

117TH CONGRESS
1ST SESSION

S. 777

To prohibit taxpayer-funded gender reassignment medical interventions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2021

Mr. MARSHALL (for himself, Mr. BRAUN, Mr. COTTON, Mrs. BLACKBURN, Mr. LEE, and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit taxpayer-funded gender reassignment medical interventions, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “End Taxpayer Funding of Gender Experimentation Act
6 of 2021”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROHIBITING FEDERALLY FUNDED GENDER
REASSIGNMENT MEDICAL INTERVENTIONS

Sec. 101. Prohibiting taxpayer-funded gender reassignment medical interventions.

Sec. 102. Amendment to table of chapters.

TITLE II—APPLICATION UNDER THE AFFORDABLE CARE ACT

Sec. 201. Clarifying application of prohibition to premium credits and cost-sharing reductions under ACA.

1 **TITLE I—PROHIBITING FEDER-**
 2 **ALLY FUNDED GENDER REAS-**
 3 **SIGNMENT MEDICAL INTER-**
 4 **VENTIONS**

5 **SEC. 101. PROHIBITING TAXPAYER-FUNDED GENDER REAS-**
 6 **SIGNMENT MEDICAL INTERVENTIONS.**

7 Title 1, United States Code, is amended by adding
 8 at the end the following new chapter:

9 **“CHAPTER 4—PROHIBITING TAXPAYER-**
 10 **FUNDED GENDER REASSIGNMENT**
 11 **MEDICAL INTERVENTIONS**

“301. Prohibition on funding for gender reassignment medical interventions.

“302. Prohibition on funding for health benefits plans that cover gender reassignment medical interventions.

“303. Limitation on Federal facilities and employees.

“304. Construction relating to separate coverage.

“305. Construction relating to the use of non-Federal funds for health coverage.

“306. Construction relating to complications arising from gender reassignment medical interventions.

“307. Treatment of individuals born with medically verifiable disorder of sex development.

“308. Gender reassignment medical intervention defined.

12 **“§ 301. Prohibition on funding for gender reassign-**
 13 **ment medical interventions**

14 “No funds authorized or appropriated by Federal
 15 law, and none of the funds in any trust fund to which
 16 funds are authorized or appropriated by Federal law, shall

1 be expended for any gender reassignment medical inter-
2 vention.

3 **“§ 302. Prohibition on funding for health benefits**
4 **plans that cover gender reassignment**
5 **medical interventions**

6 “No funds authorized or appropriated by Federal
7 law, and none of the funds in any trust fund to which
8 funds are authorized or appropriated by Federal law, shall
9 be expended for health benefits coverage that includes cov-
10 erage of gender reassignment medical interventions.

11 **“§ 303. Limitation on Federal facilities and employees**

12 “No health care service furnished—

13 “(1) by or in a health care facility owned or op-
14 erated by the Federal Government; or

15 “(2) by any physician or other individual em-
16 ployed by the Federal Government to provide health
17 care services within the scope of the physician’s or
18 individual’s employment,

19 may include gender reassignment medical interventions.

20 **“§ 304. Construction relating to separate coverage**

21 “Nothing in this chapter shall be construed as pro-
22 hibiting any individual, entity, or State or locality from
23 purchasing separate coverage for gender reassignment
24 medical interventions or health benefits coverage that in-
25 cludes gender reassignment medical interventions so long

1 as such coverage is paid for entirely using only funds not
 2 authorized or appropriated by Federal law and such cov-
 3 erage shall not be purchased using matching funds re-
 4 quired for a federally subsidized program, including a
 5 State’s or locality’s contribution of Medicaid matching
 6 funds.

7 **“§ 305. Construction relating to the use of non-Fed-**
 8 **eral funds for health coverage**

9 “Nothing in this chapter shall be construed as re-
 10 stricting the ability of any non-Federal health benefits cov-
 11 erage provider from offering coverage for gender reassign-
 12 ment medical interventions, or the ability of a State or
 13 locality to contract separately with such a provider for
 14 such coverage, so long as only funds not authorized or ap-
 15 propriated by Federal law are used and such coverage
 16 shall not be purchased using matching funds required for
 17 a federally subsidized program, including a State’s or lo-
 18 cality’s contribution of Medicaid matching funds.

