

118TH CONGRESS
1ST SESSION

S. 1135

To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and the Patient Protection and Affordable Care Act to require coverage of hearing devices and systems in certain private health insurance plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mrs. CAPITO (for herself, Ms. WARREN, and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and the Patient Protection and Affordable Care Act to require coverage of hearing devices and systems in certain private health insurance plans, 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 “Ally’s Act”.

1 **SEC. 2. COVERAGE OF HEARING DEVICES AND SYSTEMS IN**
2 **CERTAIN PRIVATE HEALTH INSURANCE**
3 **PLANS.**

4 (a) PHSA.—Part D of the Public Health Service Act
5 (42 U.S.C. 300gg–111 et seq.) is amended by adding at
6 the end the following new section:

7 **“SEC. 2799A–11. COVERAGE OF HEARING DEVICES AND SYS-**
8 **TEMS.**

9 “(a) IN GENERAL.—A group health plan and a health
10 insurance issuer offering group or individual health insur-
11 ance coverage shall at a minimum provide coverage for
12 the following items and services furnished to a qualifying
13 individual:

14 “(1) Auditory implant devices (including audi-
15 tory osseointegrated (bone conduction) implants and
16 cochlear implants) and external sound processors.

17 “(2) The maintenance of auditory implant de-
18 vices and external sound processors described in
19 paragraph (1).

20 “(3) Every 5 years, the upgrade (or replace-
21 ment if an upgrade is not available) of auditory im-
22 plant devices and external sound processors de-
23 scribed in paragraph (1).

24 “(4) Adhesive adapters and softband head-
25 bands.

1 “(5) The repair of auditory implant devices and
2 external sound processors described in paragraph
3 (1).

4 “(6) A comprehensive hearing assessment.

5 “(7) A preoperative medical assessment.

6 “(8) Surgery relating to the furnishing of such
7 devices and processors (as determined necessary by
8 a physician or qualified audiologist (as such terms
9 are defined for purposes of subsection (d)) treating
10 such individual).

11 “(9) Postoperative medical visits for purposes
12 of ensuring appropriate recovery from such surgery.

13 “(10) Postoperative audiological visits for acti-
14 vation and fitting of such devices and processors.

15 “(11) Aural rehabilitation and treatment serv-
16 ices (as so determined necessary).

17 “(b) COVERAGE REQUIREMENTS.—In the case of an
18 item or service described in subsection (a) furnished to
19 a qualifying individual under a group health plan or group
20 or individual health insurance coverage, such plan or cov-
21 erage shall ensure that—

22 “(1) the financial requirements (as defined in
23 section 2726(a)(3)) applicable to such item or serv-
24 ice are no more restrictive than the predominant fi-
25 nancial requirements applied to substantially all

1 medical and surgical benefits covered by the plan or
2 coverage (as applicable), and that there are no sepa-
3 rate cost sharing requirements that are applicable
4 only with respect to such item or service; and

5 “(2) the treatment limitations (as defined in
6 such section) applicable to such item or service are
7 no more restrictive than the predominant treatment
8 limitations applied to substantially all medical and
9 surgical benefits covered by the plan or coverage (as
10 applicable), and that there are no separate treat-
11 ment limitations that are applicable only with re-
12 spect to such item or service.

13 “(c) PROHIBITION ON REVIEW OF MEDICAL NECES-
14 SITY.—A group health plan and a health insurance issuer
15 offering group or individual health insurance coverage
16 may not deny or otherwise limit coverage of any item or
17 service described in subsection (a) furnished to a quali-
18 fying individual on the basis of a review of the medical
19 necessity of such item or service by such plan or issuer.

20 “(d) QUALIFYING INDIVIDUAL DEFINED.—For pur-
21 poses of this section, the term ‘qualifying individual’
22 means an individual that a physician (as defined in section
23 1861(r) of the Social Security Act) or qualified audiologist
24 (as defined in section 1861(ll)(4)(B) of such Act) deter-
25 mines meets an indication (including unilateral or bilateral

1 hearing loss) for an auditory implant device and external
2 sound processor described in subsection (a)(1).”.

