

# STATE OF NEW YORK

8890

2019-2020 Regular Sessions

## IN ASSEMBLY

December 30, 2019

Introduced by M. of A. SIMON -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to enacting the "Give Kids a Chance - Carter's Law" mandating health insurance coverage for congenital anomalies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Give Kids a Chance - Carter's Law".

3 § 2. Subsection (a) of section 3216 of the insurance law is amended by  
4 adding 5 new paragraphs 5, 6, 7, 8 and 9 to read as follows:

5 (5) "Congenital anomaly" means a medically diagnosed condition exist-  
6 ing at or from birth that is a deviation from the common structure or  
7 function of the body, whether caused by a hereditary or developmental  
8 disability or disease.

9 (6) "Cosmetic surgery" means surgical and nonsurgical elective proce-  
10 dures that enhance and reshape structures of the body to improve appear-  
11 ance and confidence, but are not necessary to improve body structure or  
12 function.

13 (7) "Habilitative services" means healthcare services that help an  
14 individual keep, learn, or improve skills and functioning for daily  
15 living. Habilitative services shall include but is not limited to phys-  
16 ical and occupational therapy, speech-language pathology, and services  
17 for people with disabilities in a variety of inpatient and/or outpatient  
18 settings.

19 (8) "Reconstructive services" means procedures or surgery that are  
20 performed to treat structures of the body affected aesthetically or  
21 functionally by congenital anomalies, developmental abnormalities, trau-  
22 ma, infection, tumors, or disease. Reconstructive services are intended  
23 to improve function and ability, and may also be performed to achieve a  
24 more typical appearance of the affected structure.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD14264-03-9

1 (9) "Deviation" means an anomaly that impairs the function of the body  
2 and includes but is not limited to the conditions of cleft lip, cleft  
3 palate, webbed fingers or toes, supernumerary toes or fingers, craniofa-  
4 cial malformations, disorders of metabolism, and other conditions that  
5 are medically diagnosed to be congenital anomalies.

6 § 3. Paragraph 4 of subsection (c) of section 3216 of the insurance  
7 law is amended by adding a new subparagraph (D) to read as follows:

8 (D) (1) For the purpose of this subparagraph, the term "treatment"  
9 includes inpatient and outpatient care and services performed to improve  
10 or restore body function, or performed to approximate a normal appear-  
11 ance, as a result of a congenital anomaly and shall not include cosmetic  
12 surgery. Inpatient and outpatient care and services shall include treat-  
13 ment to any and all missing or abnormal body parts, including teeth, the  
14 oral cavity, and their associated structures, that would otherwise be  
15 provided under the plan or coverage for any other injury and sickness,  
16 including:

17 (i) All inpatient and outpatient reconstructive services and proce-  
18 dures;

19 (ii) All services, procedures, and adjunctive needs, including but not  
20 limited to prosthetics and appliances, resulting from complications;

21 (iii) Adjunctive dental, orthodontic or prosthodontic support from  
22 birth until the medical or surgical treatment of the anomaly has been  
23 completed, including ongoing or subsequent treatment required to main-  
24 tain function or approximate a normal appearance;

25 (iv) Procedures that do not materially restore or improve the function  
26 of the body part being treated; and

27 (v) Procedures for secondary conditions and follow-up treatments.

28 (2) (i) Every policy, plan, certificate or contract shall provide  
29 benefits for reconstructive services when such treatment is incidental  
30 to or follows surgery resulting from injury, sickness or other diseases  
31 of the involved missing or abnormal body part or when such treatment is  
32 provided to a covered dependent child because of congenital disease or  
33 anomaly as determined by the treating physician.

34 (ii) Every policy, plan, certificate or contract shall provide bene-  
35 fits for habilitative services when such treatment is incidental to or  
36 follows surgery resulting from injury, sickness or other diseases of the  
37 involved missing or abnormal body part or when such treatment is  
38 provided to a covered dependent child because of congenital disease or  
39 anomaly as determined by the treating physician.

