

Helping Ohioans with  
Healthcare Benefit

**Choices**



# OAHU Legislative Update

PRESENTED BY: Barb Gerken, OAHU Legislative Chair

# Agenda

- State Updates

- SB 9
- HB388
- H.B. 679
- H.B. 469
- HB606
- SB 308

- Federal Updates

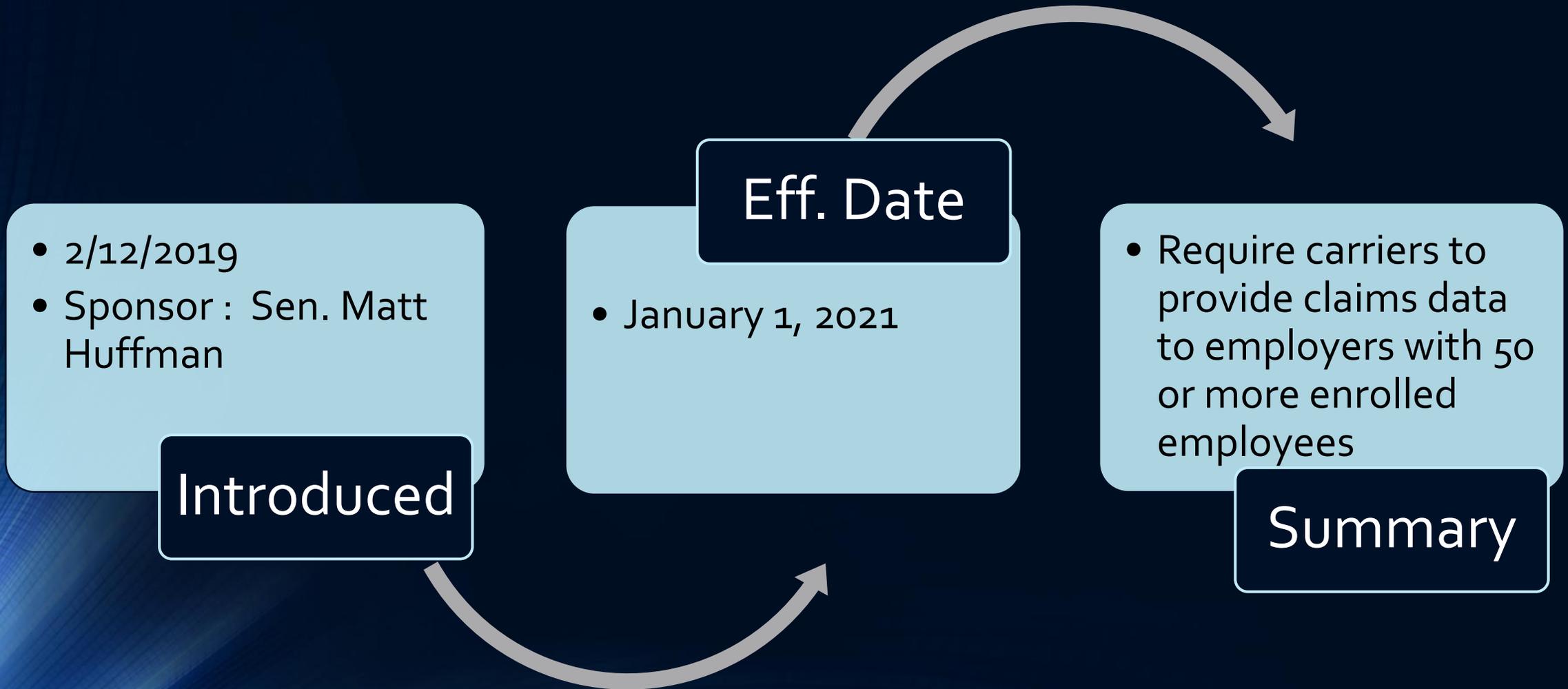
- H.R. 7010
- IRS Proposed Rule
- 2019 MLR Rebates
- H.R. 6824
- H.R. 6810
- ACA Stabilization Bill
- NAHU Comment Letters

# State Updates

# Ohio Legislative Session - Summer

- Typically the Legislature recesses in mid-June and returns after Labor Day.
- House Session – June 11, Sept. 15, Sept. 16
- Senate Session – June 23, June 24, July 21, July 22, Aug. 18, Aug. 19 (if needed), Sept. 17
- Any bill that does not pass by the end of the year will require re-introduction after January 2021.

