

112TH CONGRESS  
1ST SESSION

# S. 1217

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

JUNE 16, 2011

Ms. SNOWE (for herself, Mr. KERRY, Mr. INOUE, Mr. AKAKA, and Mr. BEGICH) 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 2,500,000 women in the  
8 United States living with breast cancer, many of  
9 whom suffer from unreconstructed breast loss.

1           (2) In 2010, an estimated 207,090 women were  
2 diagnosed with invasive breast cancer that required  
3 surgery, with many having to undergo surgical  
4 breast removal.

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

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

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

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

23           (7) The number of women choosing to undergo  
24 surgical breast reconstruction continues to increase,

1 as many women lack the viable option of custom fab-  
2 ricated prosthetic breasts to restore 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 amputations.

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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