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117TH CONGRESS
1ST SESSION

S. 777

To prohibit taxpayer-funded gender reassignment medical interventions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2021

Mr. MARSHALL (for himself, Mr. BRAUN, Mr. COTTON, Mrs. BLACKBURN, Mr. LEE, and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To prohibit taxpayer-funded gender reassignment medical interventions, 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; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''End Taxpayer Funding of Gender Experimentation Act of 2021''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROHIBITING FEDERALLY FUNDED GENDER REASSIGNMENT MEDICAL INTERVENTIONS

Sec. 101. Prohibiting taxpayer-funded gender reassignment medical interventions.
Sec. 102. Amendment to table of chapters.

TITLE II—APPLICATION UNDER THE AFFORDABLE CARE ACT

Sec. 201. Clarifying application of prohibition to premium credits and cost-sharing reductions under ACA.

TITLE I—PROHIBITING FEDERALLY FUNDED GENDER REASSIGNMENT MEDICAL INTERVENTIONS

SEC. 101. PROHIBITING TAXPAYER-FUNDED GENDER REASSIGNMENT MEDICAL INTERVENTIONS.

Title 1, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 4—PROHIBITING TAXPAYER-FUNDED GENDER REASSIGNMENT MEDICAL INTERVENTIONS

''301. Prohibition on funding for gender reassignment medical interventions.
''302. Prohibition on funding for health benefits plans that cover gender reassignment medical interventions.
''303. Limitation on Federal facilities and employees.
''304. Construction relating to separate coverage.
''305. Construction relating to the use of non-Federal funds for health coverage.
''306. Construction relating to complications arising from gender reassignment medical interventions.
''307. Treatment of individuals born with medically verifiable disorder of sex development.
''308. Gender reassignment medical intervention defined.

"§ 301. Prohibition on funding for gender reassignment medical interventions

''No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall

be expended for any gender reassignment medical intervention.

"§ 302. Prohibition on funding for health benefits plans that cover gender reassignment medical interventions

''No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for health benefits coverage that includes coverage of gender reassignment medical interventions.

"§ 303. Limitation on Federal facilities and employees

''No health care service furnished—

''(1) by or in a health care facility owned or operated by the Federal Government; or

''(2) by any physician or other individual employed by the Federal Government to provide health care services within the scope of the physician's or individual's employment,

may include gender reassignment medical interventions.

"§ 304. Construction relating to separate coverage

''Nothing in this chapter shall be construed as prohibiting any individual, entity, or State or locality from purchasing separate coverage for gender reassignment medical interventions or health benefits coverage that includes gender reassignment medical interventions so long

as such coverage is paid for entirely using only funds not authorized or appropriated by Federal law and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.

"§ 305. Construction relating to the use of non-Federal funds for health coverage

''Nothing in this chapter shall be construed as restricting the ability of any non-Federal health benefits coverage provider from offering coverage for gender reassignment medical interventions, or the ability of a State or locality to contract separately with such a provider for such coverage, so long as only funds not authorized or appropriated by Federal law are used and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.

"§ 306. Construction relating to complications arising from gender reassignment medical interventions

''Nothing in this chapter shall be construed to apply to the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of a gender reassignment medical intervention.

This rule of construction shall be applicable without regard to whether the gender reassignment medical intervention was performed in accord with Federal or State law, and without regard to whether funding for the gender reassignment medical intervention is permissible under section 307.

"§ 307. Treatment of individuals born with medically verifiable disorder of sex development

''The limitations established in sections 301, 302, and 303 shall not apply with respect to the following individuals:

''(1) An individual with external biological sex characteristics that are irresolvably ambiguous, such as those born with 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue.

''(2) An individual with respect to whom a physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a biological male or female.

"§ 308. Gender reassignment medical intervention defined

''For purposes of this chapter, the term 'gender reassignment medical intervention' means—

''(1) performing a surgery that sterilizes an individual, including castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, penectomy, phalloplasty, and vaginoplasty, to change the body of such individual to correspond to a sex that is discordant with biological sex;

''(2) performing a mastectomy on an individual for the purpose described in paragraph (1); and

''(3) administering or supplying to an individual medications for the purpose described in paragraph (1), including—

''(A) GnRH agonists or other puberty-blocking drugs to stop or delay normal puberty;

''(B) testosterone or other androgens to biological females at doses that are supraphysiologic to the female sex; and

''(C) estrogen to biological males at doses that are supraphysiologic to the male sex.''.

SEC. 102. AMENDMENT TO TABLE OF CHAPTERS.

