117TH CONGRESS
2D SESSION

H. R. 1916

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2022

Received; read twice and referred to the Committee on Health, Education, Labor, and Pensions

AN ACT

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.

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.—Part D of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–111 et seq.) is amended by adding at the end the following new section:

''SEC. 2799A–11. 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 items and services related to the diagnosis and treatment of a congenital anomaly or birth defect.

''(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 de-

fined 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 individual 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' includes, with respect to a group health plan or group or individual 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;

''(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.

''(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.—Not later than one year after the date of the enactment of this section and annually thereafter, a group health plan, and a health insurance issuer offering group or individual health insurance coverage, shall, in accordance with regulations or guidance issued by the Secretary, provide to each enrollee under such plan or coverage a written description of the terms of this section. Such description shall be in language which is understandable to the typical enrollee.''.

(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. 726. 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 health insurance coverage, shall provide coverage for outpatient and inpatient items and services related to the diagnosis and treatment of a congenital anomaly or birth defect.

''(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 restric-

tive 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' includes, 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;

''(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.

''(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.—Not later than one year after the date of the enactment of this section and annually thereafter, a group health plan, and a health insurance issuer offering group health insurance coverage, shall, in accordance with regulations or guidance issued by the Secretary, provide to each participant or beneficiary under such plan or coverage a written description of the terms of this section.

Such description shall be in language which is understandable to the typical participant or beneficiary.''.

(2) TECHNICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 725 the following new item:

''Sec. 726. Standards relating to benefits for congential anomaly or birth defect.''.

(c) INTERNAL REVENUE CODE AMENDMENTS.—

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

''SEC. 9826. STANDARDS RELATING TO BENEFITS FOR CONGENITAL ANOMALY OR BIRTH DEFECT.

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

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

''(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 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, 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.

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

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'treatment' includes, with respect to a group health plan, 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 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.

"(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.—Not later than one year after the date of the enactment of this section and annually thereafter, a group health plan shall, in accordance with regulations or guidance issued by the Secretary, provide to each enrollee under such plan a written description of the terms of this section. Such description shall be in language which is understandable to the typical enrollee.''.

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

''Sec. 9826. Standards relating to benefits for congenital anomaly or birth defect.''.

(d) RULE OF CONSTRUCTION.—A group health plan or health insurance issuer shall provide the benefits described in section 2799A–11 of the Public Health Service Act (as added by subsection (a)), section 726 of the Employee Retirement Income Security Act of 1974 (as added by subsection (b)), and section 9826 of the Internal Revenue Code of 1986 (as added by subsection (c)) under the terms of such plan or health insurance coverage offered by such issuer.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2024.

SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Passed the House of Representatives April 4, 2022.

Attest: CHERYL L. JOHNSON,

Clerk.