

117TH CONGRESS  
1ST SESSION

# H. R. 1916

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

Ms. ESHOO (for herself, Mr. FERGUSON, Ms. MCCOLLUM, Mrs. AXNE, Ms. DEGETTE, Mr. MCEACHIN, Mrs. LURIA, Mr. STANTON, Ms. STEVENS, Mr. HUFFMAN, Mr. GOTTHEIMER, Mrs. TRAHAN, Ms. BARRAGÁN, Mr. GRIJALVA, Mr. WITTMAN, Mr. GALLEG0, Mr. CARBAJAL, Ms. WILD, Mr. SUOZZI, Mr. DEUTCH, Ms. NORTON, Mr. FITZPATRICK, Ms. BROWNLEY, Mrs. HAYES, Mr. TAKANO, Ms. BLUNT ROCHESTER, Mr. HASTINGS, Mr. KIM of New Jersey, Mr. PERLMUTTER, Mr. CROW, Miss RICE of New York, Mr. STAUBER, Mr. RODNEY DAVIS of Illinois, Mr. PAYNE, Mr. RUPPERSBERGER, Ms. TLAIB, Mr. MOULTON, Mr. PASCRELL, Mrs. WATSON COLEMAN, Mrs. BEATTY, Mr. VELA, Mr. COOPER, Ms. UNDERWOOD, Mr. TRONE, Mr. YOUNG, Ms. MENG, Ms. PORTER, Ms. SCANLON, Mr. RESCHENTHALER, Mr. VAN DREW, Mr. TIMMONS, Ms. CRAIG, Mr. NEGUSE, Ms. PINGREE, Mr. LYNCH, Mr. POSEY, Mr. LAMB, Mr. COLE, Mr. JOYCE of Pennsylvania, Mr. SIRES, Mr. PALAZZO, Mr. GRAVES of Louisiana, Mr. YARMUTH, Mr. BISHOP of Georgia, Mrs. RADEWAGEN, Mr. KILDEE, Mr. BUTTERFIELD, Mr. TONKO, Mr. STIVERS, Ms. ROSS, Mr. LEVIN of Michigan, Ms. HOULAHAN, Mrs. NAPOLITANO, Mr. RASKIN, Mr. MCNERNEY, Mr. MCGOVERN, Mr. MORELLE, Ms. BASS, Ms. BONAMICI, Ms. CLARKE of New York, Ms. SALAZAR, Mr. MRVAN, Ms. LEE of California, Mr. RUTHERFORD, Ms. SÁNCHEZ, Mr. CONNOLLY, Mrs. LAWRENCE, Mr. MCKINLEY, Mr. PRICE of North Carolina, Mr. GARAMENDI, Ms. VELÁZQUEZ, Mr. ADERHOLT, Ms. KELLY of Illinois, Mr. JONES, Mr. PHILLIPS, Ms. OMAR, Mr. ALLEN, Mr. GARBARINO, Mr. GOSAR, Mr. LAWSON of Florida, Mr. RUSH, Mr. CARTER of Georgia, Mr. BACON, Mr. GROTHMAN, Mr. HARDER of California, Mr. VICENTE GONZALEZ of Texas, Mr. MANN, Mr. UPTON, Mr. COHEN, Mr. CICILLINE, Mr. KHANNA, Mrs. HARTZLER, Ms. BUSH, Mr. BOST, Ms. STRICKLAND, Ms. MANNING, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. GUEST, Mr. SIMPSON, Mr. O'HALLERAN, Ms. MOORE of Wisconsin, Mr. BABIN, Ms. TITUS, Ms. JOHNSON of Texas, Mr. POCAN, Mr. KRISHNAMOORTHY, Mr. SEAN PATRICK MALONEY of New York, Ms. DELBENE, Mr. RYAN, Mr. STEWART, Mr. HAGEDORN, Ms. JAYAPAL, Mr.

EMMER, and Mr. MOORE of Utah) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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.

