

117TH CONGRESS
1ST SESSION

S. 2352

To require health insurance coverage for the treatment of infertility.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2021

Mr. BOOKER (for himself, Mr. MENENDEZ, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require health insurance coverage for the treatment of infertility.

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 “Access to Infertility
5 Treatment and Care Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Infertility is a medical disease recognized by
9 the World Health Organization, the American Soci-
10 ety for Reproductive Medicine, and the American

1 Medical Association that affects men and women
2 equally.

3 (2) According to the Centers for Disease Con-
4 trol and Prevention, 1 in 8 couples have difficulty
5 getting pregnant or sustaining a pregnancy.

6 (3) Infertility affects a broad spectrum of pro-
7 spective parents. No matter what race, religion, sex-
8 ual orientation, or economic status one is, infertility
9 does not discriminate.

10 (4) According to the Centers for Disease Con-
11 trol and Prevention, 11 percent of women in the
12 United States between the ages of 15 and 44 have
13 difficulty getting pregnant or staying pregnant.
14 Similarly, 9 percent of men in the United States be-
15 tween the ages of 15 and 44 experience infertility.

16 (5) Infertility disproportionately affects individ-
17 uals with particular health complications. For cancer
18 patients and others who must undergo treatments
19 such as chemotherapy, radiation therapy, hormone
20 therapy, or surgery that are likely to harm the re-
21 productive system and organs, fertility preservation
22 becomes necessary.

23 (6) Leading causes of infertility include chronic
24 conditions and diseases of the endocrine or metabolic
25 systems, such as primary ovarian insufficiency, poly-

1 cystic ovarian syndrome, endometriosis, thyroid dis-
2 orders, menstrual cycle defects, autoimmune dis-
3 orders, hormonal imbalances, testicular disorders,
4 and urological health issues. Other causes include
5 structural problems or blockages within the repro-
6 ductive system, exposure to infectious diseases, occu-
7 pational or environmental hazards, or genetic influ-
8 ences.

9 (7) Recent improvements in therapy and
10 cryopreservation make pregnancy possible for more
11 people than in past years.

12 (8) Like all other diseases, infertility and its
13 treatments should be covered by health insurance.

14 (9) A 2017 national survey of employer-spon-
15 sored health plans found that 44 percent of employ-
16 ers with at least 500 employees did not cover infer-
17 tility services, and 25 percent of companies with
18 20,000 or more employees did not cover infertility
19 services.

20 (10) Coverage for infertility services under
21 State Medicaid programs is limited. The Medicaid
22 programs of only 5 States provide diagnostic testing
23 for women and men in all of their program eligibility
24 pathways; the Medicaid program of only one State
25 provides coverage for certain medications for women

1 experiencing infertility; and no State Medicaid pro-
 2 grams cover intrauterine insemination or in vitro
 3 fertilization.

4 (11) States that do not require private insur-
 5 ance coverage of assisted reproductive technology
 6 have higher rates of multiple births.

7 (12) The ability to have a family should not be
 8 denied to anyone on account of a lack of insurance
 9 coverage for medically necessary treatment.

10 **SEC. 3. STANDARDS RELATING TO BENEFITS FOR TREAT-**
 11 **MENT OF INFERTILITY AND PREVENTION OF**
 12 **IATROGENIC INFERTILITY.**

13 (a) IN GENERAL.—Part A of title XXVII of the Pub-
 14 lic Health Service Act (42 U.S.C. 300gg et seq.) is amend-
 15 ed by inserting after section 2729 the following:

16 **“SEC. 2729A. STANDARDS RELATING TO BENEFITS FOR**
 17 **TREATMENT OF INFERTILITY AND PREVEN-**
 18 **TION OF IATROGENIC INFERTILITY.**

19 “(a) IN GENERAL.—A group health plan or a health
 20 insurance issuer offering group or individual health insur-
 21 ance coverage shall ensure that such plan or coverage pro-
 22 vides coverage for—

23 “(1) the treatment of infertility, including non-
 24 experimental assisted reproductive technology proce-

1 dures, if such plan or coverage provides coverage for
2 obstetrical services; and

3 “(2) standard fertility preservation services
4 when a medically necessary treatment may directly
5 or indirectly cause iatrogenic infertility.