3 (b) ERISA.—

4 (1) IN GENERAL.—Subpart B of part 7 of sub-
5 title B of title I of the Employee Retirement Income
6 Security Act of 1974 (29 U.S.C. 1185 et seq.) by
7 adding at the end the following new section:

8 **“SEC. 726. COVERAGE OF HEARING DEVICES AND SYSTEMS.**

9 “(a) IN GENERAL.—A group health plan and a health
10 insurance issuer offering group health insurance coverage
11 shall at a minimum provide coverage for the following
12 items and services furnished to a qualifying individual:

13 “(1) Auditory implant devices (including audi-
14 tory osseointegrated (bone conduction) implants and
15 cochlear implants) and external sound processors.

16 “(2) The maintenance of auditory implant de-
17 vices and external sound processors described in
18 paragraph (1).

19 “(3) Every 5 years, the upgrade (or replace-
20 ment if an upgrade is not available) of auditory im-
21 plant devices and external sound processors de-
22 scribed in paragraph (1).

23 “(4) Adhesive adapters and softband head-
24 bands.

1 “(5) The repair of auditory implant devices and
2 external sound processors described in paragraph
3 (1).

4 “(6) A comprehensive hearing assessment.

5 “(7) A preoperative medical assessment.

6 “(8) Surgery relating to the furnishing of such
7 devices and processors (as determined necessary by
8 a physician or qualified audiologist (as such terms
9 are defined for purposes of subsection (d)) treating
10 such individual).

11 “(9) Postoperative medical visits for purposes
12 of ensuring appropriate recovery from such surgery.

13 “(10) Postoperative audiological visits for acti-
14 vation and fitting of such devices and processors.

15 “(11) Aural rehabilitation and treatment serv-
16 ices (as so determined necessary).

17 “(b) COVERAGE REQUIREMENTS.—In the case of an
18 item or service described in subsection (a) furnished to
19 a qualifying individual under a group health plan or group
20 health insurance coverage, such plan or coverage shall en-
21 sure that—

22 “(1) the financial requirements (as defined in
23 section 2726(a)(3) of the Public Health Service Act
24 (42 U.S.C. 300gg–26(a)(3))) applicable to such item
25 or service are no more restrictive than the predomi-

1 nant financial requirements applied to substantially
2 all medical and surgical benefits covered by the plan
3 or coverage (as applicable), and that there are no
4 separate cost sharing requirements that are applica-
5 ble only with respect to such item or service; and

6 “(2) the treatment limitations (as defined in
7 such section) applicable to such item or service are
8 no more restrictive than the predominant treatment
9 limitations applied to substantially all medical and
10 surgical benefits covered by the plan or coverage (as
11 applicable), and that there are no separate treat-
12 ment limitations that are applicable only with re-
13 spect to such item or service.

14 “(c) PROHIBITION ON REVIEW OF MEDICAL NECES-
15 SITY.—A group health plan and a health insurance issuer
16 offering group health insurance coverage may not deny or
17 otherwise limit coverage of any item or service described
18 in subsection (a) furnished to a qualifying individual on
19 the basis of a review of the medical necessity of such item
20 or service by such plan or issuer.

21 “(d) QUALIFYING INDIVIDUAL DEFINED.—For pur-
22 poses of this section, the term ‘qualifying individual’
23 means an individual that a physician (as defined in section
24 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)))
25 or qualified audiologist (as defined in section

1 1861(ll)(4)(B) of such Act (42 U.S.C. 1395x(ll)(4)(B)))
 2 determines meets an indication (including unilateral or bi-
 3 lateral hearing loss) for an auditory implant device and
 4 external sound processor described in subsection (a)(1).”.

5 (2) CLERICAL AMENDMENT.—The table of con-
 6 tents in section 1 of the Employee Retirement In-
 7 come Security Act of 1974 (29 U.S.C. 1001 et seq.)
 8 is amended by inserting after the item relating to
 9 section 725 the following new item:

“Sec. 726. Coverage of hearing devices and systems.”.

