

115TH CONGRESS
2D SESSION

S. 2960

To require health insurance coverage for the treatment of infertility.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2018

Mr. BOOKER 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 uality, or economic status one is, infertility does not
9 discriminate.

10 (4) Approximately one-third of infertility is at-
11 tributed to the female partner, one-third is attrib-
12 uted to the male partner, and one-third is caused by
13 a combination of problems in both partners or is un-
14 explained.

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

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

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

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

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

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

19 (10) States that do not require insurance cov-
20 erage of assisted reproductive technology have higher
21 rates of multiple births.

22 (11) The ability to have a family should not be
23 denied to anyone on account of a lack of insurance
24 coverage for medically necessary treatment.

1 **SEC. 3. STANDARDS RELATING TO BENEFITS FOR TREAT-**
2 **MENT OF INFERTILITY AND IATROGENIC IN-**
3 **FERTILITY.**

4 (a) IN GENERAL.—Part A of title XXVII of the Pub-
5 lic Health Service Act (42 U.S.C. 300gg et seq.) is amend-
6 ed by inserting after section 2728 the following:

7 **“SEC. 2729. STANDARDS RELATING TO BENEFITS FOR**
8 **TREATMENT OF INFERTILITY AND IATRO-**
9 **GENIC INFERTILITY.**

10 “(a) IN GENERAL.—A group health plan or a health
11 insurance issuer offering group or individual health insur-
12 ance coverage shall ensure that such plan or coverage pro-
13 vides coverage for—

14 “(1) the treatment of infertility, including non-
15 experimental assisted reproductive technology proce-
16 dures, if such plan or coverage provides coverage for
17 obstetrical services; and

18 “(2) the treatment of iatrogenic infertility.

19 “(b) DEFINITIONS.—In this section:

20 “(1) the term ‘assisted reproductive technology’
21 means treatments or procedures that involve the
22 handling of human egg, sperm, and embryo outside
23 of the body with the intent of facilitating a preg-
24 nancy, including in vitro fertilization, egg or embryo
25 cryopreservation, egg or embryo donation, and gesta-
26 tional surrogacy;

1 “(2) the term ‘infertility’ means a disease, de-
2 fined by the failure to achieve a successful preg-
3 nancy after 12 months or more, or for women over
4 age 35, 6 months or more, of appropriate, timed un-
5 protected intercourse or therapeutic donor insemina-
6 tion; and

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

10 “(c) REQUIRED COVERAGE.—

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

1 National Infertility Association, and the American
2 College of Obstetricians and Gynecologists.

3 “(2) COVERAGE FOR IATROGENIC INFERTILITY.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall provide coverage for treatment of fertility preservation services for individuals who undergo medically necessary treatment that may cause iatrogenic infertility, as determined by the treating physician, including cryopreservation of gametes and other procedures, as determined by the Secretary, consistent with established medical practices and professional guidelines published by professional medical organizations, including the American Society for Clinical Oncology and the American Society for Reproductive Medicine.

17 “(3) LIMITATION ON COVERAGE OF ASSISTED REPRODUCTIVE TECHNOLOGY.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall provide coverage for assisted reproductive technology as required under paragraph (1) if—

23 “(A) the individual has been unable to
24 bring a pregnancy to a live birth through less
25 costly infertility treatments, as determined ap-

1 appropriate by the treating physician, with consid-
2 eration given to participant’s or beneficiary’s
3 specific diagnoses or condition for which cov-
4 erage is available under the plan or coverage;
5 and

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

8 “(i) conforms to the standards of the
9 American Society for Reproductive Medi-
10 cine and the Society for Assisted Repro-
11 ductive Technology; and

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

14 “(d) LIMITATION.—Cost-sharing, including deduct-
15 ibles and coinsurance, or other limitations for infertility
16 and iatrogenic infertility therapy may not be imposed with
17 respect to the services required to be covered under sub-
18 section (c) to the extent that such cost-sharing exceeds
19 the cost-sharing applied to similar services under the
20 group health plan or health insurance coverage or such
21 other limitations are different from limitations imposed
22 with respect to such similar services.

23 “(e) PROHIBITIONS.—A group health plan and a
24 health insurance issuer offering group or individual health
25 insurance coverage may not—

1 “(1) provide incentives (monetary or otherwise)
2 to a participant or beneficiary to encourage such
3 participant or beneficiary not to be provided infer-
4 tility or iatrogenic infertility treatments to which
5 such participant or beneficiary is entitled under this
6 section or to providers to induce such providers not
7 to provide such treatments to qualified participants
8 or beneficiaries;

9 “(2) prohibit a provider from discussing with a
10 participant or beneficiary infertility or iatrogenic in-
11 fertility treatment techniques or medical treatment
12 options relating to this section; or

13 “(3) penalize or otherwise reduce or limit the
14 reimbursement of a provider because such provider
15 provided infertility or iatrogenic infertility treat-
16 ments to a qualified participant or beneficiary in ac-
17 cordance with this section.

18 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to require a participant or bene-
20 ficiary to undergo infertility or iatrogenic infertility ther-
21 apy.

22 “(g) NOTICE.—A group health plan and a health in-
23 surance issuer offering group or individual health insur-
24 ance coverage shall provide notice to each participant and
25 beneficiary under such plan regarding the coverage re-

1 quired by this section in accordance with regulations pro-
2 mulgated by the Secretary. Such notice shall be in writing
3 and prominently positioned in any literature or cor-
4 respondence made available or distributed by the plan or
5 issuer and shall be transmitted—

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

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

10 “(3) not later than January 1, 2020,
11 whichever is earlier.

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

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

22 (c) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by
24 subsections (a) and (b) shall apply for plan years be-

1 ginning on or after the date that is 6 months after
2 the date of enactment of this Act.