6 “(b) DEFINITIONS.—In this section:

7 “(1) the term ‘assisted reproductive technology’
8 means treatments or procedures that involve the
9 handling of human egg, sperm, and embryo outside
10 of the body with the intent of facilitating a preg-
11 nancy, including in vitro fertilization, egg, embryo,
12 or sperm cryopreservation, egg or embryo donation,
13 and gestational surrogacy;

14 “(2) the term ‘infertility’ means a disease, char-
15 acterized by the failure to establish a clinical preg-
16 nancy—

17 “(A) after 12 months of regular, unpro-
18 tected sexual intercourse; or

19 “(B) due to a person’s incapacity for re-
20 production either as an individual or with his or
21 her partner, which may be determined after a
22 period of less than 12 months of regular, un-
23 protected sexual intercourse, or based on med-
24 ical, sexual and reproductive history, age, phys-
25 ical findings, or diagnostic testing; and

1 “(3) the term ‘iatrogenic infertility’ means an
 2 impairment of fertility due to surgery, radiation,
 3 chemotherapy, or other medical treatment.

4 “(c) REQUIRED COVERAGE.—

5 “(1) COVERAGE FOR INFERTILITY.—Subject to
 6 paragraph (3), a group health plan and a health in-
 7 surance issuer offering group or individual health in-
 8 surance coverage that includes coverage for obstet-
 9 rical services shall provide coverage for treatment of
 10 infertility determined appropriate by the treating
 11 physician, including, as appropriate, ovulation induc-
 12 tion, egg retrieval, sperm retrieval, artificial insemi-
 13 nation, in vitro fertilization, genetic screening,
 14 intracytoplasmic sperm injection, and any other non-
 15 experimental treatment, as determined by the Sec-
 16 retary in consultation with appropriate professional
 17 and patient organizations such as the American So-
 18 ciety for Reproductive Medicine, RESOLVE: The
 19 National Infertility Association, and the American
 20 College of Obstetricians and Gynecologists.

21 “(2) COVERAGE FOR IATROGENIC INFER-
 22 TILITY.—A group health plan and a health insur-
 23 ance issuer offering group or individual health insur-
 24 ance coverage shall provide coverage of fertility pres-
 25 ervation services for individuals who undergo medi-

1 cally necessary treatment that may cause iatrogenic
 2 infertility, as determined by the treating physician,
 3 including cryopreservation of gametes and other pro-
 4 cedures, as determined by the Secretary, consistent
 5 with established medical practices and professional
 6 guidelines published by professional medical organi-
 7 zations, including the American Society of Clinical
 8 Oncology and the American Society for Reproductive
 9 Medicine.

10 “(3) LIMITATION ON COVERAGE OF ASSISTED
 11 REPRODUCTIVE TECHNOLOGY.—A group health plan
 12 and a health insurance issuer offering group or indi-
 13 vidual health insurance coverage shall provide cov-
 14 erage for assisted reproductive technology as re-
 15 quired under paragraph (1) if—

16 “(A) the individual is unable to bring a
 17 pregnancy to a live birth through minimally
 18 invasive infertility treatments, as determined
 19 appropriate by the treating physician, with con-
 20 sideration given to participant’s or beneficiary’s
 21 specific diagnoses or condition for which cov-
 22 erage is available under the plan or coverage;
 23 and

24 “(B) the treatment is performed at a med-
 25 ical facility that—

1 “(i) conforms to the standards of the
 2 American Society for Reproductive Medi-
 3 cine and the Society for Assisted Repro-
 4 ductive Technology; and

5 “(ii) is in compliance with any stand-
 6 ards set by an appropriate Federal agency.

7 “(d) LIMITATION.—Cost-sharing, including deducti-
 8 bles and coinsurance, or other limitations for infertility
 9 and services to prevent iatrogenic infertility may not be
 10 imposed with respect to the services required to be covered
 11 under subsection (c) to the extent that such cost-sharing
 12 exceeds the cost-sharing applied to similar services under
 13 the group health plan or health insurance coverage or such
 14 other limitations are different from limitations imposed
 15 with respect to such similar services.

16 “(e) PROHIBITIONS.—A group health plan and a
 17 health insurance issuer offering group or individual health
 18 insurance coverage may not—

19 “(1) provide incentives (monetary or otherwise)
 20 to a participant or beneficiary to encourage such
 21 participant or beneficiary not to be provided infer-
 22 tility treatments or fertility preservation services to
 23 which such participant or beneficiary is entitled
 24 under this section or to providers to induce such

1 providers not to provide such treatments to qualified
2 participants or beneficiaries;

3 “(2) prohibit a provider from discussing with a
4 participant or beneficiary infertility treatments or
5 fertility preservation technology or medical treat-
6 ment options relating to this section; or

7 “(3) penalize or otherwise reduce or limit the
8 reimbursement of a provider because such provider
9 provided infertility treatments or fertility preserva-
10 tion services to a qualified participant or beneficiary
11 in accordance with this section.