40 (iii) Every policy, plan, certificate or contract may be subject to  
41 annual deductible, co-payment, and coinsurance provisions as may be  
42 deemed appropriate and as are consistent with those established for  
43 other benefits under the plan or coverage.

44 (iv) No policy, plan, certificate or contract shall:

45 a. Deny to a patient eligibility or continued eligibility, to enroll  
46 or to renew, coverage under the terms of the plan, solely for the  
47 purpose of avoiding the requirements of this subparagraph; or

48 b. Penalize or otherwise reduce or limit the reimbursement of a treat-  
49 ing provider, or provide monetary or other incentives to a treating  
50 provider to induce the provider to provide care to an individual partic-  
51 ipant or beneficiary in a manner inconsistent with this subparagraph.

52 (v) Written notice of the availability of the coverage shall be deliv-  
53 ered to the participant upon enrollment and annually thereafter.

54 (3) (i) In accordance with section forty-four hundred eight of the  
55 public health law, an enrollee has the right to appeal any denial of

1 care that the carrier determines is not medically necessary or exper-  
2 imental.

3 (ii) An internal appeal of denial filed by an enrollee or the  
4 enrollee's provider to the insurance carrier regarding coverage for  
5 reconstructive or habilitative services to treat a congenital anomaly  
6 shall be expedited by the carrier. The health plan shall respond orally  
7 with a decision within forty-eight hours, followed by a confirmation in  
8 writing within seven days.

9 § 4. Subsection (f) of section 4235 of the insurance law is amended by  
10 adding a new paragraph 5 to read as follows:

11 (5) (A) As used in this paragraph:

12 (i) "Congenital anomaly" means a medically diagnosed condition exist-  
13 ing at or from birth that is a deviation from the common structure or  
14 function of the body, whether caused by a hereditary or developmental  
15 disability or disease.

16 (ii) "Cosmetic surgery" means surgical and nonsurgical elective proce-  
17 dures that enhance and reshape structures of the body to improve appear-  
18 ance and confidence, but are not necessary to improve body structure or  
19 function.

20 (iii) "Habilitative services" means healthcare services that help an  
21 individual keep, learn, or improve skills and functioning for daily  
22 living. Habilitative services shall include but is not limited to phys-  
23 ical and occupational therapy, speech-language pathology, and services  
24 for people with disabilities in a variety of inpatient and/or outpatient  
25 settings.

26 (iv) "Reconstructive services" means procedures or surgery that are  
27 performed to treat structures of the body affected aesthetically or  
28 functionally by congenital anomalies, developmental abnormalities, trau-  
29 ma, infection, tumors, or disease. Reconstructive services are intended  
30 to improve function and ability, and may also be performed to achieve a  
31 more typical appearance of the affected structure.

32 (v) "Deviation" means an anomaly that impairs the function of the body  
33 and includes but is not limited to the conditions of cleft lip, cleft  
34 palate, webbed fingers or toes, supernumerary toes or fingers, craniofa-  
35 cial malformations, disorders of metabolism, and other conditions that  
36 are medically diagnosed to be congenital anomalies.

37 (B) (i) For the purpose of this paragraph, the term "treatment"  
38 includes inpatient and outpatient care and services performed to improve  
39 or restore body function, or performed to approximate a normal appear-  
40 ance, as a result of a congenital anomaly and shall not include cosmetic  
41 surgery. Inpatient and outpatient care and services shall include treat-  
42 ment to any and all missing or abnormal body parts, including teeth, the  
43 oral cavity, and their associated structures, that would otherwise be  
44 provided under the plan or coverage for any other injury and sickness,  
45 including:

46 (I) All inpatient and outpatient reconstructive services and proce-  
47 dures;

48 (II) All services, procedures, and adjunctive needs, including but not  
49 limited to prosthetics and appliances, resulting from complications;

50 (III) Adjunctive dental, orthodontic or prosthodontic support from  
51 birth until the medical or surgical treatment of the anomaly has been  
52 completed, including ongoing or subsequent treatment required to main-  
53 tain function or approximate a normal appearance;

54 (IV) Procedures that do not materially restore or improve the function  
55 of the body part being treated; and

56 (V) Procedures for secondary conditions and follow-up treatments.

