

117TH CONGRESS
1ST SESSION

S. 1793

To amend title XXVII of the Public Health Service Act to improve health care coverage under vision and dental plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2021

Mr. MANCHIN (for himself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title XXVII of the Public Health Service Act to improve health care coverage under vision and dental plans, 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 “Dental and Optometric
5 Care Access Act of 2021” or the “DOC Access Act of
6 2021”.

7 **SEC. 2. IMPROVING HEALTH CARE COVERAGE UNDER VI-** 8 **SION AND DENTAL PLANS.**

9 (a) PHSA.—

1 (1) IN GENERAL.—Part D of title XXVII of the
 2 Public Health Service Act (42 U.S.C. 300gg–111 et
 3 seq.) is amended by adding at the end the following:

4 **“SEC. 2799A–11. IMPROVING COVERAGE UNDER VISION AND**
 5 **DENTAL PLANS.**

6 “(a) IN GENERAL.—Under a group health plan or in-
 7 dividual or group health insurance coverage (including
 8 such a plan or coverage offering limited scope dental or
 9 vision benefits), the following shall apply:

10 “(1) PAYMENT AMOUNTS FROM COVERED PER-
 11 SONS.—

12 “(A) IN GENERAL.—The plan or coverage
 13 shall provide that, with respect to a doctor of
 14 optometry, doctor of dental surgery, or doctor
 15 of dental medicine that has an agreement to
 16 participate in the plan or coverage and that
 17 provides items or services that are not covered
 18 services under the plan or coverage to a person
 19 enrolled under such plan or coverage, the doctor
 20 may charge the enrollee for such items or serv-
 21 ices any amount determined by the doctor that
 22 is equal to, or less than, the usual and cus-
 23 tomary amount that the doctor charges individ-
 24 uals who are not so enrolled for such items or
 25 services.

1 “(B) ITEMS OR SERVICES CONSIDERED
2 COVERED BY A PLAN.—For purposes of sub-
3 paragraph (A), an item or service shall be con-
4 sidered, with respect to a plan or coverage, to
5 be covered services under the plan or coverage
6 only if the item or service is an item or service
7 with respect to which the plan or coverage is
8 obligated to pay an amount that is reasonable
9 and is not nominal or de minimis.

10 “(C) EXCEPTION FOR DENTAL CLEAN-
11 ING.—For purposes of subparagraph (A), a
12 doctor of dental surgery or doctor of dental
13 medicine that has an agreement to participate
14 in the plan or coverage may charge an enrollee
15 only the contracted network fee for any dental
16 cleaning, including any dental cleaning that ex-
17 ceeds the annual maximum under the enrollee’s
18 plan or coverage.

19 “(2) DURATION OF LIMITED SCOPE VISION AND
20 DENTAL PLANS.—In the case of an agreement be-
21 tween such a doctor and such a plan or coverage
22 that offers limited scope dental or vision benefits—

23 “(A) the agreement may be extended for a
24 term longer than 2 years only with the prior ac-

1 ceptance of the doctor for each such term ex-
2 tension; and

3 “(B) the agreement may be extended for
4 unlimited terms, subject to subparagraph (A).

5 “(3) NO RESTRICTIONS ON CHOICE OF LABORA-
6 TORIES.—The plan or coverage may not, directly or
7 indirectly, restrict or limit, such a doctor’s choice of
8 laboratories or choice of source and suppliers of
9 services or materials provided by the doctor to an in-
10 dividual who is enrolled under the plan or coverage.

11 “(b) PRIVATE RIGHT OF ACTION.—In addition to
12 any other remedies under State or Federal law, a person
13 adversely affected by a violation of this subsection may
14 bring action for injunctive relief against a plan described
15 in subsection (a) and, upon prevailing, in addition to such
16 injunctive relief shall recover monetary damages of no
17 more than \$1,000 for each day found to be in violation
18 plus attorney’s fees and costs. The district courts of the
19 United States shall have exclusive jurisdiction of civil ac-
20 tions brought under this subsection.

21 “(c) RELATIONSHIP TO EXCEPTION FOR LIMITED,
22 EXCEPTED BENEFITS.—Section 2722(c)(1) shall not
23 apply with respect to the requirements of this section.

24 “(d) ELECTION TO BE EXCLUDED.—

1 “(1) IN GENERAL.—If a doctor of optometry,
 2 doctor of dental surgery, or doctor of dental medi-
 3 cine to which the provisions of paragraphs (1) and
 4 (3) of subsection (a) otherwise apply makes an elec-
 5 tion under this paragraph (in such form and manner
 6 as the Secretary may by regulations prescribe), the
 7 requirements of such paragraphs insofar as they
 8 apply directly to the plan or coverage shall not apply
 9 to such plan or coverage for such period, as de-
 10 scribed in paragraph (2).

