

115TH CONGRESS  
2D SESSION

# S. 3369

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.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 23, 2018

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

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## 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 2728 (42 U.S.C. 300gg–28), the following:

7 **“SEC. 2729. 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 2729”.

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 2729 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 2729 (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, 2018, 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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