1 (ii) (I) Every policy, plan, certificate or contract shall provide  
2 benefits for reconstructive services when such treatment is incidental  
3 to or follows surgery resulting from injury, sickness or other diseases  
4 of the involved missing or abnormal body part or when such treatment is  
5 provided to a covered dependent child because of congenital disease or  
6 anomaly as determined by the treating physician.

7 (II) Every policy, plan, certificate or contract shall provide bene-  
8 fits for habilitative services when such treatment is incidental to or  
9 follows surgery resulting from injury, sickness or other diseases of the  
10 involved missing or abnormal body part or when such treatment is  
11 provided to a covered dependent child because of congenital disease or  
12 anomaly as determined by the treating physician.

13 (III) Every policy, plan, certificate or contract may be subject to  
14 annual deductible, co-payment, and coinsurance provisions as may be  
15 deemed appropriate and as are consistent with those established for  
16 other benefits under the plan or coverage.

17 (IV) No policy, plan, certificate or contract shall:

18 a. Deny to a patient eligibility or continued eligibility, to enroll  
19 or to renew, coverage under the terms of the plan, solely for the  
20 purpose of avoiding the requirements of this paragraph; or

21 b. Penalize or otherwise reduce or limit the reimbursement of a treat-  
22 ing provider, or provide monetary or other incentives to a treating  
23 provider to induce the provider to provide care to an individual partic-  
24 ipant or beneficiary in a manner inconsistent with this paragraph.

25 (V) Written notice of the availability of the coverage shall be deliv-  
26 ered to the participant upon enrollment and annually thereafter.

27 (iii) (I) In accordance with section forty-four hundred eight of the  
28 public health law, an enrollee has the right to appeal any denial of  
29 care that the carrier determines is not medically necessary or exper-  
30 imental.

31 (II) An internal appeal of denial filed by an enrollee or the  
32 enrollee's provider to the insurance carrier regarding coverage for  
33 reconstructive or habilitative services to treat a congenital anomaly  
34 shall be expedited by the carrier. The health plan shall respond orally  
35 with a decision within forty-eight hours, followed by a confirmation in  
36 writing within seven days.

37 § 5. Paragraph 1 of subsection (d) of section 4304 of the insurance  
38 law is amended by adding a new subparagraph (D) to read as follows:

39 (D) (i) As used in this paragraph:

40 1. "Congenital anomaly" means a medically diagnosed condition existing  
41 at or from birth that is a deviation from the common structure or func-  
42 tion of the body, whether caused by a hereditary or developmental disa-  
43 bility or disease.

44 2. "Cosmetic surgery" means surgical and nonsurgical elective proce-  
45 dures that enhance and reshape structures of the body to improve appear-  
46 ance and confidence, but are not necessary to improve body structure or  
47 function.

48 3. "Habilitative services" means healthcare services that help an  
49 individual keep, learn, or improve skills and functioning for daily  
50 living. Habilitative services shall include but is not limited to phys-  
51 ical and occupational therapy, speech-language pathology, and services  
52 for people with disabilities in a variety of inpatient and/or outpatient  
53 settings.

54 4. "Reconstructive services" means procedures or surgery that are  
55 performed to treat structures of the body affected aesthetically or  
56 functionally by congenital anomalies, developmental abnormalities, trau-

1 ma, infection, tumors, or disease. Reconstructive services are intended  
2 to improve function and ability, and may also be performed to achieve a  
3 more typical appearance of the affected structure.

4 5. "Deviation" means an anomaly that impairs the function of the body  
5 and includes but is not limited to the conditions of cleft lip, cleft  
6 palate, webbed fingers or toes, supernumerary toes or fingers, craniofa-  
7 cial malformations, disorders of metabolism, and other conditions that  
8 are medically diagnosed to be congenital anomalies.