11 “(2) PERIOD OF ELECTION.—An election under
 12 paragraph (1)—

13 “(A) shall apply for a single specified plan
 14 year;

15 “(B) may be extended through subsequent
 16 elections under this subsection; and

17 “(C) shall not be available with respect to
 18 the requirements concerning the duration of
 19 limited scope vision and dental plans under sub-
 20 section (a)(2).

21 “(e) DEFINITIONS.—In this section:

22 “(1) The term ‘covered services’ means dental
 23 care or vision care services for which reimbursement
 24 is available under a plan or coverage contract, or for
 25 which reimbursement would be available but for the

1 application of contractual limitations, including
 2 deductibles, copayments, coinsurance, waiting peri-
 3 ods, lifetime maximum, frequency limitations, and
 4 alternative benefit payments.

5 “(2) The terms ‘doctor of dental surgery’ and
 6 ‘doctor of dental medicine’ mean a doctor of dental
 7 surgery or of dental medicine, as applicable, who is
 8 legally authorized to practice dentistry by the State
 9 in which the doctor performs such function and who
 10 is acting within the scope of the license of the doctor
 11 when performing such functions.

12 “(3) The term ‘doctor of optometry’ means a
 13 doctor of optometry who is legally authorized to
 14 practice optometry by the State in which the doctor
 15 so practices.”.

16 (2) CONFORMING AMENDMENT.—Section
 17 2722(c)(1) of the Public Health Service Act (42
 18 U.S.C. 300gg–21(c)(1)) is amended by striking
 19 “The requirements” and inserting “Subject to sec-
 20 tion 2799A–11, the requirements”.

21 (b) ERISA.—

22 (1) IN GENERAL.—Subpart B of part 7 of sub-
 23 title B of title I of the Employee Retirement Income
 24 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
 25 amended by adding at the end the following:

1 **“SEC. 726. IMPROVING COVERAGE UNDER VISION AND DEN-**
2 **TAL PLANS.**

3 “(a) IN GENERAL.—Under a group health plan or
4 group health insurance coverage (including such a plan or
5 coverage offering limited scope dental or vision benefits),
6 the following shall apply:

7 “(1) PAYMENT AMOUNTS FROM COVERED PER-
8 SONS.—

9 “(A) IN GENERAL.—The plan or coverage
10 shall provide that, with respect to a doctor of
11 optometry, doctor of dental surgery, or doctor
12 of dental medicine that has an agreement to
13 participate in the plan or coverage and that
14 provides items or services that are not covered
15 services under the plan or coverage to a person
16 enrolled under such plan or coverage, the doctor
17 may charge the enrollee for such items or serv-
18 ices any amount determined by the doctor that
19 is equal to, or less than, the usual and cus-
20 tomary amount that the doctor charges individ-
21 uals who are not so enrolled for such items or
22 services.

23 “(B) ITEMS OR SERVICES CONSIDERED
24 COVERED BY A PLAN.—For purposes of sub-
25 paragraph (A), an item or service shall be con-
26 sidered, with respect to a plan or coverage, to

be covered services under the plan or coverage only if the item or service is an item or service with respect to which the plan or coverage is obligated to pay an amount that is reasonable and is not nominal or de minimis.

“(C) EXCEPTION FOR DENTAL CLEANING.—For purposes of subparagraph (A), a doctor of dental surgery or doctor of dental medicine that has an agreement to participate in the plan or coverage may charge an enrollee only the contracted network fee for any dental cleaning, including any dental cleaning that exceeds the annual maximum under the enrollee’s plan or coverage.

“(2) DURATION OF LIMITED SCOPE VISION AND DENTAL PLANS.—In the case of an agreement between such a doctor and such a plan or coverage that offers limited scope dental or vision benefits—

“(A) the agreement may be extended for a term longer than 2 years only with the prior acceptance of the doctor for each such term extension; and

“(B) the agreement may be extended for unlimited terms, subject to subparagraph (A).

1 “(3) NO RESTRICTIONS ON CHOICE OF LABORA-
 2 TORIES.—The plan or coverage may not, directly or
 3 indirectly, restrict or limit, such a doctor’s choice of
 4 laboratories or choice of source and suppliers of
 5 services or materials provided by the doctor to an in-
 6 dividual who is enrolled under the plan or coverage.