19 **“§ 306. Construction relating to complications arising**
 20 **from gender reassignment medical inter-**
 21 **ventions**

22 “Nothing in this chapter shall be construed to apply
 23 to the treatment of any infection, injury, disease, or dis-
 24 order that has been caused by or exacerbated by the per-
 25 formance of a gender reassignment medical intervention.

1 This rule of construction shall be applicable without re-
2 gard to whether the gender reassignment medical inter-
3 vention was performed in accord with Federal or State
4 law, and without regard to whether funding for the gender
5 reassignment medical intervention is permissible under
6 section 307.

7 **“§ 307. Treatment of individuals born with medically**
8 **verifiable disorder of sex development**

9 “The limitations established in sections 301, 302,
10 and 303 shall not apply with respect to the following indi-
11 viduals:

12 “(1) An individual with external biological sex
13 characteristics that are irresolvably ambiguous, such
14 as those born with 46 XX chromosomes with
15 virilization, 46 XY chromosomes with
16 undervirilization, or having both ovarian and testic-
17 ular tissue.

18 “(2) An individual with respect to whom a phy-
19 sician has determined through genetic or biochemical
20 testing that the individual does not have normal sex
21 chromosome structure, sex steroid hormone produc-
22 tion, or sex steroid hormone action for a biological
23 male or female.

1 **“§ 308. Gender reassignment medical intervention de-**
 2 **fin ed**

3 “For purposes of this chapter, the term ‘gender reas-

4 signment medical intervention’ means—

5 “(1) performing a surgery that sterilizes an in-

6 dividual, including castration, vasectomy,

7 hysterectomy, oophorectomy, metoidioplasty,

8 penectomy, phalloplasty, and vaginoplasty, to change

9 the body of such individual to correspond to a sex

10 that is discordant with biological sex;

11 “(2) performing a mastectomy on an individual

12 for the purpose described in paragraph (1); and

13 “(3) administering or supplying to an individual

14 medications for the purpose described in paragraph

15 (1), including—

16 “(A) GnRH agonists or other puberty-

17 blocking drugs to stop or delay normal puberty;

18 “(B) testosterone or other androgens to bi-

19 ological females at doses that are

20 supraphysiologic to the female sex; and

21 “(C) estrogen to biological males at doses

22 that are supraphysiologic to the male sex.”.

23 **SEC. 102. AMENDMENT TO TABLE OF CHAPTERS.**

24 The table of chapters for title 1, United States Code,

25 is amended by adding at the end the following new item:

**“4. Prohibiting taxpayer-funded gender reassignment
medical interventions 301”.**

1 **TITLE II—APPLICATION UNDER**
2 **THE AFFORDABLE CARE ACT**

3 **SEC. 201. CLARIFYING APPLICATION OF PROHIBITION TO**
4 **PREMIUM CREDITS AND COST-SHARING RE-**
5 **DUCTIONS UNDER ACA.**

6 (a) IN GENERAL.—

7 (1) DISALLOWANCE OF REFUNDABLE CREDIT
8 AND COST-SHARING REDUCTIONS FOR COVERAGE
9 UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES
10 COVERAGE FOR GENDER REASSIGNMENT MEDICAL
11 INTERVENTIONS.—

12 (A) IN GENERAL.—Subparagraph (A) of
13 section 36B(c)(3) of the Internal Revenue Code
14 of 1986 is amended by inserting before the pe-
15 riod at the end the following: “or any health
16 plan that includes coverage for gender reassign-
17 ment medical interventions (other than any
18 gender reassignment medical intervention or
19 treatment described in section 306 or 307 of
20 title 1, United States Code)”.

21 (B) OPTION TO PURCHASE OR OFFER SEP-
22 ARATE COVERAGE OR PLAN.—Paragraph (3) of
23 section 36B(c) of such Code is amended by

1 adding at the end the following new subpara-
2 graph:

3 “(C) SEPARATE COVERAGE OR PLAN FOR
4 GENDER REASSIGNMENT MEDICAL INTERVEN-
5 TIONS ALLOWED.—

6 “(i) OPTION TO PURCHASE SEPARATE
7 COVERAGE OR PLAN.—Nothing in subpara-
8 graph (A) shall be construed as prohibiting
9 any individual from purchasing separate
10 coverage for gender reassignment medical
11 interventions described in such subpara-
12 graph, or a health plan that includes such
13 gender reassignment medical interventions,
14 so long as no credit is allowed under this
15 section with respect to the premiums for
16 such coverage or plan.