9 (ii) For the purpose of this subparagraph, the term "treatment"  
10 includes inpatient and outpatient care and services performed to improve  
11 or restore body function, or performed to approximate a normal appear-  
12 ance, as a result of a congenital anomaly and shall not include cosmetic  
13 surgery. Inpatient and outpatient care and services shall include treat-  
14 ment to any and all missing or abnormal body parts, including teeth, the  
15 oral cavity, and their associated structures, that would otherwise be  
16 provided under the plan or coverage for any other injury and sickness,  
17 including:

18 1. All inpatient and outpatient reconstructive services and proce-  
19 dures;

20 2. All services, procedures, and adjunctive needs, including prosthet-  
21 ics and appliances, resulting from complications;

22 3. Adjunctive dental, orthodontic or prosthodontic support from birth  
23 until the medical or surgical treatment of the anomaly has been  
24 completed, including ongoing or subsequent treatment required to main-  
25 tain function or approximate a normal appearance;

26 4. Procedures that do not materially restore or improve the function  
27 of the body part being treated; and

28 5. Procedures for secondary conditions and follow-up treatments.

29 (iii) 1. Every policy, plan, certificate or contract shall provide  
30 benefits for reconstructive services when such treatment is incidental  
31 to or follows surgery resulting from injury, sickness or other diseases  
32 of the involved missing or abnormal body part or when such treatment is  
33 provided to a covered dependent child because of congenital disease or  
34 anomaly as determined by the treating physician.

35 2. Every policy, plan, certificate or contract shall provide benefits  
36 for habilitative services when such treatment is incidental to or  
37 follows surgery resulting from injury, sickness or other diseases of the  
38 involved missing or abnormal body part or when such treatment is  
39 provided to a covered dependent child because of congenital disease or  
40 anomaly as determined by the treating physician.

41 3. Every policy, plan, certificate or contract may be subject to annu-  
42 al deductible, co-payment, and coinsurance provisions as may be deemed  
43 appropriate and as are consistent with those established for other bene-  
44 fits under the plan or coverage.

45 4. No policy, plan, certificate or contract shall:

46 a. Deny to a patient eligibility or continued eligibility, to enroll  
47 or to renew, coverage under the terms of the plan, solely for the  
48 purpose of avoiding the requirements of this subparagraph; or

49 b. Penalize or otherwise reduce or limit the reimbursement of a treat-  
50 ing provider, or provide monetary or other incentives to a treating  
51 provider to induce the provider to provide care to an individual partic-  
52 ipant or beneficiary in a manner inconsistent with this subparagraph.

53 (iv) Written notice of the availability of the coverage shall be  
54 delivered to the participant upon enrollment and annually thereafter.

55 (v) 1. In accordance with section forty-four hundred eight of the  
56 public health law, an enrollee has the right to appeal any denial of

1 care that the carrier determines is not medically necessary or exper-  
2 imental.

3 2. An internal appeal of denial filed by an enrollee or the enrollee's  
4 provider to the insurance carrier regarding coverage for reconstructive  
5 or habilitative services to treat a congenital anomaly shall be expe-  
6 ditated by the carrier. The health plan shall respond orally with a deci-  
7 sion within forty-eight hours, followed by a confirmation in writing  
8 within seven days.

9 § 6. Paragraph 1 of subsection (c) of section 4305 of the insurance  
10 law is amended by adding a new subparagraph (D) to read as follows:

11 (D)(i) As used in this subparagraph:

12 1. "Congenital anomaly" means a medically diagnosed condition existing  
13 at or from birth that is a deviation from the common structure or func-  
14 tion of the body, whether caused by a hereditary or developmental disa-  
15 bility or disease.

16 2. "Cosmetic surgery" means surgical and nonsurgical elective proce-  
17 dures that enhance and reshape structures of the body to improve appear-  
18 ance and confidence, but are not necessary to improve body structure or  
19 function.

20 3. "Habilitative services" means healthcare services that help an  
21 individual keep, learn, or improve skills and functioning for daily  
22 living. Habilitative services shall include but is not limited to phys-  
23 ical and occupational therapy, speech-language pathology, and services  
24 for people with disabilities in a variety of inpatient and/or outpatient  
25 settings.

