

117TH CONGRESS
1ST SESSION

S. 754

To provide health insurance benefits for outpatient and inpatient items and services related to the diagnosis and treatment of a congenital anomaly or birth defect.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2021

Ms. BALDWIN (for herself, Ms. ERNST, Mr. BROWN, Ms. MURKOWSKI, Ms. KLOBUCHAR, Mr. MARSHALL, Mrs. SHAHEEN, Mr. WICKER, Mr. WHITEHOUSE, Mr. TILLIS, Ms. STABENOW, Mr. CRAMER, Mr. VAN HOLLEN, Mr. BOOZMAN, Mr. PETERS, Ms. COLLINS, Mr. MARKEY, Mrs. CAPITO, Mr. BOOKER, Mr. GRAHAM, Ms. SMITH, Mr. GRASSLEY, Ms. SINEMA, Mr. MORAN, Mr. MURPHY, Mr. DAINES, Mr. BLUMENTHAL, Mr. BRAUN, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide health insurance benefits for outpatient and inpatient items and services related to the diagnosis and treatment of a congenital anomaly or birth defect.

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 Lasting
5 Smiles Act”.

1 **SEC. 2. COVERAGE OF CONGENITAL ANOMALY OR BIRTH**
 2 **DEFECT.**

3 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—
 4 Part D of title XXVII of the Public Health Service Act
 5 (42 U.S.C. 300gg–111 et seq.) is amended by adding at
 6 the end the following new section:

7 **“SEC. 2799A–11. STANDARDS RELATING TO BENEFITS FOR**
 8 **CONGENITAL ANOMALY OR BIRTH DEFECT.**

9 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-
 10 TIVE TREATMENT.—

11 “(1) IN GENERAL.—A group health plan, and a
 12 health insurance issuer offering group or individual
 13 health insurance coverage, shall provide coverage for
 14 outpatient and inpatient items and services related
 15 to the diagnosis and treatment of a congenital
 16 anomaly or birth defect.

17 “(2) REQUIREMENTS.—

18 “(A) IN GENERAL.—Coverage provided
 19 under paragraph (1) shall include any medically
 20 necessary item or service to functionally im-
 21 prove, repair, or restore any body part to
 22 achieve normal body functioning or appearance,
 23 as determined by the treating physician (as de-
 24 fined in section 1861(r) of the Social Security
 25 Act), due to congenital anomaly or birth defect.

1 “(B) FINANCIAL REQUIREMENTS AND
 2 TREATMENT REQUIREMENTS.—Any coverage
 3 provided under paragraph (1) under a group
 4 health plan or individual or group health insur-
 5 ance coverage offered by a health insurance
 6 issuer may be subject to coverage limits (such
 7 as medical necessity, pre-authorization, or pre-
 8 certification) and cost-sharing requirements
 9 (such as coinsurance, copayments, and
 10 deductibles), as required by the plan or issuer,
 11 that are no more restrictive than the predomi-
 12 nant coverage limits and cost-sharing require-
 13 ments, respectively, applied to substantially all
 14 medical and surgical benefits covered by the
 15 plan (or coverage).

16 “(3) TREATMENT DEFINED.—In this section:

17 “(A) IN GENERAL.—Except as provided in
 18 subparagraph (B), the term ‘treatment’ in-
 19 cludes, with respect to a group health plan or
 20 group or individual health insurance coverage
 21 offered by a health insurance issuer, inpatient
 22 and outpatient items and services performed to
 23 improve, repair, or restore bodily function (or
 24 performed to approximate a normal appear-
 25 ance), due to a congenital anomaly or birth de-

fect, and includes treatment to any and all missing or abnormal body parts (including teeth, the oral cavity, and their associated structures) that would otherwise be provided under the plan or coverage for any other injury or sickness, including—

“(i) any items or services, including inpatient and outpatient care, reconstructive services and procedures, and complications thereof;

“(ii) adjunctive dental, orthodontic, or prosthodontic support from birth until the medical or surgical treatment of the defect or anomaly has been completed, including ongoing or subsequent treatment required to maintain function or approximate a normal appearance;

“(iii) procedures that materially improve, repair, or restore bodily function; and

“(iv) procedures for secondary conditions and follow-up treatment associated with the underlying congenital anomaly or birth defect.

1 “(B) EXCEPTION.—The term ‘treatment’
 2 shall not include cosmetic surgery performed to
 3 reshape normal structures of the body to im-
 4 prove appearance or self-esteem.

