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24

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. KAPLAN, JACKSON, KENNEDY, RITCHIE, RIVERA -- read twice and ordered printed, and when printed to be committed 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

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

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1 to improve function and ability, and may also be performed to achieve a
2 more typical appearance of the affected structure.

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

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

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

19 (i) All inpatient and outpatient reconstructive services and proce-
20 dures;

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

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

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

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

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

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

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

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

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

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

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

(3) (i) In accordance with section forty-four hundred eight of the public health law, an enrollee has the right to appeal any denial of care that the carrier determines is not medically necessary or experimental.

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

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

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

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

(ii) "Cosmetic surgery" means surgical and nonsurgical elective procedures that enhance and reshape structures of the body to improve appearance and confidence, but are not necessary to improve body structure or function.

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

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

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

(B) (i) For the purpose of this paragraph, the term "treatment" includes inpatient and outpatient care and services performed to improve or restore body function, or performed to approximate a normal appearance, as a result of a congenital anomaly and shall not include cosmetic surgery. Inpatient and outpatient care and services shall include 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 and sickness, including:

(I) All inpatient and outpatient reconstructive services and procedures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 1. All inpatient and outpatient reconstructive services and proce-
22 dures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 1. All inpatient and outpatient reconstructive services and proce-
51 dures;

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

54 3. Adjunctive dental, orthodontic or prosthodontic support from birth
55 until the medical or surgical treatment of the anomaly has been

1 completed, including ongoing or subsequent treatment required to main-
2 tain function or approximate a normal appearance;

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

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

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

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

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

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

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

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

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

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

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

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