



**Ensuring Lasting Smiles Act (ELSA)
(Pending Reintroduction; HR.1916, S.754 in the 117th Congress)**

FAQs & TALKING POINTS

Legislative “Ask” or Request:

Please support and become an Original Cosponsor for reintroduction of the bipartisan, bicameral Ensuring Lasting Smiles Act (ELSA), which will be reintroduced later this year for the 118th Congress.

ELSA’s Sponsors in the 118th Congress:

- **U.S. Senate** - Senator Tammy Baldwin (D-WI) & Senator Joni Ernst (R-IA)
- **U.S. House of Representatives** - Congresswoman Anna Eshoo (D-CA-18) & Congressman Drew Ferguson (R-GA-3)

What is ELSA?

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

- Provide coverage for the medically necessary repair of congenital anomalies including oral defects (such as cleft lip or palate, hypodontia, enamel hypoplasia, etc.), skeletal defects (craniosynostosis), vision defects (such as congenital cataracts or aphakia), hearing defects (such as microtia), or any medically diagnosed congenital anomaly that requires medically necessary treatment, and
- Address a major issue where health insurance providers deny or delay claims for medically necessary treatments of congenital anomalies.

What requirements does ELSA create for private health insurance?

ELSA’s language is very clear in specifying that it requires two things for health insurance coverage: (1) medical necessity for treatment of a body part that is missing, abnormal, or not functioning as a direct result of (2) a congenital anomaly.

ELSA would require all private group and individual health plans to:

- Cover medically necessary items or services that are related to the diagnosis and treatment of a congenital anomaly at the same rate as other coverages in that individual’s plan,
- Cover any medically necessary item or service to functionally improve, repair, or restore any body part to achieve normal body function or appearance due to the congenital anomaly,
- And cover adjunctive dental, orthodontic, or prosthodontic support if the treatment is for congenital anomalies that affect the mouth, teeth, or intra-oral structures.

ELSA also specifies that the term “treatment” shall NOT include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.

Why is a federal law required? Would state laws be pre-empted? (Alternatively: Why not handle this issue at the state level?)

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, which are federally regulated private health plans.

ELSA 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.

What is the status of ELSA?

In the 117th Congress, the *Ensuring Lasting Smiles Act* passed in the U.S. House of Representatives on April 4th, 2022 with strong bipartisan support in a vote of 310-110 and garnered the support of 62 Senate cosponsors. We are currently working with our bill leads to strengthen the text of ELSA and incorporate relevant TA (technical assistance) to allow the strongest version of ELSA to be reintroduced in the 118th Congress.

Do you have an updated draft of ELSA's text?

The text is not yet finalized for reintroduction. Please contact Senator Baldwin's or Congresswoman Eshoo's office to discuss and receive updates about the bill and receive the text when it is finalized after incorporation of relevant TA (technical assistance).

Does ELSA have a cost estimate (CBO score)? (Alternatively: ELSA seems like it will cost a lot of money. Can you please talk about the cost of the bill?)

The Congressional Budget Office (CBO) released its findings in March and April 2022. The overall budgetary impact was estimated to be \$2.5 billion from 2022 to 2031, primarily due to reduced federal tax revenue. However, the CBO does not dynamically score bills, and therefore the number presented by CBO does not account for expected cost savings from reduced or eliminated secondary health treatments. Delays in medically necessary care, including dental care, can result in poor outcomes and more expensive secondary care later on. Unfortunately, despite years of communication to the CBO through House Committees and the bill's sponsors, its cost estimate failed to include this as an uncertainty in their report. Even with secondary savings omitted by the CBO, its report still found that insurance premiums would rise "less than 0.1 percent" to implement ELSA's requirements. We believe these numbers are inflated since CBO did not address secondary savings. Bottom line, ELSA would provide long overdue consistency in protecting patients nationwide, while also generating cost savings.

Even more fundamentally, families are already paying for these coverages. Most private health plans provide coverage for congenital anomalies, and all states require insurers to provide coverage of health services and treatments related to congenital anomalies or birth defects. Therefore, this bill seeks to ensure health plans do not bypass necessary coverages — for which families are already paying in premiums, deductibles, and copays — by using loopholes or unintended coverage gaps.

What issues or concerns exist about ELSA?

Several Republican offices have stated that they believe the scope of ELSA's coverage is too broad because the term "congenital anomaly" is not defined and could allow for misuse of the bill by medical providers seeking coverage of procedures that are not medically necessary and do not treat congenital anomalies. The bill sponsors have been working with the Senate HELP Committee, House Energy and Commerce Committee, and Legislative Counsel to determine what language could be added or changed to address this concern.