# S.B. 9 – Employer Claims Reporting



# S.B. 9

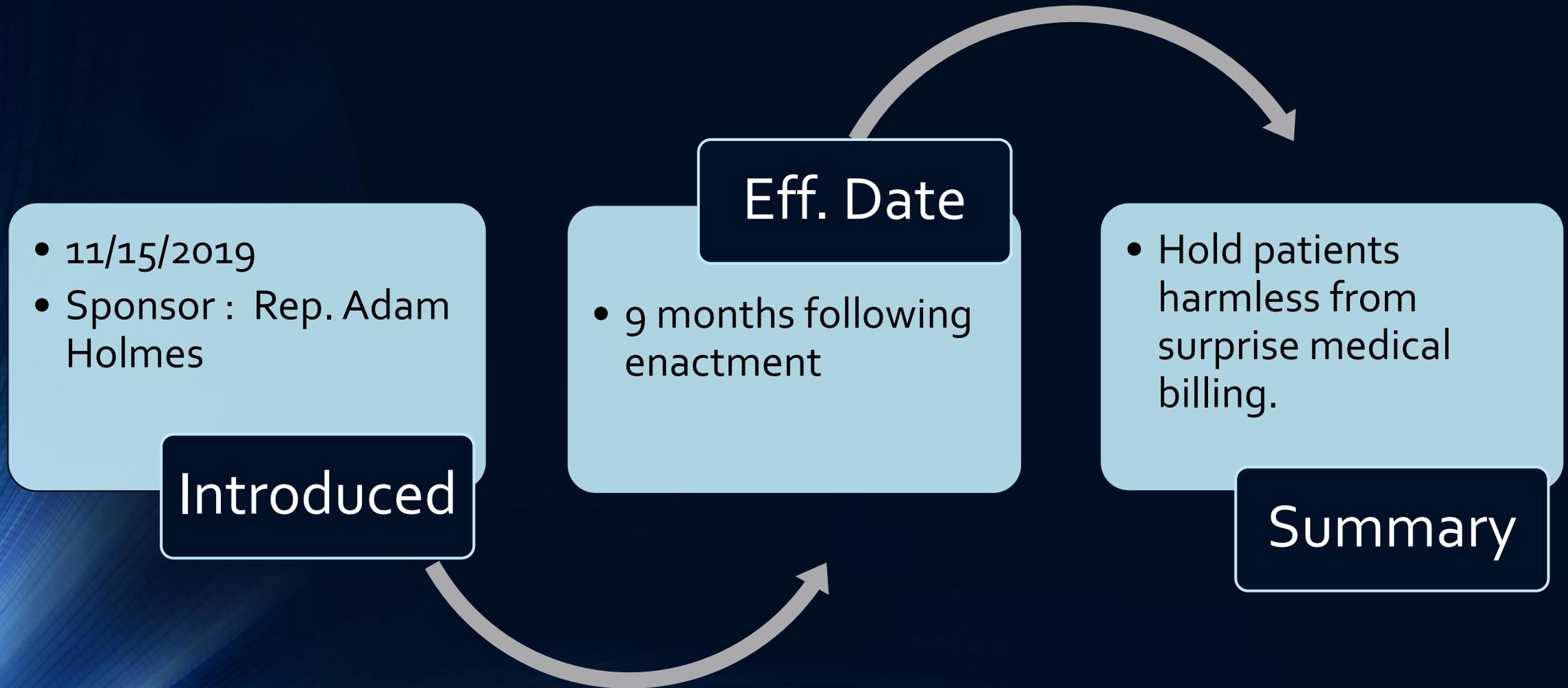
## *Details*

- net claims paid by month,
- claims over \$30,000 amount paid toward each claim and claimant health condition or diagnosis.
- enrollment data by month,
- Monthly prescription claim information

## *Status*

- 3/20/2019 – Passed Senate unanimously
- 12/11/2019 – Passed House with PEO amendment
- 6/2020 – Pending Conference Committee

# H.B. 388 – Surprise Billing



# H.B. 388 – Surprise Billing

## *Details*

- Includes providers, facilities, ambulance (ground only) and clinical laboratories. Will use “provider” in the remaining bullet points but will include all stated.
- Benchmark (“fair market value”) for payment, the greater of:
  - The median amount negotiated with in-network provides for the service in question in that geographic region under that health plan;
  - the price paid for the out of network service (if there is out of network coverage, what a plan pays for the out of network service); or
  - the Medicare rate
- Consumer cannot be billed for the difference between the plan’s reimbursement and the provider’s charge.

# H.B. 388 – Surprise Billing

## *Details*

- Negotiation
  - In-lieu of a “greatest of 3” payment, the out of network provider/ER facility may negotiate reimbursement.
  - If the negotiation has not successfully concluded within 30 days, or if both parties agree that they are at an impasse, the out of network provider may request arbitration.

# H.B. 388 – Surprise Billing

## *Details*

- Arbitration – Baseball Style Based on Accuracy/Inaccuracy
  - If arbitration is requested, each party must submit their final offer. The parties may submit, and the arbitrator may consider, evidence that relates to the factors described below:
    - In-network rates that other health benefit plans or health plan issuers reimburse, and have reimbursed, that particular provider and other providers, and the factors that went into those rates (guaranteed patient volume, availability of provider's geographic area.
    - Any in-network reimbursement rates previously agreed upon between the plan and the provider, if the health plan and the provider had a previous relationship in the past six years.

# H.B. 388 – Surprise Billing

## *Details*

- To be eligible for arbitration, the service in question could not have been provided more than one year prior to the request.
- Bill, or combination of bills as listed in bundling below, must be greater than \$750
- The non-prevailing party is to pay 70% of the arbitrator's fees and costs and the prevailing party is to pay 30%.
- Bundling. A provider or emergency facility may bundle up to fifteen claims from the same health benefit plan that involve the same or similar services provided under similar circumstances.

