

116TH CONGRESS
1ST SESSION

S. 1481

To amend title XXVII of the Public Health Service Act to provide for a special enrollment period for pregnant women, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2019

Mr. BROWN (for himself, Ms. SMITH, Mrs. GILLIBRAND, Mr. MARKEY, Ms. KLOBUCHAR, Mr. TESTER, Ms. HASSAN, Mr. BLUMENTHAL, Ms. HARRIS, Mr. CASEY, Mr. WHITEHOUSE, Mr. BOOKER, Mr. MERKLEY, Mr. PETERS, Mr. KING, Ms. ROSEN, Mr. LEAHY, Ms. CORTEZ MASTO, Ms. BALDWIN, Mr. JONES, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XXVII of the Public Health Service Act to provide for a special enrollment period for pregnant women, 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 the “Healthy Maternity and
5 Obstetric Medicine Act” or the “Healthy MOM Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Pregnancy is a significant life event for mil-
2 lions of women in the United States each year.

3 (2) For more than 30 years, our Nation,
4 through the Medicaid program, has recognized that
5 pregnant women need immediate access to afford-
6 able care, and has allowed women who meet income-
7 eligibility requirements to enroll in Medicaid cov-
8 erage when they become pregnant.

9 (3) Congress recognized the central importance
10 of maternity coverage by classifying maternity and
11 newborn care as one of the ten essential health bene-
12 fits that must now be covered on most individual
13 and small group health insurance plans under sec-
14 tion 1302(b)(1) of the Patient Protection and Af-
15 fordable Care Act (42 U.S.C. 18022(b)(1)).

16 (4) Congress has also recognized the significant
17 challenge of maternal mortality and the need to
18 eliminate disparities in maternal health outcomes for
19 pregnancy-related and pregnancy-associated deaths,
20 and to improve health outcomes for both mothers
21 and babies through passage of the Preventing Ma-
22 ternal Deaths Act of 2018 (Public Law 115–344).

23 (5) Access to comprehensive maternity coverage
24 allows women to access important pregnancy-related
25 care, which is demonstrated to improve health out-

1 comes for women and newborns and reduce financial
2 costs for both consumers and insurers.

3 (6) Uninsured women, women with grand-
4 fathered and transitional health plans, self-funded
5 student health plans, and catastrophic and high-de-
6 ductible health plans may lack access to comprehen-
7 sive and affordable maternity coverage.

8 (7) Employer health plans that exclude depend-
9 ent daughters from maternity coverage leave young
10 women without coverage for their pregnancy, even
11 though Federal law has long held that treating preg-
12 nancy differently than other conditions is sex-based
13 discrimination.

14 (8) A special enrollment period is especially im-
15 portant for young adults, who are at high risk for
16 unintended pregnancies, yet young adults are fre-
17 quently enrolled in catastrophic coverage, which
18 often has fewer benefits, more restrictions, and high-
19 er deductibles.

20 (9) This coverage would be an equalizer for
21 communities of color. The maternal mortality rate
22 varies drastically by race and ethnicity, and where a
23 woman lives. The rising maternal mortality rate in
24 the United States is driven predominantly by the
25 disproportionately high African-American maternal

1 mortality rate, which is four times more than the
2 rate for White women.

3 (10) According to the Centers for Disease Con-
4 trol and Prevention, about 700 women die each year
5 in the United States from pregnancy-related com-
6 plications. Black and American Indian/Alaska Native
7 women are about three times more likely to die from
8 a pregnancy-related cause than White women.

9 (11) Data demonstrates that 3 in 5 pregnancy-
10 related deaths could be prevented. Improving access
11 to care is one way to help prevent deaths, regardless
12 of race or ethnicity.

13 (12) Timely maternity care improves the health
14 of pregnant women, as well as birth outcomes and
15 the health of babies throughout their lifetimes. Preg-
16 nancy-related maternal mortality is three to four
17 times higher among women who receive no maternity
18 care compared to women who do. Regular maternity
19 care can detect or mitigate serious pregnancy-related
20 health complications, including preeclampsia, pla-
21 cental abruption, complications from diabetes, com-
22 plications from heart disease, and Graves' disease,
23 all of which can result in morbidity or mortality for
24 the mother or newborn.