17 “(ii) OPTION TO OFFER COVERAGE OR
18 PLAN.—Nothing in subparagraph (A) shall
19 restrict any non-Federal health insurance
20 issuer offering a health plan from offering
21 separate coverage for gender reassignment
22 medical interventions described in such
23 subparagraph, or a plan that includes such
24 gender reassignment medical interventions,
25 so long as premiums for such separate cov-

1 erage or plan are not paid for with any
 2 amount attributable to the credit allowed
 3 under this section (or the amount of any
 4 advance payment of the credit under sec-
 5 tion 1412 of the Patient Protection and
 6 Affordable Care Act).”.

7 (2) DISALLOWANCE OF SMALL EMPLOYER
 8 HEALTH INSURANCE EXPENSE CREDIT FOR PLAN
 9 WHICH INCLUDES COVERAGE FOR GENDER REAS-
 10 SIGNMENT MEDICAL INTERVENTIONS.—Subsection
 11 (h) of section 45R of the Internal Revenue Code of
 12 1986 is amended—

13 (A) by striking “Any term” and inserting
 14 the following:

15 “(1) IN GENERAL.—Any term”; and

16 (B) by adding at the end the following new
 17 paragraph:

18 “(2) EXCLUSION OF HEALTH PLANS INCLUDING
 19 COVERAGE FOR GENDER REASSIGNMENT MEDICAL
 20 INTERVENTIONS.—

21 “(A) IN GENERAL.—The term ‘qualified
 22 health plan’ does not include any health plan
 23 that includes coverage for gender reassignment
 24 medical interventions (other than any gender
 25 reassignment medical intervention or treatment

1 described in section 306 or 307 of title 1,
2 United States Code).

3 “(B) SEPARATE COVERAGE OR PLAN FOR
4 GENDER REASSIGNMENT MEDICAL INTERVEN-
5 TIONS ALLOWED.—

6 “(i) OPTION TO PURCHASE SEPARATE
7 COVERAGE OR PLAN.—Nothing in subpara-
8 graph (A) shall be construed as prohibiting
9 any employer from purchasing for its em-
10 ployees separate coverage for gender reas-
11 signment medical interventions described
12 in such subparagraph, or a health plan
13 that includes such gender reassignment
14 medical interventions, so long as no credit
15 is allowed under this section with respect
16 to the employer contributions for such cov-
17 erage or plan.

18 “(ii) OPTION TO OFFER COVERAGE OR
19 PLAN.—Nothing in subparagraph (A) shall
20 restrict any non-Federal health insurance
21 issuer offering a health plan from offering
22 separate coverage for gender reassignment
23 medical interventions described in such
24 subparagraph, or a plan that includes such
25 gender reassignment medical interventions,

1 so long as such separate coverage or plan
2 is not paid for with any employer contribu-
3 tion eligible for the credit allowed under
4 this section.”.

5 (b) APPLICATION TO MULTI-STATE PLANS.—Section
6 1334(a) of Public Law 111–148 (42 U.S.C. 18054(a)) is
7 amended by adding at the end the following new para-
8 graph:

9 “(8) COVERAGE CONSISTENT WITH FEDERAL
10 POLICY REGARDING GENDER REASSIGNMENT MED-
11 ICAL INTERVENTIONS.—In entering into contracts
12 under this subsection, the Director shall ensure that
13 no multi-State qualified health plan offered in an
14 Exchange provides health benefits coverage for
15 which the expenditure of Federal funds is prohibited
16 under chapter 4 of title 1, United States Code.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 subsection (a) shall apply to taxable years ending after
19 the date that is one year after the date of enactment of
20 this Act, but only with respect to plan years beginning
21 after such date, and the amendment made by subsection
22 (b) shall apply to plan years beginning after such date.

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