# H.B. 388 – Surprise Billing

## *Details*

- Final arbitration decision will be binding except as to other remedies available at law.
- Superintendent of insurance is tasked with selecting one single arbitration entity.
- Arbitration entity must submit annual reporting on the number of arbitrations conducted, the provider type, the specialty of the provider, the out-of-network situation and the percentage of times the arbitrator rules in favor of the health plan versus the provider.

# H.B. 388 – Surprise Billing

## *Details*

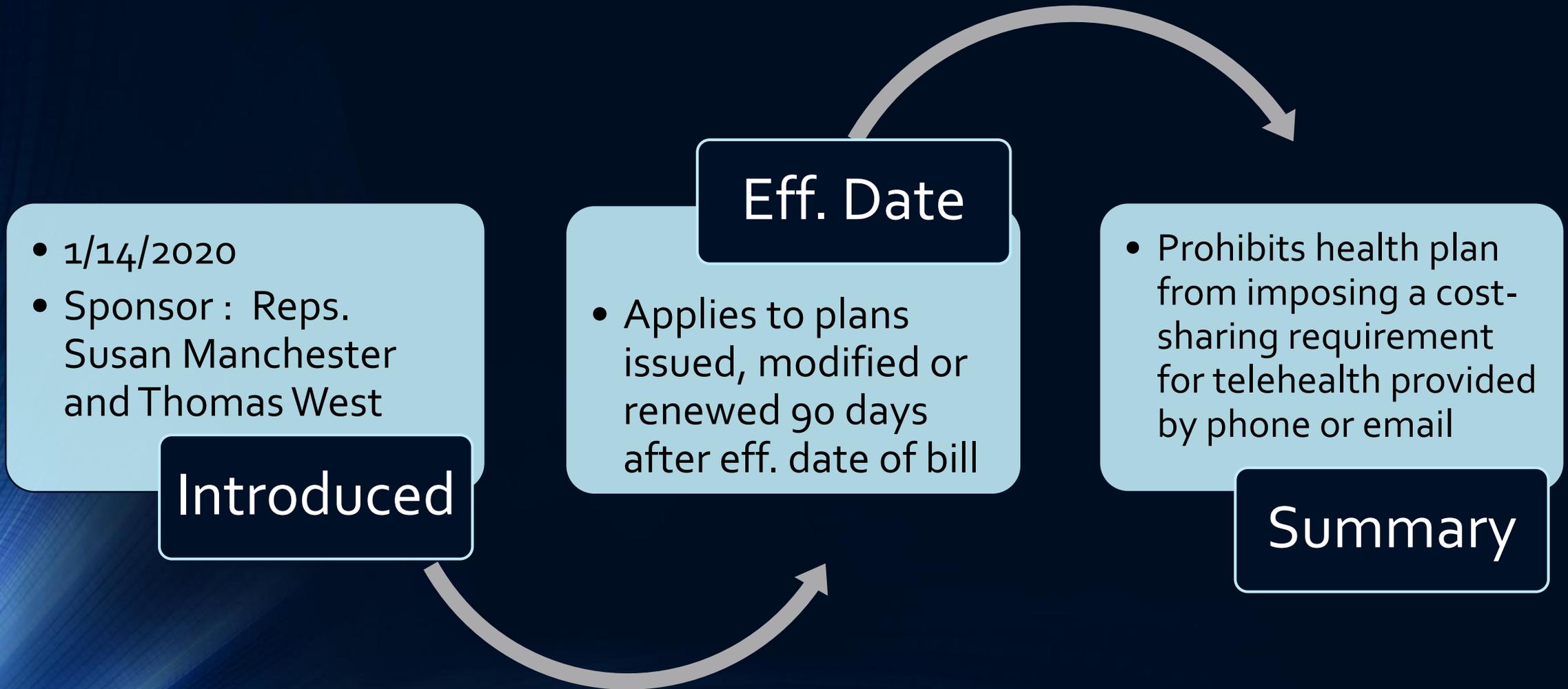
- For services covered by the health plan, but are provided by an individual out-of-network provider, an individual cannot be balanced billed unless:
  - The provider informs the individual that the provider is not in the covered person's health benefit plan.
  - They provide the consumer with a good faith estimate, including a disclaimer that they are not required to get the services at that location or from the provider.
  - The individual **consents to the services.**

# H.B. 388 – Surprise Billing

## *Status*

- 5/20/2020 – Passed House unanimously
- 6/5/2020 – No hearings in Senate, Senator Steve Huffman, sponsor of S.B. 198, likes the language in HB388 and may hold hearings in the fall

