

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Closing the Contracep-
5 tion Coverage Gap Act”.

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

4 (a) PART B COVERAGE.—

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

7 (A) in subsection (s)(2)—

8 (i) in subparagraph (JJ), by inserting

9 “and” after the semicolon at the end; and

10 (ii) by adding at the end the following

11 new subparagraph:

12 “(KK) contraceptive items and services (as de-
13 fined in subsection (nnn)) furnished to individuals
14 on or after January 1, 2027;” and

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

17 “(nnn) CONTRACEPTIVE ITEMS AND SERVICES.—

18 “(1) IN GENERAL.—The term ‘contraceptive
19 items and services’ means items and services fur-
20 nished by a physician or practitioner (as defined in
21 section 1842(b)(18)(C))—

22 “(A) that—

23 “(i) align with guidance as of January
24 12, 2022, issued in accordance with in sec-
25 tion 2713(a)(4) of the Public Health Serv-

1 ice Act (including patient-centered coun-
2 seling services); and

3 “(ii) may be furnished for the purpose
4 of contraception; or

5 “(B) that are ancillary clinical services.

6 “(2) ANCILLARY CLINICAL SERVICES.—For
7 purposes of paragraph (1)(B), the term ‘ancillary
8 clinical services’ means—

9 “(A) clinical services that are related to
10 the items and services described in paragraph
11 (1)(A), including consultations, examinations,
12 procedures, device insertion, ultrasound, pain
13 management, patient education, referrals, and
14 counseling; and

15 “(B) follow-up services related to the pro-
16 vision or use of the items and services described
17 in paragraph (1)(A), including management of
18 side effects, counseling for continued adherence,
19 and device removal.

20 “(3) CLARIFICATION.—The term ‘contraceptive
21 items and services’ includes items and services de-
22 scribed in paragraph (1) regardless of whether such
23 items and services are actually furnished for pur-
24 poses 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—

5 “(A) align with guidance as of January 12,
6 2022, issued in accordance with section
7 2713(a)(4) of the Public Health Service Act.;
8 and

9 “(B) include the coverage of counseling to
10 all patients on the full range of contraceptive
11 items and services described in paragraph (1).”.

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

14 (A) in subsection (a)(1)—

15 (i) by striking “and” before “(HH)”;

16 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

1 (B) in subsection (b), in the first sen-
2 tence—

3 (i) by striking “, and (13)” and in-
4 serting “(13)”; and

5 (ii) by striking “1861(n).” and in-
6 serting “1861(n), and (14) such deductible
7 shall not apply with respect to contracep-
8 tive items and services (as defined in sec-
9 tion 1861(nnn)).”.

10 (3) EXCLUSION MODIFICATION.—Section
11 1862(a)(1) of the Social Security Act (42 U.S.C.
12 1395y(a)(1)) is amended—

13 (A) in subparagraph (O), by striking
14 “and” at the end;

15 (B) in subparagraph (P), by striking the
16 semicolon and inserting “, and”; and

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

19 “(Q) in the case of contraceptive items and
20 services (as defined in section 1861(nnn)), which are
21 not furnished or ordered by a physician or practi-
22 tioner (as defined in section 1842(b)(18)(C));”.

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

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

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

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

8 (A) in clause (iv)—

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

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

13 “(VIII) Contraceptive items and
14 services (as defined in section
15 1861(nnn)).”; and

16 (B) in clause (v), by striking “and (VI)”
17 and inserting “(VI), and (VIII)”.

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

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

23 (1) COVERAGE.—Section 1860D–4(b)(3)(G) of
24 the Social Security Act (42 U.S.C. 1395w–
25 104(b)(3)(G)) is amended—

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

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

7 “(VII) Covered part D drugs de-
8 scribed in guidelines issued pursuant
9 to section 2713(a)(4) of the Public
10 Health Service Act and that may be
11 furnished for purposes of contracep-
12 tion (regardless of whether such drugs
13 are actually furnished for purposes of
14 contraception).”.

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

18 (A) in subsection (b)—

19 (i) in paragraph (1)(A), in the matter
20 preceding clause (i), by striking “and (9)”
21 and inserting “, (9), and (10)”;

22 (ii) in paragraph (2)(A), in the matter
23 preceding clause (i), by striking “and (9)”
24 and inserting “, (9), and (10)”; and

1 (iii) by adding at the end the fol-
2 lowing new paragraph:

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

11 “(A) the deductible under paragraph (1)
12 shall not apply; and

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

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

18 “(7) TREATMENT OF COST-SHARING FOR CON-
19 TRACEPTIVE DRUGS.—The coverage is provided in
20 accordance with subsection (b)(10).”.

21 (3) CONFORMING AMENDMENTS TO COST-SHAR-
22 ING FOR LOW-INCOME INDIVIDUALS.—Section
23 1860D–14(a) of the Social Security Act (42 U.S.C.
24 1395w–114(a)) is amended—

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

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

6 “(7) NO APPLICATION OF COST-SHARING OR
7 DEDUCTIBLE FOR CONTRACEPTIVE DRUGS.—For
8 plan years beginning on or after January 1, 2027,
9 with respect to a covered part D drug that is de-
10 scribed in guidelines issued pursuant to section
11 2713(a)(4) of the Public Health Service Act and
12 that is furnished for purposes of contraception—

13 “(A) the deductible under section 1860D–
14 2(b)(1) shall not apply; and

15 “(B) there shall be no cost-sharing under
16 this section with respect to such drug.”.

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

20 (d) ENSURING COMPARABLE COVERAGE FOR DUAL
21 ELIGIBLE INDIVIDUALS.—In implementing the amend-
22 ments made by this section, the Secretary of Health and
23 Human Services shall ensure that the coverage of contra-
24 ceptive items and services (as defined in section
25 1861(nnn) of the Social Security Act (as added by sub-

1 section (a)) and covered part D drugs described in section
2 1860D–4(b)(3)(G)(VII) of such Act (as added by sub-
3 section (c)(1)) with respect to individuals who are dually
4 eligible for benefits under the Medicare program under
5 title XVIII of such Act and for medical assistance under
6 a State plan under title XIX of such Act (or a waiver of
7 such plan) is at least as comprehensive as the coverage
8 of such items and services and drugs for such individuals
9 under such State plans (or waivers of such plans), as de-
10 termined by the Secretary based on an annual review of
11 such State plans (and waivers of such plans).

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

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

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

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

4 (b) REPORT.—Not later than 1 year after the date
5 of enactment of this Act, the Secretary shall submit to
6 Congress a report on the study conducted under sub-
7 section (a), together with recommendations for such legis-
8 lation and administrative action as the Secretary deter-
9 mines appropriate.

10 **SEC. 4. GAO STUDY AND REPORT ON CONTRACEPTIVE COV-**
11 **ERAGE REQUIREMENTS UNDER COMMER-**
12 **CIAL AND PUBLIC HEALTH PLANS.**

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

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

22 (2) Waive cost-sharing for such contraception.

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

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

4 **SEC. 5. GAO STUDY AND REPORT ON DIFFERENCE IN COV-**
5 **ERAGE OF CONTRACEPTIVE ITEMS AND**
6 **SERVICES FOR DUAL ELIGIBLES.**

7 (a) STUDY.—The Comptroller General of the United
8 States (in this section referred to as the “Comptroller
9 General”) shall conduct a study on the difference in cov-
10 erage of contraceptive items and services for individuals
11 who are dually eligible for Medicare and Medicaid benefits.

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