

117TH CONGRESS
1ST SESSION

S. 3239

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2021

Mr. BROWN (for himself, Mr. KING, Ms. BALDWIN, Mr. CASEY, Ms. SMITH, Mr. BLUMENTHAL, Mr. VAN HOLLEN, Mr. MERKLEY, Mr. WHITEHOUSE, Ms. CORTEZ MASTO, Mr. MARKEY, Mr. Kaine, Ms. KLOBUCHAR, Mr. BOOKER, and Ms. ROSEN) 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 persons, 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”.

1 **SEC. 2. PROVIDING FOR A SPECIAL ENROLLMENT PERIOD**
 2 **FOR PREGNANT INDIVIDUALS.**

3 (a) PUBLIC HEALTH SERVICE ACT.—Section
 4 2702(b)(2) of the Public Health Service Act (42 U.S.C.
 5 300gg–1(b)(2)) is amended by inserting “including a spe-
 6 cial enrollment period for pregnant individuals, beginning
 7 on the date on which the pregnancy is reported to the
 8 health insurance issuer” before the period at the end.

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

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

15 (2) by redesignating subparagraph (D) as sub-
 16 paragraph (E); and

17 (3) by inserting after subparagraph (C) the fol-
 18 lowing new subparagraph:

19 “(D) a special enrollment period for preg-
 20 nant individuals, beginning on the date on
 21 which the pregnancy is reported to the Ex-
 22 change; and”.

23 (c) SPECIAL ENROLLMENT PERIODS.—

24 (1) INTERNAL REVENUE CODE.—Section
 25 9801(f) of the Internal Revenue Code of 1986 (26

1 U.S.C. 9801(f) is amended by adding at the end
2 the following new paragraph:

3 “(4) FOR PREGNANT INDIVIDUALS.—

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

15 “(B) REGULATIONS.—The Secretary shall
16 promulgate regulations with respect to the spe-
17 cial enrollment period under subparagraph (A),
18 including establishing a time period for preg-
19 nant individuals to enroll in coverage and effec-
20 tive date of such coverage.”.

21 (2) ERISA.—Section 701(f) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1181(f)) is amended by adding at the end the fol-
24 lowing:

25 “(4) FOR PREGNANT INDIVIDUALS.—

1 “(A) IN GENERAL.—A group health plan
2 or health insurance issuer in connection with a
3 group health plan shall permit an employee who
4 is eligible, but not enrolled, for coverage under
5 the terms of the plan (or a dependent of such
6 an employee if the dependent is eligible, but not
7 enrolled, for coverage under such terms) to en-
8 roll for coverage under the terms of the plan
9 upon pregnancy, with the special enrollment pe-
10 riod beginning on the date on which the preg-
11 nancy is reported to the group health plan or
12 health insurance issuer or the pregnancy is con-
13 firmed by a health care provider.

14 “(B) REGULATIONS.—The Secretary shall
15 promulgate regulations with respect to the spe-
16 cial enrollment period under subparagraph (A),
17 including establishing a time period for preg-
18 nant individuals to enroll in coverage and effec-
19 tive date of such coverage.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to plan years begin-
22 ning after the 2021 plan year.

1 **SEC. 3. COVERAGE OF MATERNITY CARE FOR DEPENDENT**
2 **CHILDREN.**

3 Section 2719A of the Public Health Service Act (42
4 U.S.C. 300gg–19a) is amended—

5 (1) in subsection (e), by inserting “(other than
6 subsection (f))” after “this section”; and

7 (2) by adding at the end the following:

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

17 **SEC. 4. FEDERAL EMPLOYEE HEALTH BENEFIT PLANS.**

18 (a) **COVERAGE OF PREGNANCY.**—The Director of the
19 Office of Personnel Management shall issue such regula-
20 tions as are necessary to ensure that pregnancy is consid-
21 ered a change in family status and a qualifying life event
22 for an individual who is eligible to enroll, but is not en-
23 rolled, in a health benefit plan under chapter 89 of title
24 5, United States Code.

25 (b) **EFFECTIVE DATE.**—The requirement in sub-
26 section (a) shall apply with respect to any contract entered

1 into under section 8902 of such title beginning 12 months
2 after the date of enactment of this Act.

3 **SEC. 5. CONTINUATION OF MEDICAID INCOME ELIGIBILITY**
4 **STANDARD FOR PREGNANT INDIVIDUALS**
5 **AND INFANTS.**

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

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

10 (2) in clause (ii)—

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

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

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

16 “(III) January 1, 2022, is the percentage pro-
17 vided under clause (v).”; and

18 (3) by adding at the end the following new
19 clause:

20 “(v) The percentage provided under clause (ii) for
21 medical assistance provided on or after January 1, 2022,
22 with respect to individuals described in subparagraph (A)
23 or (B) of paragraph (1) shall not be less than—

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

4 “(II) if no such percentage is specified as of
5 January 1, 2014, the percentage established for
6 such individuals under the State’s authorizing legis-
7 lation or provided for under the State’s appropria-
8 tions as of that date.”.

