coverage periods that include portions of a  
10          month in order to avoid lapses of coverage.

11          “(3) LIMITATION ON PAYMENTS.—No payments  
12          may be made under this title with respect to the ex-  
13          penses of an individual enrolled under this section  
14          unless such expenses were incurred by such indi-  
15          vidual during a period which, with respect to the in-  
16          dividual, is a coverage period under this subsection.

17          “(d) TERMINATION OF COVERAGE.—

18          “(1) IN GENERAL.—An individual’s coverage  
19          period under this section shall continue until the in-  
20          dividual’s enrollment has been terminated at the ear-  
21          liest of the following:

22                 “(A) GENERAL PROVISIONS.—

23                         “(i) NOTICE.—The individual files no-  
24                         tice (in a form and manner prescribed by  
25                         the Secretary) that the individual no

1 longer wishes to participate in the insur-  
2 ance program under this part.

3 “(ii) NONPAYMENT OF PREMIUMS.—  
4 The individual fails to make payment of  
5 premiums required for enrollment under  
6 this part.

7 “(iii) MEDICARE ELIGIBILITY ON  
8 OTHER BASIS.—The individual becomes en-  
9 titled to benefits under this part other  
10 than by reason of this section.

11 “(B) TERMINATION BASED ON AGE.—The  
12 individual attains 65 years of age.

13 “(2) EFFECTIVE DATE OF TERMINATION.—

14 “(A) NOTICE.—The termination of a cov-  
15 erage period under paragraph (1)(A)(i) shall  
16 take effect at the close of the month following  
17 for which the notice is filed.

18 “(B) NONPAYMENT OF PREMIUM.—The  
19 termination of a coverage period under para-  
20 graph (1)(A)(ii) shall take effect on a date de-  
21 termined under regulations, which may be de-  
22 termined so as to provide a grace period in  
23 which overdue premiums may be paid and cov-  
24 erage continued. The grace period determined  
25 under the preceding sentence shall not exceed



60 days; except that it may be extended for an additional 30 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 60-day period.

“(C) AGE OR MEDICARE ELIGIBILITY.—

The termination of a coverage period under paragraph (1)(A)(iii) or (1)(B) shall take effect as of the first day of the month in which the individual attains 65 years of age or becomes otherwise entitled to benefits under this part.

“(e) PREMIUMS.—

“(1) IN GENERAL.—Premiums for enrollment under this section shall be paid to the Secretary in an amount determined under paragraph (2). Such premiums shall be paid at such times, and in such manner, as the Secretary shall by regulations prescribe, and shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund established under section 1817.

“(2) AMOUNT OF PREMIUM.—The amount of premium for a month occurring during—

“(A) fiscal year 2001, is equal to \$400;

and

1           “(B) a succeeding fiscal year is the  
2           amount specified under this paragraph for the  
3           previous fiscal year increased by the percentage  
4           increase in the consumer price index for all  
5           urban consumers (all items; United States city  
6           average) for the 12-month period ending with  
7           July preceding the beginning of the fiscal year.

8           “(3) PERIOD OF APPLICABILITY OF PRE-  
9           MIUMS.—Such premiums shall be payable for the pe-  
10          riod commencing with the first month of an individ-  
11          ual’s coverage period and ending with the month in  
12          which the individual dies or, if earlier, in which the  
13          individual’s coverage period terminates under sub-  
14          section (d).

15          “(f) DEFINITIONS.—For purposes of this section:

16               “(1) QUALIFIED RETIREE.—The term ‘qualified  
17               retiree’ means an individual who, immediately before  
18               the occurrence of the termination of coverage of  
19               such individual under a group health plan—

20                       “(A) had attained 55 years of age; and

21                       “(B) was receiving such coverage by rea-  
22               son of the retirement of the individual.

23               “(2) FEDERAL OR STATE COBRA CONTINU-  
24               ATION PROVISION.—The term ‘Federal or State  
25               COBRA continuation provision’ has the meaning

1 given the term ‘COBRA continuation provision’ in  
2 section 2791(d)(4) of the Public Health Service Act  
3 and includes a comparable State program, as deter-  
4 mined by the Secretary.

