

116TH CONGRESS
2D SESSION

H. R. 8558

To amend the Employee Retirement Income Security Act of 1974 to provide for health coverage of nipple-areolar complex tattooing in connection with reconstructive surgery following mastectomy and to amend titles XVIII and XIX of the Social Security Act to extend coverage of certain breast reconstructive services following mastectomy under the Medicare and Medicaid programs.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2020

Mr. HASTINGS (for himself, Ms. WASSERMAN SCHULTZ, Mr. BUCHANAN, Ms. LEE of California, Mr. DEUTCH, Mr. SOTO, and Mrs. DAVIS of California) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide for health coverage of nipple-areolar complex tattooing in connection with reconstructive surgery following mastectomy and to amend titles XVIII and XIX of the Social Security Act to extend coverage of certain breast reconstructive services following mastectomy under the Medicare and Medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Comprehensive Breast
3 Reconstruction Act of 2020”.

4 **SEC. 2. PROVIDING FOR HEALTH COVERAGE OF NIPPLE-**
5 **AREOLAR COMPLEX TATTOOING IN CONNec-**
6 **TION WITH RECONSTRUCTIVE SURGERY FOL-**
7 **LOWING MASTECTOMY; EXTENDING COV-**
8 **ERAGE OF BREAST RECONSTRUCTIVE SERV-**
9 **ICES FOLLOWING MASTECTOMY UNDER**
10 **MEDICARE AND MEDICAID.**

11 (a) PRIVATE HEALTH INSURANCE COVERAGE AND
12 GROUP HEALTH PLANS.—

13 (1) IN GENERAL.—Section 713(a) of the Em-
14 ployee Retirement Income Security Act of 1974 (29
15 U.S.C. 1185b(a)) is amended—

16 (A) in paragraph (2), by striking at the
17 end “and”;

18 (B) in paragraph (3), by adding at the end
19 “and”;

20 (C) by inserting after paragraph (3) the
21 following new paragraph:

22 “(4) tattooing of the nipple-areolar complex
23 pursuant to or as part of such reconstruction if such
24 tattooing is performed by a physician, physician ex-
25 tender (as defined in section 1834(x) of the Social
26 Security Act), or State-licensed tattoo artist (as de-

1 fined in such section), as prescribed by a physi-
2 cian;” and

3 (D) by adding at the end of the flush mat-
4 ter following paragraph (4), as inserted by sub-
5 paragraph (C), the following: “Tattooing of the
6 nipple-areolar complex described in paragraph
7 (4) shall be deemed to be medically reasonable
8 and necessary.”.

9 (2) EFFECTIVE DATES.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (B), the amendments made by this sec-
12 tion shall apply with respect to plan years be-
13 ginning after the date of enactment of this Act.

14 (B) SPECIAL RULE FOR COLLECTIVE BAR-
15 GAINING AGREEMENTS.—In the case of a group
16 health plan maintained pursuant to 1 or more
17 collective bargaining agreements between em-
18 ployee representatives and 1 or more employers
19 ratified before the date of enactment of this
20 Act, the amendments made by this section shall
21 not apply to plan years beginning before the
22 later of—

23 (i) the date on which the last collec-
24 tive bargaining agreements relating to the
25 plan terminates (determined without re-

1 gard to any extension thereof agreed to
2 after the date of enactment of this Act); or
3 (ii) January 1 of the first year begin-
4 ning at least one year after the date of the
5 enactment of this Act.

6 For purposes of clause (i), any plan amendment
7 made pursuant to a collective bargaining agree-
8 ment relating to the plan which amends the
9 plan solely to conform to any requirement
10 added by this subsection shall not be treated as
11 a termination of such collective bargaining
12 agreement.

13 (b) MEDICARE COVERAGE.—

14 (1) COVERAGE.—Section 1861(s)(2) of the So-
15 cial Security Act (42 U.S.C. 1395x(s)(2)) is amend-
16 ed—

17 (A) in subparagraph (GG), by striking at
18 the end “and”;

19 (B) in subparagraph (HH), by inserting at
20 the end “; and”; and

21 (C) by adding at the end the following new
22 subparagraph:

23 “(II) qualifying reconstructive breast sur-
24 gery services (as defined in subsection (kkk)).”.

1 (2) DEFINITION.—Section 1861 of the Social
2 Security Act (42 U.S.C. 1395x) is amended by add-
3 ing at the end the following new subsection:

4 “(kkk) QUALIFYING RECONSTRUCTIVE BREAST SUR-
5 GERY SERVICES.—The term ‘qualifying reconstructive
6 breast surgery services’ means, in the case of an individual
7 who has a mastectomy, breast reconstruction in connec-
8 tion with such mastectomy, including—

9 “(1) all stages of reconstruction of the breast
10 on which the mastectomy has been performed;

11 “(2) surgery and reconstruction of the other
12 breast to produce a symmetrical appearance;

13 “(3) prostheses and physical complications of
14 mastectomy, including lymphedemas; and

15 “(4) tattooing of the nipple-areolar complex
16 pursuant to or as part of such reconstruction if such
17 tattooing is performed by a physician, physician ex-
18 tender, or State-licensed tattoo artist (as such terms
19 are defined in section 1834(x)), as prescribed by a
20 physician,

21 in a manner determined in consultation with the attending
22 physician and the individual.”.

