

118TH CONGRESS
1ST SESSION

S. 3069

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2023

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

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 4,000,000
8 women with a history of breast cancer in the United
9 States, many of whom experience unreconstructed
10 breast loss.

1 (2) In 2023, an estimated 297,790 women will
2 be diagnosed with invasive breast cancer that re-
3 quires surgery, with many having to undergo sur-
4 gical breast removal.

5 (3) In 2023, an estimated 43,100 women in the
6 United States are expected to die from breast can-
7 cer.

8 (4) Annually, there are more than 100,000
9 women in the United States who undergo
10 mastectomies, a surgical removal of the breast.

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

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

22 (7) While the number of women choosing to un-
23 dergo surgical breast reconstruction continues to in-
24 crease, many women continue to lack the viable op-

1 tion of custom fabricated prosthetic breasts to re-
2 store the lost breast.

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

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

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

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

1 bursement, however, for more costly surgical breast
2 reconstruction.

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

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

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

14 **SEC. 2. COVERAGE.**

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

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

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

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

22 “(B) custom fabricated breast prostheses fol-
23 lowing surgical removal of the breast, including re-
24 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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