5 “(b) NOTICE.—A group health plan under this part
 6 shall comply with the notice requirement under section
 7 714(c) of the Employee Retirement Income Security Act
 8 of 1974 with respect to the requirements of this section
 9 as if such section applied to such plan.”.

10 (b) ERISA AMENDMENTS.—

11 (1) IN GENERAL.—Subpart B of part 7 of sub-
 12 title B of title I of the Employee Retirement Income
 13 Security Act of 1974 is amended by adding at the
 14 end the following:

15 **“SEC. 726. STANDARDS RELATING TO BENEFITS FOR CON-**
 16 **GENITAL ANOMALY OR BIRTH DEFECT.**

17 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-
 18 TIVE TREATMENT.—

19 “(1) IN GENERAL.—A group health plan, and a
 20 health insurance issuer offering group health insur-
 21 ance coverage, shall provide coverage for outpatient
 22 and inpatient items and services related to the diag-
 23 nosis and treatment of a congenital anomaly or birth
 24 defect.

25 “(2) REQUIREMENTS.—

“(A) IN GENERAL.—Coverage provided under paragraph (1) shall include any medically necessary item or service to functionally improve, repair, or restore any body part to achieve normal body functioning or appearance, as determined by the treating physician (as defined in section 1861(r) of the Social Security Act), due to congenital anomaly or birth defect.

“(B) FINANCIAL REQUIREMENTS AND TREATMENT REQUIREMENTS.—Any coverage provided under paragraph (1) under a group health plan or group health insurance coverage offered by a health insurance issuer may be subject to coverage limits (such as medical necessity, pre-authorization, or pre-certification) and cost-sharing requirements (such as coinsurance, copayments, and deductibles), as required by the plan or issuer, that are no more restrictive than the predominant coverage limits and cost-sharing requirements, respectively, applied to substantially all medical and surgical benefits covered by the plan (or coverage).

“(3) TREATMENT DEFINED.—In this section:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘treatment’ in-

cludes, with respect to a group health plan or group health insurance coverage offered by a health insurance issuer, inpatient and outpatient items and services performed to improve, repair, or restore bodily function (or performed to approximate a normal appearance), due to a congenital anomaly or birth defect, and includes treatment to any and all missing or abnormal body parts (including teeth, the oral cavity, and their associated structures) that would otherwise be provided under the plan or coverage for any other injury or sickness, including—

“(i) any items or services, including inpatient and outpatient care, reconstructive services and procedures, and complications thereof;

“(ii) adjunctive dental, orthodontic, or prosthodontic support from birth until the medical or surgical treatment of the defect or anomaly has been completed, including ongoing or subsequent treatment required to maintain function or approximate a normal appearance;

1 “(iii) procedures that materially im-
 2 prove, repair, or restore bodily function;
 3 and

4 “(iv) procedures for secondary condi-
 5 tions and follow-up treatment associated
 6 with the underlying congenital anomaly or
 7 birth defect.

8 “(B) EXCEPTION.—The term ‘treatment’
 9 shall not include cosmetic surgery performed to
 10 reshape normal structures of the body to im-
 11 prove appearance or self-esteem.

12 “(b) NOTICE.—A group health plan under this part
 13 shall comply with the notice requirement under section
 14 714(c) with respect to the requirements of this section as
 15 if such section applied to such plan.”.

16 (2) TECHNICAL AMENDMENTS.—

17 (A) Section 732(a) of such Act (29 U.S.C.
 18 1191a(a)) is amended by striking “section 711”
 19 and inserting “sections 711 and 726”.

20 (B) The table of contents in section 1 of
 21 such Act is amended by inserting after the item
 22 relating to section 725 the following new item:

“Sec. 726. Standards relating to benefits for congenital anomaly or birth de-
 fect.”

23 (c) INTERNAL REVENUE CODE AMENDMENTS.—

1 (1) IN GENERAL.—Subchapter B of chapter
2 100 of the Internal Revenue Code of 1986 is amend-
3 ed by adding at the end the following:

4 **“SEC. 9826. STANDARDS RELATING TO BENEFITS FOR CON-**
5 **GENITAL ANOMALY OR BIRTH DEFECT.**

6 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-
7 TIVE TREATMENT.—

8 “(1) IN GENERAL.—A group health plan shall
9 provide coverage for outpatient and inpatient items
10 and services related to the diagnosis and treatment
11 of a congenital anomaly or birth defect.

