

111TH CONGRESS  
1ST SESSION

# S. 1258

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and chapter 89 of title 5, United States Code, to require coverage for the treatment of infertility.

---

## IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and chapter 89 of title 5, United States Code, to require coverage for the treatment of infertility.

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; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Family Building Act of 2009”.

6       (b) FINDINGS.—Congress makes the following find-  
7       ings:

1           (1) Infertility is a disease affecting more than  
2           6,000,000 American women and men, about 10 per-  
3           cent of the reproductive age population.

4           (2) Recent improvements in therapy make preg-  
5           nancy possible for more couples than in past years.

6           (3) The majority of group health plans do not  
7           provide coverage for infertility therapy.

8           (4) A fundamental part of the human experi-  
9           ence is fulfilling the desire to reproduce.

10 **SEC. 2. STANDARDS RELATING TO BENEFITS FOR TREAT-**  
11 **MENT OF INFERTILITY.**

12           (a) GROUP HEALTH PLANS.—

13           (1) PUBLIC HEALTH SERVICE ACT AMEND-  
14           MENT.—(A) Subpart 2 of part A of title XXVII of  
15           the Public Health Service Act is amended by adding  
16           at the end the following new section:

17 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**  
18 **TREATMENT OF INFERTILITY.**

19           “(a) REQUIREMENTS FOR COVERAGE OF TREAT-  
20           MENT OF INFERTILITY.—

21           “(1) IN GENERAL.—In a case in which a group  
22           health plan, and a health insurance issuer offering  
23           group health insurance coverage provides coverage  
24           for obstetrical services, such plan or issuer shall in-

1       clude (consistent with this section) coverage for  
2       treatment of infertility.

3               “(2) INFERTILITY DEFINED.—For purposes of  
4       this section, the term ‘infertility’ means a disease or  
5       condition that results in the abnormal function of  
6       the reproductive system, which results in—

7                       “(A) the inability to conceive after 1 year  
8                       of unprotected intercourse, or

9                       “(B) the inability to carry a pregnancy to  
10                      live birth.

11       “(b) REQUIRED COVERAGE.—

12               “(1) IN GENERAL.—A group health plan, and a  
13       health insurance issuer offering group health insur-  
14       ance coverage shall provide coverage for treatment  
15       of infertility deemed appropriate by a participant or  
16       beneficiary and the treating physician. Such treat-  
17       ment shall include ovulation induction, artificial in-  
18       semination, in vitro fertilization (IVF), gamete  
19       intrafallopian transfer (GIFT), zygote intrafallopian  
20       transfer (ZIFT), intracytoplasmic sperm injection  
21       (ICSI), sperm collection for fertility treatments, and  
22       any other treatment provided it has been deemed as  
23       ‘non-experimental’ by the Secretary after consulta-  
24       tion with appropriate professional and patient orga-  
25       nizations such as the American Society for Repro-

1 ductive Medicine, RESOLVE, and the American  
2 College of Obstetricians and Gynecologists.

3 “(2) LIMITATION ON COVERAGE OF ASSISTED  
4 REPRODUCTIVE TECHNOLOGY.—

5 “(A) IN GENERAL.—In the case of assisted  
6 reproductive technology, coverage shall be pro-  
7 vided if—

8 “(i) the participant or beneficiary has  
9 been unable to bring a pregnancy to a live  
10 birth through less costly medically appro-  
11 priate infertility treatments for which cov-  
12 erage is available under the insured’s pol-  
13 icy, plan, or contract;

14 “(ii) the participant or beneficiary has  
15 not undergone 4 complete oocyte retrievals,  
16 except that if a live birth follows a com-  
17 pleted oocyte retrieval, then at least 2  
18 more completed oocyte retrievals shall be  
19 covered, with a lifetime cap of 6 retrievals;  
20 and

21 “(iii) the treatment is performed at a  
22 medical facility that—

23 “(I) conforms to the standards of  
24 the American Society for Reproductive  
25 Medicine; and

1                   “(II) is in compliance with any  
2                   standards set by an appropriate Fed-  
3                   eral agency.

