

STATE OF NEW YORK

2286

2023-2024 Regular Sessions

IN SENATE

January 19, 2023

Introduced by Sen. CLEARE -- 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
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.

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(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 rehabilitative 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

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.

(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, 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 dicted 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 expe-
34 ditated 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.