1 (13) The Centers for Disease Control and Pre-
2 vention reports that more than half of all maternal
3 deaths occur at delivery or in the first postpartum
4 year, whereas just more than one-third of preg-
5 nancy-related or pregnancy-associated deaths occur
6 while a person is still pregnant. Yet, for women eligi-
7 ble for the Medicaid program on the basis of preg-
8 nancy, such Medicaid coverage lapses at the end of
9 the month on which the 60th postpartum day lands.

10 (14) Timely maternity care and adequate
11 postpartum care can reduce short- and long-term
12 health care costs. If a woman does not have access
13 to affordable maternity care during her pregnancy,
14 and she or her newborn experiences pregnancy com-
15 plications that result in health problems after birth,
16 their insurer may end up paying much higher costs
17 than if the insurer had covered the woman's mater-
18 nity care during her pregnancy. Intensive maternity
19 care can reduce hospital and neonatal intensive care
20 unit admissions among infants, resulting in cost sav-
21 ings of \$1,768 to \$5,560 per birth. For women with
22 high-risk pregnancies, intensive maternity care saves
23 \$1.37 for every \$1 invested in maternity care.

24 (b) PURPOSE.—The purpose of this Act is to protect
25 the health of women and newborns by ensuring that all

1 women eligible for coverage through the Exchanges estab-
 2 lished under title I of the Patient Protection and Afford-
 3 able Care Act (Public Law 111–148) and women eligible
 4 for other individual or group health plan coverage can ac-
 5 cess affordable health coverage during their pregnancy.

6 **SEC. 3. PROVIDING FOR A SPECIAL ENROLLMENT PERIOD**
 7 **FOR PREGNANT INDIVIDUALS.**

8 (a) PUBLIC HEALTH SERVICE ACT.—Section
 9 2702(b)(2) of the Public Health Service Act (42 U.S.C.
 10 300gg–1(b)(2)) is amended by inserting “including a spe-
 11 cial enrollment period for pregnant individuals, beginning
 12 on the date on which the pregnancy is reported to the
 13 health insurance issuer” before the period at the end.

14 (b) PATIENT PROTECTION AND AFFORDABLE CARE
 15 ACT.—Section 1311(c)(6) of the Patient Protection and
 16 Affordable Care Act (42 U.S.C. 18031(c)(6)) is amend-
 17 ed—

18 (1) in subparagraph (C), by striking “and” at
 19 the end;

20 (2) by redesignating subparagraph (D) as sub-
 21 paragraph (E); and

22 (3) by inserting after subparagraph (C) the fol-
 23 lowing new subparagraph:

24 “(D) a special enrollment period for preg-
 25 nant individuals, beginning on the date on

1 which the pregnancy is reported to the Ex-
2 change; and”.

3 (c) SPECIAL ENROLLMENT PERIODS.—

4 (1) INTERNAL REVENUE CODE.—Section
5 9801(f) of the Internal Revenue Code of 1986 (26
6 U.S.C. 9801(f)) is amended by adding at the end
7 the following new paragraph:

8 “(4) FOR PREGNANT INDIVIDUALS.—

9 “(A) A group health plan shall permit an
10 employee who is eligible, but not enrolled, for
11 coverage under the terms of the plan (or a de-
12 pendent of such an employee if the dependent
13 is eligible, but not enrolled, for coverage under
14 such terms) to enroll for coverage under the
15 terms of the plan upon pregnancy, with the spe-
16 cial enrollment period beginning on the date on
17 which the pregnancy is reported to the group
18 health plan or the pregnancy is confirmed by a
19 health care provider.

20 “(B) The Secretary shall promulgate regu-
21 lations with respect to the special enrollment
22 period under subparagraph (A), including es-
23 tablishing a time period for pregnant individ-
24 uals to enroll in coverage and effective date of
25 such coverage.”.

1 (2) ERISA.—Section 701(f) of the Employee
2 Retirement Income Security Act of 1974 (29 U.S.C.
3 1181(f)) is amended by adding at the end the fol-
4 lowing:

5 “(4) FOR PREGNANT INDIVIDUALS.—

6 “(A) A group health plan or health insur-
7 ance issuer in connection with a group health
8 plan shall permit an employee who is eligible,
9 but not enrolled, for coverage under the terms
10 of the plan (or a dependent of such an employee
11 if the dependent is eligible, but not enrolled, for
12 coverage under such terms) to enroll for cov-
13 erage under the terms of the plan upon preg-
14 nancy, with the special enrollment period begin-
15 ning on the date on which the pregnancy is re-
16 ported to the group health plan or health insur-
17 ance issuer or the pregnancy is confirmed by a
18 health care provider.