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”.

6 **SEC. 2. COVERAGE OF CONGENITAL ANOMALY OR BIRTH**  
 7 **DEFECT.**

8       (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—  
 9 Part D of title XXVII of the Public Health Service Act  
 10 (42 U.S.C. 300gg–111 et seq.) is amended by adding at  
 11 the end the following new section:

12 **“SEC. 2799A-11. STANDARDS RELATING TO BENEFITS FOR**  
 13 **CONGENITAL ANOMALY OR BIRTH DEFECT.**

14       “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-  
 15 TIVE TREATMENT.—

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

7           “(2) REQUIREMENTS.—

8           “(A) IN GENERAL.—Coverage provided  
9 under paragraph (1) shall include any medically  
10 necessary item or service to functionally im-  
11 prove, repair, or restore any body part to  
12 achieve normal body functioning or appearance,  
13 as determined by the treating physician (as de-  
14 fined in section 1861(r) of the Social Security  
15 Act), due to congenital anomaly or birth defect.

16           “(B) FINANCIAL REQUIREMENTS AND  
17 TREATMENT REQUIREMENTS.—Any coverage  
18 provided under paragraph (1) under a group  
19 health plan or individual or group health insur-  
20 ance coverage offered by a health insurance  
21 issuer may be subject to coverage limits (such  
22 as medical necessity, pre-authorization, or pre-  
23 certification) and cost-sharing requirements  
24 (such as coinsurance, copayments, and  
25 deductibles), as required by the plan or issuer,

1 that are no more restrictive than the predomi-  
2 nant coverage limits and cost-sharing require-  
3 ments, respectively, applied to substantially all  
4 medical and surgical benefits covered by the  
5 plan (or coverage).

6 “(3) TREATMENT DEFINED.—In this section:

7 “(A) IN GENERAL.—Except as provided in  
8 subparagraph (B), the term ‘treatment’ in-  
9 cludes, with respect to a group health plan or  
10 group or individual health insurance coverage  
11 offered by a health insurance issuer, inpatient  
12 and outpatient items and services performed to  
13 improve, repair, or restore bodily function (or  
14 performed to approximate a normal appear-  
15 ance), due to a congenital anomaly or birth de-  
16 fect, and includes treatment to any and all  
17 missing or abnormal body parts (including  
18 teeth, the oral cavity, and their associated  
19 structures) that would otherwise be provided  
20 under the plan or coverage for any other injury  
21 or sickness, including—

22 “(i) any items or services, including  
23 inpatient and outpatient care, reconstruc-  
24 tive services and procedures, and complica-  
25 tions thereof;

1           “(ii) adjunctive dental, orthodontic, or  
2           prosthodontic support from birth until the  
3           medical or surgical treatment of the defect  
4           or anomaly has been completed, including  
5           ongoing or subsequent treatment required  
6           to maintain function or approximate a nor-  
7           mal appearance;

8           “(iii) procedures that materially im-  
9           prove, repair, or restore bodily function;  
10          and

11          “(iv) procedures for secondary condi-  
12          tions and follow-up treatment associated  
13          with the underlying congenital anomaly or  
14          birth defect.

15          “(B) EXCEPTION.—The term ‘treatment’  
16          shall not include cosmetic surgery performed to  
17          reshape normal structures of the body to im-  
18          prove appearance or self-esteem.

19          “(b) NOTICE.—A group health plan under this part  
20          shall comply with the notice requirement under section  
21          714(e) of the Employee Retirement Income Security Act  
22          of 1974 with respect to the requirements of this section  
23          as if such section applied to such plan.”.

24          (b) ERISA AMENDMENTS.—



1 provided under paragraph (1) under a group  
2 health plan or group health insurance coverage  
3 offered by a health insurance issuer may be  
4 subject to coverage limits (such as medical ne-  
5 cessity, pre-authorization, or pre-certification)  
6 and cost-sharing requirements (such as coinsur-  
7 ance, copayments, and deductibles), as required  
8 by the plan or issuer, that are no more restric-  
9 tive than the predominant coverage limits and  
10 cost-sharing requirements, respectively, applied  
11 to substantially all medical and surgical benefits  
12 covered by the plan (or coverage).

