

Ensuring Lasting Smiles Act (S. 754/H.R. 1916)

Frequently Asked Questions

What is the Ensuring Lasting Smiles Act?

The *Ensuring Lasting Smiles Act* (ELSA) is federal legislation that would:

- Ensure all private group and individual health plans cover medically necessary items or services, including needed dental procedures, as a result of congenital anomalies or birth defects;
- Stipulate that coverage includes medically necessary items or services to functionally improve, repair, or restore any body part that is medically necessary to achieve normal body functioning or appearance, and clarifies that this includes adjunctive dental, orthodontic or prosthodontic support; and
- Exclude cosmetic procedures or surgery to reshape normal structures of body to improve appearance or self-esteem.

What is a congenital anomaly?

According to the World Health Organization, congenital anomalies are also known as birth defects or congenital disorders. Congenital anomalies can be defined as structural or functional anomalies (e.g. metabolic disorders) that occur during intrauterine life and can be identified prenatally, at birth or later in life. Congenital anomalies can be caused by single gene defects, chromosomal disorders, multifactorial inheritance, environmental teratogens and micronutrient deficiencies. Many born with congenital anomalies suffer from severe oral defects (such as cleft lip or palate, hypodontia, enamel hypoplasia), skeletal defects (such as craniosynostosis), vision defects (such as congenital cataracts or aphakia), hearing defects (such as microtia), or other loss of bodily functions. Individuals who do not receive timely, continuous care for their congenital anomalies face long-term physical and psychological injuries.

Why is the *Ensuring Lasting Smiles Act* necessary?

About four percent of children in the U.S. are born with congenital anomalies or birth defects that affect the way they look, develop, or function – often for the rest of their lives. Most private health plans provide coverage for the surgical treatment of congenital anomalies and many states require insurers to provide coverage of any health services related to congenital anomalies or birth defects. Despite this, health plans often deny claims and appeals for oral or dental related procedures – like orthodontia and dental implants – or other procedures, which are often crucial to the overall success of treatment, claiming these services are cosmetic.

Severe dental anomalies are a common symptom of many craniofacial anomaly conditions requiring serious medical treatment that is outside the scope of procedures covered by dental plans. As a result, when private insurance denies a child's reconstructive surgery, patients are forced to incur significant out-of-pocket costs on medically necessary reconstructive care related to their disorder.

The *Ensuring Lasting Smiles Act* would address these coverage denials and ensure that patients with birth defects or anomalies have coverage for the treatment they need, when they need it.

Why is federal legislation necessary?

All 50 states require *some* level of coverage for patients with a congenital and/or craniofacial anomaly or birth defect. These laws vary in their requirements. Some are very extensive and virtually mirror the *Ensuring Lasting Smiles Act* while others are more limiting and may only apply to patients with certain

conditions, such as patients with a cleft lip and/or palate. Regardless, none of these state laws apply to ERISA plans.

Is this bill disease specific?

No. The bill ensures coverage for inpatient and outpatient items and services performed to improve, repair, or restore bodily function or to approximate a normal appearance due to a congenital anomaly or birth defect (e.g., craniofacial, congenital heart defect, etc.).

Would state laws be pre-empted?

The *Ensuring Lasting Smiles Act* would provide a floor to ensure minimum coverage by private group and individual insurance plans, including ERISA plans. States would be able to enact more generous laws related to coverage of congenital anomalies.

Is the bill text identical to the legislation introduced in the 116th Congress?

The bill text is updated to include clarifying language made to the bill during committee consideration during the last Congress. The bill text for the 117th Congress is consistent with H.R. 1379 (116th Congress), as amended and favorably reported out of the House Energy and Commerce Committee on September 9, 2020 by voice vote. In addition, a rule of construction has been added to the bill text for the 117th Congress to reiterate the intent of the bill and better align with the coverage requirements outlined in the Affordable Care Act (ACA).

Does this bill have bi-partisan support?

Yes! The lead Senate sponsors are Senators Tammy Baldwin (D-WI) and Joni Ernst (R-IA), and the lead House sponsors are Representatives Anna Eshoo (D-CA) and Drew Ferguson IV, DDS (R-GA). In the 116th Congress, the bill had 53 bipartisan cosponsors in the Senate and 313 bipartisan cosponsors in the House.

Does the bill have a score?

In 2020, the Congressional Budget Office (CBO) estimated that the bill would reduce revenues by about \$1.7 billion and increase direct spending by \$221 million for a total effect on the deficit of about \$1.9 billion over the eight year period following implementation (from 2022-2030). CBO reached this estimate by examining the impact of the bill on premiums, and reasoning that premium increases would be incorporated into plan rates following implementation. These assumed higher premiums for private health insurance would increase federal deficits because of federal government subsidies for most private insurance through tax preferences for employment-based coverage and through the health insurance marketplaces established by the Affordable Care Act. However, at the state level, similar legislation has had a minimal impact on premium increases.

What organizations support the bill?

The bill has support from more than 40 provider and patient advocacy organizations. Please see the support letter for a full list.

Who do I contact with questions or to cosponsor the *Ensuring Lasting Smiles Act*?

Please contact Erin_Dugan@baldwin.senate.gov (Sen. Baldwin) or Anna_Breen@ernst.senate.gov (Sen. Ernst) to cosponsor S. 754. Please contact Aisling.McDonough@mail.house.gov (Rep. Eshoo) or Miller.Robinson@mail.house.gov (Rep. Ferguson) to cosponsor H.R. 1916.