5 “(3) FEDERAL HEALTH INSURANCE PROGRAM  
6 DEFINED.—The term ‘Federal health insurance pro-  
7 gram’ means any of the following:

8 “(A) MEDICARE.—This title (other than by  
9 reason of this section).

10 “(B) MEDICAID.—A State plan under title  
11 XIX.

12 “(C) FEHBP.—The Federal employees  
13 health benefit program under chapter 89 of title  
14 5, United States Code.

15 “(D) TRICARE.—The TRICARE pro-  
16 gram (as defined in section 1072(7) of title 10,  
17 United States Code).

18 “(E) ACTIVE DUTY MILITARY.—Health  
19 benefits under title 10, United States Code, to  
20 an individual as a member of the uniformed  
21 services of the United States.

22 “(5) GROUP HEALTH PLAN.—The term ‘group  
23 health plan’ has the meaning given such term in sec-  
24 tion 2791(a)(1) of the Public Health Service Act.”.

25 (b) CONFORMING AMENDMENTS.—

1           (1) Section 1905(p)(3)(A) of the Social Secu-  
 2           rity Act (42 U.S.C. 1396d(p)(3)(A)) is amended by  
 3           striking “or 1818A” and inserting “, 1818A, or  
 4           1818B”.

5           (2)(A) Section 602(2)(D)(ii) of the Employee  
 6           Retirement Income Security Act of 1974 (29 U.S.C.  
 7           1162(2)) is amended by inserting “(not including an  
 8           individual who is so entitled pursuant to enrollment  
 9           under section 1818B)” after “Social Security Act”.

10          (B) Section 2202(2)(D)(ii) of the Public Health  
 11          Service Act (42 U.S.C. 300bb–2(2)(D)(ii)) is amend-  
 12          ed by inserting “(not including an individual who is  
 13          so entitled pursuant to enrollment under section  
 14          1818B)” after “Social Security Act”.

15          (C) Section 4980B(f)(2)(B)(i)(V) of the Inter-  
 16          nal Revenue Code of 1986 is amended by inserting  
 17          “(not including an individual who is so entitled pur-  
 18          suant to enrollment under section 1818B)” after  
 19          “Social Security Act”.

20   **SEC. 102. PROTECTIONS UNDER MEDIGAP FOR RETIRED**  
 21                   **WORKERS WHO LOSE RETIREE HEALTH BEN-**  
 22                   **EFITS.**

23          (a) PROVIDING FOR MEDIGAP OPEN ENROLLMENT  
 24          PERIOD.—Section 1882(s)(2)(A) of the Social Security

1 Act (42 U.S.C. 1395ss(s)(2)(A)), as amended by section  
 2 201(b), is amended—

3 (1) by striking “or (ii)” and inserting “, (ii)”;  
 4 and

5 (2) by inserting before the period at the end the  
 6 following: “, or (iii) in the case of an individual who  
 7 enrolls in part B pursuant to a special enrollment  
 8 period provided under section 1837(i)(4), the 6-  
 9 month period beginning with the first month as of  
 10 the first day of which the individual is enrolled  
 11 under part B pursuant to such enrollment”.

12 (b) EFFECTIVE DATE.—The amendments made by  
 13 this section shall take effect on the date of the enactment  
 14 of this Act and apply to any involuntary termination of  
 15 coverage under a group health plan.

16 **TITLE II—COBRA PROTECTION**  
 17 **FOR EARLY RETIREES**  
 18 **Subtitle A—Amendments to the**  
 19 **Employee Retirement Income**  
 20 **Security Act of 1974**

21 **SEC. 201. COBRA CONTINUATION BENEFITS FOR CERTAIN**  
 22 **RETIRED WORKERS WHO LOSE RETIREE**  
 23 **HEALTH COVERAGE.**

24 (a) ESTABLISHMENT OF NEW QUALIFYING  
 25 EVENT.—

1           (1) IN GENERAL.—Section 603 of the Employee  
2       Retirement Income Security Act of 1974 (29 U.S.C.  
3       1163) is amended by inserting after paragraph (6)  
4       the following new paragraph:

5           “(7) The termination of benefits of group  
6       health plan coverage as a result of plan changes or  
7       termination in the case of a covered employee who  
8       is a qualified retiree.”.

