119TH CONGRESS
1ST SESSION

S. _____

To amend title XVIII of the Social Security Act to provide coverage of contraceptive items and services at no cost-sharing under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. HASSAN (for herself, Ms. MURKOWSKI, Ms. DUCKWORTH, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to provide coverage of contraceptive items and services at no cost-sharing under the Medicare program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Closing the Contraception Coverage Gap Act''.

SEC. 2. PROVIDING COVERAGE OF CONTRACEPTIVE ITEMS AND SERVICES AT NO COST-SHARING UNDER THE MEDICARE PROGRAM.

(a) PART B COVERAGE.—

(1) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(A) in subsection (s)(2)—

(i) in subparagraph (JJ), by inserting ''and'' after the semicolon at the end; and

(ii) by adding at the end the following new subparagraph:

''(KK) contraceptive items and services (as defined in subsection (nnn)) furnished to individuals on or after January 1, 2027;''; and

(B) by adding at the end the following new subsection:

''(nnn) CONTRACEPTIVE ITEMS AND SERVICES.—

''(1) IN GENERAL.—The term 'contraceptive items and services' means items and services furnished by a physician or practitioner (as defined in section 1842(b)(18)(C))—

''(A) that—

''(i) align with guidance as of January 12, 2022, issued in accordance with in section 2713(a)(4) of the Public Health Serv-

ice Act (including patient-centered counseling services); and

"(ii) may be furnished for the purpose of contraception; or

"(B) that are ancillary clinical services.

"(2) ANCILLARY CLINICAL SERVICES.—For purposes of paragraph (1)(B), the term 'ancillary clinical services' means—

"(A) clinical services that are related to the items and services described in paragraph (1)(A), including consultations, examinations, procedures, device insertion, ultrasound, pain management, patient education, referrals, and counseling; and

"(B) follow-up services related to the provision or use of the items and services described in paragraph (1)(A), including management of side effects, counseling for continued adherence, and device removal.

"(3) CLARIFICATION.—The term 'contraceptive items and services' includes items and services described in paragraph (1) regardless of whether such items and services are actually furnished for purposes of contraception.

''(4) PATIENT-CENTERED COUNSELING SERVICES.—For purposes of paragraph (1)(A), the Secretary shall issue guidance regarding the coverage of patient-centered counseling. Such guidance shall—

''(A) align with guidance as of January 12, 2022, issued in accordance with section 2713(a)(4) of the Public Health Service Act.; and

''(B) include the coverage of counseling to all patients on the full range of contraceptive items and services described in paragraph (1).''.

(2) PAYMENT.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(A) in subsection (a)(1)—

(i) by striking ''and'' before ''(HH)''; and

(ii) by inserting the following before the semicolon: ''and (II) with respect to contraceptive items and services (as defined in section 1861(nnn)), the amount paid shall be an amount equal to 100 percent of the lesser of the actual charge for the items and services or the amount determined under a payment basis determined appropriate by the Secretary''; and

(B) in subsection (b), in the first sentence—

(i) by striking ‘‘, and (13)’’ and inserting ‘‘(13)’’; and

(ii) by striking ‘‘1861(n)..’’ and inserting ‘‘1861(n), and (14) such deductible shall not apply with respect to contraceptive items and services (as defined in section 1861(nnn)).’’.

(3) EXCLUSION MODIFICATION.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)) is amended—

(A) in subparagraph (O), by striking ‘‘and’’ at the end;

(B) in subparagraph (P), by striking the semicolon and inserting ‘‘, and’’; and

(C) by adding at the end the following new subparagraph:

‘‘(Q) in the case of contraceptive items and services (as defined in section 1861(nnn)), which are not furnished or ordered by a physician or practitioner (as defined in section 1842(b)(18)(C));’’.

(4) QUALITY MEASURES.—The Secretary of Health and Human Services may, for the purposes of ensuring quality in services, develop measures of

contraceptive counseling, care, and access, including but not limited to validated survey instruments.

(b) PART C COST-SHARING FOR CONTRACEPTIVE ITEMS AND SERVICES.—

(1) IN GENERAL.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)(B)) is amended—

(A) in clause (iv)—

(i) by redesignating subclause (VIII) as subclause (IX); and

(ii) by inserting after subclause (VII) the following new subclause:

''(VIII) Contraceptive items and services (as defined in section 1861(nnn)).''; and

(B) in clause (v), by striking ''and (VI)'' and inserting ''(VI), and (VIII)''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning on or after January 1, 2027.

