

# STATE OF NEW YORK

1943

2021-2022 Regular Sessions

## IN ASSEMBLY

January 13, 2021

Introduced by M. of A. SIMON, ABBATE, HEVESI, McDONOUGH, ZEBROWSKI --  
Multi-Sponsored by -- M. of A. ABINANTI, BRAUNSTEIN, DeSTEFANO,  
EPSTEIN, FAHY, GALEF, GOTTFRIED, GRIFFIN, JACOBSON, LAVINE, LUPARDO,  
OTIS, L. ROSENTHAL, SAYEGH, STECK, STERN -- 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 Assem-  
bly, 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-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (I) All inpatient and outpatient reconstructive services and proce-  
49 dures;

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

52 (III) Adjunctive dental, orthodontic or prosthodontic support from  
53 birth until the medical or surgical treatment of the anomaly has been  
54 completed, including ongoing or subsequent treatment required to main-  
55 tain 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 expe-  
10 ditated 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.