13 “(3) TREATMENT DEFINED.—In this section:

14 “(A) IN GENERAL.—Except as provided in  
15 subparagraph (B), the term ‘treatment’ in-  
16 cludes, with respect to a group health plan or  
17 group health insurance coverage offered by a  
18 health insurance issuer, inpatient and out-  
19 patient items and services performed to im-  
20 prove, repair, or restore bodily function (or per-  
21 formed to approximate a normal appearance),  
22 due to a congenital anomaly or birth defect, and  
23 includes treatment to any and all missing or ab-  
24 normal body parts (including teeth, the oral  
25 cavity, and their associated structures) that

1 would otherwise be provided under the plan or  
2 coverage for any other injury or sickness, in-  
3 cluding—

4 “(i) any items or services, including  
5 inpatient and outpatient care, reconstruc-  
6 tive services and procedures, and complica-  
7 tions thereof;

8 “(ii) adjunctive dental, orthodontic, or  
9 prosthodontic support from birth until the  
10 medical or surgical treatment of the defect  
11 or anomaly has been completed, including  
12 ongoing or subsequent treatment required  
13 to maintain function or approximate a nor-  
14 mal appearance;

15 “(iii) procedures that materially im-  
16 prove, repair, or restore bodily function;  
17 and

18 “(iv) procedures for secondary condi-  
19 tions and follow-up treatment associated  
20 with the underlying congenital anomaly or  
21 birth defect.

22 “(B) EXCEPTION.—The term ‘treatment’  
23 shall not include cosmetic surgery performed to  
24 reshape normal structures of the body to im-  
25 prove appearance or self-esteem.



1       “(b) NOTICE.—A group health plan under this part  
2 shall comply with the notice requirement under section  
3 714(e) with respect to the requirements of this section as  
4 if such section applied to such plan.”.

5           (2) TECHNICAL AMENDMENTS.—

6           (A) Section 732(a) of such Act (29 U.S.C.  
7 1191a(a)) is amended by striking “section 711”  
8 and inserting “sections 711 and 726”.

9           (B) The table of contents in section 1 of  
10 such Act is amended by inserting after the item  
11 relating to section 725 the following new item:

“Sec. 726. Standards relating to benefits for congenital anomaly or birth defect.”.

12       (c) INTERNAL REVENUE CODE AMENDMENTS.—

13           (1) IN GENERAL.—Subchapter B of chapter  
14 100 of the Internal Revenue Code of 1986 is amend-  
15 ed by adding at the end the following:

16 **“SEC. 9826. STANDARDS RELATING TO BENEFITS FOR CON-**  
17 **GENITAL ANOMALY OR BIRTH DEFECT.**

18       “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-  
19 TIVE TREATMENT.—

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

24           “(2) REQUIREMENTS.—

1           “(A) IN GENERAL.—Coverage provided  
2 under paragraph (1) shall include any medically  
3 necessary item or service to functionally im-  
4 prove, repair, or restore any body part to  
5 achieve normal body functioning or appearance,  
6 as determined by the treating physician (as de-  
7 fined in section 1861(r) of the Social Security  
8 Act), due to congenital anomaly or birth defect.

9           “(B) FINANCIAL REQUIREMENTS AND  
10 TREATMENT REQUIREMENTS.—Any coverage  
11 provided under paragraph (1) under a group  
12 health plan may be subject to coverage limits  
13 (such as medical necessity, pre-authorization, or  
14 pre-certification) and cost-sharing requirements  
15 (such as coinsurance, copayments, and  
16 deductibles), as required by the plan, that are  
17 no more restrictive than the predominant cov-  
18 erage limits and cost-sharing requirements, re-  
19 spectively, applied to substantially all medical  
20 and surgical benefits covered by the plan.