9           (2) QUALIFIED RETIREE; AND QUALIFIED BEN-  
10      EFICIARY DEFINED.—Section 607 of such Act (29  
11      U.S.C. 1167) is amended—

12           (A) in paragraph (3)—

13               (i) in subparagraph (A), by inserting  
14               “except as otherwise provided in this para-  
15               graph,” after “means,”; and

16               (ii) by adding at the end the following  
17               new subparagraph:

18           “(D) SPECIAL RULE FOR QUALIFYING RE-  
19      TIREES AND DEPENDENTS.—In the case of a  
20      qualifying event described in section 603(7), the  
21      term ‘qualified beneficiary’ means a qualified  
22      retiree and any other individual who, on the day  
23      before such qualifying event, is a beneficiary  
24      under the plan on the basis of the individual’s  
25      relationship to such qualified retiree.”; and

1 (B) by adding at the end the following new  
2 paragraphs:

3 “(6) QUALIFIED RETIREE.—The term ‘qualified  
4 retiree’ means, with respect to a qualifying event de-  
5 scribed in section 603(7), a covered employee who,  
6 at the time of the event—

7 “(A) has attained 55 years of age;

8 “(B) was receiving group health coverage  
9 under the plan by reason of the retirement of  
10 the covered employee; and

11 “(C) is not enrolled under section 1818B  
12 of the Social Security Act (relating to Medicare  
13 benefits for certain individuals who are 55 to  
14 65 years of age)”.

15 (b) DURATION OF COVERAGE THROUGH AGE 65.—  
16 Section 602(2)(A) of such Act (29 U.S.C. 1162(2)(A)) is  
17 amended—

18 (1) in clause (ii), by inserting “or 603(7)” after  
19 “603(6)”;

20 (2) in clause (iv), by striking “or 603(6)” and  
21 inserting “, 603(6), or 603(7)”;

22 (3) by redesignating clause (iv) as clause (vi);

23 (4) by redesignating clause (v) as clause (iv)  
24 and by moving such clause to immediately follow  
25 clause (iii); and

(5) by inserting after such clause (iv) the following new clause:

“(v) SPECIAL RULE FOR CERTAIN DEPENDENTS IN CASE OF TERMINATION OF RETIREE HEALTH COVERAGE.—In the case of a qualifying event described in section 603(7), in the case of a qualified beneficiary described in section 607(3)(D) who is not the qualified retiree or spouse of such retiree, the later of—

“(I) the date that is 36 months after the earlier of the date the qualified retiree becomes entitled to benefits under title XVIII of the Social Security Act, or the date of the death of the qualified retiree; or

“(II) the date that is 36 months after the date of the qualifying event.”.

(c) TYPE OF COVERAGE IN CASE OF TERMINATION OF RETIREE HEALTH COVERAGE.—Section 602(1) of such Act (29 U.S.C. 1162(1)) is amended—

(1) by striking “The coverage” and inserting the following:



1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the coverage”; and  
3           (2) by adding at the end the following:

4           “(B) CERTAIN RETIREES.—In the case of  
5           a qualifying event described in section 603(7),  
6           in applying the first sentence of subparagraph  
7           (A) and the fourth sentence of paragraph (3),  
8           the coverage offered that is the most prevalent  
9           coverage option (as determined under regula-  
10          tions of the Secretary) continued under the  
11          group health plan (or, if none, under the most  
12          prevalent other plan offered by the same plan  
13          sponsor) shall be treated as the coverage de-  
14          scribed in such sentence, or (at the option of  
15          the plan and qualified beneficiary) such other  
16          coverage option as may be offered and elected  
17          by the qualified beneficiary involved.”.

18          (d) INCREASED LEVEL OF PREMIUMS PERMITTED.—  
19          Section 602(3) of such Act (29 U.S.C. 1162(3)) is amend-  
20          ed by adding at the end the following new sentence: “In  
21          the case of an individual provided continuation coverage  
22          by reason of a qualifying event described in section  
23          603(7), any reference in subparagraph (A) of this para-  
24          graph to ‘102 percent of the applicable premium’ is  
25          deemed a reference to ‘110 percent of the applicable pre-

1 mium for employed individuals (and their dependents, if  
 2 applicable) for the coverage option referred to in para-  
 3 graph (1)(B)’.’.

