

117TH CONGRESS  
1ST SESSION

# S. 2051

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 15, 2021

Ms. DUCKWORTH (for herself, Ms. MURKOWSKI, Mr. BROWN, and Ms. KLOBUCHAR) 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 of 2021”.

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

7 (1) There are currently more than 3,800,000  
8 women with a history of breast cancer in the United

1 States, many of whom experience unreconstructed  
2 breast loss.

3 (2) In 2021, an estimated 281,550 women will  
4 be diagnosed with invasive breast cancer that re-  
5 quires surgery, with many having to undergo sur-  
6 gical breast removal.

7 (3) In 2021, an estimated 43,600 women in the  
8 United States are expected to die from breast can-  
9 cer.

10 (4) Annually, there are more than 100,000  
11 women in the United States who undergo mastecto-  
12 mies, a surgical removal of the breast.

13 (5) The number of breast mastectomies in the  
14 United States has increased among younger women.

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

21 (7) While the number of women choosing to un-  
22 dergo surgical breast reconstruction continues to in-  
23 crease, many women continue to lack the viable op-  
24 tion of custom fabricated prosthetic breasts to re-  
25 store the lost breast.

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

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

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

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

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

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

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

12 **SEC. 2. COVERAGE.**

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

15           (1) by adding “and” after the semicolon at the  
16 end;

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

18           (3) by inserting after subparagraph (A) the fol-  
19 lowing new subparagraph:

20           “(B) custom fabricated breast prostheses fol-  
21 lowing surgical removal of the breast, including re-  
22 placement of such prostheses;”.

23           (b) CONFORMING AMENDMENT.—Section 1862(a)(7)  
24 of such Act (42 U.S.C. 1395y(a)(7)) is amended by strik-  
25 ing “1861(s)(8)” and inserting “1861(s)(8)(A)”.

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

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