# H.B. 679 – Establish/Modify Requirements for Telehealth Services



# H.B. 679 – Establish/Modify Requirements for Telehealth Services

## *Details*

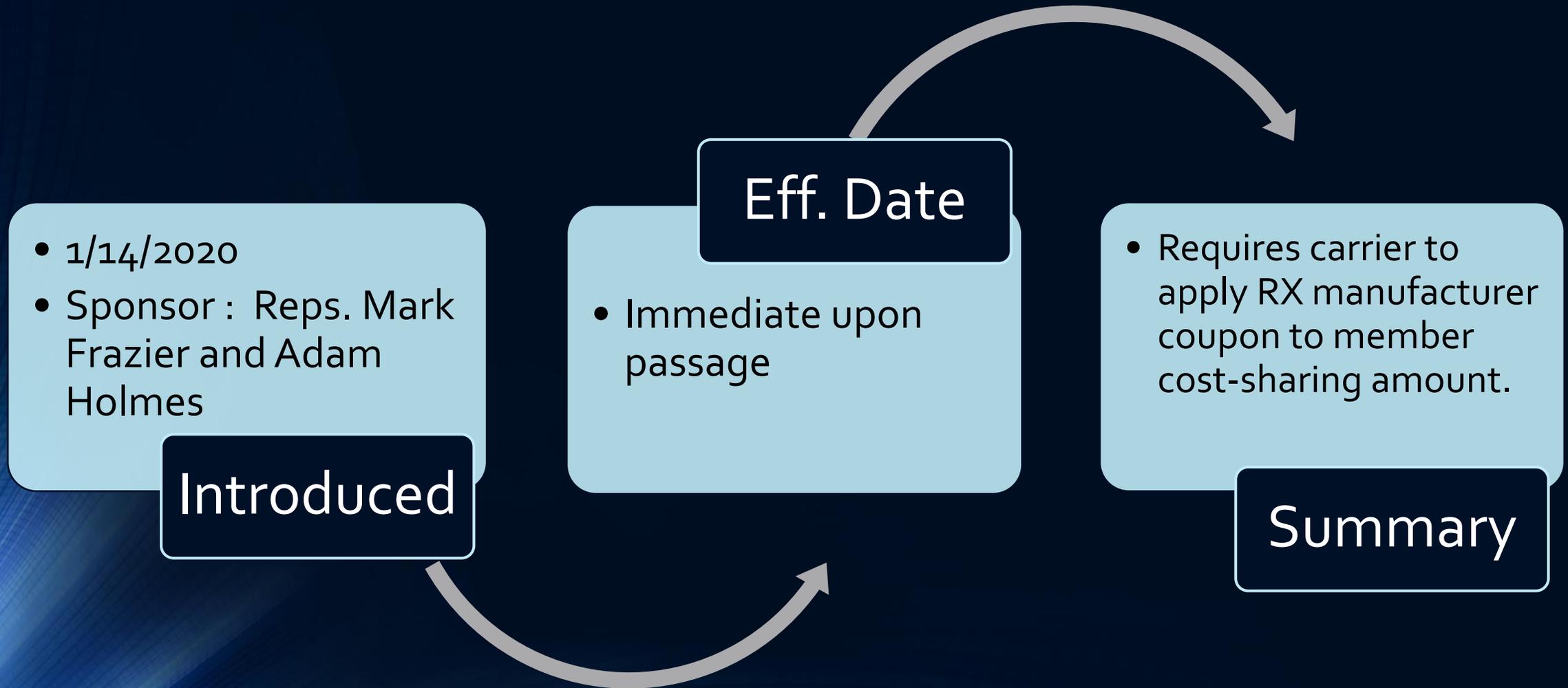
- Detailed Analysis
- Prohibits a health benefit plan from imposing cost sharing for telehealth services provided via telephone or email.
- Requires telehealth services provided via telephone or email to be tallied using minutes spent per patient on a running total and reimbursed for a block of time in a manner equivalent to the standard amount of time spent on a telehealth service.
- Allows the Superintendent of Insurance to adopt rules as necessary to carry out the bill's provisions governing insurance coverage of telehealth services.

# H.B. 679 – Establish/Modify Requirements for Telehealth Services

## *Status*

- 5/28/2020 – Sponsor Testimony
- 6/3/2020 – Hearing in House Insurance Committee
  - 2 Proponents / 3 Opponents / 1 Interested Party
- 6/9/2020 – Hearing in House Insurance Committee
  - 4 Proponents / 4 Interested Parties
- 6/10/2020 – Passed House with Amendment
- 6/12/2020 – Introduced in Senate

# H.B. 469 – Prohibit Certain Health Insurance Cost-Sharing Practices



# H.B. 469 – Prohibit Certain Health Insurance Cost-sharing Practices

## *Details*

- Detailed analysis
- Requires health insuring corporations and sickness and accident insurers to apply amounts paid by or on behalf of covered individuals toward cost-sharing requirements. i.e. when a drug manufacturer provides a coupon
- Exempts situations where a generic version of a brand name drug exists, but the prescribing physician prescribes the brand name drug without it being medically necessary.