4 (e) NOTICE.—Section 606(a) of such Act (29 U.S.C.  
 5 1166) is amended—

6 (1) in paragraph (4)(A), by striking “or (6)”  
 7 and inserting “(6), or (7)”; and

8 (2) by adding at the end the following:

9 “The notice under paragraph (4) in the case of a quali-  
 10 fying event described in section 603(7) shall be provided  
 11 at least 90 days before the date of the qualifying event.  
 12 Such notice shall include information with respect to eligi-  
 13 bility for enrollment under section 1818B of the Social  
 14 Security Act (relating to medicare benefits for certain in-  
 15 dividuals who are 55 to 65 years of age).’.

16 (f) ELECTION OF MEDICARE COVERAGE IN LIEU OF  
 17 CONTINUATION COVERAGE.—Section 607(3) of such Act  
 18 (29 U.S.C. 1167(3)) (as amended by subsection (a)(2))  
 19 is amended further by adding at the end the following new  
 20 subparagraph:

21 “(E) EXCLUSION FOR CERTAIN INDIVID-  
 22 UALS ELECTING MEDICARE ENROLLMENT.—  
 23 Such term does not include an individual who  
 24 is enrolled under section 1818B of the Social  
 25 Security Act (relating to Medicare benefits for

1 certain individuals who are 55 to 65 years of  
2 age).”.

3 (g) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by  
5 this section (other than subsection (e)(2)) shall  
6 apply to qualifying events occurring during plan  
7 years ending after August 1, 1996. In the case of  
8 a qualifying event occurring on or after such date  
9 and before the date of the enactment of this Act,  
10 such event shall be deemed (for purposes of such  
11 amendments) to have occurred on the date of the en-  
12 actment of this Act.

13 (2) ADVANCE NOTICE OF TERMINATIONS AND  
14 REDUCTIONS.—The amendment made by subsection  
15 (e)(2) shall apply to qualifying events occurring on  
16 or after February 10, 2000.

17 **Subtitle B—Amendments to the**  
18 **Public Health Service Act**

19 **SEC. 211. COBRA CONTINUATION BENEFITS FOR CERTAIN**  
20 **RETIRED WORKERS WHO LOSE RETIREE**  
21 **HEALTH COVERAGE.**

22 (a) ESTABLISHMENT OF NEW QUALIFYING  
23 EVENT.—

24 (1) IN GENERAL.—Section 2203 of the Public  
25 Health Service Act (42 U.S.C. 300bb–3) is amended

1 by inserting after paragraph (5) the following new  
2 paragraph:

3 “(6) The termination of benefits of group  
4 health plan coverage as a result of plan changes or  
5 termination in the case of a covered employee who  
6 is a qualified retiree.”.

7 (2) QUALIFIED RETIREE; AND QUALIFIED BEN-  
8 EFICIARY; DEFINED.—Section 2208 of such Act (42  
9 U.S.C. 300bb–8) is amended—

10 (A) in paragraph (3)—

11 (i) in subparagraph (A), by inserting  
12 “except as otherwise provided in this para-  
13 graph,” after “means,”; and

14 (ii) by adding at the end the following  
15 new subparagraph:

16 “(C) SPECIAL RULE FOR QUALIFYING RE-  
17 TIREES AND DEPENDENTS.—In the case of a  
18 qualifying event described in section 2203(6),  
19 the term ‘qualified beneficiary’ means a quali-  
20 fied retiree and any other individual who, on  
21 the day before such qualifying event, is a bene-  
22 ficiary under the plan on the basis of the indi-  
23 vidual’s relationship to such qualified retiree.”;  
24 and

1 (B) by adding at the end the following new  
2 paragraphs:

3 “(5) QUALIFIED RETIREE.—The term ‘qualified  
4 retiree’ means, with respect to a qualifying event de-  
5 scribed in section 2203(6), a covered employee who,  
6 at the time of the event—

7 “(A) has attained 55 years of age;

8 “(B) was receiving group health coverage  
9 under the plan by reason of the retirement of  
10 the covered employee; and

11 “(C) is not enrolled under section 1818B of the  
12 Social Security Act (relating to Medicare benefits for  
13 certain individuals who are 55 to 65 years of age).”.