10 (c) IRC.—

11 (1) IN GENERAL.—Subchapter B of chapter
 12 100 of the Internal Revenue Code of 1986 is amend-
 13 ed by adding at the end the following new section:

14 **“SEC. 9826. COVERAGE OF HEARING DEVICES AND SYS-**
 15 **TEMS.**

16 “(a) IN GENERAL.—A group health plan shall at a
 17 minimum provide coverage for the following items and
 18 services furnished to a qualifying individual:

19 “(1) Auditory implant devices (including audi-
 20 tory osseointegrated (bone conduction) implants and
 21 cochlear implants) and external sound processors.

22 “(2) The maintenance of auditory implant de-
 23 vices and external sound processors described in
 24 paragraph (1).

1 “(3) Every 5 years, the upgrade (or replace-
2 ment if an upgrade is not available) of auditory im-
3 plant devices and external sound processors de-
4 scribed in paragraph (1).

5 “(4) Adhesive adapters and softband head-
6 bands.

7 “(5) The repair of auditory implant devices and
8 external sound processors described in paragraph
9 (1).

10 “(6) A comprehensive hearing assessment.

11 “(7) A preoperative medical assessment.

12 “(8) Surgery relating to the furnishing of such
13 devices and processors (as determined necessary by
14 a physician or qualified audiologist (as such terms
15 are defined for purposes of subsection (d)) treating
16 such individual).

17 “(9) Postoperative medical visits for purposes
18 of ensuring appropriate recovery from such surgery.

19 “(10) Postoperative audiological visits for acti-
20 vation and fitting of such devices and processors.

21 “(11) Aural rehabilitation and treatment serv-
22 ices (as so determined necessary).

23 “(b) COVERAGE REQUIREMENTS.—In the case of an
24 item or service described in subsection (a) furnished to

1 a qualifying individual under a group health plan, such
2 plan shall ensure that—

3 “(1) the financial requirements (as defined in
4 section 2726(a)(3) of the Public Health Service Act
5 (42 U.S.C. 300gg–26(a)(3))) applicable to such item
6 or service are no more restrictive than the predomi-
7 nant financial requirements applied to substantially
8 all medical and surgical benefits covered by the plan,
9 and that there are no separate cost sharing require-
10 ments that are applicable only with respect to such
11 item or service; and

12 “(2) the treatment limitations (as defined in
13 such section) applicable to such item or service are
14 no more restrictive than the predominant treatment
15 limitations applied to substantially all medical and
16 surgical benefits covered by the plan, and that there
17 are no separate treatment limitations that are appli-
18 cable only with respect to such item or service.

19 “(c) PROHIBITION ON REVIEW OF MEDICAL NECES-
20 SITY.—A group health plan may not deny or otherwise
21 limit coverage of any item or service described in sub-
22 section (a) furnished to a qualifying individual on the basis
23 of a review of the medical necessity of such item or service
24 by such plan or issuer.

1 “(d) QUALIFYING INDIVIDUAL DEFINED.—For pur-
 2 poses of this section, the term ‘qualifying individual’
 3 means an individual that a physician (as defined in section
 4 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)))
 5 or qualified audiologist (as defined in section
 6 1861(ll)(4)(B) of such Act (42 U.S.C. 1395x(ll)(4)(B)))
 7 determines meets an indication (including unilateral or bi-
 8 lateral hearing loss) for an auditory implant device and
 9 external sound processor described in subsection (a)(1).”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
 11 tions for subchapter B of chapter 100 of the Inter-
 12 nal Revenue Code of 1986 is amended by inserting
 13 after the item relating to section 9825 the following
 14 new item:

“Sec. 9826. Coverage of hearing devices and systems.”.

15 (d) APPLICATION TO GRANDFATHERED HEALTH
 16 PLANS.—Section 1251(a)(4)(A) of the Patient Protection
 17 and Affordable Care Act (42 U.S.C. 18011(a)(4)(A)) is
 18 amended—

19 (1) by striking “title” and inserting “title, or as
 20 added after the date of the enactment of this Act”;
 21 and

22 (2) by adding at the end the following new
 23 clause:

24 “(v) Section 2799A–11 (relating to
 25 hearing devices and systems).”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply with respect to plan
3 years beginning on or after January 1, 2025.

○