9 **SEC. 6. REQUIRING AND MAKING PERMANENT 12-MONTH**
10 **CONTINUOUS COVERAGE FOR PREGNANT**
11 **AND POSTPARTUM INDIVIDUALS UNDER**
12 **MEDICAID AND CHIP.**

13 (a) **MEDICAID.**—Section 1902 of the Social Security
14 Act (42 U.S.C. 1396a) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (86), by striking “and”
17 at the end;

18 (B) in paragraph (87), by striking the pe-
19 riod at the end and inserting “; and”; and

20 (C) by inserting after paragraph (87) the
21 following new paragraph:

22 “(88) provide that the State plan is in compli-
23 ance with subsection (e)(16).”; and

1 (2) in subsection (e)(16), as added by section
2 9812 of the American Rescue Plan Act of 2021
3 (Public Law 117–2)—

4 (A) in subparagraph (A), by striking “At
5 the option of the State, the State plan (or waiv-
6 er of such State plan) may provide” and insert-
7 ing “A State plan (or waiver of such State
8 plan) shall provide”;

9 (B) in subparagraph (B), in the matter
10 preceding clause (i), by striking “by a State
11 making an election under this paragraph” and
12 inserting “under a State plan (or a waiver of
13 such State plan)”; and

14 (C) by striking subparagraph (C).

15 (b) CHIP.—

16 (1) IN GENERAL.—Section 2107(e)(1)(J) of the
17 Social Security Act (42 U.S.C. 1397gg(e)(1)(J)), as
18 inserted by section 9822 of the American Rescue
19 Plan Act of 2021 (Public Law 117–2), is amended
20 to read as follows:

21 “(J) Paragraphs (5) and (16) of section
22 1902(e) (relating to the requirement to provide
23 medical assistance under the State plan or
24 waiver consisting of full benefits during preg-
25 nancy and throughout the 12-month

1 postpartum period under title XIX) such that
2 the provision of assistance under the State child
3 health plan or waiver for targeted low-income
4 children or targeted low-income pregnant indi-
5 viduals during pregnancy and the 12-month
6 postpartum period shall be required and shall
7 include coverage of all items or services pro-
8 vided to a targeted low-income child or targeted
9 low-income pregnant individual (as applicable)
10 under the State child health plan or waiver).”.

11 (2) CONFORMING.—Section 2112(d)(2)(A) of
12 the Social Security Act (42 U.S.C. 1397ll(d)(2)(A)),
13 as inserted by section 9822 of the American Rescue
14 Plan Act of 2021 (Public Law 117–2), is amended
15 by striking “the month in which the 60-day period”
16 and all that follows through “pursuant to section
17 2107(e)(1),”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 9812(b) of the American Rescue
20 Plan Act of 2021 (Public Law 117–2) is amended
21 to read as follows:

22 “(b) EFFECTIVE DATE.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 the amendment made by subsection (a) shall apply
25 with respect to services furnished on or after the 1st

1 day of the 1st fiscal year quarter that begins one
2 year after the date of the enactment of this Act.

3 “(2) EXCEPTION FOR STATE LEGISLATION.—In
4 the case of a State plan under title XIX of the So-
5 cial Security Act that the Secretary of Health and
6 Human Services determines requires State legisla-
7 tion in order for the respective plan to meet any re-
8 quirement imposed by amendments made by this
9 section, the plan shall not be regarded as failing to
10 comply with the requirements of such title solely on
11 the basis of its failure to meet such an additional re-
12 quirement before the first day of the first fiscal year
13 quarter beginning after the close of the first regular
14 session of the State legislature that begins after the
15 date of enactment of this Act. For purposes of the
16 previous sentence, in the case of a State that has a
17 2-year legislative session, each year of the session
18 shall be considered to be a separate regular session
19 of the State legislature.”

20 (2) Section 9822(b) of the American Rescue
21 Plan Act of 2021 (Public Law 117–2) is amended
22 to read as follows:

23 “(b) EFFECTIVE DATE.—

24 “(1) IN GENERAL.—Subject to paragraph (2),
25 the amendments made by subsection (a), shall apply

1 with respect to services furnished on or after the 1st
2 day of the 1st fiscal year quarter that begins one
3 year after the date of the enactment of this Act.

4 “(2) EXCEPTION FOR STATE LEGISLATION.—In
5 the case of a State child health plan under title XXI
6 of the Social Security Act that the Secretary of
7 Health and Human Services determines requires
8 State legislation in order for the plan to meet any
9 requirement imposed by amendments made by this
10 section, the respective plan shall not be regarded as
11 failing to comply with the requirements of such title
12 solely on the basis of its failure to meet such an ad-
13 ditional requirement before the first day of the first
14 fiscal year quarter beginning after the close of the
15 first regular session of the State legislature that be-
16 gins after the date of enactment of this Act. For
17 purposes of the previous sentence, in the case of a
18 State that has a 2-year legislative session, each year
19 of the session shall be considered to be a separate
20 regular session of the State legislature.”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 subsections (a) and (c)(1) shall take effect as if included
23 in the enactment of section 9812 of the American Rescue
24 Plan Act of 2021 (Public Law 117–2). The amendments

1 made by subsections (b) and (c)(2) shall take effect as
2 if included in the enactment of section 9822 of such Act.

3 **SEC. 7. RELATIONSHIP TO OTHER LAWS.**

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

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