

117TH CONGRESS
2D SESSION

H. R. 8891

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage for forensic medical exams with no cost sharing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2022

Ms. SÁNCHEZ (for herself, Ms. MOORE of Wisconsin, and Mrs. MILLER of West Virginia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor, and 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

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage for forensic medical exams with no cost sharing, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “No Surprises for Sur-
3 vivors Act of 2022”.

4 **SEC. 2. REQUIRING COVERAGE OF FORENSIC MEDICAL**
5 **EXAMS WITH NO COST SHARING.**

6 (a) PHSA.—Part D of title XXVII of the Public
7 Health Service Act (42 U.S.C. 300gg–111 et seq.) is
8 amended—

9 (1) in section 2799A–1(a)(3)(C)(ii), by insert-
10 ing “forensic medical exams (as defined in section
11 2799A–11(d)) furnished on or after January 1,
12 2025 and” after “shall include”; and

13 (2) by adding at the end the following new sec-
14 tion:

15 **“SEC. 2799A–11. REQUIRED COVERAGE OF FORENSIC MED-**
16 **ICAL EXAMS WITH NO COST SHARING.**

17 “(a) IN GENERAL.—Except as provided in subsection
18 (b), a group health plan and a health insurance issuer of-
19 fering group or individual health insurance coverage shall
20 provide coverage for and shall not impose any cost sharing
21 requirements for a forensic medical exam (as defined in
22 subsection (d)) furnished by a sexual assault forensic ex-
23 aminer (as defined for purposes of section 304 of the DNA
24 Sexual Assault Justice Act of 2004), a sexual assault
25 nurse examiner (as so defined), or any other provider spec-
26 ified by the Secretary, regardless of whether such forensic

1 examiner, nurse examiner, or other provider has in effect
2 a contractual relationship with such plan or coverage for
3 the furnishing of such exam or item or service.

4 “(b) NONAPPLICATION TO CERTAIN FORENSIC MED-
5 ICAL EXAMS OTHERWISE COVERED.—

6 “(1) IN GENERAL.—The provisions of sub-
7 section (a) shall not apply with respect to a forensic
8 medical exam furnished in a State for which such
9 State is responsible for incurring the full out-of-
10 pocket costs under section 2010 of the Omnibus
11 Crime Control and Safe Streets Act of 1968.

12 “(2) NOTIFICATION.—In the case that a group
13 health plan or health insurance issuer offering group
14 or individual health insurance coverage receives a
15 claim for a forensic medical exam to which the provi-
16 sions of subsection (a) would apply but for applica-
17 tion of paragraph (1) and such plan or issuer denies
18 such claim or imposes cost sharing on such claim,
19 such plan or issuer shall—

20 “(A) at the time of such denial or imposi-
21 tion, notify the individual with respect to whom
22 such exam was furnished of the manner in
23 which such individual may seek reimbursement
24 for such exam (or for the amount of such cost

1 sharing so imposed, as applicable) from the
2 State in which such exam was furnished; and

3 “(B) after receiving authorization from
4 such individual, notify the appropriate State
5 agency of the State in which such exam was
6 furnished of such claim.

7 “(c) APPLICATION OF SURPRISE BILLING PROVI-
8 SIONS.—

9 “(1) IN GENERAL.—The provisions of sections
10 2799A–1 and 2799B–1, 716 of the Employee Re-
11 tirement Income Security Act of 1974, and 9816 of
12 the Internal Revenue Code of 1986 shall apply to a
13 forensic medical exam for which a group health plan
14 or health insurance issuer offering group or indi-
15 vidual health insurance coverage is responsible for
16 providing coverage at no cost sharing under this sec-
17 tion furnished to an enrollee of such plan or group
18 or individual health insurance coverage by a provider
19 that does not have in effect a contractual relation-
20 ship described in subsection (a) with such plan or
21 coverage (as applicable) for furnishing such exam as
22 if such exam was an emergency service furnished by
23 a nonparticipating provider in an emergency depart-
24 ment of a hospital.

1 “(2) DEFINITIONS.—In this subsection, the
2 terms ‘emergency service’ and ‘nonparticipating pro-
3 vider’ have the meanings given such terms in sub-
4 paragraphs (C)(i) and (G), respectively, of sections
5 2799A–1(a)(3), 716(a)(3) of the Employee Retirement
6 Income Security Act of 1974, and section
7 9816(a)(3) of the Internal Revenue Code of 1986.

8 “(d) DEFINITION.—For purposes of this section, the
9 term ‘forensic medical exam’ means, with respect to an
10 individual—

11 “(1) an examination for physical trauma;

12 “(2) a determination of penetration or force;

13 “(3) an interview of such individual; and

14 “(4) the collection and evaluation of evidence
15 from such individual.”.