The table of chapters for title 1, United States Code, is amended by adding at the end the following new item:

"4. Prohibiting taxpayer-funded gender reassignment medical interventions ..... 301".

TITLE II—APPLICATION UNDER THE AFFORDABLE CARE ACT

SEC. 201. CLARIFYING APPLICATION OF PROHIBITION TO PREMIUM CREDITS AND COST-SHARING REDUCTIONS UNDER ACA.

(a) IN GENERAL.—

(1) DISALLOWANCE OF REFUNDABLE CREDIT AND COST-SHARING REDUCTIONS FOR COVERAGE UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES COVERAGE FOR GENDER REASSIGNMENT MEDICAL INTERVENTIONS.—

(A) IN GENERAL.—Subparagraph (A) of section 36B(c)(3) of the Internal Revenue Code of 1986 is amended by inserting before the period at the end the following: ''or any health plan that includes coverage for gender reassignment medical interventions (other than any gender reassignment medical intervention or treatment described in section 306 or 307 of title 1, United States Code)''.

(B) OPTION TO PURCHASE OR OFFER SEPARATE COVERAGE OR PLAN.—Paragraph (3) of section 36B(c) of such Code is amended by

adding at the end the following new subparagraph:

"(C) SEPARATE COVERAGE OR PLAN FOR GENDER REASSIGNMENT MEDICAL INTERVENTIONS ALLOWED.—

"(i) OPTION TO PURCHASE SEPARATE COVERAGE OR PLAN.—Nothing in subparagraph (A) shall be construed as prohibiting any individual from purchasing separate coverage for gender reassignment medical interventions described in such subparagraph, or a health plan that includes such gender reassignment medical interventions, so long as no credit is allowed under this section with respect to the premiums for such coverage or plan.

"(ii) OPTION TO OFFER COVERAGE OR PLAN.—Nothing in subparagraph (A) shall restrict any non-Federal health insurance issuer offering a health plan from offering separate coverage for gender reassignment medical interventions described in such subparagraph, or a plan that includes such gender reassignment medical interventions, so long as premiums for such separate cov-

erage or plan are not paid for with any amount attributable to the credit allowed under this section (or the amount of any advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act).''.

(2) DISALLOWANCE OF SMALL EMPLOYER HEALTH INSURANCE EXPENSE CREDIT FOR PLAN WHICH INCLUDES COVERAGE FOR GENDER REASSIGNMENT MEDICAL INTERVENTIONS.—Subsection (h) of section 45R of the Internal Revenue Code of 1986 is amended—

(A) by striking ''Any term'' and inserting the following:

''(1) IN GENERAL.—Any term''; and

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

''(2) EXCLUSION OF HEALTH PLANS INCLUDING COVERAGE FOR GENDER REASSIGNMENT MEDICAL INTERVENTIONS.—

''(A) IN GENERAL.—The term 'qualified health plan' does not include any health plan that includes coverage for gender reassignment medical interventions (other than any gender reassignment medical intervention or treatment

described in section 306 or 307 of title 1, United States Code).

"(B) SEPARATE COVERAGE OR PLAN FOR GENDER REASSIGNMENT MEDICAL INTERVENTIONS ALLOWED.—

"(i) OPTION TO PURCHASE SEPARATE COVERAGE OR PLAN.—Nothing in subparagraph (A) shall be construed as prohibiting any employer from purchasing for its employees separate coverage for gender reassignment medical interventions described in such subparagraph, or a health plan that includes such gender reassignment medical interventions, so long as no credit is allowed under this section with respect to the employer contributions for such coverage or plan.

"(ii) OPTION TO OFFER COVERAGE OR PLAN.—Nothing in subparagraph (A) shall restrict any non-Federal health insurance issuer offering a health plan from offering separate coverage for gender reassignment medical interventions described in such subparagraph, or a plan that includes such gender reassignment medical interventions,

so long as such separate coverage or plan is not paid for with any employer contribution eligible for the credit allowed under this section.''.

(b) APPLICATION TO MULTI-STATE PLANS.—Section 1334(a) of Public Law 111–148 (42 U.S.C. 18054(a)) is amended by adding at the end the following new paragraph:

''(8) COVERAGE CONSISTENT WITH FEDERAL POLICY REGARDING GENDER REASSIGNMENT MEDICAL INTERVENTIONS.—In entering into contracts under this subsection, the Director shall ensure that no multi-State qualified health plan offered in an Exchange provides health benefits coverage for which the expenditure of Federal funds is prohibited under chapter 4 of title 1, United States Code.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending after the date that is one year after the date of enactment of this Act, but only with respect to plan years beginning after such date, and the amendment made by subsection (b) shall apply to plan years beginning after such date.

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