12 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed to require a participant or bene-
14 ficiary to undergo infertility treatments or fertility preser-
15 vation services.

16 “(g) NOTICE.—A group health plan and a health in-
17 surance issuer offering group or individual health insur-
18 ance coverage shall provide notice to each participant and
19 beneficiary under such plan regarding the coverage re-
20 quired by this section in accordance with regulations pro-
21 mulgated by the Secretary. Such notice shall be in writing
22 and prominently positioned in any literature or cor-
23 respondence made available or distributed by the plan or
24 issuer and shall be transmitted—

1 “(1) in the next mailing made by the plan or
2 issuer to the participant or beneficiary;

3 “(2) as part of any yearly informational packet
4 sent to the participant or beneficiary; or

5 “(3) not later than January 1, 2022,
6 whichever is earlier.

7 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—
8 Nothing in this section shall be construed to prevent a
9 group health plan or a health insurance issuer offering
10 group or individual health insurance coverage from negoti-
11 ating the level and type of reimbursement with a provider
12 for care provided in accordance with this section.”.

13 (b) CONFORMING AMENDMENT.—Section 2724(c) of
14 the Public Health Service Act (42 U.S.C. 300gg–23(c))
15 is amended by striking “section 2704” and inserting “sec-
16 tions 2704 and 2708”.

17 (c) EFFECTIVE DATES.—

18 (1) IN GENERAL.—The amendments made by
19 subsections (a) and (b) shall apply for plan years be-
20 ginning on or after the date that is 6 months after
21 the date of enactment of this Act.

22 (2) COLLECTIVE BARGAINING EXCEPTION.—

23 (A) IN GENERAL.—In the case of a group
24 health plan maintained pursuant to one or more
25 collective bargaining agreements between em-

1 ployee representatives and one or more employ-
2 ers ratified before the date of enactment of this
3 Act, the amendments made by subsection (a)
4 shall not apply to plan years beginning before
5 the later of—

6 (i) the date on which the last collec-
7 tive bargaining agreements relating to the
8 plan terminates (determined without re-
9 gard to any extension thereof agreed to
10 after the date of enactment of this Act); or

11 (ii) the date occurring 6 months after
12 the date of the enactment of this Act.

13 (B) CLARIFICATION.—For purposes of
14 subparagraph (A), any plan amendment made
15 pursuant to a collective bargaining agreement
16 relating to the plan which amends the plan sole-
17 ly to conform to any requirement added by sub-
18 section (a) shall not be treated as a termination
19 of such collective bargaining agreement.

20 **SEC. 4. FEDERAL EMPLOYEES HEALTH BENEFITS PRO-**
21 **GRAM.**

22 (a) IN GENERAL.—Section 8902 of title 5, United
23 States Code, is amended by adding at the end the fol-
24 lowing:

1 “(q)(1) In this subsection, the terms ‘infertility’ and
2 ‘iatrogenic infertility’ have the meanings given those terms
3 in section 2729A of the Public Health Service Act.

4 “(2) A contract under this chapter shall provide, in
5 a manner consistent with section 2729A of the Public
6 Health Service Act, coverage for—

7 “(A) the diagnosis and treatment of infertility,
8 including nonexperimental assisted reproductive
9 technology procedures, if that contract covers obstet-
10 rical benefits; and

11 “(B) standard fertility preservation services
12 when a medically necessary treatment may directly
13 or indirectly cause iatrogenic infertility.

14 “(3) Coverage for the diagnosis or treatment of infer-
15 tility and fertility preservation services under a health ben-
16 efits plan described in section 8903 or 8903a may not be
17 subject to any copayment or deductible greater than the
18 copayment or deductible, respectively, applicable to obstet-
19 rical benefits under the plan.

20 “(4) Subsection (m)(1) shall not, with respect to a
21 contract under this chapter, prevent the inclusion of any
22 terms that, under paragraph (2) of this subsection, are
23 required by reason of section 2729A of the Public Health
24 Service Act.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 subsection (a) shall apply with respect to—

3 (1) any contract entered into or renewed for a
 4 contract year beginning on or after the date that is
 5 180 days after the date of enactment of this Act;
 6 and

7 (2) any health benefits plan offered under a
 8 contract described in paragraph (1).