4                   “(B) DEFINITION OF ASSISTED REPRO-  
5                   DUCTIVE TECHNOLOGY.—For purposes of this  
6                   paragraph, the term ‘assisted reproductive tech-  
7                   nology’ includes all treatments or procedures  
8                   that involve the handling of human egg and  
9                   sperm for the purpose of helping a woman be-  
10                  come pregnant. Types of assisted reproductive  
11                  technology include in vitro fertilization, gamete  
12                  intrafallopian transfer, zygote intrafallopian  
13                  transfer, embryo cryopreservation, egg or em-  
14                  bryo donation, and surrogate birth.

15                  “(3) REVIEW BY THE SECRETARY.—Not later  
16                  than 5 years after the date of enactment of the  
17                  Family Building Act of 2009, the Secretary, in con-  
18                  sultation with the American Society for Reproductive  
19                  Medicine and RESOLVE: the National Infertility  
20                  Association, shall review the requirements for treat-  
21                  ment of infertility established under paragraphs (1)  
22                  and (2).

23                  “(c) LIMITATION.—Deductibles, coinsurance, and  
24                  other cost-sharing or other limitations for infertility ther-  
25                  apy may not be imposed to the extent they exceed the

1 deductibles, coinsurance, and limitations that are applied  
2 to similar services under the group health plan or health  
3 insurance coverage.

4 “(d) PROHIBITIONS.—A group health plan, and a  
5 health insurance issuer offering group health insurance  
6 coverage in connection with a group health plan, may  
7 not—

8 “(1) deny to a participant or beneficiary eligi-  
9 bility, or continued eligibility, to enroll or to renew  
10 coverage under the terms of the plan, solely for the  
11 purpose of avoiding the requirements of this section;

12 “(2) provide incentives (monetary or otherwise)  
13 to a participant or beneficiary to encourage such  
14 participant or beneficiary not to be provided infer-  
15 tility treatments to which they are entitled under  
16 this section or to providers to induce such providers  
17 not to provide such treatments to qualified partici-  
18 pants or beneficiaries;

19 “(3) prohibit a provider from discussing with a  
20 participant or beneficiary infertility treatment tech-  
21 niques or medical treatment options relating to this  
22 section; or

23 “(4) penalize or otherwise reduce or limit the  
24 reimbursement of a provider because such provider

1 provided infertility treatments to a qualified partici-  
2 pant or beneficiary in accordance with this section.

3 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
4 tion shall be construed to require a participant or bene-  
5 ficiary to undergo infertility therapy.

6 “(f) NOTICE.—A group health plan under this part  
7 shall comply with the notice requirement under section  
8 713(b) of the Employee Retirement Income Security Act  
9 of 1974 with respect to the requirements of this section  
10 as if such section applied to such plan.

11 “(g) LEVEL AND TYPE OF REIMBURSEMENTS.—  
12 Nothing in this section shall be construed to prevent a  
13 group health plan or a health insurance issuer offering  
14 group health insurance coverage from negotiating the level  
15 and type of reimbursement with a provider for care pro-  
16 vided in accordance with this section.

17 “(h) PREEMPTION.—The provisions of this section do  
18 not preempt State law relating to health insurance cov-  
19 erage to the extent such State law provides greater bene-  
20 fits with respect to infertility treatments or prevention.”.

21 (B) Section 2723(c) of such Act (42 U.S.C.  
22 300gg-23(c)) is amended by striking “section 2704”  
23 and inserting “sections 2704 and 2708”.

24 (2) ERISA AMENDMENT.—(A) Subpart B of  
25 part 7 of subtitle B of title I of the Employee Re-

1       tirement Income Security Act of 1974 is amended by  
2       adding at the end the following new section:

3       **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR**  
4                                   **TREATMENT OF INFERTILITY.**

5       “(a) IN GENERAL.—A group health plan and a health  
6 insurance issuer offering group health insurance coverage  
7 in connection with such a plan shall comply with the re-  
8 quirements of section 2708 of the Public Health Service  
9 Act, and such requirements shall be deemed to be incor-  
10 porated into this subsection.