12 “(2) REQUIREMENTS.—

13 “(A) IN GENERAL.—Coverage provided
14 under paragraph (1) shall include any medically
15 necessary item or service to functionally im-
16 prove, repair, or restore any body part to
17 achieve normal body functioning or appearance,
18 as determined by the treating physician (as de-
19 fined in section 1861(r) of the Social Security
20 Act), due to congenital anomaly or birth defect.

21 “(B) FINANCIAL REQUIREMENTS AND
22 TREATMENT REQUIREMENTS.—Any coverage
23 provided under paragraph (1) under a group
24 health plan may be subject to coverage limits
25 (such as medical necessity, pre-authorization, or

1 pre-certification) and cost-sharing requirements
2 (such as coinsurance, copayments, and
3 deductibles), as required by the plan, that are
4 no more restrictive than the predominant cov-
5 erage limits and cost-sharing requirements, re-
6 spectively, applied to substantially all medical
7 and surgical benefits covered by the plan.

8 “(3) TREATMENT DEFINED.—In this section:

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the term ‘treatment’ in-
11 cludes, with respect to a group health plan, in-
12 patient and outpatient items and services per-
13 formed to improve, repair, or restore bodily
14 function (or performed to approximate a normal
15 appearance), due to a congenital anomaly or
16 birth defect, and includes treatment to any and
17 all missing or abnormal body parts (including
18 teeth, the oral cavity, and their associated
19 structures) that would otherwise be provided
20 under the plan for any other injury or sickness,
21 including—

22 “(i) any items or services, including
23 inpatient and outpatient care, reconstruc-
24 tive services and procedures, and complica-
25 tions thereof;

1 “(ii) adjunctive dental, orthodontic, or
2 prosthodontic support from birth until the
3 medical or surgical treatment of the defect
4 or anomaly has been completed, including
5 ongoing or subsequent treatment required
6 to maintain function or approximate a nor-
7 mal appearance;

8 “(iii) procedures that materially im-
9 prove, repair, or restore bodily function;
10 and

11 “(iv) procedures for secondary condi-
12 tions and follow-up treatment associated
13 with the underlying congenital anomaly or
14 birth defect.

15 “(B) EXCEPTION.—The term ‘treatment’
16 shall not include cosmetic surgery performed to
17 reshape normal structures of the body to im-
18 prove appearance or self-esteem.

19 “(b) NOTICE.—A group health plan under this part
20 shall comply with the notice requirement under section
21 714(c) of the Employee Retirement Income Security Act
22 of 1974 with respect to the requirements of this section
23 as if such section applied to such plan.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions for such subchapter is amended by adding at
 3 the end the following new item:

“Sec. 9826. Standards relating to benefits for congenital anomaly or birth de-
 defect.”.

4 (d) RULE OF CONSTRUCTION.—A group health plan
 5 or health insurance issuer shall provide the benefits de-
 6 scribed in section 2799A–11 of the Public Health Service
 7 Act (as added by subsection (a)), section 726 of the Em-
 8 ployee Retirement Income Security Act of 1974 (as added
 9 by subsection (b)), and section 9826 of the Internal Rev-
 10 enue Code of 1986 (as added by subsection (c)) under the
 11 terms of such plan or health insurance coverage offered
 12 by such issuer.

13 (e) CLARIFYING AMENDMENT REGARDING APPLICA-
 14 TION TO GRANDFATHERED PLANS.—Section
 15 1251(a)(4)(A) of the Patient Protection and Affordable
 16 Care Act (42 U.S.C. 18011(a)(4)(A)), is amended by add-
 17 ing at the end the following:

18 “(v) Section 2799A–11 (relating to
 19 standards relating to benefits for con-
 20 genital anomaly or birth defect), as added
 21 by section 2(a) of the Ensuring Lasting
 22 Smiles Act.”.

23 (f) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply with respect to group health plans

1 for plan years beginning on or after January 1, 2022, and
2 with respect to health insurance coverage offered, sold,
3 issued, renewed, in effect, or operated in the individual
4 market on or after such date.

5 (g) COORDINATED REGULATIONS.—Section 104(1)
6 of the Health Insurance Portability and Accountability
7 Act of 1996 is amended by striking “this subtitle (and
8 the amendments made by this subtitle and section 401)”
9 and inserting “the provisions of part 7 of subtitle B of
10 title I of the Employee Retirement Income Security Act
11 of 1974, the provisions of parts A, C, and D of title XXVII
12 of the Public Health Service Act, and chapter 100 of the
13 Internal Revenue Code of 1986”.

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