9 **SEC. 5. BENEFITS FOR TREATMENT OF INFERTILITY AND**
 10 **PREVENTION OF IATROGENIC INFERTILITY**
 11 **UNDER THE TRICARE PROGRAM.**

12 (a) IN GENERAL.—Chapter 55 of title 10, United
 13 States Code, is amended by adding at the end the fol-
 14 lowing new section:

15 **“§ 1110c. Obstetrical and infertility benefits**

16 “(a) IN GENERAL.—Any health care plan under this
 17 chapter shall provide, in a manner consistent with section
 18 2729A of the Public Health Service Act—

19 “(1) coverage for the diagnosis and treatment
 20 of infertility, including nonexperimental assisted re-
 21 productive technology procedures, if such plan covers
 22 obstetrical benefits; and

23 “(2) coverage for standard fertility preservation
 24 services when a medically necessary treatment may
 25 directly or indirectly cause iatrogenic infertility.

1 “(b) COPAYMENT.—The Secretary of Defense shall
 2 establish cost-sharing requirements for the coverage of di-
 3 agnosis and treatment of infertility and fertility preserva-
 4 tion services described in subsection (a) that are consistent
 5 with the cost-sharing requirements applicable to health
 6 plans and health insurance coverage under section
 7 2729A(d) of the Public Health Service Act.

8 “(c) REGULATIONS.—The Secretary of Defense shall
 9 prescribe any regulations necessary to carry out this sec-
 10 tion.

11 “(d) DEFINITIONS.—In this section, the terms ‘as-
 12 sisted reproductive technology’, ‘iatrogenic infertility’, and
 13 ‘infertility’ have the meanings given those terms in section
 14 2729A of the Public Health Service Act.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 at the beginning of chapter 55 of such title is amended
 17 by adding at the end the following new item:

“1110c. Obstetrical and infertility benefits.”.

18 **SEC. 6. TREATMENT OF INFERTILITY AND PREVENTION OF**
 19 **IATROGENIC INFERTILITY FOR VETERANS**
 20 **AND SPOUSES OR PARTNERS OF VETERANS.**

21 (a) IN GENERAL.—Subchapter II of chapter 17 of
 22 title 38, United States Code, is amended by adding at the
 23 end the following new section:

1 **“§ 1720K. Infertility treatment for veterans and**
 2 **spouses or partners of veterans.**

3 “(a) IN GENERAL.—The Secretary shall furnish
 4 treatment for infertility and fertility preservation services,
 5 including through the use of assisted reproductive tech-
 6 nology, to a veteran or a spouse or partner of a veteran
 7 if the veteran, and the spouse or partner of the veteran,
 8 as applicable, apply jointly for such treatment through a
 9 process prescribed by the Secretary for purposes of this
 10 section.

11 “(b) DEFINITIONS.—In this section, the terms ‘as-
 12 sisted reproductive technology’ and ‘infertility’ have the
 13 meanings given those terms in section 2729A of the Public
 14 Health Service Act.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 at the beginning of subchapter II of chapter 17 of such
 17 title is amended by inserting after the item relating to sec-
 18 tion 1720J the following new item:

“1720K. Infertility treatment for veterans and spouses or partners of vet-
 erans.”.

19 (c) REGULATIONS.—Not later than 18 months after
 20 the date of the enactment of this Act, the Secretary of
 21 Veterans Affairs shall prescribe regulations to carry out
 22 section 1720K of title 38, United States Code, as added
 23 by subsection (a).

1 **SEC. 7. REQUIREMENT FOR STATE MEDICAID PLANS TO**
 2 **PROVIDE MEDICAL ASSISTANCE FOR TREAT-**
 3 **MENT OF INFERTILITY AND PREVENTION OF**
 4 **IATROGENIC INFERTILITY.**

5 (a) IN GENERAL.—Section 1905 of the Social Secu-
 6 rity Act (42 U.S.C. 1396d) is amended—

7 (1) in subsection (a)(4)—

8 (A) by striking “; and (D)” and inserting
 9 “; (D)”;

10 (B) by striking “; and (E)” and inserting
 11 “; (E)”;

12 (C) by striking “; and (F)” and inserting
 13 “; (F)”;