7 “(b) PRIVATE RIGHT OF ACTION.—In addition to
 8 any other remedies under State or Federal law, a person
 9 adversely affected by a violation of this subsection may
 10 bring action for injunctive relief against a plan described
 11 in subsection (a) and, upon prevailing, in addition to such
 12 injunctive relief shall recover monetary damages of no
 13 more than \$1,000 for each day found to be in violation
 14 plus attorney’s fees and costs. The district courts of the
 15 United States shall have exclusive jurisdiction of civil ac-
 16 tions brought under this subsection.

17 “(c) RELATIONSHIP TO EXCEPTION FOR LIMITED,
 18 EXCEPTED BENEFITS.—Section 732(c)(1) shall not apply
 19 with respect to the requirements of this section.

20 “(d) ELECTION TO BE EXCLUDED.—

21 “(1) IN GENERAL.—If a doctor of optometry,
 22 doctor of dental surgery, or doctor of dental medi-
 23 cine to which the provisions of paragraphs (1) and
 24 (3) of subsection (a) otherwise apply makes an elec-
 25 tion under this paragraph (in such form and manner

1 as the Secretary may by regulations prescribe), the
2 requirements of such paragraphs insofar as they
3 apply directly to the plan or coverage shall not apply
4 to such plan or coverage for such period, as de-
5 scribed in paragraph (2).

6 “(2) PERIOD OF ELECTION.—An election under
7 paragraph (1)—

8 “(A) shall apply for a single specified plan
9 year;

10 “(B) may be extended through subsequent
11 elections under this subsection; and

12 “(C) shall not be available with respect to
13 the requirements concerning the duration of
14 limited scope vision and dental plans under sub-
15 section (a)(2).

16 “(e) DEFINITIONS.—In this section:

17 “(1) The term ‘covered services’ means dental
18 care or vision care services for which reimbursement
19 is available under a plan or coverage contract, or for
20 which reimbursement would be available but for the
21 application of contractual limitations, including
22 deductibles, copayments, coinsurance, waiting peri-
23 ods, lifetime maximum, frequency limitations, and
24 alternative benefit payments.

1 “(2) The terms ‘doctor of dental surgery’ and
 2 ‘doctor of dental medicine’ mean a doctor of dental
 3 surgery or of dental medicine, as applicable, who is
 4 legally authorized to practice dentistry by the State
 5 in which the doctor performs such function and who
 6 is acting within the scope of the license of the doctor
 7 when performing such functions.

8 “(3) The term ‘doctor of optometry’ means a
 9 doctor of optometry who is legally authorized to
 10 practice optometry by the State in which the doctor
 11 so practices.”.

12 (2) CONFORMING AMENDMENT.—Section
 13 732(c)(1) of the Employee Retirement Income Secu-
 14 rity Act of 1974 (29 U.S.C. 1191a(c)(1)) is amend-
 15 ed by striking “The requirements” and inserting
 16 “Subject to section 726, the requirements”.

17 (3) CLERICAL AMENDMENT.—The table of con-
 18 tents in section 1 of the Employee Retirement In-
 19 come Security Act of 1974 (29 U.S.C. 1001 et seq.)
 20 is amended by inserting after the item relating to
 21 section 725 the following:

“Sec. 726. Improving coverage under vision and dental plans.”.

22 (c) IRC.—

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

1 **“SEC. 9826. IMPROVING COVERAGE UNDER VISION AND**
2 **DENTAL PLANS.**

3 “(a) IN GENERAL.—Under a group health plan (in-
4 cluding such a plan offering limited scope dental or vision
5 benefits), the following shall apply:

6 “(1) PAYMENT AMOUNTS FROM COVERED PER-
7 SONS.—

8 “(A) IN GENERAL.—The plan shall provide
9 that, with respect to a doctor of optometry, doc-
10 tor of dental surgery, or doctor of dental medi-
11 cine that has an agreement to participate in the
12 plan and that provides items or services that
13 are not covered services under the plan to a
14 person enrolled under such plan, the doctor
15 may charge the enrollee for such items or serv-
16 ices any amount determined by the doctor that
17 is equal to, or less than, the usual and cus-
18 tomary amount that the doctor charges individ-
19 uals who are not so enrolled for such items or
20 services.

21 “(B) ITEMS OR SERVICES CONSIDERED
22 COVERED BY A PLAN.—For purposes of sub-
23 paragraph (A), an item or service shall be con-
24 sidered, with respect to a plan, to be covered
25 services under the plan only if the item or serv-
26 ice is an item or service with respect to which

1 the plan is obligated to pay an amount that is
 2 reasonable and is not nominal or de minimis.