# H.B. 469 – Prohibit Certain Health Insurance Cost-sharing Practices

## *Details*

- Example:

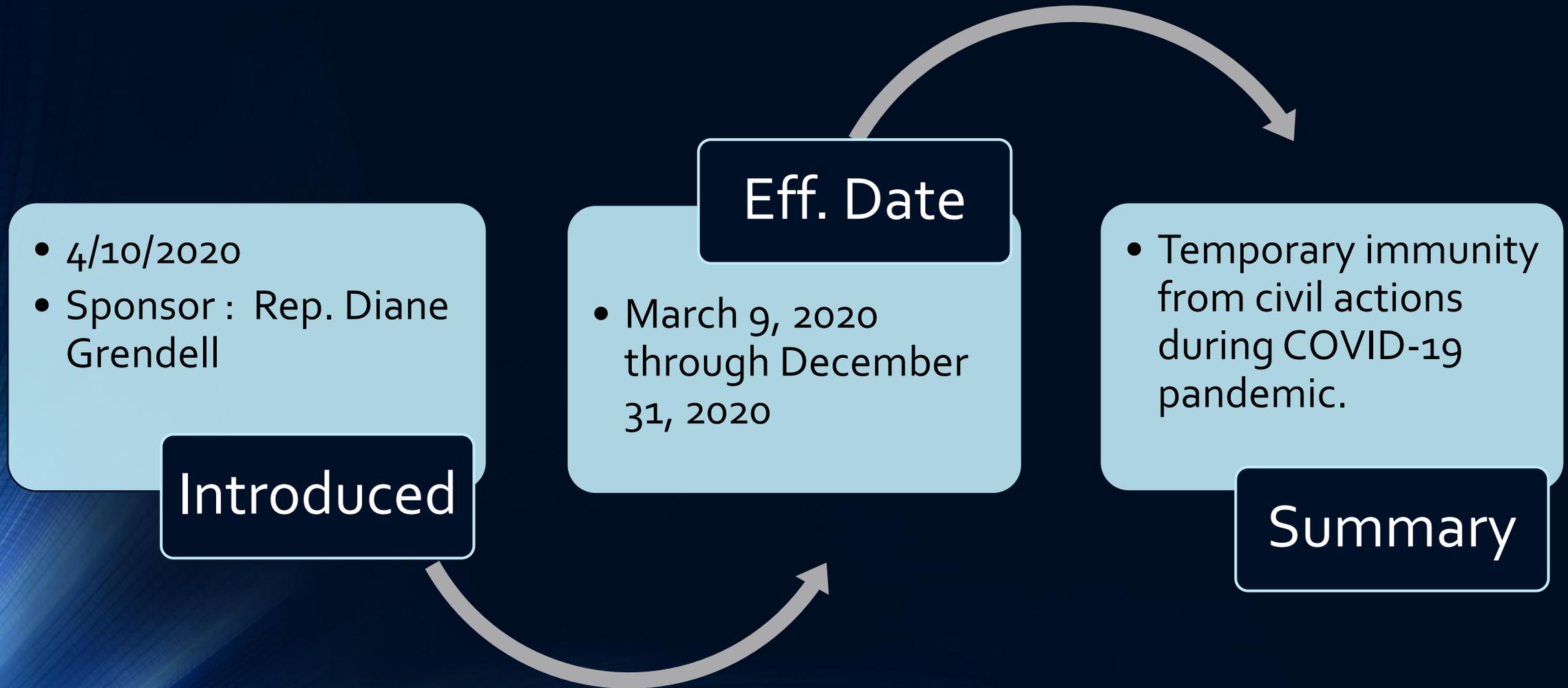
If a covered individual receives a coupon for a drug which stipulates that the manufacturer of the drug will pay the copayment for the drug, then, under the bill, such a payment would have to be counted toward any cost-sharing requirement the covered individual's health benefit plan might impose.

# H.B. 469 – Prohibit Certain Health Insurance Cost-sharing Practices

## *Status*

- 1/28/2020 – Referred to House Insurance Committee
- 6/2/2020 – Proponent Hearing in House Insurance Committee
  - Testimony from 29 Proponents (Cystic Fibrosis Foundation, AIDS Institute, MS Society, Lupus and Allied Diseases Association)
- 6/9/2020 – Opponent Hearing in House Insurance Committee
  - Testimony from 2 Opponents (AHIP, Pharmaceutical Care Management Association)

# H.B. 606 - *Grant Immunity to Essential Workers Who Transmit COVID-19*



# H.B. 606 - *Grant Immunity to Essential Workers Who Transmit COVID-19*

## *Details*

- [Detailed analysis](#)
- Grants temporary qualified immunity to specified health care providers who provide health care services or emergency services during a declared disaster or emergency as described below.
- Grants immunity from tort liability and professional discipline for such services provided as a result of and in response to a disaster or emergency that results in injury, death, or loss allegedly resulting from (1) actions or omissions in the provision, withholding, or withdrawal of those services, (2) decisions related to the provision, withholding, or withdrawal of those services, and (3) compliance with an executive order or director's order.

# H.B. 606 - *Grant Immunity to Essential Workers Who Transmit COVID-19*

## *Details*

- Grants immunity from tort liability and professional discipline for injury, death, or loss that allegedly resulted because a health care provider was unable to treat a person, including the inability to perform any elective procedure, due to an executive or director's order or a local health order issued in relation to an epidemic or pandemic disease or other public health emergency.
- In uncodified law, generally prevents bringing a civil action for injury, death, or loss to person or property against any person if the cause of action on which the action is based, in whole or in part, is that the injury, death, or loss is caused by the exposure to, or the transmission or contraction of, "MERS-CoV," "SARS-CoV," or "SARS-CoV-2," or any mutation thereof.

