

116TH CONGRESS  
1ST SESSION

# S. 562

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2019

Ms. DUCKWORTH (for herself, Ms. MURKOWSKI, Ms. KLOBUCHAR, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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

1 States, many of whom experience unreconstructed  
2 breast loss.

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

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

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

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

18 (6) The results of breast reconstruction surgery  
19 can vary and, as with any surgical procedure, there  
20 are inherent risks associated with such surgery. Ad-  
21 ditionally, reconstruction of the breast using im-  
22 plants requires lifelong follow up to ensure the  
23 health of the patient.

24 (7) While the number of women choosing to un-  
25 dergo surgical breast reconstruction continues to in-

1 crease, many women continue to lack the viable op-  
2 tion of custom fabricated prosthetic breasts to re-  
3 store the lost breast.

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

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

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

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

1 medically necessary'. Medicare does provide reim-  
2 bursement, however, for more costly surgical breast  
3 reconstruction.

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

9 (13) The Department of Veterans Affairs does  
10 provide the option of a custom fabricated prosthetic  
11 breast for women post-mastectomy.

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

15 **SEC. 2. COVERAGE.**

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

18 (1) by adding “and” after the semicolon at the  
19 end;

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

21 (3) by inserting after subparagraph (A) the fol-  
22 lowing new subparagraph:

23 “(B) custom fabricated breast prostheses fol-  
24 lowing surgical removal of the breast, including re-  
25 placement of such prostheses;”.

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

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

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