14 (b) DURATION OF COVERAGE THROUGH AGE 65.—  
15 Section 2202(2)(A) of such Act (42 U.S.C. 300bb-  
16 2(2)(A)) is amended—

17 (1) by redesignating clause (iii) as clause (iv);  
18 and

19 (2) by inserting after clause (ii) the following  
20 new clause:

21 “(iii) SPECIAL RULE FOR CERTAIN  
22 DEPENDENTS IN CASE OF TERMINATION  
23 OF RETIREE HEALTH COVERAGE.—In the  
24 case of a qualifying event described in sec-  
25 tion 2203(6), in the case of a qualified

1 beneficiary described in section 2208(3)(C)  
 2 who is not the qualified retiree or spouse  
 3 of such retiree, the later of—

4 “(I) the date that is 36 months  
 5 after the earlier of the date the quali-  
 6 fied retiree becomes entitled to bene-  
 7 fits under title XVIII of the Social Se-  
 8 curity Act, or the date of the death of  
 9 the qualified retiree; or

10 “(II) the date that is 36 months  
 11 after the date of the qualifying  
 12 event.”.

13 (c) TYPE OF COVERAGE IN CASE OF TERMINATION  
 14 OF RETIREE HEALTH COVERAGE.—Section 2202(1) of  
 15 such Act (42 U.S.C. 300bb–2(1)) is amended—

16 (1) by striking “The coverage” and inserting  
 17 the following:

18 “(A) IN GENERAL.—Except as provided in  
 19 subparagraph (B), the coverage”; and

20 (2) by adding at the end the following:

21 “(B) CERTAIN RETIREES.—In the case of  
 22 a qualifying event described in section 2203(6),  
 23 in applying the first sentence of subparagraph  
 24 (A) and the fourth sentence of paragraph (3),  
 25 the coverage offered that is the most prevalent

1 coverage option (as determined under regula-  
 2 tions of the Secretary of Labor) continued  
 3 under the group health plan (or, if none, under  
 4 the most prevalent other plan offered by the  
 5 same plan sponsor) shall be treated as the cov-  
 6 erage described in such sentence, or (at the op-  
 7 tion of the plan and qualified beneficiary) such  
 8 other coverage option as may be offered and  
 9 elected by the qualified beneficiary involved.”.

10 (d) INCREASED LEVEL OF PREMIUMS PERMITTED.—  
 11 Section 2202(3) of such Act (42 U.S.C. 300bb–2(3)) is  
 12 amended by adding at the end the following new sentence:  
 13 “In the case of an individual provided continuation cov-  
 14 erage by reason of a qualifying event described in section  
 15 2203(6), any reference in subparagraph (A) of this para-  
 16 graph to ‘102 percent of the applicable premium’ is  
 17 deemed a reference to ‘110 percent of the applicable pre-  
 18 mium for employed individuals (and their dependents, if  
 19 applicable) for the coverage option referred to in para-  
 20 graph (1)(B)’.”.

21 (e) NOTICE.—Section 2206(a) of such Act (42 U.S.C.  
 22 300bb–6(a)) is amended—

23 (1) in paragraph (4)(A), by striking “or (4)”  
 24 and inserting “(4), or (6)”; and

25 (2) by adding at the end the following:

1 “The notice under paragraph (4) in the case of a quali-  
 2 fying event described in section 2203(6) shall be provided  
 3 at least 90 days before the date of the qualifying event.  
 4 Such notice shall include information with respect to eligi-  
 5 bility for enrollment under section 1818B of the Social  
 6 Security Act (relating to medicare benefits for certain in-  
 7 dividuals who are 55 to 65 years of age).”.

8 (f) ELECTION OF MEDICARE COVERAGE IN LIEU OF  
 9 CONTINUATION COVERAGE.—Section 2208(3) of such Act  
 10 (42 U.S.C. 300bb–8(3)) (as amended by subsection  
 11 (a)(2)) is amended further by adding at the end the fol-  
 12 lowing new subparagraph:

13 “(D) EXCLUSION FOR CERTAIN INDIVID-  
 14 UALS ELECTING MEDICARE ENROLLMENT.—  
 15 Such term does not include an individual who  
 16 is enrolled under section 1818B of the Social  
 17 Security Act (relating to medicare benefits for  
 18 certain individuals who are 55 to 65 years of  
 19 age).”.