21           “(3) TREATMENT DEFINED.—In this section:

22           “(A) IN GENERAL.—Except as provided in  
23 subparagraph (B), the term ‘treatment’ in-  
24 cludes, with respect to a group health plan, in-  
25 patient and outpatient items and services per-

1           formed to improve, repair, or restore bodily  
2           function (or performed to approximate a normal  
3           appearance), due to a congenital anomaly or  
4           birth defect, and includes treatment to any and  
5           all missing or abnormal body parts (including  
6           teeth, the oral cavity, and their associated  
7           structures) that would otherwise be provided  
8           under the plan for any other injury or sickness,  
9           including—

10                   “(i) any items or services, including  
11                   inpatient and outpatient care, reconstruc-  
12                   tive services and procedures, and complica-  
13                   tions thereof;

14                   “(ii) adjunctive dental, orthodontic, or  
15                   prosthodontic support from birth until the  
16                   medical or surgical treatment of the defect  
17                   or anomaly has been completed, including  
18                   ongoing or subsequent treatment required  
19                   to maintain function or approximate a nor-  
20                   mal appearance;

21                   “(iii) procedures that materially im-  
22                   prove, repair, or restore bodily function;  
23                   and

24                   “(iv) procedures for secondary condi-  
25                   tions and follow-up treatment associated

1 with the underlying congenital anomaly or  
2 birth defect.

3 “(B) EXCEPTION.—The term ‘treatment’  
4 shall not include cosmetic surgery performed to  
5 reshape normal structures of the body to im-  
6 prove appearance or self-esteem.

7 “(b) NOTICE.—A group health plan under this part  
8 shall comply with the notice requirement under section  
9 714(c) of the Employee Retirement Income Security Act  
10 of 1974 with respect to the requirements of this section  
11 as if such section applied to such plan.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-  
13 tions for such subchapter is amended by adding at  
14 the end the following new item:

“Sec. 9826. Standards relating to benefits for congenital anomaly or birth de-  
fect.”.

15 (d) RULE OF CONSTRUCTION.—A group health plan  
16 or health insurance issuer shall provide the benefits de-  
17 scribed in section 2799A–11 of the Public Health Service  
18 Act (as added by subsection (a)), section 726 of the Em-  
19 ployee Retirement Income Security Act of 1974 (as added  
20 by subsection (b)), and section 9826 of the Internal Rev-  
21 enue Code of 1986 (as added by subsection (c)) under the  
22 terms of such plan or health insurance coverage offered  
23 by such issuer.

1           (e) CLARIFYING AMENDMENT REGARDING APPLICA-  
2 TION       TO       GRANDFATHERED       PLANS.—Section  
3 1251(a)(4)(A) of the Patient Protection and Affordable  
4 Care Act (42 U.S.C. 18011(a)(4)(A)), is amended by add-  
5 ing at the end the following:

6                           “(v) Section 2799A–11 (relating to  
7 standards relating to benefits for con-  
8 genital anomaly or birth defect), as added  
9 by section 2(a) of the Ensuring Lasting  
10 Smiles Act.”.

11       (f) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply with respect to group health plans  
13 for plan years beginning on or after January 1, 2022, and  
14 with respect to health insurance coverage offered, sold,  
15 issued, renewed, in effect, or operated in the individual  
16 market on or after such date.

17       (g) COORDINATED REGULATIONS.—Section 104(1)  
18 of the Health Insurance Portability and Accountability  
19 Act of 1996 is amended by striking “this subtitle (and  
20 the amendments made by this subtitle and section 401)”  
21 and inserting “the provisions of part 7 of subtitle B of  
22 title I of the Employee Retirement Income Security Act  
23 of 1974, the provisions of parts A, C, and D of title XXVII

1 of the Public Health Service Act, and chapter 100 of the  
2 Internal Revenue Code of 1986”.

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