23 (3) PAYMENT.—

1 (A) IN GENERAL.—Section 1833(a)(1) of
2 the Social Security Act (42 U.S.C. 1395l(a)(1))
3 is amended—

4 (i) by striking “and (DD)” and in-
5 serting “(DD)”; and

6 (ii) by inserting before the semicolon
7 at the end the following “and (EE) with
8 respect to qualifying reconstructive breast
9 surgery services (as defined in section
10 1861(kkk)), the amount paid shall be
11 equal to the amount payable in accordance
12 with section 1834(x)”.

13 (B) PAYMENT DETERMINATION.—Section
14 1834 of the Social Security Act (42 U.S.C.
15 1395m) is amended by adding at the end the
16 following new subsection:

17 “(x) QUALIFYING RECONSTRUCTIVE BREAST SUR-
18 GERY SERVICES.—

19 “(1) IN GENERAL.—With respect to qualifying
20 reconstructive breast surgery services described in
21 section 1861(kkk)(4) for which payment is deter-
22 mined under this subsection, payment shall be made
23 in an amount equal to 100 percent of the reasonable
24 and customary amount for nipple areolar tattooing,
25 determined according to the reimbursement rates for

1 CPT codes 11920, 11921, and 11922 (or any suc-
2 cessor to such codes).

3 “(2) REASONABLE AND NECESSARY TREAT-
4 MENT.—Qualifying reconstructive breast surgery
5 services described in section 1861(kkk)(4) shall be
6 deemed to be reasonable and necessary for purposes
7 of section 1862(a)(1)(A).

8 “(3) PHYSICIAN EXTENDER.—For purposes of
9 this subsection and section 1861(kkk)(4), the term
10 ‘physician extender’ means a health care practitioner
11 who is not a physician and who is licensed or cer-
12 tified by the State in which the practitioner is fur-
13 nishing services to furnish items or services typically
14 furnished by a physician, such as a nurse practi-
15 tioner or physician assistant.

16 “(4) STATE-LICENSED TATTOO ARTIST.—For
17 purposes of this subsection and section
18 1861(kkk)(4), the term ‘State-licensed tattoo artist’
19 means an individual (as specified by the law of the
20 State in which the individual is licensed in per-
21 forming permanent body art and in which they are
22 so practicing such art) who maintains all public
23 health, safety, and welfare standards and regulations
24 set forth by the State, including all sterilization,
25 sanitation, and safety regulations for tattoo parlors

1 and salons, tattoo inks, tattoo instruments, and any
2 other related paraphernalia, as well as allowing the
3 individual to perform the procedure in the pre-
4 scribing physician’s place of business with the con-
5 sent of the physician and the patient, abiding by all
6 such standards and regulations.”.

7 (4) INCLUDING CERTAIN TATTOO ARTISTS AS
8 MEDICARE PROVIDERS FOR PURPOSES OF
9 TATTOOING OF THE NIPPLE-AREOLAR COMPLEX
10 AFTER MASTECTOMY.—Section 1866(j)(1) of the So-
11 cial Security Act (42 U.S.C. 1395cc(j)(1)) is amend-
12 ed by adding at the end the following new subpara-
13 graph:

14 “(D) INCLUDING CERTAIN TATTOO ART-
15 ISTS FOR PURPOSES OF TATTOOING OF THE
16 NIPPLE-AREOLAR COMPLEX AFTER MASTEC-
17 TOMY.—For purposes of this section, the term
18 ‘supplier’ shall include a State-licensed tattoo
19 artist (as defined in section 1834(x)), but only
20 with respect to the tattooing of the nipple-
21 areolar complex pursuant to or as part of re-
22 constructive surgery following a medically nec-
23 essary mastectomy and if such tattooing is pre-
24 scribed by a physician.”.

1 (5) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply with respect to items
3 and services furnished on or after January 1 of the
4 first year beginning after the date of the enactment
5 of this Act.

6 (c) MEDICAID COVERAGE.—

7 (1) IN GENERAL.—Section 1905(a) of the So-
8 cial Security Act (42 U.S.C. 1396d(a)) is amend-
9 ed—

10 (A) by redesignating paragraph (30) as
11 paragraph (31);

12 (B) in paragraph (29), by striking at the
13 end “and”;

14 (C) by inserting after paragraph (29) the
15 following new paragraph:

16 “(30) qualifying reconstructive breast surgery
17 services (as defined in section 1861(kkk)); and”;

18 (D) by adding at the end of the flush mat-
19 ter following paragraph (31), as redesignated
20 by subparagraph (A), the following new sen-
21 tence: “For purposes of paragraph (30), quali-
22 fying reconstructive breast surgery services de-
23 scribed in section 1861(kkk)(4) shall be deemed
24 to be medically reasonable and necessary.”.

25 (2) EFFECTIVE DATE.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the amendments made by this sec-
3 tion shall take effect with respect to medical as-
4 sistance provided on or after January 1 of the
5 first year beginning after the date of the enact-
6 ment of this Act.

7 (B) EXCEPTION FOR STATE LEGISLA-
8 TION.—In the case of a State plan under title
9 XIX of the Social Security Act (42 U.S.C. 1396
10 et seq.) that the Secretary of Health and
11 Human Services determines requires State leg-
12 islation in order for the respective plan to meet
13 any requirement imposed by the amendments
14 made by this section, the respective plan shall
15 not be regarded as failing to comply with the
16 requirements of such title solely on the basis of
17 its failure to meet such an additional require-
18 ment before the first day of the first calendar
19 quarter beginning after the close of the first
20 regular session of the State legislature that be-
21 gins after the date of the enactment of this Act.
22 For purposes of the previous sentence, in the
23 case of a State that has a 2-year legislative ses-
24 sion, each year of the session shall be consid-

1 ered to be a separate regular session of the
2 State legislature.

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