

**Suspend the Rules and Pass the Bill, H.R. 1916, With An Amendment**

**(The amendment strikes all after the enacting clause and inserts a new text)**

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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. GALLEGO, 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. RESCENTIALER, 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:

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

3 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-  
4 TIVE TREATMENT.—

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

11 “(2) REQUIREMENTS.—

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

20 “(B) FINANCIAL REQUIREMENTS AND  
21 TREATMENT REQUIREMENTS.—Any coverage  
22 provided under paragraph (1) under a group  
23 health plan or individual or group health insur-  
24 ance coverage offered by a health insurance  
25 issuer may be subject to coverage limits (such  
26 as medical necessity, pre-authorization, or pre-

1 certification) and cost-sharing requirements  
2 (such as coinsurance, copayments, and  
3 deductibles), as required by the plan or issuer,  
4 that are no more restrictive than the predomi-  
5 nant coverage limits and cost-sharing require-  
6 ments, respectively, applied to substantially all  
7 medical and surgical benefits covered by the  
8 plan (or coverage).

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

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

1           “(i) any items or services, including  
2           inpatient and outpatient care, reconstruc-  
3           tive services and procedures, and complica-  
4           tions thereof;

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

12          “(iii) procedures that materially im-  
13          prove, repair, or restore bodily function;  
14          and

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

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

23          “(b) NOTICE.—Not later than one year after the date  
24          of the enactment of this section and annually thereafter,  
25          a group health plan, and a health insurance issuer offering

1 group or individual health insurance coverage, shall, in ac-  
2 cordance with regulations or guidance issued by the Sec-  
3 retary, provide to each enrollee under such plan or cov-  
4 erage a written description of the terms of this section.  
5 Such description shall be in language which is understand-  
6 able to the typical enrollee.”.

7 (b) ERISA AMENDMENTS.—

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

12 **“SEC. 726. STANDARDS RELATING TO BENEFITS FOR CON-**  
13 **GENITAL ANOMALY OR BIRTH DEFECT.**

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

16 **“(1) IN GENERAL.—**A group health plan, and a  
17 health insurance issuer offering group health insur-  
18 ance coverage, shall provide coverage for outpatient  
19 and inpatient items and services related to the diag-  
20 nosis and treatment of a congenital anomaly or birth  
21 defect.

22 **“(2) REQUIREMENTS.—**

23 **“(A) IN GENERAL.—**Coverage provided  
24 under paragraph (1) shall include any medically  
25 necessary item or service to functionally im-

1           prove, repair, or restore any body part to  
2           achieve normal body functioning or appearance,  
3           as determined by the treating physician (as de-  
4           fined in section 1861(r) of the Social Security  
5           Act), due to congenital anomaly or birth defect.

6           “(B) FINANCIAL REQUIREMENTS AND  
7           TREATMENT REQUIREMENTS.—Any coverage  
8           provided under paragraph (1) under a group  
9           health plan or group health insurance coverage  
10          offered by a health insurance issuer may be  
11          subject to coverage limits (such as medical ne-  
12          cessity, pre-authorization, or pre-certification)  
13          and cost-sharing requirements (such as coinsur-  
14          ance, copayments, and deductibles), as required  
15          by the plan or issuer, that are no more restric-  
16          tive than the predominant coverage limits and  
17          cost-sharing requirements, respectively, applied  
18          to substantially all medical and surgical benefits  
19          covered by the plan (or coverage).

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

21                 “(A) IN GENERAL.—Except as provided in  
22                 subparagraph (B), the term ‘treatment’ in-  
23                 cludes, with respect to a group health plan or  
24                 group health insurance coverage offered by a  
25                 health insurance issuer, inpatient and out-

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

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

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

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



1                   “(iv) procedures for secondary condi-  
2                   tions and follow-up treatment associated  
3                   with the underlying congenital anomaly or  
4                   birth defect.

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

9                   “(b) NOTICE.—Not later than one year after the date  
10                  of the enactment of this section and annually thereafter,  
11                  a group health plan, and a health insurance issuer offering  
12                  group health insurance coverage, shall, in accordance with  
13                  regulations or guidance issued by the Secretary, provide  
14                  to each participant or beneficiary under such plan or cov-  
15                  erage a written description of the terms of this section.  
16                  Such description shall be in language which is understand-  
17                  able to the typical participant or beneficiary.”.

18                  (2) TECHNICAL AMENDMENT.—The table of  
19                  contents in section 1 of such Act is amended by in-  
20                  serting after the item relating to section 725 the fol-  
21                  lowing new item:

                  “Sec. 726. Standards relating to benefits for congenital anomaly or birth de-  
                  fect.”.

22                  (c) INTERNAL REVENUE CODE AMENDMENTS.—

1           (1) IN GENERAL.—Subchapter B of chapter  
2           100 of the Internal Revenue Code of 1986 is amend-  
3           ed by adding at the end the following:

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

6           “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-  
7           TIVE TREATMENT.—

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

12                   “(2) REQUIREMENTS.—

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

21                           “(B) FINANCIAL REQUIREMENTS AND  
22          TREATMENT REQUIREMENTS.—Any coverage  
23          provided under paragraph (1) under a group  
24          health plan may be subject to coverage limits  
25          (such as medical necessity, pre-authorization, or

1 pre-certification) and cost-sharing requirements  
2 (such as coinsurance, copayments, and  
3 deductibles), as required by the plan, that are  
4 no more restrictive than the predominant cov-  
5 erage limits and cost-sharing requirements, re-  
6 spectively, applied to substantially all medical  
7 and surgical benefits covered by the plan.

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

9 “(A) IN GENERAL.—Except as provided in  
10 subparagraph (B), the term ‘treatment’ in-  
11 cludes, with respect to a group health plan, in-  
12 patient and outpatient items and services per-  
13 formed to improve, repair, or restore bodily  
14 function (or performed to approximate a normal  
15 appearance), due to a congenital anomaly or  
16 birth defect, and includes treatment to any and  
17 all 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 for any other injury or sickness,  
21 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.—Not later than one year after the date  
20                  of the enactment of this section and annually thereafter,  
21                  a group health plan shall, in accordance with regulations  
22                  or guidance issued by the Secretary, provide to each en-  
23                  rollee under such plan a written description of the terms  
24                  of this section. Such description shall be in language which  
25                  is understandable to the typical enrollee.”.

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

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

4           (d) RULE OF CONSTRUCTION.—A group health plan  
5           or health insurance issuer shall provide the benefits de-  
6           scribed in section 2799A–11 of the Public Health Service  
7           Act (as added by subsection (a)), section 726 of the Em-  
8           ployee Retirement Income Security Act of 1974 (as added  
9           by subsection (b)), and section 9826 of the Internal Rev-  
10          enue Code of 1986 (as added by subsection (c)) under the  
11          terms of such plan or health insurance coverage offered  
12          by such issuer.

13          (e) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply with respect to plan years begin-  
15          ning on or after January 1, 2024.