# H.B. 606 - *Grant Immunity to Essential Workers Who Transmit COVID-19*

## *Details*

- Creates a presumption, for purposes of the Workers' Compensation Law, that specified emergency responders, corrections officers, and certain food workers who contract COVID-19 contracted the disease in the course of and arising from their employment.

## *Status*

- Referred to House Insurance Committee on 5/5/2020
- 5/28/2020 – Passed House 84 – 9
- 6/2/2020 – Introduced in Senate
- 6/3/2020 – Referred to the Senate Judiciary Committee

# S.B. 308- *Regards Civil Liability of Service Providers in Emergency*



# S.B. 308- *Regards Civil Liability of Service Providers in Emergency*

## *Details*

- [Detailed analysis](#)
- Grants a service provider qualified civil immunity for illness or for injury, death, or loss in providing services that are as a result of, or in response to, a disaster or emergency declared due to COVID-19 or are intended to assist persons to recover from such disaster or emergency during its period and ending on April 1, 2021.
- Grants a service provider qualified civil immunity for injury, death, or loss resulting from, or related to, a person's actual or alleged exposure to an illness in the course of that provider's provision of services during the period of the declared disaster or emergency due to COVID-19 and ending on April 1, 2021.

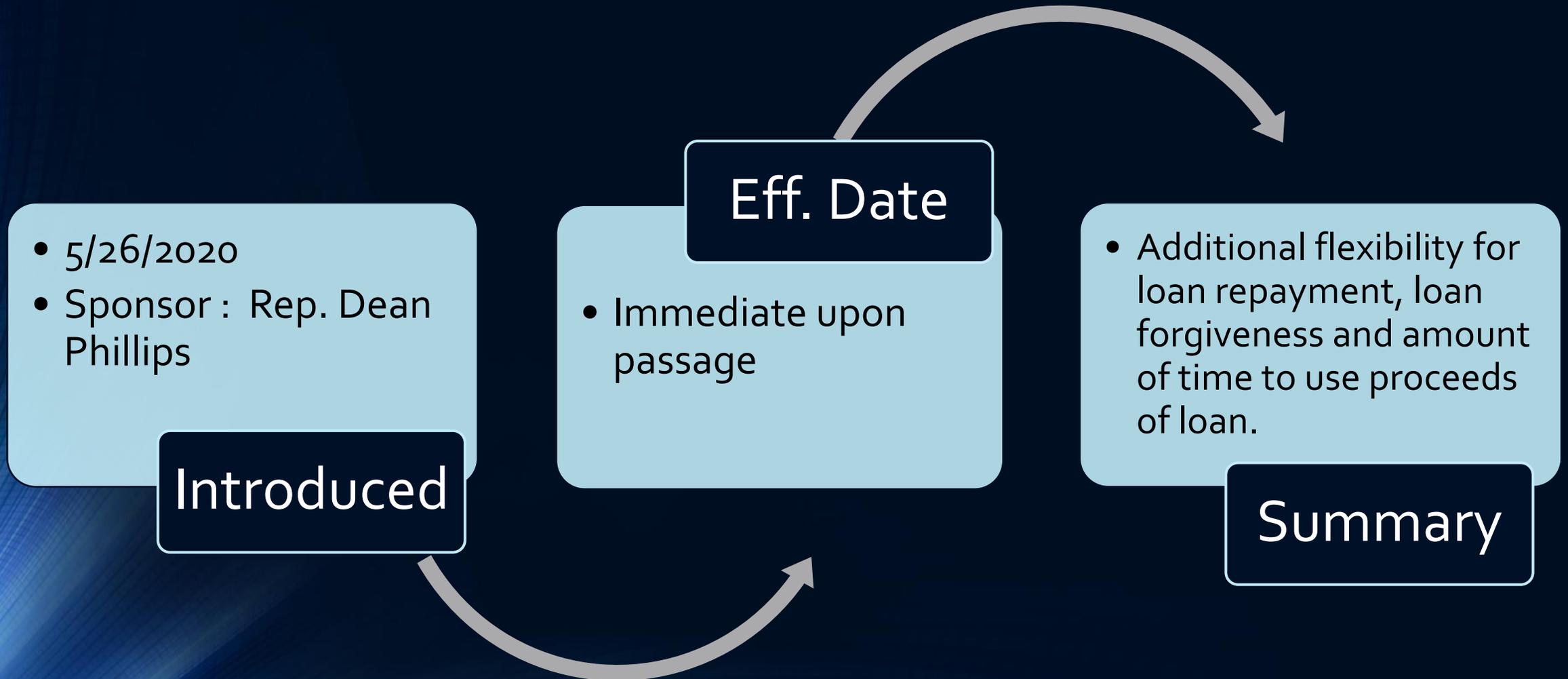
# ***S.B. 308- Regards Civil Liability of Service Providers in Emergency***

## ***Status***

- 6/3/2020 – passed out of Senate Judiciary Committee by vote of 7 – 3 and the full Senate by vote of 24-9.
- 6/9/2020 – introduced in the House
- 6/10/2020 – referred to the House Civil Justice committee

# Federal Updates

# H.R. 7010 – Paycheck Protection Program Flexibility Act of 2020



# H.R. 7010 – Paycheck Protection Program Flexibility Act of 2020

## *Details*

- Total of 5 years to pay back the loan.
- Total of 24 weeks after date of origination, or December 31, 2020, to use the funds (originally 8 weeks)
- Loan forgiveness is determined without regard to reduction in number of FT equivalent employees if an eligible recipient is unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020 or is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020.
- Changes limitation on the non-payroll portion of a forgivable loan amount from 25% to 40%.