3 (2) COLLECTIVE BARGAINING EXCEPTION.—

4 (A) IN GENERAL.—In the case of a group
5 health plan maintained pursuant to 1 or more
6 collective bargaining agreements between em-
7 ployee representatives and 1 or more employers
8 ratified before the date of enactment of this
9 Act, the amendments made by subsection (a)
10 shall not apply to plan years beginning before
11 the later of—

12 (i) the date on which the last collec-
13 tive bargaining agreements relating to the
14 plan terminates (determined without re-
15 gard to any extension thereof agreed to
16 after the date of enactment of this Act), or

17 (ii) the date occurring 6 months after
18 the date of the enactment of this Act.

19 (B) CLARIFICATION.—For purposes of
20 subparagraph (A), any plan amendment made
21 pursuant to a collective bargaining agreement
22 relating to the plan which amends the plan sole-
23 ly to conform to any requirement added by sub-
24 section (a) shall not be treated as a termination
25 of such collective bargaining agreement.

1 **SEC. 4. FEDERAL EMPLOYEES HEALTH BENEFITS PRO-**
2 **GRAM.**

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

6 “(p) COVERAGE FOR DIAGNOSIS AND TREATMENT
7 OF INFERTILITY AND IATROGENIC INFERTILITY.—

8 “(1) DEFINITIONS.—In this subsection, the
9 terms ‘infertility’ and ‘iatrogenic infertility’ have the
10 meanings given those terms in section 2729 of the
11 Public Health Service Act.

12 “(2) REQUIRED COVERAGE.—A contract under
13 this chapter shall provide, in a manner consistent
14 with section 2729 of the Public Health Service
15 Act—

16 “(A) coverage for the diagnosis and treat-
17 ment of infertility, including nonexperimental
18 assisted reproductive technology procedures, if
19 such contract covers obstetrical benefits; and

20 “(B) coverage for the diagnosis and treat-
21 ment of iatrogenic infertility.

22 “(3) COST.—Coverage for the diagnosis or
23 treatment of infertility or iatrogenic infertility under
24 a health benefits plan described in section 8903 or
25 8903a may not be subject to any copayment or de-
26 ductible greater than the copayment or deductible,

1 respectively, applicable to obstetrical benefits under
2 the plan.

3 “(4) PREEMPTION.—Subsection (m)(1) shall
4 not, with respect to a contract under this chapter,
5 prevent the inclusion of any terms that, under para-
6 graph (2) of this subsection, are required by reason
7 of section 2729 of the Public Health Service Act.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply with respect to any contract en-
10 tered into or renewed for a contract year beginning on
11 or after the date that is 180 days after the date of enact-
12 ment of this Act, and any health benefits plan offered
13 under such a contract.

14 **SEC. 5. BENEFITS FOR TREATMENT OF INFERTILITY AND**
15 **IATROGENIC INFERTILITY UNDER THE**
16 **TRICARE PROGRAM.**

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

20 **“§ 1110c. Obstetrical and infertility benefits**

21 “(a) IN GENERAL.—Any health care plan under this
22 chapter shall provide, in a manner consistent with section
23 2729 of the Public Health Service Act—

24 “(1) coverage for the diagnosis and treatment
25 of infertility, including nonexperimental assisted re-

1 productive technology procedures, if such plan covers
2 obstetrical benefits; and

3 “(2) coverage for the diagnosis and treatment
4 of iatrogenic infertility.

5 “(b) COPAYMENT.—The Secretary of Defense shall
6 establish cost-sharing requirements for the coverage of di-
7 agnosis and treatment of infertility and iatrogenic infer-
8 tility described in subsection (a) that are consistent with
9 the cost-sharing requirements applicable to health plans
10 and health insurance coverage under section 2729(d) of
11 the Public Health Service Act.

12 “(c) REGULATIONS.—The Secretary of Defense shall
13 prescribe any regulations necessary to carry out this sec-
14 tion.

15 “(d) DEFINITIONS.—In this section, the terms ‘infer-
16 tility’ and ‘iatrogenic infertility’ have the meanings given
17 those terms in section 2729 of the Public Health Service
18 Act.”.

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

“1110e. Obstetrical and infertility benefits.”.

1 **SEC. 6. TREATMENT OF INFERTILITY AND IATROGENIC IN-**
 2 **FERTILITY FOR VETERANS AND SPOUSES OR**
 3 **PARTNERS OF VETERANS.**

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

7 **“§ 1720J. Infertility treatment for veterans and**
 8 **spouses or partners of veterans.**

9 “(a) IN GENERAL.—The Secretary shall furnish
 10 treatment for infertility and iatrogenic infertility, includ-
 11 ing through the use of assisted reproductive technology,
 12 to a veteran or a spouse or partner of a veteran if the
 13 veteran, and the spouse or partner of the veteran, as appli-
 14 cable, apply jointly for such treatment and counseling
 15 through a process prescribed by the Secretary for purposes
 16 of this section.

17 “(b) INFERTILITY DEFINED.—In this section, the
 18 terms ‘infertility’ and ‘iatrogenic infertility’ have the
 19 meanings given those terms in section 2729 of the Public
 20 Health Service Act.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
 22 at the beginning of chapter 17 of such title is amended
 23 by inserting after the item relating to section 1720I the
 24 following new item:

“1720J. Infertility treatment for veterans and spouses or partners of veterans.”.

1 (c) REGULATIONS.—Not later than 18 months after
2 the date of the enactment of this Act, the Secretary of
3 Veterans Affairs shall prescribe regulations to carry out
4 section 1720J of title 38, United States Code, as added
5 by subsection (a).

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