19 “(B) The Secretary shall promulgate regu-
20 lations with respect to the special enrollment
21 period under subparagraph (A), including es-
22 tablishing a time period for pregnant individ-
23 uals to enroll in coverage and effective date of
24 such coverage.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to plan years begin-
 3 ning after the 2019 plan year.

4 **SEC. 4. COVERAGE OF MATERNITY CARE FOR DEPENDENT**
 5 **CHILDREN.**

6 Section 2719A of the Public Health Service Act (42
 7 U.S.C. 300gg–19a) is amended by adding at the end the
 8 following:

9 “(e) COVERAGE OF MATERNITY CARE.—A group
 10 health plan, or health insurance issuer offering group or
 11 individual health insurance coverage, that provides cov-
 12 erage for dependents shall ensure that such plan or cov-
 13 erage includes coverage for maternity care associated with
 14 pregnancy, childbirth, and postpartum care for all partici-
 15 pants, beneficiaries, or enrollees, including dependents, in-
 16 cluding coverage of labor and delivery. Such coverage shall
 17 be provided to all pregnant dependents regardless of age.”.

18 **SEC. 5. FEDERAL EMPLOYEE HEALTH BENEFIT PLANS.**

19 (a) COVERAGE OF PREGNANCY.—

20 (1) IN GENERAL.—The Director of the Office of
 21 Personnel Management shall issue such regulations
 22 as are necessary to ensure that pregnancy is consid-
 23 ered a change in family status and a qualifying life
 24 event for an individual who is eligible to enroll, but

1 is not enrolled, in a health benefit plan under chap-
 2 ter 89 title 5, United States Code.

3 (2) EFFECTIVE DATE.—The requirement in
 4 paragraph (1) shall apply with respect to any con-
 5 tract entered into under section 8902 of such title
 6 beginning 12 months after the date of enactment of
 7 this Act.

8 (b) DESIGNATING CERTAIN FEHBP-RELATED
 9 SERVICES AS EXCEPTED SERVICES UNDER THE ANTI-
 10 DEFICIENCY ACT.—

11 (1) IN GENERAL.—Section 8905 of title 5,
 12 United States Code, is amended by adding at the
 13 end the following:

14 “(i) Any services by an officer or employee under this
 15 chapter relating to enrolling individuals in a health bene-
 16 fits plan under this chapter, or changing the enrollment
 17 of an individual already so enrolled due to an event de-
 18 scribed in section 5(a)(1) of the Healthy MOM Act, shall
 19 be deemed, for purposes of section 1342 of title 31, serv-
 20 ices for emergencies involving the safety of human life or
 21 the protection of property.”.

22 (2) APPLICATION.—The amendment made by
 23 paragraph (1) shall apply to any lapse in appropria-
 24 tions beginning on or after the date of enactment of
 25 this Act.

1 **SEC. 6. CONTINUATION OF MEDICAID INCOME ELIGIBILITY**
 2 **STANDARD FOR PREGNANT INDIVIDUALS**
 3 **AND INFANTS.**

4 Section 1902(l)(2)(A) of the Social Security Act (42
 5 U.S.C. 1396a(l)(2)(A)) is amended—

6 (1) in clause (i), by striking “and not more
 7 than 185 percent”;

8 (2) in clause (ii)—

9 (A) in subclause (I), by striking “and”
 10 after the comma;

11 (B) in subclause (II), by striking the pe-
 12 riod at the end and inserting “, and”; and

13 (C) by adding at the end the following:

14 “(III) January 1, 2020, is the percentage pro-
 15 vided under clause (v).”; and

16 (3) by adding at the end the following new
 17 clause:

18 “(v) The percentage provided under clause (ii) for
 19 medical assistance provided on or after January 1, 2020,
 20 with respect to individuals described in subparagraph (A)
 21 or (B) of paragraph (1) shall not be less than—

22 “(I) the percentage specified for such individ-
 23 uals by the State in an amendment to its State plan
 24 (whether approved or not) as of January 1, 2014; or

25 “(II) if no such percentage is specified as of
 26 January 1, 2014, the percentage established for

1 such individuals under the State’s authorizing legis-
 2 lation or provided for under the State’s appropria-
 3 tions as of that date.”.