# H.R. 7010 – Paycheck Protection Program Flexibility Act of 2020

## *Status*

- 05/28/2020 Passed by a vote of 417-1
- 6/3/2020 Passed in Senate without amendment by voice vote
- 6/5/2020 Signed into law by President Trump

# IRS Proposed Rule – HRA

- Published to the [Federal Register](#) on June 10, 2020
- Declare payments for the following are expenses for medical care under Internal Revenue Code Section 213:
  - Direct Primary Care (DPC)
  - Health Care Cost Sharing Ministries
- An employer may reimburse an employee for either from an HRA.

# IRS Proposed Rule – HRA

- The proposed regulations respond to Executive Order 13877, which directs the Secretary of the Treasury, to the extent consistent with law, to “propose regulations to treat expenses related to certain types of arrangements, potentially including direct primary care arrangements and healthcare sharing ministries, as eligible medical expenses under Section 213(d)” of the Code.
- Comments due August 10, 2020
  - NAHU working with Employer Working Group, Compliance Corner and Cost Containment Group to draft comment letter.

# CMS – 2019 MLR Rebates in Response to COVID-19

- [2019-MLR-Rebates-in-Response-to-COVID-19](#)
- Allows issuers to prepay enrollees a portion, or all, of the estimated MLR rebate for 2019.
- Issuer may also modify the standard language of the rebate notice.
- Extends deadline for filing 2019 MLR Annual Reporting Forms from July 31, 2020 to August 17, 2020.

# H.R. 6824 – To Amend the Internal Revenue Code of 1986 to provide for the carryover of the remaining balance in health FSA

- 5/12/2020
- Sponsor : Rep. Derek Kilmer (D-WA)

