

118TH CONGRESS
2D SESSION

S. 5445

To amend title XVIII of the Social Security Act to provide coverage of contraceptive items and services at no cost-sharing under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2024

Ms. HASSAN (for herself, Ms. MURKOWSKI, Ms. DUCKWORTH, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide coverage of contraceptive items and services at no cost-sharing under the Medicare program, 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 “Closing the Contracep-
5 tion Coverage Gap Act”.

1 **SEC. 2. PROVIDING COVERAGE OF CONTRACEPTIVE ITEMS**
 2 **AND SERVICES AT NO COST-SHARING UNDER**
 3 **THE MEDICARE PROGRAM.**

4 (a) PART B COVERAGE.—

5 (1) IN GENERAL.—Section 1861 of the Social
 6 Security Act (42 U.S.C. 1395x) is amended—

7 (A) in subsection (s)(2)—

8 (i) in subparagraph (JJ), by inserting

9 “and” after the semicolon at the end; and

10 (ii) by adding at the end the following

11 new subparagraph:

12 “(KK) contraceptive items and services (as de-
 13 fined in subsection (nnn)) furnished to individuals
 14 on or after January 1, 2026.”; and

15 (B) by adding at the end the following new
 16 subsection:

17 “(nnn) CONTRACEPTIVE ITEMS AND SERVICES.—

18 “(1) IN GENERAL.—The term ‘contraceptive
 19 items and services’ means items and services fur-
 20 nished by a physician or practitioner (as defined in
 21 section 1842(b)(18)(C))—

22 “(A) that—

23 “(i) align with guidance as of January
 24 12, 2022, issued in accordance with in sec-
 25 tion 2713(a)(4) of the Public Health Serv-

1 ice Act (including patient-centered coun-
2 seling services); and

3 “(ii) may be furnished for the purpose
4 of contraception; or

5 “(B) that are ancillary clinical services.

6 “(2) ANCILLARY CLINICAL SERVICES.—For
7 purposes of paragraph (1)(B), the term ‘ancillary
8 clinical services’ means—

9 “(A) clinical services that are related to
10 the items and services described in paragraph
11 (1)(A), including consultations, examinations,
12 procedures, device insertion, ultrasound, pain
13 management, patient education, referrals, and
14 counseling; and

15 “(B) follow-up services related to the pro-
16 vision or use of the items and services described
17 in paragraph (1)(A), including management of
18 side effects, counseling for continued adherence,
19 and device removal.

20 “(3) CLARIFICATION.—The term ‘contraceptive
21 items and services’ includes items and services de-
22 scribed in paragraph (1) regardless of whether such
23 items and services are actually furnished for pur-
24 poses of contraception.

1 “(4) PATIENT-CENTERED COUNSELING SERV-
 2 ICES.—For purposes of paragraph (1)(A), the Sec-
 3 retary shall issue guidance regarding the coverage of
 4 patient-centered counseling. Such guidance shall—

5 “(A) align with guidance as of January 12,
 6 2022, issued in accordance with section
 7 2713(a)(4) of the Public Health Service Act.;
 8 and

9 “(B) include the coverage of counseling to
 10 all patients on the full range of contraceptive
 11 items and services described in paragraph (1).”.

12 (2) PAYMENT.—Section 1833 of the Social Se-
 13 curity Act (42 U.S.C. 1395l) is amended—

14 (A) in subsection (a)(1)—

15 (i) by striking “and” before “(HH)”;
 16 and

17 (ii) by inserting the following before
 18 the semicolon: “and (II) with respect to
 19 contraceptive items and services (as de-
 20 fined in section 1861(nnn)), the amount
 21 paid shall be an amount equal to 100 per-
 22 cent of the lesser of the actual charge for
 23 the items and services or the amount de-
 24 termined under a payment basis deter-
 25 mined appropriate by the Secretary”; and

1 (B) in subsection (b), in the first sen-
 2 tence—

3 (i) by striking “, and (13)” and in-
 4 serting “(13)”; and

5 (ii) by striking “1861(n).” and in-
 6 serting “1861(n) , and (14) such deduct-
 7 ible shall not apply with respect to contra-
 8 ceptive items and services (as defined in
 9 section 1861(nnn)).”.

10 (3) EXCLUSION MODIFICATION.—Section
 11 1862(a)(1) of the Social Security Act (42 U.S.C.
 12 1395y(a)(1)) is amended—

13 (A) in subparagraph (O), by striking
 14 “and” at the end;

15 (B) in subparagraph (P), by striking the
 16 semicolon and inserting “, and”; and

17 (C) by adding at the end the following new
 18 subparagraph:

19 “(Q) in the case of contraceptive items and
 20 services (as defined in section 1861(nnn)), which are
 21 not furnished or ordered by a physician or practi-
 22 tioner (as defined in section 1842(b)(18)(C));”.