4 **SEC. 7. 12-MONTH CONTINUOUS COVERAGE FOR PREG-**
 5 **NANT AND POSTPARTUM INDIVIDUALS**
 6 **UNDER MEDICAID AND CHIP.**

7 (a) MEDICAID.—

8 (1) REQUIRED FOR ALL ELIGIBILITY PATH-
 9 WAYS.—Paragraph (5) of section 1902(e) of the So-
 10 cial Security Act (42 U.S.C. 1396a(e)) is amended
 11 to read as follows:

12 “(5) Any individual who is eligible for medical assist-
 13 ance under the State plan or a waiver of such plan and
 14 who is, or who while so eligible becomes, pregnant, shall
 15 continue to be eligible under the plan or waiver for medical
 16 assistance that provides at least essential health benefits
 17 as described in section 1302(b) of the Patient Protection
 18 and Affordable Care Act, through the end of the month
 19 in which the 1-year period (beginning on the last day of
 20 her pregnancy) ends, regardless of the basis for the indi-
 21 vidual’s eligibility for medical assistance, including if the
 22 individual’s eligibility for medical assistance is on the basis
 23 of being pregnant.”.

(2) CONFORMING AMENDMENTS.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) in section 1902—

(i) in subsection (a)(10), in the matter following subparagraph (G) by striking “(VII) the medical assistance” and all that follows through “complicate pregnancy,”;

(ii) in subsection (e)(6), by striking “60-day” and inserting “1-year”; and

(iii) in subsection (l)(1)(A), by striking “60-day” and inserting “1-year”;

(B) in section 1903(v)(4)(A)(i), by striking “60-day” and inserting “1-year”; and

(C) in section 1905(a), in the 4th sentence in the matter following paragraph (30), by striking “60-day” and inserting “1-year”.

(b) CHIP.—

(1) IN GENERAL.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) by redesignating subparagraphs (H) through (S) as subparagraphs (I) through (T), respectively; and

1 (B) by inserting after subparagraph (G),
 2 the following:

3 “(H) Section 1902(e)(5) (requiring 12-
 4 month continuous coverage for pregnant indi-
 5 viduals).”.

6 (2) CONFORMING AMENDMENTS.—Subsections
 7 (d)(2)(A) and (f)(2) of section 2112 of the Social
 8 Security Act (42 U.S.C. 1397ll) are each amended
 9 by striking “60-day” and inserting “1-year”.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Subject to paragraph (2),
 12 the amendments made by this section shall take ef-
 13 fect on the 1st day of the 1st calendar quarter that
 14 begins on or after the date that is 1 year after the
 15 date of enactment of this Act.

16 (2) EXCEPTION FOR STATE LEGISLATION.—In
 17 the case of a State plan under title XIX of the So-
 18 cial Security Act or a State child health plan under
 19 title XXI of such Act that the Secretary of Health
 20 and Human Services determines requires State legis-
 21 lation in order for the respective plan to meet any
 22 requirement imposed by amendments made by this
 23 section, the respective plan shall not be regarded as
 24 failing to comply with the requirements of such title
 25 solely on the basis of its failure to meet such an ad-

1 ditional requirement before the first day of the first
2 calendar quarter beginning after the close of the
3 first regular session of the State legislature that be-
4 gins after the date of enactment of this Act. For
5 purposes of the previous sentence, in the case of a
6 State that has a 2-year legislative session, each year
7 of the session shall be considered to be a separate
8 regular session of the State legislature.

9 **SEC. 8. RELATIONSHIP TO OTHER LAWS.**

10 Nothing in this Act (or an amendment made by this
11 Act) shall be construed to invalidate or limit the remedies,
12 rights, and procedures of any Federal law or the law of
13 any State or political subdivision of any State or jurisdic-
14 tion that provides greater or equal protection for enrollees
15 in a group health plan or group or individual health insur-
16 ance offered by a health insurance issuer.

○