

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5447

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 HOUSE OF REPRESENTATIVES

MAY 27, 2010

Mr. ROSS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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       “Custom Fabricated Prosthetic Breast Act of 2010”.

6       (b) **FINDINGS.**—Congress finds the following:

1           (1) There are currently 2,500,000 women in the  
2 United States living with breast cancer, many of  
3 whom suffer from unreconstructed breast loss.

4           (2) In 2009, an estimated 192,370 women were  
5 diagnosed with invasive breast cancer that required  
6 surgery, with many having to undergo surgical  
7 breast removal.

8           (3) Annually, there are more than 130,000  
9 women in the United States who undergo  
10 mastectomies, a surgical removal of the breast.

11           (4) The number of breast amputations in the  
12 United States is projected to increase due to the ris-  
13 ing incidence of breast cancer and the growing elder-  
14 ly population.

15           (5) A woman suffering from the loss of her  
16 breast may not be a candidate for surgical breast re-  
17 construction or may choose not to undergo addi-  
18 tional surgery if there were a viable, less costly, less  
19 invasive option available.

20           (6) The results of breast reconstruction surgery  
21 can vary and, as with any surgical procedure, there  
22 are inherent risks associated with such surgery. Ad-  
23 ditionally, reconstruction of the breast using im-  
24 plants can impose increased risks and costs due to  
25 the eventual need for implant replacement surgery.

1           (7) The number of women choosing to undergo  
2 surgical breast reconstruction continues to increase,  
3 as many women lack the viable option of custom fab-  
4 ricated prosthetic breasts to restore the lost breast.

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

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

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

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

1 provide reimbursement and downgrades such option  
2 to a non-custom fabricated “least costly alternative”.  
3 Medicare does provide reimbursement, however, for  
4 more costly surgical breast reconstruction.

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

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

13 **SEC. 2. COVERAGE.**

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

16 (1) by striking “(8) prosthetic devices” and in-  
17 serting “(8)(A) prosthetic devices”;

18 (2) in subparagraph (A), as added by para-  
19 graph (1), by inserting “and” after the semicolon;  
20 and

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

23 “(B) custom fabricated breast prostheses  
24 following surgical removal of the breast, includ-  
25 ing replacement 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 “eyewear described in section 1861(s)(8)” and insert-  
4 ing “eyewear described in section 1861(s)(8)(A)”.

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

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