14 (D) by inserting before the semicolon at
 15 the end the following: “; and (G) services and
 16 supplies to treat infertility and prevent iatro-
 17 genic infertility (as such terms are defined in
 18 section 2729A(b) of the Public Health Service
 19 Act) in accordance with subsection (jj)”;

20 (2) by adding at the end the following new sub-
 21 section:

22 “(jj) REQUIREMENTS FOR COVERAGE OF INFER-
 23 TILITY TREATMENT AND PREVENTION OF IATROGENIC
 24 INFERTILITY.—For purposes of subsection (a)(4)(G), a
 25 State shall ensure that the medical assistance provided
 26 under the State plan (or waiver of such plan) for treat-

1 ment of infertility and fertility preservation services com-
 2 plies with the requirements and limitations of section
 3 2729A(c) of the Public Health Service Act in the same
 4 manner as such requirements and limitations apply to
 5 health insurance coverage offered by a group health plan
 6 or health insurance issuer.”.

7 (b) NO COST SHARING FOR INFERTILITY TREAT-
 8 MENT.—

9 (1) IN GENERAL.—Subsections (a)(2)(D) and
 10 (b)(2)(D) of section 1916 of the Social Security Act
 11 (42 U.S.C. 1396o(a)(2)(D)) are amended by insert-
 12 ing “, services and supplies to treat infertility and
 13 provide fertility preservation services described in
 14 section 1905(a)(4)(G)” after “1905(a)(4)(C)” each
 15 place it appears.

16 (2) APPLICATION TO ALTERNATIVE COST SHAR-
 17 ING.—Section 1916A(b)(3)(B)(vii) of the Social Se-
 18 curity Act (42 U.S.C. 1396o–1(b)(3)(B)(vii)) is
 19 amended by inserting “ and services and supplies to
 20 treat infertility and provide fertility preservation de-
 21 scribed in section 1905(a)(4)(G)” before the period.

22 (c) PRESUMPTIVE ELIGIBILITY FOR INFERTILITY
 23 TREATMENT.—Section 1920C of the Social Security Act
 24 (42 U.S.C. 1396r–1c) is amended—

1 (1) in the section heading, by inserting “AND
2 INFERTILITY TREATMENT” after “FAMILY PLANNING
3 SERVICES”;

4 (2) in subsection (a)—

5 (A) by striking “State plan” and inserting
6 “A State plan”;

7 (B) by striking “1905(a)(4)(C)” and in-
8 serting “section 1905(a)(4)(C), services and
9 supplies to treat infertility and prevent iatro-
10 genic infertility described in section
11 1905(a)(4)(G),”; and

12 (C) by inserting “or in conjunction with an
13 infertility treatment service in an infertility
14 treatment setting” before the period.

15 (d) INCLUSION IN BENCHMARK COVERAGE.—Section
16 1937(b) of the Social Security Act (42 U.S.C. 1396u–
17 7(b)) is amended by adding at the end the following new
18 paragraph:

19 “(9) COVERAGE OF INFERTILITY TREATMENT
20 AND PREVENTION OF IATROGENIC INFERTILITY.—
21 Notwithstanding the previous provisions of this sec-
22 tion, a State may not provide for medical assistance
23 through enrollment of an individual with benchmark
24 coverage or benchmark-equivalent coverage under
25 this section unless such coverage includes medical

1 assistance for services and supplies to treat infer-
2 tility and provide fertility preservation described in
3 section 1905(a)(4)(G) in accordance with such sec-
4 tion.”.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall take effect on October 1, 2021.

9 (2) DELAY PERMITTED IF STATE LEGISLATION
10 REQUIRED.—In the case of a State plan approved
11 under title XIX of the Social Security Act which the
12 Secretary of Health and Human Services determines
13 requires State legislation (other than legislation ap-
14 propriating funds) in order for the plan to meet the
15 additional requirement imposed by this section, the
16 State plan shall not be regarded as failing to comply
17 with the requirements of such title solely on the
18 basis of the failure of the plan to meet such addi-
19 tional requirement before the first day of the first
20 calendar quarter beginning after the close of the
21 first regular session of the State legislature that
22 ends after the 1-year period beginning with the date
23 of the enactment of this section. For purposes of the
24 preceding sentence, in the case of a State that has
25 a 2-year legislative session, each year of the session

- 1 is deemed to be a separate regular session of the
- 2 State legislature.