Introduced

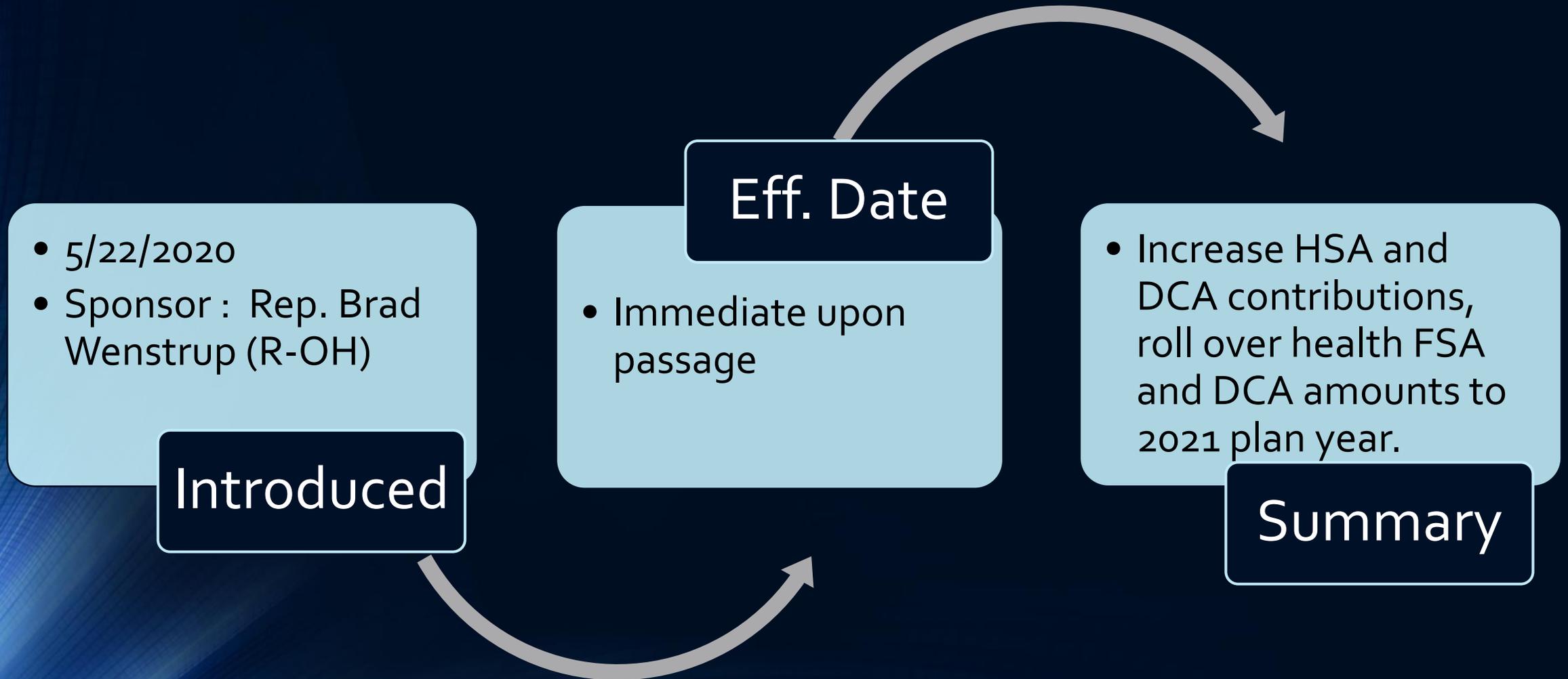
- Immediate upon passage

Eff. Date

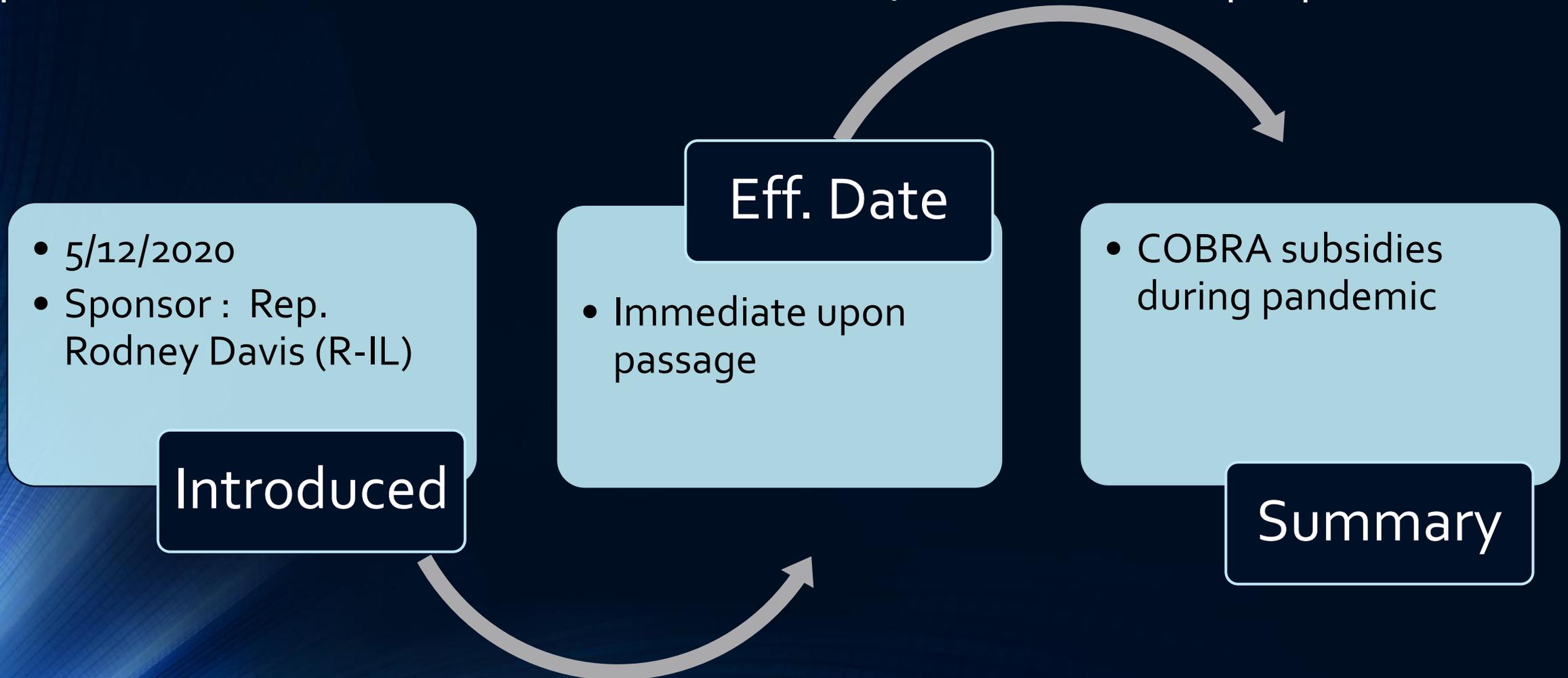
- Carryover all remaining health FSA funds from 2020 plan year to 2021 plan year

Summary

# H.R. 7008 – Family Savings Flexibility Act



H.R. 6810 To establish a Health Care Protection Program Fund to provide grants to employers to ensure continuity of coverage under a group health plan through the COVID-19 pandemic, to provide for premium assistance for COBRA benefits, and for other purposes.



# ACA Stabilization Bill

- Potential for House to vote on bill before July 4.
- Not introduced but will be similar to H.R. 1884
  - Expand subsidies
  - Extend Medicaid eligibility

# Comment Letters

- COVID-19 Pandemic Suggestions:
  - Extension and Expansion of FSA
  - Employer Reporting (coding, 226J letters, variable hour ees)
  - Section 125 (pre-tax deductions on hold, discrimination testing)
- PPP Forgiveness
  - Submission date for application
  - Alternative Payroll Covered Period (monthly payroll, all funds paid for services during the covered period)
  - Forgivable payroll expenses – incurred during covered period and paid on or before next billing cycle (furloughed employees)
- COBRA – discussion on Wednesday, 6/17/2020

Questions

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