

116TH CONGRESS
1ST SESSION

S. 560

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a congenital anomaly or birth defect.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2019

Ms. BALDWIN (for herself, Ms. ERNST, Ms. MURKOWSKI, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for 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 (1) IN GENERAL.—Title XXVII of the Public
5 Health Service Act is amended by inserting after
6 section 2729 (42 U.S.C. 300gg–19b), the following:

7 **“SEC. 2730. STANDARDS RELATING TO BENEFITS FOR CON-**
8 **GENITAL 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 services related to the diag-
15 nosis and treatment of a congenital anomaly or birth
16 defect.

17 “(2) REQUIREMENTS.—Coverage provided
18 under paragraph (1) shall include any service to
19 functionally improve, repair, or restore any body
20 part that is medically necessary to achieve normal
21 body functioning or appearance, as determined by
22 the treating physician (as defined in section 1861 of
23 the Social Security Act). Any coverage provided
24 under such paragraph may be subject to coverage
25 limits, such as pre-authorization or pre-certification,
26 as required by the plan or issuer that are no more

1 restrictive than the predominant treatment limita-
2 tions applied to substantially all medical and sur-
3 gical benefits covered by the plan (or coverage).

4 “(3) TREATMENT DEFINED.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), in this section, the term
7 ‘treatment’ includes patient and outpatient care
8 and services performed to improve or restore
9 body function (or performed to approximate a
10 normal appearance), due to congenital anomaly
11 or birth defect and shall include treatment to
12 any and all missing or abnormal body parts,
13 (including teeth, the oral cavity, and their asso-
14 ciated structures) that would otherwise be pro-
15 vided under the plan or coverage for any other
16 injury and sickness, including—

17 “(i) inpatient and outpatient care, re-
18 constructive services and procedures, and
19 complications thereof, including prosthetics
20 and appliances;

21 “(ii) adjunctive dental, orthodontic or
22 prosthodontic support from birth until the
23 medical or surgical treatment of the defect
24 or anomaly has been completed, including
25 ongoing or subsequent treatment required

1 to maintain function or approximate a nor-
2 mal appearance;

3 “(iii) procedures that do not materi-
4 ally restore or improve the function of the
5 body part being treated; and

6 “(iv) procedures for secondary condi-
7 tions and follow-up treatment.

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(b) of the Employee Retirement Income Security Act
15 of 1974 with respect to the requirements of this section
16 as if such section applied to such plan.”.

17 (2) TECHNICAL AMENDMENTS.—

18 (A) Section 2724(c) of the Public Health
19 Service Act (42 U.S.C. 300gg-23(c)) is amend-
20 ed by striking “section 2704” and inserting
21 “sections 2725 and 2730”.

22 (B) Section 2762(b)(2) of the Public
23 Health Service Act (42 U.S.C. 300gg-62(b)(2))
24 is amended by striking “section 2751” and in-
25 serting “sections 2730 and 2751”.

1 (b) ERISA AMENDMENTS.—

2 (1) IN GENERAL.—Subpart B of part 7 of sub-
3 title B of title I of the Employee Retirement Income
4 Security Act of 1974 is amended by adding at the
5 end the following:

6 **“SEC. 716. STANDARDS RELATING TO BENEFITS FOR CON-**
7 **GENITAL ANOMALY OR BIRTH DEFECT.**

8 “(a) REQUIREMENTS FOR RECONSTRUCTIVE TREAT-
9 MENT.—

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

16 “(2) REQUIREMENTS.—Coverage provided
17 under paragraph (1) shall include any service to
18 functionally improve, repair, or restore any body
19 part that is medically necessary to achieve normal
20 body functioning or appearance, as determined by
21 the treating physician (as defined in section 1861 of
22 the Social Security Act). Any coverage provided
23 under such paragraph may be subject to coverage
24 limits, such as pre-authorization or pre-certification,
25 as required by the plan or issuer that are no more

1 restrictive than the predominant treatment limita-
2 tions applied to substantially all medical and sur-
3 gical benefits covered by the plan (or coverage).

4 “(3) TREATMENT DEFINED.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), in this section, the term
7 ‘treatment’ includes patient and outpatient care
8 and services performed to improve or restore
9 body function (or performed to approximate a
10 normal appearance), due to congenital anomaly
11 or birth defect and shall include treatment to
12 any and all missing or abnormal body parts,
13 (including teeth, the oral cavity, and their asso-
14 ciated structures) that would otherwise be pro-
15 vided under the plan or coverage for any other
16 injury and sickness, including—

17 “(i) inpatient and outpatient care, re-
18 constructive services and procedures, and
19 complications thereof, including prosthetics
20 and appliances;

21 “(ii) adjunctive dental, orthodontic or
22 prosthodontic support from birth until the
23 medical or surgical treatment of the defect
24 or anomaly has been completed, including
25 ongoing or subsequent treatment required

1 to maintain function or approximate a nor-
2 mal appearance;

3 “(iii) procedures that do not materi-
4 ally restore or improve the function of the
5 body part being treated; and

6 “(iv) procedures for secondary condi-
7 tions and follow-up treatment.