23 (4) QUALITY MEASURES.—The Secretary of
 24 Health and Human Services may, for the purposes
 25 of ensuring quality in services, develop measures of

1 contraceptive counseling, care, and access, including
 2 but not limited to validated survey instruments.

3 (b) PART C COST-SHARING FOR CONTRACEPTIVE
 4 ITEMS AND SERVICES.—

5 (1) IN GENERAL.—Section 1852(a)(1)(B) of the
 6 Social Security Act (42 U.S.C. 1395w–22(a)(1)(B))
 7 is amended—

8 (A) in clause (iv)—

9 (i) by redesignating subclause (VIII)
 10 as subclause (IX); and

11 (ii) by inserting after subclause (VII)
 12 the following new subclause:

13 “(VIII) Contraceptive items and
 14 services (as defined in section
 15 1861(nnn)).”; and

16 (B) in clause (v), by striking “and (VI)”
 17 and inserting “(VI), and (VIII)”.

18 (2) EFFECTIVE DATE.—The amendments made
 19 by this subsection shall apply with respect to plan
 20 years beginning on or after January 1, 2026.

21 (c) PART D COVERAGE AND COST-SHARING FOR
 22 CONTRACEPTIVE DRUGS.—

23 (1) COVERAGE.—Section 1860D–4(b)(3)(G) of
 24 the Social Security Act (42 U.S.C. 1395w–
 25 104(b)(3)(G)) is amended—

1 (A) in clause (ii)(I), by adding at the end
 2 the following new sentence: “Such identification
 3 shall include the drugs described in clause
 4 (iv)(VII).”; and

5 (B) in clause (iv), by adding at the end the
 6 following new subclause:

7 “(VII) Covered part D drugs de-
 8 scribed in guidelines issued pursuant
 9 to section 2713(a)(4) of the Public
 10 Health Service Act and that may be
 11 furnished for purposes of contracep-
 12 tion (regardless of whether such drugs
 13 are actually furnished for purposes of
 14 contraception).”.

15 (2) COST-SHARING.—Section 1860D–2 of the
 16 Social Security Act (42 U.S.C. 1395w–102) is
 17 amended—

18 (A) in subsection (b)—

19 (i) in paragraph (1)(A), in the matter
 20 preceding clause (i), by striking “and (9)”
 21 and inserting “, (9), and (10)”;

22 (ii) in paragraph (2)(A), in the matter
 23 preceding clause (i), by striking “and (9)”
 24 and inserting “, (9), and (10)”;

1 (iii) in paragraph (3)(A), in the mat-
 2 ter preceding clause (i), by striking “and
 3 (9)” and inserting “(9), and (10)”; and
 4 (iv) by adding at the end the following
 5 new paragraph:

6 “(10) TREATMENT OF COST-SHARING FOR CON-
 7 TRACEPTIVE DRUGS.—For plan years beginning on
 8 or after January 1, 2026, with respect to a covered
 9 part D drug that is described in guidelines issued
 10 pursuant to section 2713(a)(4) of the Public Health
 11 Service Act and that may be furnished for purposes
 12 of contraception (regardless of whether such drug is
 13 actually furnished for purposes of contraception)—

14 “(A) the deductible under paragraph (1)
 15 shall not apply; and

16 “(B) there shall be no coinsurance or other
 17 cost-sharing under this part with respect to
 18 such drug.”; and

19 (B) in subsection (c), by adding at the end
 20 the following new paragraph:

21 “(7) TREATMENT OF COST-SHARING FOR CON-
 22 TRACEPTIVE DRUGS.—The coverage is provided in
 23 accordance with subsection (b)(10).”.

24 (3) CONFORMING AMENDMENTS TO COST-SHAR-
 25 ING FOR LOW-INCOME INDIVIDUALS.—Section

1 1860D–14(a) of the Social Security Act (42 U.S.C.
2 1395w–114(a)) is amended—

3 (A) in paragraph (1)(D), in each of clauses
4 (ii) and (iii), by striking “paragraph (6)” and
5 inserting “paragraphs (6) and (7)”;

6 (B) in paragraph (2)—

7 (i) in subparagraph (B), by striking
8 “and (9)” and inserting “, (9), and (10)”;

9 (ii) in subparagraph (D), by striking
10 “paragraph (6)” and inserting “para-
11 graphs (6) and (7)”;