(c) PART D COVERAGE AND COST-SHARING FOR CONTRACEPTIVE DRUGS.—

(1) COVERAGE.—Section 1860D–4(b)(3)(G) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(G)) is amended—

(A) in clause (ii)(I), by adding at the end the following new sentence: ''Such identification shall include the drugs described in clause (iv)(VII).''; and

(B) in clause (iv), by adding at the end the following new subclause:

''(VII) Covered part D drugs described in guidelines issued pursuant to section 2713(a)(4) of the Public Health Service Act and that may be furnished for purposes of contraception (regardless of whether such drugs are actually furnished for purposes of contraception).''.

(2) COST-SHARING.—Section 1860D–2 of the Social Security Act (42 U.S.C. 1395w–102) is amended—

(A) in subsection (b)—

(i) in paragraph (1)(A), in the matter preceding clause (i), by striking ''and (9)'' and inserting '', (9), and (10)'';

(ii) in paragraph (2)(A), in the matter preceding clause (i), by striking ''and (9)'' and inserting '', (9), and (10)''; and

(iii) by adding at the end the following new paragraph:

''(10) TREATMENT OF COST-SHARING FOR CONTRACEPTIVE DRUGS.—For plan years beginning on or after January 1, 2027, with respect to a covered part D drug that is described in guidelines issued pursuant to section 2713(a)(4) of the Public Health Service Act and that may be furnished for purposes of contraception (regardless of whether such drug is actually furnished for purposes of contraception)—

''(A) the deductible under paragraph (1) shall not apply; and

''(B) there shall be no coinsurance or other cost-sharing under this part with respect to such drug.''; and

(B) in subsection (c), by adding at the end the following new paragraph:

''(7) TREATMENT OF COST-SHARING FOR CONTRACEPTIVE DRUGS.—The coverage is provided in accordance with subsection (b)(10).''.

(3) CONFORMING AMENDMENTS TO COST-SHARING FOR LOW-INCOME INDIVIDUALS.—Section 1860D–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)) is amended—

(A) in paragraph (1)(D), in each of clauses (ii) and (iii), by striking ''paragraph (6)'' and inserting ''paragraphs (6) and (7)''; and

(B) by adding at the end the following new paragraph:

''(7) NO APPLICATION OF COST-SHARING OR DEDUCTIBLE FOR CONTRACEPTIVE DRUGS.—For plan years beginning on or after January 1, 2027, with respect to a covered part D drug that is described in guidelines issued pursuant to section 2713(a)(4) of the Public Health Service Act and that is furnished for purposes of contraception—

''(A) the deductible under section 1860D–2(b)(1) shall not apply; and

''(B) there shall be no cost-sharing under this section with respect to such drug.''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning on or after January 1, 2027.

(d) ENSURING COMPARABLE COVERAGE FOR DUAL ELIGIBLE INDIVIDUALS.—In implementing the amendments made by this section, the Secretary of Health and Human Services shall ensure that the coverage of contraceptive items and services (as defined in section 1861(nnn) of the Social Security Act (as added by sub-

section (a)) and covered part D drugs described in section 1860D–4(b)(3)(G)(VII) of such Act (as added by subsection (c)(1)) with respect to individuals who are dually eligible for benefits under the Medicare program under title XVIII of such Act and for medical assistance under a State plan under title XIX of such Act (or a waiver of such plan) is at least as comprehensive as the coverage of such items and services and drugs for such individuals under such State plans (or waivers of such plans), as determined by the Secretary based on an annual review of such State plans (and waivers of such plans).

SEC. 3. HHS STUDY AND REPORT ON PRESCRIPTION DRUG COVERAGE FOR MEDICARE BENEFICIARIES LIVING WITH DISABILITIES.

(a) STUDY.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a study on—

(1) the adequacy of access to prescription drug coverage, including oral contraceptives, among Medicare beneficiaries living with disabilities who are enrolled under the original Medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (but not enrolled under part C or D of such title XVIII); and

(2) providing coverage of over-the-counter contraceptive drugs under the Medicare program under such title XVIII with no cost-sharing.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

SEC. 4. GAO STUDY AND REPORT ON CONTRACEPTIVE COVERAGE REQUIREMENTS UNDER COMMERCIAL AND PUBLIC HEALTH PLANS.

(a) STUDY.—The Comptroller General of the United States (in this section referred to as the ''Comptroller General'') shall conduct a study on the forms of health insurance (including commercial plans and public health programs (including Medicaid, Medicare, and TRICARE)), that are not required by State or Federal law to do one or both of the following:

(1) Cover all forms of contraception approved by the Food and Drug Administration.

(2) Waive cost-sharing for such contraception.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under

subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

SEC. 5. GAO STUDY AND REPORT ON DIFFERENCE IN COVERAGE OF CONTRACEPTIVE ITEMS AND SERVICES FOR DUAL ELIGIBLES.

(a) STUDY.—The Comptroller General of the United States (in this section referred to as the ''Comptroller General'') shall conduct a study on the difference in coverage of contraceptive items and services for individuals who are dually eligible for Medicare and Medicaid benefits.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.