

115TH CONGRESS
2D SESSION

S. 3687

To amend title XVIII of the Social Security Act to provide coverage for custom fabricated breast prostheses following a mastectomy.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2018

Ms. DUCKWORTH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide coverage for custom fabricated breast prostheses following a mastectomy.

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 “Breast Cancer Patient Equity Act”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) There are currently more than 3,500,000
8 women with a history of breast cancer in the United
9 States, many of whom experience unreconstructed
10 breast loss.

1 (2) In 2018, more than 260,000 women were
2 diagnosed with invasive breast cancer that required
3 surgery, with many having to undergo surgical
4 breast removal.

5 (3) In 2018, more than 40,000 women in the
6 United States are expected to die from breast can-
7 cer.

8 (4) Annually, there are 144,000 women in the
9 United States who undergo mastectomies, a surgical
10 removal of the breast.

11 (5) The number of breast mastectomies in the
12 United States has increased among younger women,
13 ages 18 to 34 years old, at a rate of 30 percent and
14 at a rate of 15 percent for women ages 35 to 44
15 years old.

16 (6) The results of breast reconstruction surgery
17 can vary and, as with any surgical procedure, there
18 are inherent risks associated with such surgery. Ad-
19 ditionally, reconstruction of the breast using im-
20 plants can impose increased risks and costs due to
21 the eventual need for implant replacement surgery.

22 (7) The number of women choosing to undergo
23 surgical breast reconstruction continues to increase,
24 as many women lack the viable option of custom fab-
25 ricated prosthetic breasts to restore the lost breast.

1 (8) Both older women and minority women are
2 less likely to be offered or undergo surgical breast
3 reconstruction and are disproportionately disadvan-
4 taged by a lack of access to the option of custom
5 fabricated prosthetic breasts.

6 (9) Currently, the Medicare program provides
7 coverage and reimbursement for custom fabricated
8 prostheses for any body part, with the exception of
9 breasts, that has been lost.

10 (10) Following passage of the Women’s Health
11 and Cancer Rights Act of 1998 (Public Law 105–
12 277; 42 U.S.C. 201 note), many private insurers
13 and group health plans began to provide coverage
14 for custom fabricated breast prostheses as an alter-
15 native to surgical breast reconstruction.

16 (11) While the Medicare program recognizes
17 custom fabricated breast prostheses as a discrete de-
18 vice and valid treatment option, having assigned a
19 billing code for such option under the Healthcare
20 Common Procedure Coding System (“HCPCS”) and
21 setting a maximum allowable fee, Medicare does not
22 provide reimbursement and denies claims as ‘not
23 medically necessary’. Medicare does provide reim-
24 bursement, however, for more costly surgical breast
25 reconstruction.

1 (12) Due to the fact that the Medicare program
2 does not provide reimbursement for custom fab-
3 ricated breast prostheses, many private insurance
4 companies have also begun to limit their reimburse-
5 ment for them.

6 (13) The Department of Veterans Affairs does
7 provide the option of a custom fabricated prosthetic
8 breast for women post-mastectomy.

9 (14) Providing coverage for custom fabricated
10 prosthetic breast devices and components will not in-
11 crease the incidence of breast mastectomies.

12 **SEC. 2. COVERAGE.**

13 (a) IN GENERAL.—Section 1861(s)(8) of the Social
14 Security Act (42 U.S.C. 1395x(s)(8)) is amended—

15 (1) by adding “and” after the semicolon at the
16 end;

17 (2) by inserting “(A)” after “(8)”; and

18 (3) by inserting after subparagraph (A) the fol-
19 lowing new subparagraph:

20 “(B) custom fabricated breast prostheses fol-
21 lowing surgical removal of the breast, including re-
22 placement of such prostheses;”.

23 (b) CONFORMING AMENDMENT.—Section 1862(a)(7)
24 of such Act (42 U.S.C. 1395y(a)(7)) is amended by strik-
25 ing “1861(s)(8)” and inserting “1861(s)(8)(A)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to items and services furnished on
3 or after the date of enactment of this Act.

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