



COUNCIL OF THE DISTRICT OF COLUMBIA
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March 30, 2021

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Secretary Smith,

Today, I, along with Councilmembers Gray, Henderson, Lewis George, and Pinto, am introducing the "Medically Necessary Foods Coverage Act of 2021." Please find enclosed a signed copy of the legislation.

Every day, a small number of new parents will learn that their newborn baby cannot consume breastmilk or standard formula due to a metabolic or gastrointestinal condition. Without highly specialized formula, these babies may suffer nutritional deficiencies leading to inadequate growth, abnormal development, cognitive impairment, or even death. The adverse effects and complications of such diseases can also impair the quality of life for children and adults. Specialized, medically necessary nutrition is standard of care for these patients.

In many states, insurers are required to cover the costs of these special formulas. But this requirement does not currently exist under District law, where patients and their families are left to foot the bill for special formulas that cost 4-5 times the cost of regular food. These costs often fall on new parents who are already facing increased household expenses.

With this legislation, the District would join 37 other states by requiring health insurance policies to include coverage for medically necessary foods ordered by a provider for a disease or condition. While these diseases requiring medical foods as treatment are often rare, this legislation would provide enormous relief to the patients and families afflicted by these conditions.

Should you have any questions about this legislation, please contact my Legislative Director, Michael Porcello, at mporcello@dccouncil.us or (202) 724-8062.

Best,

Mary M. Cheh

1 Vincent C. Gray
2 Councilmember Vincent C. Gray
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Mary M. Cheh
Councilmember Mary M. Cheh

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5 Janeese Lewis George
6 Councilmember Janeese Lewis George
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Christina Henderson
Councilmember Christina Henderson

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9 BE R
10 Councilmember Brooke Pinto
11

12 A BILL
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16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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22 To require health insurers in the District to provide coverage for medically necessary
23 foods.
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25 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

26 That this act be cited as the “Medically Necessary Foods Coverage Act of 2021”.

27 Sec. 2. Medically necessary foods.

28 (a) Any health benefit plan which is delivered, issued for delivery, renewed,
29 extended, or modified in the District by any health insurer shall include coverage for the
30 costs of medically necessary food ordered by a provider as medically necessary for a
31 disease or condition specified in subsection (b) of this section.

32 (b) The requirement in subsection (a) of this section shall apply to the following
33 diseases or conditions:

34 (1) Inflammatory bowel disease, including Crohn’s disease, ulcerative
35 colitis, and indeterminate colitis;

- 36 (2) Gastroesophageal reflux disease that is nonresponsive to standard
37 medical therapies;
- 38 (3) Immunoglobulin E and non-Immunoglobulin E mediated allergies to
39 food proteins;
- 40 (4) Food protein-induced enterocolitis syndrome;
- 41 (5) Eosinophilic disorders, including eosinophilic esophagitis, eosinophilic
42 gastroenteritis, eosinophilic colitis, and post-transplant eosinophilic disorders;
- 43 (6) Impaired absorption of nutrients caused by disorders affecting the
44 absorptive surface, functional length, and motility of the gastrointestinal tract, including
45 short bowel syndrome and chronic intestinal pseudo-obstruction;
- 46 (7) Malabsorption due to liver or pancreatic disease;
- 47 (8) Inherited metabolic disorders; and
- 48 (9) Any other diseases or conditions the Mayor adds by rule.

49 (c) The Mayor, pursuant to Title I of the District of Columbia Administrative
50 Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et*
51 *seq.*), may issue rules to implement the provisions of the Medically Necessary Foods
52 Coverage Act of 2021, as introduced on March 30, 2021 (Bill 24-XXX).”.

53 (d) For the purposes of this section, the term:

54 (1) “Health benefit plan” means any accident and health insurance policy
55 or certificate, hospital and medical services corporation contract, health maintenance
56 organization subscriber contract, plan provided by a multiple employer welfare
57 arrangement, or plan provided by another benefit arrangement. The term “health benefit
58 plan” does not mean accident only, credit, or disability insurance; coverage of Medicare

59 services or federal employee health plans, pursuant to contracts with the United States
60 government; Medicare supplemental or long-term care insurance; dental only or vision
61 only insurance; specified disease insurance; hospital confinement indemnity coverage;
62 limited benefit health coverage; coverage issued as a supplement to liability insurance,
63 insurance arising out of a workers' compensation or similar law; automobile medical
64 payment insurance; medical expense and loss of income benefits; or insurance under
65 which benefits are payable with or without regard to fault and that is statutorily required
66 to be contained in any liability insurance policy or equivalent self-insurance.

67 (2) "Health insurer" means a person that provides one or more health
68 benefit plans or insurance in the District of Columbia, including an insurer, a hospital and
69 medical services corporation, a fraternal benefit society, a health maintenance
70 organization, a multiple employer welfare arrangement, or any other person providing a
71 plan of health insurance subject to the authority of the Commissioner of the Department
72 of Insurance, Securities, and Banking.

73 (3) "Medically necessary food" means food, including a low-protein
74 modified food product or an amino acid preparation product, a modified fat preparation
75 product, or a nutritional formula (including such a formula that does not require a
76 prescription), that is specially formulated and processed for the partial or exclusive
77 feeding of an individual by means of oral intake or enteral feeding by tube, and intended
78 for dietary management of an individual who, because of therapeutic or chronic medical
79 needs, has limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary
80 foodstuffs or certain nutrients, or who has other specially medically determined nutrient

81 requirements, the dietary management of which cannot be achieved by modification of
82 the normal diet alone.

83 Sec. 3. Fiscal impact statement.

84 The Council adopts the fiscal impact statement in the committee report as the
85 fiscal impact statement required by section 4a of the General Legislative Procedures Act
86 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

87 Sec. 4. Effective date.

88 This act shall take effect following approval by the Mayor (or in the event of veto
89 by the Mayor, action by the Council to override the veto), a 30-day period of
90 congressional review as provided in section 602(c)(1) of the District of Columbia Home
91 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
92 206.02(c)(1)), and publication in the District of Columbia Register.