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 UNDER GROUP HEALTH PLAN.—The
13 imposition of the requirements of this section shall be
14 treated as a material modification in the terms of the plan
15 described in the last sentence of section 102(a), for pur-
16 poses of assuring notice of such requirements under the
17 plan, except that the summary description required to be
18 provided under the fourth sentence of section 104(b)(1)
19 with respect to such modification shall be provided by not
20 later than 60 days after the first day of the first plan
21 year in which such requirements apply.”.

22 (2) TECHNICAL AMENDMENTS.—

23 (A) Section 731(c) of such Act (29 U.S.C.
24 1191(c)) is amended by striking “section 711”
25 and inserting “sections 711 and 716”.

1 (B) Section 732(a) of such Act (29 U.S.C.
 2 1191a(a)) is amended by striking “section 711”
 3 and inserting “sections 711 and 716”.

4 (C) The table of contents in section 1 of
 5 such Act is amended by inserting after the item
 6 relating to section 714 the following new items:

Sec. 715. Additional market reforms.

Sec. 716. Standards relating to benefits for congenital anomaly or birth defect.

7 (c) INTERNAL REVENUE CODE AMENDMENTS.—

8 (1) IN GENERAL.—Subchapter B of chapter
 9 100 of the Internal Revenue Code of 1986, as
 10 amended by subsection (f) of the section 1563 (relat-
 11 ing to conforming amendments) of Public Law 111–
 12 148, is amended by adding at the end the following:

13 **“SEC. 9816. STANDARDS RELATING TO BENEFITS FOR CON-**
 14 **GENITAL ANOMALY OR BIRTH DEFECT.**

15 **“(a) REQUIREMENTS FOR RECONSTRUCTIVE TREAT-**
 16 **MENT.**—A group health plan, and a health insurance
 17 issuer offering group or individual health insurance cov-
 18 erage, shall provide coverage for outpatient and inpatient
 19 services related to the diagnosis and treatment of a con-
 20 genital anomaly or birth defect.

21 **“(b) REQUIREMENTS.**—Coverage provided under
 22 subsection (a) shall include any service to functionally im-
 23 prove, repair, or restore any body part that is medically
 24 necessary to achieve normal body functioning or appear-

1 ance, as determined by the treating physician (as defined
2 in section 1861 of the Social Security Act). Any coverage
3 provided under such subsection may be subject to coverage
4 limits, such as pre-authorization or pre-certification, as re-
5 quired by the plan or issuer that are no more restrictive
6 than the predominant treatment limitations applied to
7 substantially all medical and surgical benefits covered by
8 the plan (or coverage).

9 “(c) TREATMENT DEFINED.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), in this section, the term ‘treatment’ in-
12 cludes patient and outpatient care and services per-
13 formed to improve or restore body function (or per-
14 formed to approximate a normal appearance), due to
15 congenital anomaly or birth defect and shall include
16 treatment to any and all missing or abnormal body
17 parts, (including teeth, the oral cavity, and their as-
18 sociated structures) that would otherwise be pro-
19 vided under the plan or coverage for any other in-
20 jury and sickness, including—

21 “(A) inpatient and outpatient care, recon-
22 structive services and procedures, and complica-
23 tions thereof, including prosthetics and appli-
24 ances;

1 “(B) adjunctive dental, orthodontic or
 2 prosthodontic support from birth until the med-
 3 ical or surgical treatment of the defect or
 4 anomaly has been completed, including ongoing
 5 or subsequent treatment required to maintain
 6 function or approximate a normal appearance;

7 “(C) procedures that do not materially re-
 8 store or improve the function of the body part
 9 being treated; and

10 “(D) procedures for secondary conditions
 11 and follow-up treatment.

12 “(2) EXCEPTION.—The term ‘treatment’ shall
 13 not include cosmetic surgery performed to reshape
 14 normal structures of the body to improve appearance
 15 or self-esteem.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
 17 tions for such subchapter is amended by adding at
 18 the end the following new items:

“Sec. 9815. Additional market reforms.

“Sec. 9816. Standards relating to benefits for congenital anomaly or birth de-
 defect.”.

19 (d) CLARIFYING AMENDMENT REGARDING APPLICA-
 20 TION TO GRANDFATHERED PLANS.—Section
 21 1251(a)(4)(A) of the Patient Protection and Affordable
 22 Care Act (42 U.S.C. 18011(a)(4)(A)), is amended by add-
 23 ing at the end the following:

1 “(v) Section 2730 (relating to stand-
2 ards relating to benefits for congenital
3 anomaly or birth defect), as added by sec-
4 tion 2(a) of the Ensuring Lasting Smiles
5 Act.”.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to group health plans
8 for plan years beginning on or after January 1, 2020, and
9 with respect to health insurance coverage offered, sold,
10 issued, renewed, in effect, or operated in the individual
11 market on or after such date.

12 (f) COORDINATED REGULATIONS.—Section 104(1) of
13 the Health Insurance Portability and Accountability Act
14 of 1996 is amended by striking “this subtitle (and the
15 amendments made by this subtitle and section 401)” and
16 inserting “the provisions of part 7 of subtitle B of title
17 I of the Employee Retirement Income Security Act of
18 1974, the provisions of parts A and C of title XXVII of
19 the Public Health Service Act, and chapter 100 of the In-
20 ternal Revenue Code of 1986”.

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