12 (iii) in subparagraph (E), by striking
13 “paragraph (6)” and inserting “para-
14 graphs (6) and (7)”;

15 (C) by adding at the end the following new
16 paragraph:

17 “(7) NO APPLICATION OF COST-SHARING OR
18 DEDUCTIBLE FOR CONTRACEPTIVE DRUGS.—For
19 plan years beginning on or after January 1, 2026,
20 with respect to a covered part D drug that is de-
21 scribed in guidelines issued pursuant to section
22 2713(a)(4) of the Public Health Service Act and
23 that is furnished for purposes of contraception—

24 “(A) the deductible under section 1860D–
25 2(b)(1) shall not apply; and

1 “(B) there shall be no cost-sharing under
2 this section with respect to such drug.”.

3 (4) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply with respect to plan
5 years beginning on or after January 1, 2026.

6 (d) ENSURING COMPARABLE COVERAGE FOR DUAL
7 ELIGIBLE INDIVIDUALS.—In implementing the amend-
8 ments made by this section, the Secretary of Health and
9 Human Services shall ensure that the coverage of contra-
10 ceptive items and services (as defined in section
11 1861(nnn) of the Social Security Act (as added by sub-
12 section (a)) and covered part D drugs described in section
13 1860D–4(b)(3)(G)(VII) of such Act (as added by sub-
14 section (c)(1)) with respect to individuals who are dually
15 eligible for benefits under the Medicare program under
16 title XVIII of such Act and for medical assistance under
17 a State plan under title XIX of such Act (or a waiver of
18 such plan) is at least as comprehensive as the coverage
19 of such items and services and drugs for such individuals
20 under such State plans (or waivers of such plans), as de-
21 termined by the Secretary based on an annual review of
22 such State plans (and waivers of such plans).

1 **SEC. 3. HHS STUDY AND REPORT ON PRESCRIPTION DRUG**
2 **COVERAGE FOR MEDICARE BENEFICIARIES**
3 **LIVING WITH DISABILITIES.**

4 (a) STUDY.—The Secretary of Health and Human
5 Services (in this section referred to as the “Secretary”)
6 shall conduct a study on—

7 (1) the adequacy of access to prescription drug
8 coverage, including oral contraceptives, among Medi-
9 care beneficiaries living with disabilities who are en-
10 rolled under the original Medicare fee-for-service
11 program under parts A and B of title XVIII of the
12 Social Security Act (but not enrolled under part C
13 or D of such title XVIII); and

14 (2) providing coverage of over-the-counter con-
15 traceptive drugs under the Medicare program under
16 such title XVIII with no cost-sharing.

17 (b) REPORT.—Not later than 1 year after the date
18 of enactment of this Act, the Secretary shall submit to
19 Congress a report on the study conducted under sub-
20 section (a), together with recommendations for such legis-
21 lation and administrative action as the Secretary deter-
22 mines appropriate.

1 **SEC. 4. GAO STUDY AND REPORT ON CONTRACEPTIVE COV-**
2 **ERAGE REQUIREMENTS UNDER COMMER-**
3 **CIAL AND PUBLIC HEALTH PLANS.**

4 (a) STUDY.—The Comptroller General of the United
5 States (in this section referred to as the “Comptroller
6 General”) shall conduct a study on the forms of health
7 insurance (including commercial plans and public health
8 programs (including Medicaid, Medicare, and
9 TRICARE)), that are not required by State or Federal
10 law to do one or both of the following:

11 (1) Cover all forms of contraception approved
12 by the Food and Drug Administration.

13 (2) Waive cost-sharing for such contraception.

14 (b) REPORT.—Not later than 1 year after the date
15 of enactment of this Act, the Comptroller General shall
16 submit to Congress a report on the study conducted under
17 subsection (a), together with recommendations for such
18 legislation and administrative action as the Comptroller
19 General determines appropriate.

20 **SEC. 5. GAO STUDY AND REPORT ON DIFFERENCE IN COV-**
21 **ERAGE OF CONTRACEPTIVE ITEMS AND**
22 **SERVICES FOR DUAL ELIGIBLES.**

23 (a) STUDY.—The Comptroller General of the United
24 States (in this section referred to as the “Comptroller
25 General”) shall conduct a study on the difference in cov-

1 erage of contraceptive items and services for individuals
2 who are dually eligible for Medicare and Medicaid benefits.

3 (b) REPORT.—Not later than 2 years after the date
4 of enactment of this Act, the Comptroller General shall
5 submit to Congress a report on the study conducted under
6 subsection (a), together with recommendations for such
7 legislation and administrative action as the Secretary de-
8 termines appropriate.

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