STATE OF NEW YORK

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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:

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

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

(5) "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.

(6) "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.

(7) "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.

(8) "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

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

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

(9) "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.

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

(D) (1) For the purpose of this subparagraph, 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;

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

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

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

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

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

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

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

b. Penalize or otherwise reduce or limit the reimbursement of a treating provider, or provide monetary or other incentives to a treating provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this subparagraph.

(v) Written notice of the availability of the coverage shall be delivered 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;

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

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

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

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

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

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

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

b. Penalize or otherwise reduce or limit the reimbursement of a treating provider, or provide monetary or other incentives to a treating provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this paragraph.

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

(iii) (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.

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

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

1. "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.

2. "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.

3. "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.

4. "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.

5. "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.

(ii) For the purpose of this subparagraph, 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:

1. All inpatient and outpatient reconstructive services and procedures;

2. All services, procedures, and adjunctive needs, including prosthetics and appliances, resulting from complications;

3. 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;

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

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

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

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

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

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

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

b. Penalize or otherwise reduce or limit the reimbursement of a treating provider, or provide monetary or other incentives to a treating provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this subparagraph.

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

(v) 1. 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.

2. 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.

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

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

1. "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.

2. "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.

3. "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.

4. "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.

5. "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.

(ii) For the purpose of this subparagraph, 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:

1. All inpatient and outpatient reconstructive services and procedures;

2. All services, procedures, and adjunctive needs, including prosthetics and appliances, resulting from complications;

3. 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;

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

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

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

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

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

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

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

b. Penalize or otherwise reduce or limit the reimbursement of a treating provider or provide monetary or other incentives to a treating provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this subparagraph.

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

(v) 1. 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.

2. 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.

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