20 (g) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by  
 22 this section (other than subsection (e)(2)) shall  
 23 apply to qualifying events occurring during plan  
 24 years ending after August 1, 1996. In the case of  
 25 a qualifying event occurring on or after such date



and before the date of the enactment of this Act, such event shall be deemed (for purposes of such amendments) to have occurred on the date of the enactment of this Act.

(2) ADVANCE NOTICE OF TERMINATIONS AND REDUCTIONS.—The amendment made by subsection (e)(2) shall apply to qualifying events occurring on or after February 10, 2000.

## **Subtitle C—Amendments to the Internal Revenue Code of 1986**

### **SEC. 221. COBRA CONTINUATION BENEFITS FOR CERTAIN RETIRED WORKERS WHO LOSE RETIREE HEALTH COVERAGE.**

(a) ESTABLISHMENT OF NEW QUALIFYING EVENT.—

(1) IN GENERAL.—Section 4980B(f)(3) of the Internal Revenue Code of 1986 is amended by inserting after subparagraph (F) the following new subparagraph:

“(G) The termination of benefits of group health plan coverage as a result of plan changes or termination in the case of a covered employee who is a qualified retiree.”.

(2) QUALIFIED RETIREE; AND QUALIFIED BENEFICIARY; DEFINED.—Section 4980B(g) of such Code is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting “except as otherwise provided in this paragraph,” after “means,”; and

(ii) by adding at the end the following new subparagraph:

“(E) SPECIAL RULE FOR QUALIFYING RETIREES AND DEPENDENTS.—In the case of a qualifying event described in subsection (f)(3)(G), the term ‘qualified beneficiary’ means a qualified retiree and any other individual who, on the day before such qualifying event, is a beneficiary under the plan on the basis of the individual’s relationship to such qualified retiree.”; and

(B) by adding at the end the following new paragraphs:

“(5) QUALIFIED RETIREE.—The term ‘qualified retiree’ means, with respect to a qualifying event described in subsection (f)(3)(G), a covered employee who, at the time of the event—

“(A) has attained 55 years of age;

1 “(B) was receiving group health coverage  
 2 under the plan by reason of the retirement of  
 3 the covered employee; and

4 “(C) is not enrolled under section 1818B  
 5 of the Social Security Act (relating to Medicare  
 6 benefits for certain individuals who are 55 to  
 7 65 years of age).”.

8 (b) DURATION OF COVERAGE THROUGH AGE 65.—  
 9 Section 4980B(f)(2)(B)(i) of such Code is amended—

10 (1) in subclause (II), by inserting “or (3)(G)”  
 11 after “(3)(F)”;

12 (2) in subclause (IV), by striking “or (3)(F)”  
 13 and inserting “, (3)(F), or (3)(G)”;

14 (3) by redesignating subclause (IV) as sub-  
 15 clause (VI);

16 (4) by redesignating subclause (V) as subclause  
 17 (IV) and by moving such clause to immediately fol-  
 18 low subclause (III); and

19 (5) by inserting after such subclause (IV) the  
 20 following new subclause:

21 “(V) SPECIAL RULE FOR CER-  
 22 TAIN DEPENDENTS IN CASE OF TER-  
 23 MINATION OF RETIREE HEALTH COV-  
 24 ERAGE.—In the case of a qualifying  
 25 event described in paragraph (3)(G),

in the case of a qualified beneficiary described in subsection (g)(1)(E) who is not the qualified retiree or spouse of such retiree, the later of—

“(a) the date that is 36 months after the earlier of the date the qualified retiree becomes entitled to benefits under title XVIII of the Social Security Act, or the date of the death of the qualified retiree; or

“(b) the date that is 36 months after the date of the qualifying event.”.

(c) TYPE OF COVERAGE IN CASE OF TERMINATION OF RETIREE HEALTH COVERAGE.—Section 4980B(f)(2)(A) of such Code is amended—

(1) by striking “The coverage” and inserting the following:

“(i) IN GENERAL.—Except as provided in clause (ii), the coverage”; and

(2) by adding at the end the following:

“(ii) CERTAIN RETIREES.—In the case of a qualifying event described in paragraph (3)(G), in applying the first

1 sentence of clause (i) and the fourth sen-  
2 tence of subparagraph (C), the coverage  
3 offered that is the most prevalent coverage  
4 option (as determined under regulations of  
5 the Secretary of Labor) continued under  
6 the group health plan (or, if none, under  
7 the most prevalent other plan offered by  
8 the same plan sponsor) shall be treated as  
9 the coverage described in such sentence, or  
10 (at the option of the plan and qualified  
11 beneficiary) such other coverage option as  
12 may be offered and elected by the qualified  
13 beneficiary involved.”.

