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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Access to Infertility Treatment and Care Act”.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Infertility is a medical disease recognized by the World Health Organization, the American Society for Reproductive Medicine, and the American
Medical Association that affects men and women equally.

(2) According to the Centers for Disease Control and Prevention, 1 in 8 couples have difficulty getting pregnant or sustaining a pregnancy.

(3) Infertility affects a broad spectrum of prospective parents. No matter what race, religion, sexuality, or economic status one is, infertility does not discriminate.

(4) Approximately one-third of infertility is attributed to the female partner, one-third is attributed to the male partner, and one-third is caused by a combination of problems in both partners or is unexplained.

(5) Infertility disproportionately affects individuals with particular health complications. For cancer patients and others who must undergo treatments such as chemotherapy, radiation therapy, hormone therapy, or surgery that are likely to harm the reproductive system and organs, fertility preservation becomes necessary.

(6) Leading causes of infertility include chronic conditions and diseases of the endocrine or metabolic systems, such as primary ovarian insufficiency, polycystic ovarian syndrome, endometriosis, thyroid dis-
orders, menstrual cycle defects, autoimmune disorders, hormonal imbalances, testicular disorders, and urological health issues. Other causes include structural problems or blockages within the reproductive system, exposure to infectious diseases, occupational or environmental hazards, or genetic influences.

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

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

(9) A 2017 national survey of employer-sponsored health plans found that 44 percent of employers with at least 500 employees did not cover infertility services, and 25 percent of companies with 20,000 or more employees did not cover infertility services.

(10) States that do not require insurance coverage of assisted reproductive technology have higher rates of multiple births.

(11) The ability to have a family should not be denied to anyone on account of a lack of insurance coverage for medically necessary treatment.
SEC. 3. STANDARDS RELATING TO BENEFITS FOR TREATMENT OF INFERTILITY AND IATROGENIC INFERTILITY.

(a) IN GENERAL.—Part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended by inserting after section 2728 the following:

"SEC. 2729. STANDARDS RELATING TO BENEFITS FOR TREATMENT OF INFERTILITY AND IATROGENIC INFERTILITY.

(a) IN GENERAL.—A group health plan or a health insurance issuer offering group or individual health insurance coverage shall ensure that such plan or coverage provides coverage for—

(1) the treatment of infertility, including non-experimental assisted reproductive technology procedures, if such plan or coverage provides coverage for obstetrical services; and

(2) the treatment of iatrogenic infertility.

(b) DEFINITIONS.—In this section:

(1) the term ‘assisted reproductive technology’ means treatments or procedures that involve the handling of human egg, sperm, and embryo outside of the body with the intent of facilitating a pregnancy, including in vitro fertilization, egg or embryo cryopreservation, egg or embryo donation, and gestational surrogacy;
“(2) the term ‘infertility’ means a disease, defined by the failure to achieve a successful pregnancy after 12 months or more, or for women over age 35, 6 months or more, of appropriate, timed unprotected intercourse or therapeutic donor insemination; and

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

“(c) REQUIRED COVERAGE.—

“(1) COVERAGE FOR INFERTILITY.—Subject to paragraph (3), a group health plan and a health insurance issuer offering group or individual health insurance coverage that includes coverage for obstetrical services shall provide coverage for treatment of infertility determined appropriate by the treating physician, including, as appropriate, ovulation induction, egg retrieval, sperm retrieval, artificial insemination, in vitro fertilization, genetic screening, intracytoplasmic sperm injection, and any other non-experimental treatment, as determined by the Secretary in consultation with appropriate professional and patient organizations such as the American Society for Reproductive Medicine, RESOLVE: The

“(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.

“(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—

“(A) the individual has been unable to bring a pregnancy to a live birth through less costly infertility treatments, as determined ap-
propriate by the treating physician, with consider-
ation given to participant’s or beneficiary’s
specific diagnoses or condition for which cov-
erage is available under the plan or coverage;
and
“(B) the treatment is performed at a med-
ical facility that—
“(i) conforms to the standards of the
American Society for Reproductive Medi-
cine and the Society for Assisted Repro-
ductive Technology; and
“(ii) is in compliance with any stand-
ards set by an appropriate Federal agency.
“(d) LIMITATION.—Cost-sharing, including deduct-
ibles and coinsurance, or other limitations for infertility
and iatrogenic infertility therapy may not be imposed with
respect to the services required to be covered under sub-
section (e) to the extent that such cost-sharing exceeds
the cost-sharing applied to similar services under the
group health plan or health insurance coverage or such
other limitations are different from limitations imposed
with respect to such similar services.
“(e) PROHIBITIONS.—A group health plan and a
health insurance issuer offering group or individual health
insurance coverage may not—
“(1) provide incentives (monetary or otherwise) to a participant or beneficiary to encourage such participant or beneficiary not to be provided infertility or iatrogenic infertility treatments to which such participant or beneficiary is entitled under this section or to providers to induce such providers not to provide such treatments to qualified participants or beneficiaries;