26 4. "Reconstructive services" means procedures or surgery that are  
27 performed to treat structures of the body affected aesthetically or  
28 functionally by congenital anomalies, developmental abnormalities, trau-  
29 ma, infection, tumors, or disease. Reconstructive services are intended  
30 to improve function and ability, and may also be performed to achieve a  
31 more typical appearance of the affected structure.

32 5. "Deviation" means an anomaly that impairs the function of the body  
33 and includes but is not limited to the conditions of cleft lip, cleft  
34 palate, webbed fingers or toes, supernumerary toes or fingers, craniofa-  
35 cial malformations, disorders of metabolism, and other conditions that  
36 are medically diagnosed to be congenital anomalies.

37 (ii) For the purpose of this subparagraph, the term "treatment"  
38 includes inpatient and outpatient care and services performed to improve  
39 or restore body function, or performed to approximate a normal appear-  
40 ance, as a result of a congenital anomaly and shall not include cosmetic  
41 surgery. Inpatient and outpatient care and services shall include treat-  
42 ment to any and all missing or abnormal body parts, including teeth, the  
43 oral cavity, and their associated structures, that would otherwise be  
44 provided under the plan or coverage for any other injury and sickness,  
45 including:

46 1. All inpatient and outpatient reconstructive services and proce-  
47 dures;

48 2. All services, procedures, and adjunctive needs, including prosthet-  
49 ics and appliances, resulting from complications;

50 3. Adjunctive dental, orthodontic or prosthodontic support from birth  
51 until the medical or surgical treatment of the anomaly has been  
52 completed, including ongoing or subsequent treatment required to main-  
53 tain function or approximate a normal appearance;

54 4. Procedures that do not materially restore or improve the function  
55 of the body part being treated; and

56 5. Procedures for secondary conditions and follow-up treatments.

1 (iii) 1. Every policy, plan, certificate or contract shall provide  
 2 benefits for reconstructive services when such treatment is incidental  
 3 to or follows surgery resulting from injury, sickness or other diseases  
 4 of the involved missing or abnormal body part or when such treatment is  
 5 provided to a covered dependent child because of congenital disease or  
 6 anomaly as determined by the treating physician.

7 2. Every policy, plan, certificate or contract shall provide benefits  
 8 for habilitative services when such treatment is incidental to or  
 9 follows surgery resulting from injury, sickness or other diseases of the  
 10 involved missing or abnormal body part or when such treatment is  
 11 provided to a covered dependent child because of congenital disease or  
 12 anomaly as determined by the treating physician.

13 3. Every policy, plan, certificate or contract may be subject to annu-  
 14 al deductible, co-payment, and coinsurance provisions as may be deemed  
 15 appropriate and as are consistent with those established for other bene-  
 16 fits under the plan or coverage.

17 4. No policy, plan, certificate or contract shall:

18 a. Deny to a patient eligibility or continued eligibility, to enroll  
 19 or to renew, coverage under the terms of the plan, solely for the  
 20 purpose of avoiding the requirements of this subparagraph; or

21 b. Penalize or otherwise reduce or limit the reimbursement of a treat-  
 22 ing provider or provide monetary or other incentives to a treating  
 23 provider to induce the provider to provide care to an individual partic-  
 24 ipant or beneficiary in a manner inconsistent with this subparagraph.

25 (iv) Written notice of the availability of the coverage shall be  
 26 delivered to the participant upon enrollment and annually thereafter.

27 (v) 1. In accordance with section forty-four hundred eight of the  
 28 public health law, an enrollee has the right to appeal any denial of  
 29 care that the carrier determines is not medically necessary or exper-  
 30 imental.

31 2. An internal appeal of denial filed by an enrollee or the enrollee's  
 32 provider to the insurance carrier regarding coverage for reconstructive  
 33 or habilitative services to treat a congenital anomaly shall be exped-  
 34 ited by the carrier. The health plan shall respond orally with a deci-  
 35 sion within forty-eight hours, followed by a confirmation in writing  
 36 within seven days.

37 § 7. This act shall take effect on the first of January next succeed-  
 38 ing the date on which it shall have become a law and shall apply to all  
 39 policies and contracts issued, renewed, modified, altered or amended on  
 40 or after such date.