11       “(b) NOTICE.—A health insurance issuer offering  
12 health insurance coverage in connection with a group  
13 health plan shall comply with the notice requirement  
14 under section 713(b) with respect to the requirements re-  
15 ferred to in subsection (a) as if such section applied to  
16 such issuer and such issuer were a group health plan.”.

17               (B) Section 732(a) of such Act (29 U.S.C.  
18       1191a(a)) is amended by striking “section 711” and  
19       inserting “sections 711 and 714”.

20               (C) The table of contents in section 1 of such  
21       Act is amended by inserting after the item relating  
22       to section 714 the following new item:

      “715. Standards relating to benefits for treatment of infertility.”.

23       (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
24 of title XXVII of the Public Health Service Act is amend-

1 ed by inserting after section 2753 the following new sec-  
2 tion:

3 **“SEC. 2754. STANDARD RELATING TO BENEFITS FOR**  
4 **TREATMENT OF INFERTILITY.**

5 “(a) IN GENERAL.—The provisions of section 2708  
6 shall apply to health insurance coverage offered by a  
7 health insurance issuer in the individual market in the  
8 same manner as they apply to health insurance coverage  
9 offered by a health insurance issuer in connection with a  
10 group health plan in the small or large group market.

11 “(b) NOTICE.—A health insurance issuer under this  
12 part shall comply with the notice requirement under sec-  
13 tion 713(b) of the Employee Retirement Income Security  
14 Act of 1974 with respect to the requirements referred to  
15 in subsection (a) as if such section applied to such issuer  
16 and such issuer were a group health plan.”.

17 (2) Section 2762(b)(2) of such Act (42 U.S.C.  
18 300gg–62(b)(2)) is amended by striking “section 2751”  
19 and inserting “sections 2751 and 2753”.

20 (c) EFFECTIVE DATES.—

21 (1) GROUP HEALTH PLANS AND GROUP  
22 HEALTH INSURANCE COVERAGE.—Subject to para-  
23 graph (3), the amendments made by subsection (a)  
24 apply with respect to group health plans for plan

1 years beginning on or after the date occurring 6  
2 months after the date of the enactment of this Act.

3 (2) INDIVIDUAL HEALTH INSURANCE COV-  
4 ERAGE.—The amendments made by subsection (b)  
5 apply with respect to health insurance coverage of-  
6 fered, sold, issued, renewed, in effect, or operated in  
7 the individual market on or after such date.

8 (3) COLLECTIVE BARGAINING EXCEPTION.—In  
9 the case of a group health plan maintained pursuant  
10 to 1 or more collective bargaining agreements be-  
11 tween employee representatives and 1 or more em-  
12 ployers ratified before the date of enactment of this  
13 Act, the amendments made by subsection (a) shall  
14 not apply to plan years beginning before the later  
15 of—

16 (A) the date on which the last collective  
17 bargaining agreements relating to the plan ter-  
18 minates (determined without regard to any ex-  
19 tension thereof agreed to after the date of en-  
20 actment of this Act), or

21 (B) the date occurring 6 months after the  
22 date of the enactment of this Act.

23 For purposes of subparagraph (A), any plan amend-  
24 ment made pursuant to a collective bargaining  
25 agreement relating to the plan which amends the

1 plan solely to conform to any requirement added by  
2 subsection (a) shall not be treated as a termination  
3 of such collective bargaining agreement.

4 **SEC. 3. AMENDMENT TO TITLE 5, UNITED STATES CODE.**

5 (a) **IN GENERAL.**—Section 8902 of title 5, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing new subsection:

8 “(p)(1) Each contract under this chapter which pro-  
9 vides obstetrical benefits shall also provide (in a manner  
10 consistent with section 2708 of the Public Health Service  
11 Act) coverage for the diagnosis and treatment of infertility  
12 (as defined by such section).

13 “(2) Subsection (m)(1) shall not, with respect to any  
14 contract under this chapter, prevent the inclusion of any  
15 terms which, under paragraph (1), are required by reason  
16 of section 2708(h) of the Public Health Service Act.”.

17 (b) **EFFECTIVE DATE.**—The amendment made by  
18 this section shall apply with respect to contracts entered  
19 into or renewed for contract years beginning at least 6  
20 months after the date of enactment of this Act.

○