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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ensuring Lasting Smiles Act''.

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

(a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(1) IN GENERAL.—Title XXVII of the Public Health Service Act is amended by inserting after section 2728 (42 U.S.C. 300gg–28), the following:

"SEC. 2729. STANDARDS RELATING TO BENEFITS FOR CONGENITAL ANOMALY OR BIRTH DEFECT.

''(a) REQUIREMENTS FOR CARE AND RECONSTRUCTIVE TREATMENT.—

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

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

restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage).

''(3) TREATMENT DEFINED.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), in this section, the term 'treatment' includes patient and outpatient care and services performed to improve or restore body function (or performed to approximate a normal appearance), due to congenital anomaly or birth defect and shall include 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 and sickness, including—

''(i) inpatient and outpatient care, reconstructive services and procedures, and complications thereof, including prosthetics and appliances;

''(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 do not materially restore or improve the function of the body part being treated; and

''(iv) procedures for secondary conditions and follow-up treatment.

''(B) EXCEPTION.—The term 'treatment' shall not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.

''(b) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 714(b) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.''.

(2) TECHNICAL AMENDMENTS.—

(A) Section 2724(c) of the Public Health Service Act (42 U.S.C. 300gg–23(c)) is amended by striking ''section 2704'' and inserting ''sections 2725 and 2729''.

(B) Section 2762(b)(2) of the Public Health Service Act (42 U.S.C. 300gg–62(b)(2)) is amended by striking ''section 2751'' and inserting ''sections 2729 and 2751''.

(b) ERISA AMENDMENTS.—

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

"SEC. 716. STANDARDS RELATING TO BENEFITS FOR CONGENITAL ANOMALY OR BIRTH DEFECT.

''(a) REQUIREMENTS FOR RECONSTRUCTIVE TREATMENT.—

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

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

restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage).

''(3) TREATMENT DEFINED.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), in this section, the term 'treatment' includes patient and outpatient care and services performed to improve or restore body function (or performed to approximate a normal appearance), due to congenital anomaly or birth defect and shall include 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 and sickness, including—

''(i) inpatient and outpatient care, reconstructive services and procedures, and complications thereof, including prosthetics and appliances;

''(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 do not materially restore or improve the function of the body part being treated; and

''(iv) procedures for secondary conditions and follow-up treatment.

''(B) EXCEPTION.—The term 'treatment' shall not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.

''(b) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in the last sentence of section 102(a), for purposes of assuring notice of such requirements under the plan, except that the summary description required to be provided under the fourth sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.''.

(2) TECHNICAL AMENDMENTS.—

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

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

(C) The table of contents in section 1 of such Act is amended by inserting after the item 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.''.

(c) INTERNAL REVENUE CODE AMENDMENTS.—

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

''SEC. 9816. STANDARDS RELATING TO BENEFITS FOR CONGENITAL ANOMALY OR BIRTH DEFECT.

''(a) REQUIREMENTS FOR RECONSTRUCTIVE TREATMENT.—A group health plan, and a health insurance issuer offering group or individual health insurance coverage, shall provide coverage for outpatient and inpatient services related to the diagnosis and treatment of a congenital anomaly or birth defect.

''(b) REQUIREMENTS.—Coverage provided under subsection (a) shall include any service to functionally improve, repair, or restore any body part that is medically necessary to achieve normal body functioning or appear-

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

''(c) TREATMENT DEFINED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in this section, the term 'treatment' includes patient and outpatient care and services performed to improve or restore body function (or performed to approximate a normal appearance), due to congenital anomaly or birth defect and shall include 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 and sickness, including—

''(A) inpatient and outpatient care, reconstructive services and procedures, and complications thereof, including prosthetics and appliances;

''(B) 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;

''(C) procedures that do not materially restore or improve the function of the body part being treated; and

''(D) procedures for secondary conditions and follow-up treatment.

''(2) EXCEPTION.—The term 'treatment' shall not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.''.

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new items:

''Sec. 9815. Additional market reforms.
''Sec. 9816. Standards relating to benefits for congenital anomaly or birth defect.''.

(d) CLARIFYING AMENDMENT REGARDING APPLICATION TO GRANDFATHERED PLANS.—Section 1251(a)(4)(A) of the Patient Protection and Affordable Care Act (42 U.S.C. 18011(a)(4)(A)), is amended by adding at the end the following:

"(v) Section 2729 (relating to standards relating to benefits for congenital anomaly or birth defect), as added by section 2(a) of the Ensuring Lasting Smiles Act.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning on or after January 1, 2018, and with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after such date.

(f) COORDINATED REGULATIONS.—Section 104(1) of the Health Insurance Portability and Accountability Act of 1996 is amended by striking "this subtitle (and the amendments made by this subtitle and section 401)" and inserting "the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, the provisions of parts A and C of title XXVII of the Public Health Service Act, and chapter 100 of the Internal Revenue Code of 1986".

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