14 (d) INCREASED LEVEL OF PREMIUMS PERMITTED.—  
15 Section 4980B(f)(2)(C) of such Code is amended by add-  
16 ing at the end the following new sentence: “In the case  
17 of an individual provided continuation coverage by reason  
18 of a qualifying event described in paragraph (3)(G), any  
19 reference in clause (i) of this subparagraph to ‘102 per-  
20 cent of the applicable premium’ is deemed a reference to  
21 ‘110 percent of the applicable premium for employed indi-  
22 viduals (and their dependents, if applicable) for the cov-  
23 erage option referred to in subparagraph (A)(ii)’.”.

24 (e) NOTICE.—Section 4980B(f)(6) of such Code is  
25 amended—

1           (1) in subparagraph (D)(i), by striking “or  
2           (F)” and inserting “(F), or (G)”; and

3           (2) by adding at the end the following:

4   “The notice under subparagraph (D)(i) in the case of a  
5   qualifying event described in paragraph (3)(G) shall be  
6   provided at least 90 days before the date of the qualifying  
7   event. Such notice shall include information with respect  
8   to eligibility for enrollment under section 1818B of the  
9   Social Security Act (relating to medicare benefits for cer-  
10   tain individuals who are 55 to 65 years of age).”.

11       (f) ELECTION OF MEDICARE COVERAGE IN LIEU OF  
12   CONTINUATION COVERAGE.—Section 4980B(g)(1) of  
13   such Code (as amended by subsection (a)(2)) is amended  
14   further by adding at the end the following new subpara-  
15   graph:

16               “(F) EXCLUSION FOR CERTAIN INDIVID-  
17               UALS ELECTING MEDICARE ENROLLMENT.—  
18               Such term does not include an individual who  
19               is enrolled under section 1818B of the Social  
20               Security Act (relating to Medicare benefits for  
21               certain individuals who are 55 to 65 years of  
22               age).”.

23       (g) EFFECTIVE DATES.—

24           (1) IN GENERAL.—The amendments made by  
25   this section (other than subsection (e)(2)) shall

1       apply to qualifying events occurring during plan  
 2       years ending after August 1, 1996. In the case of  
 3       a qualifying event occurring on or after such date  
 4       and before the date of the enactment of this Act,  
 5       such event shall be deemed (for purposes of such  
 6       amendments) to have occurred on the date of the  
 7       enactment of this Act.

8               (2) ADVANCE NOTICE OF TERMINATIONS AND  
 9       REDUCTIONS.—The amendment made by subsection  
 10       (e)(2) shall apply to qualifying events occurring on  
 11       or after February 10, 2000.

## 12                   **TITLE III—NOTICE** 13                   **REQUIREMENTS**

### 14       **SEC. 301. ADVANCE NOTICE OF MATERIAL REDUCTIONS IN** 15                   **COVERED SERVICES UNDER GROUP HEALTH** 16                   **PLANS.**

17       (a) ADVANCE NOTICE.—

18               (1) IN GENERAL.—Section 104(b)(1) of the  
 19       Employee Retirement Income Security Act of 1974  
 20       (29 U.S.C. 1024(b)(1)) is amended—

21                   (A) by redesignating subparagraphs (A)  
 22                   and (B) as clauses (i) and (ii), respectively;

23                   (B) by striking “(1) The administrator”  
 24                   and inserting “(1)(A) The administrator”;

1 (C) by striking “The administrator” the  
2 second place it appears and inserting the fol-  
3 lowing:

4 “(B) The administrator”;

5 (D) by striking “If there is a modification”  
6 and inserting the following:

7 “(C) If there is a modification”; and

8 (E) by adding at the end the following new  
9 subparagraph:

10 “(D) Notwithstanding subparagraph (C), a summary  
11 description of any material modification described in sec-  
12 tion 102(a)(1) that is a reduction in covered services or  
13 benefits provided in the case of a group health plan (as  
14 defined in section 733(a)(1)) relating to retiree health  
15 benefits shall be furnished to participants and bene-  
16 ficiaries not later than 180 days before the effective date  
17 of the modification. In any case in which an individual  
18 first becomes a participant under a group health plan dur-  
19 ing any such 180-day period with respect to such a modi-  
20 fication or (in the case of any other beneficiary under the  
21 plan) first receives benefits under the plan during such  
22 180-day period, the requirements of the preceding sen-  
23 tence may be met by providing the summary description  
24 of such modification not later than the date on which such



1 individual first becomes a participant or such other bene-  
 2 ficiary first receives benefits under the plan.”.

3 (2) DETERMINATION BY SECRETARY.—Section  
 4 104 of such Act (29 U.S.C. 1024) is further amend-  
 5 ed by redesignating subsection (d) as subsection (e)  
 6 and by inserting after subsection (c) the following  
 7 new subsection:

8 “(d) A material modification described in section  
 9 102(a)(1) that is a reduction in covered services or bene-  
 10 fits provided in the case of a group health plan (as defined  
 11 in section 733(a)(1))) relating to retiree health benefits  
 12 that is subject to the requirements of subsection (b)(1)(D)  
 13 may not take effect until after 6 months after the Sec-  
 14 retary receives written notice of the modification from the  
 15 administrator and after the Secretary determines that  
 16 such modification does not violate the plan, including col-  
 17 lective bargaining agreements. The determination of  
 18 whether any such modification constitutes such a violation  
 19 shall be made by the Secretary during such 6-month pe-  
 20 riod, and any such modification shall be deemed not to  
 21 be effective until the Secretary issues such determination.  
 22 Any such determination shall be treated as a final order  
 23 subject to review under section 502(k).”.

24 (3) ADVANCE NOTICE TO SECRETARY.—Section  
 25 104(b)(1) of such Act (29 U.S.C. 1024(b)(1)) is

1 amended, in the fourth sentence following subpara-  
 2 graph (B), by inserting before the period the fol-  
 3 lowing: “, or in the case of any such modification  
 4 that is a reduction in covered services or benefits  
 5 provided in the case of a group health plan relating  
 6 to retiree health benefits, not later than 180 days  
 7 before the effective date of such modification.”.

8 (4) CIVIL PENALTY.—Section 502(c)(1) of such  
 9 Act (29 U.S.C. 1132(c)(1)) is amended by striking  
 10 “or section 101(e)(1)” and inserting “, section  
 11 101(e)(1), or section 104(b)(1)(D)”.

12 (b) ENFORCEMENT.—

13 (1) REQUIREMENTS.—Section 4980B of the In-  
 14 ternal Revenue Code of 1986 is amended by redesign-  
 15 ating subsection (g) as subsection (h) and by in-  
 16 serting after subsection (f) the following new sub-  
 17 section:

18 “(g) NOTICE OF MODIFICATION IN HEALTH BENE-  
 19 FITS.—

20 “(1) IN GENERAL.—A group health plan meets  
 21 the requirements of this subsection, in the case of a  
 22 material modification described in section 102(a)(1)  
 23 of the Employee Retirement Income Security Act of  
 24 1974 that is a reduction in covered services or bene-  
 25 fits provided in the case of a group health plan (as

defined in section 733(a)(1)) of such Act) relating to retiree health benefits, if—

“(A) the plan sponsor complies with section 104(b)(1)(D) of such Act; and

“(B) such modification takes effect only after the Secretary of Labor makes the determination required by section 104(d) of such Act that such modification does not violate the plan, including collective bargaining agreements.

“(2) NONCOMPLIANCE PERIOD.—For the purposes of subsection (b), the noncompliance period with respect to this subsection shall be determined without regard to paragraph (2)(B)(ii) of subsection (b).”.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 4980B of such Code is amended by striking “subsection (f)” and inserting “subsections (f) and (g)”.

(B) Clause (iv)(II) of section 4980B(f)(2)(B) of such Code is amended by striking “subsection (g)(1)(D)” and inserting “subsection (h)(1)(D)”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply with respect to material modifica-  
3 tions occurring on or after February 10, 2000.

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