“(2) prohibit a provider from discussing with a participant or beneficiary infertility or iatrogenic infertility treatment techniques or medical treatment options relating to this section; or

“(3) penalize or otherwise reduce or limit the reimbursement of a provider because such provider provided infertility or iatrogenic infertility treatments to a qualified participant or beneficiary in accordance with this section.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require a participant or beneficiary to undergo infertility or iatrogenic infertility therapy.

“(g) NOTICE.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall provide notice to each participant and beneficiary under such plan regarding the coverage re-
quired by this section in accordance with regulations pro-
mulgated by the Secretary. Such notice shall be in writing
and prominently positioned in any literature or cor-
respondence made available or distributed by the plan or
issuer and shall be transmitted—

“(1) in the next mailing made by the plan or
issuer to the participant or beneficiary;
“(2) as part of any yearly informational packet
sent to the participant or beneficiary; or
“(3) not later than January 1, 2020,

whichever is earlier.

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

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

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by
subsections (a) and (b) shall apply for plan years be-
beginning on or after the date that is 6 months after
the date of enactment of this Act.

(2) COLLECTIVE BARGAINING EXCEPTION.—

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

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

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

(B) CLARIFICATION.—For purposes of
subsection (A), any plan amendment made
pursuant to a collective bargaining agreement
relating to the plan which amends the plan sole-
ly to conform to any requirement added by sub-
section (a) shall not be treated as a termination
of such collective bargaining agreement.
SECTION 4. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.

(a) In General.—Section 8902 of title 5, United States Code, is amended by adding at the end the following:

"(p) Coverage for Diagnosis and Treatment of Infertility and Iatrogenic Infertility.—

"(1) Definitions.—In this subsection, the terms ‘infertility’ and ‘iatrogenic infertility’ have the meanings given those terms in section 2729 of the Public Health Service Act.

"(2) Required Coverage.—A contract under this chapter shall provide, in a manner consistent with section 2729 of the Public Health Service Act—

"(A) coverage for the diagnosis and treatment of infertility, including nonexperimental assisted reproductive technology procedures, if such contract covers obstetrical benefits; and

"(B) coverage for the diagnosis and treatment of iatrogenic infertility.

"(3) Cost.—Coverage for the diagnosis or treatment of infertility or iatrogenic infertility under a health benefits plan described in section 8903 or 8903a may not be subject to any copayment or deductible greater than the copayment or deductible,
respectively, applicable to obstetrical benefits under
the plan.

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

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

SEC. 5. BENEFITS FOR TREATMENT OF INFERTILITY AND
IATROGENIC INFERTILITY UNDER THE
TRICARE PROGRAM.

(a) In General.—Chapter 55 of title 10, United
States Code, is amended by adding at the end the fol-
lowing new section:

“§ 1110c. Obstetrical and infertility benefits

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

“(1) coverage for the diagnosis and treatment
of infertility, including nonexperimental assisted re-
productive technology procedures, if such plan covers obstetrical benefits; and

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

“(b) COPAYMENT.—The Secretary of Defense shall establish cost-sharing requirements for the coverage of diagnosis and treatment of infertility and iatrogenic infertility described in subsection (a) that are consistent with the cost-sharing requirements applicable to health plans and health insurance coverage under section 2729(d) of the Public Health Service Act.

“(c) REGULATIONS.—The Secretary of Defense shall prescribe any regulations necessary to carry out this section.

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

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

“1110c. Obstetrical and infertility benefits.”.
SEC. 6. TREATMENT OF INFERTILITY AND IATROGENIC INFERTILITY FOR VETERANS AND SPOUSES OR PARTNERS OF VETERANS.

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

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

“(a) IN GENERAL.—The Secretary shall furnish treatment for infertility and iatrogenic infertility, including through the use of assisted reproductive technology, to a veteran or a spouse or partner of a veteran if the veteran, and the spouse or partner of the veteran, as applicable, apply jointly for such treatment and counseling through a process prescribed by the Secretary for purposes of this section.

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

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

“1720J. Infertility treatment for veterans and spouses or partners of veterans.”.
(c) REGULATIONS.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Veterans Affairs shall prescribe regulations to carry out section 1720J of title 38, United States Code, as added by subsection (a).