3 “(C) EXCEPTION FOR DENTAL CLEAN-
 4 ING.—For purposes of subparagraph (A), a
 5 doctor of dental surgery or doctor of dental
 6 medicine that has an agreement to participate
 7 in the plan may charge an enrollee only the
 8 contracted network fee for any dental cleaning,
 9 including any dental cleaning that exceeds the
 10 annual maximum under the enrollee’s plan.

11 “(2) DURATION OF LIMITED SCOPE VISION AND
 12 DENTAL PLANS.—In the case of an agreement be-
 13 tween such a doctor and such a plan that offers lim-
 14 ited scope dental or vision benefits—

15 “(A) the agreement may be extended for a
 16 term longer than 2 years only with the prior ac-
 17 ceptance of the doctor for each such term ex-
 18 tension; and

19 “(B) the agreement may be extended for
 20 unlimited terms, subject to subparagraph (A).

21 “(3) NO RESTRICTIONS ON CHOICE OF LABORA-
 22 TORIES.—The plan may not, directly or indirectly,
 23 restrict or limit, such a doctor’s choice of labora-
 24 tories or choice of source and suppliers of services

1 or materials provided by the doctor to an individual
 2 who is enrolled under the plan.

3 “(b) PRIVATE RIGHT OF ACTION.—In addition to
 4 any other remedies under State or Federal law, a person
 5 adversely affected by a violation of this subsection may
 6 bring action for injunctive relief against a plan described
 7 in subsection (a) and, upon prevailing, in addition to such
 8 injunctive relief shall recover monetary damages of no
 9 more than \$1,000 for each day found to be in violation
 10 plus attorney’s fees and costs. The district courts of the
 11 United States shall have exclusive jurisdiction of civil ac-
 12 tions brought under this subsection.

13 “(c) RELATIONSHIP TO EXCEPTION FOR LIMITED,
 14 EXCEPTED BENEFITS.—Section 9831(c)(1) shall not
 15 apply with respect to the requirements of this section.

16 “(d) ELECTION TO BE EXCLUDED.—

17 “(1) IN GENERAL.—If a doctor of optometry,
 18 doctor of dental surgery, or doctor of dental medi-
 19 cine to which the provisions of paragraphs (1) and
 20 (3) of subsection (a) otherwise apply makes an elec-
 21 tion under this paragraph (in such form and manner
 22 as the Secretary may by regulations prescribe), the
 23 requirements of such paragraphs insofar as they
 24 apply directly to the plan shall not apply to such
 25 plan for such period, as described in paragraph (2).

1 “(2) PERIOD OF ELECTION.—An election under
2 paragraph (1)—

3 “(A) shall apply for a single specified plan
4 year;

5 “(B) may be extended through subsequent
6 elections under this subsection; and

7 “(C) shall not be available with respect to
8 the requirements concerning the duration of
9 limited scope vision and dental plans under sub-
10 section (a)(2).

11 “(e) DEFINITIONS.—In this section:

12 “(1) The term ‘covered services’ means dental
13 care or vision care services for which reimbursement
14 is available under a plan contract, or for which reim-
15 bursement would be available but for the application
16 of contractual limitations, including deductibles, co-
17 payments, coinsurance, waiting periods, lifetime
18 maximum, frequency limitations, and alternative
19 benefit payments.

20 “(2) The terms ‘doctor of dental surgery’ and
21 ‘doctor of dental medicine’ mean a doctor of dental
22 surgery or of dental medicine, as applicable, who is
23 legally authorized to practice dentistry by the State
24 in which the doctor performs such function and who

1 is acting within the scope of the license of the doctor
2 when performing such functions.

3 “(3) The term ‘doctor of optometry’ means a
4 doctor of optometry who is legally authorized to
5 practice optometry by the State in which the doctor
6 so practices.”.

7 (2) CONFORMING AMENDMENT.—Section
8 9831(c)(1) of the Internal Revenue Code of 1986 is
9 amended by striking “The requirements” and insert-
10 ing “Subject to section 9826, the requirements”.

11 (3) CLERICAL AMENDMENT.—The table of sec-
12 tions for subchapter B of chapter 100 of the Inter-
13 nal Revenue Code of 1986 is amended by adding at
14 the end the following:

“Sec. 9826. Improving coverage under vision and dental plans.”.

15 **SEC. 3. EXCLUSIVE APPLICABILITY OF STATE LAW.**

16 Notwithstanding any amendment made by this Act,
17 State law that directly affects any standard or require-
18 ment relating to health insurance issuers and dental or
19 vision benefit plans, shall have exclusive application and
20 the amendments made by this Act shall not apply to the
21 extent that such State law conflicts with such amend-
22 ments. The State shall retain exclusive jurisdiction over
23 health insurance issuers and limited scope dental or vision
24 benefit plans that are directly governed by such State.