16 (b) ERISA.—

17 (1) IN GENERAL.—Subpart B of part 7 of sub-
18 title B of title I of the Employee Retirement Income
19 Security Act of 1974 is amended—

20 (A) in section 716(a)(3)(C)(ii), by insert-
21 ing “forensic medical exams (as defined in sec-
22 tion 726(d)) furnished on or after January 1,
23 2025 and” after “shall include”; and

24 (B) by adding at the end the following new
25 section:

1 **“SEC. 726. REQUIRED COVERAGE OF FORENSIC MEDICAL**
2 **EXAMS WITH NO COST SHARING.**

3 “(a) IN GENERAL.—Except as provided in subsection
4 (b), a group health plan and a health insurance issuer of-
5 fering group health insurance coverage shall provide cov-
6 erage for and shall not impose any cost sharing require-
7 ments for a forensic medical exam (as defined in sub-
8 section (d)) furnished by a sexual assault forensic exam-
9 iner (as defined for purposes of section 304 of the DNA
10 Sexual Assault Justice Act of 2004), a sexual assault
11 nurse examiner (as so defined), or any other provider spec-
12 ified by the Secretary, regardless of whether such forensic
13 examiner, nurse examiner, or other provider has in effect
14 a contractual relationship with such plan or coverage for
15 the furnishing of such exam or item or service.

16 “(b) NONAPPLICATION TO CERTAIN FORENSIC MED-
17 ICAL EXAMS OTHERWISE COVERED.—

18 “(1) IN GENERAL.—The provisions of sub-
19 section (a) shall not apply with respect to a forensic
20 medical exam furnished in a State for which such
21 State is responsible for incurring the full out-of-
22 pocket costs under section 2010 of the Omnibus
23 Crime Control and Safe Streets Act of 1968.

24 “(2) NOTIFICATION.—In the case that a group
25 health plan or health insurance issuer offering group
26 health insurance coverage receives a claim for a fo-

1 forensic medical exam to which the provisions of sub-
2 section (a) would apply but for application of para-
3 graph (1) and such plan or issuer denies such claim
4 or imposes cost sharing on such claim, such plan or
5 issuer shall—

6 “(A) at the time of such denial or imposi-
7 tion, notify the individual with respect to whom
8 such exam was furnished of the manner in
9 which such individual may seek reimbursement
10 for such exam (or for the amount of such cost
11 sharing so imposed, as applicable) from the
12 State in which such exam was furnished; and

13 “(B) after receiving authorization from
14 such individual, notify the appropriate State
15 agency of the State in which such exam was
16 furnished of such claim.

17 “(c) APPLICATION OF SURPRISE BILLING PROVI-
18 SIONS.—

19 “(1) IN GENERAL.—The provisions of sections
20 2799A–1 and 2799B–1 of the Public Health Service
21 Act, 716, and 9816 of the Internal Revenue Code of
22 1986 shall apply to a forensic medical exam for
23 which a group health plan or health insurance issuer
24 offering group health insurance coverage is respon-
25 sible for providing coverage at no cost sharing under

1 this section furnished to a participant or beneficiary
 2 of such plan or group health insurance coverage by
 3 a provider that does not have in effect a contractual
 4 relationship described in subsection (a) with such
 5 plan or coverage (as applicable) for furnishing such
 6 exam as if such exam was an emergency services
 7 furnished by a nonparticipating provider in an emer-
 8 gency department of a hospital.

9 “(2) DEFINITIONS.—In this subsection, the
 10 terms ‘emergency service’ and ‘nonparticipating pro-
 11 vider’ have the meanings given such terms in sub-
 12 paragraphs (C)(i) and (G), respectively, of sections
 13 2799A–1(a)(3) of the Public Health Service Act,
 14 716(a)(3), and section 9816(a)(3) of the Internal
 15 Revenue Code of 1986.

16 “(d) DEFINITION.—For purposes of this section, the
 17 term ‘forensic medical exam’ means, with respect to an
 18 individual—

19 “(1) an examination for physical trauma;
 20 “(2) a determination of penetration or force;
 21 “(3) an interview of such individual; and
 22 “(4) the collection and evaluation of evidence
 23 from such individual.”.

24 (2) TECHNICAL AMENDMENT.—The table of
 25 contents in section 1 of such Act is amended by in-

1 serting after the item relating to section 725 the fol-
 2 lowing new item:

“Sec. 726. Required coverage of forensic medical exams with no cost sharing.”.

3 (c) IRC.—

4 (1) IN GENERAL.—Subchapter B of chapter
 5 100 of the Internal Revenue Code of 1986 is amend-
 6 ed—

7 (A) in section 9816(a)(3)(C)(ii), by insert-
 8 ing “forensic medical exams (as defined in sec-
 9 tion 9826(d)) furnished on or after January 1,
 10 2025 and” after “shall include”; and

11 (B) by adding at the end the following new
 12 section:

13 **“SEC. 9826. REQUIRED COVERAGE OF FORENSIC MEDICAL**
 14 **EXAMS WITH NO COST SHARING.**

15 “(a) IN GENERAL.—Except as provided in subsection
 16 (b), a group health plan shall provide coverage for and
 17 shall not impose any cost sharing requirements for a fo-
 18 rensic medical exam (as defined in subsection (d)) fur-
 19 nished by a sexual assault forensic examiner (as defined
 20 for purposes of section 304 of the DNA Sexual Assault
 21 Justice Act of 2004), a sexual assault nurse examiner (as
 22 so defined), or any other provider specified by the Sec-
 23 retary, regardless of whether such forensic examiner,
 24 nurse examiner, or other provider has in effect a contrac-

1 tual relationship with such plan for the furnishing of such
2 exam or item or service.

3 “(b) NONAPPLICATION TO CERTAIN FORENSIC MED-
4 ICAL EXAMS OTHERWISE COVERED.—

5 “(1) IN GENERAL.—The provisions of sub-
6 section (a) shall not apply with respect to a forensic
7 medical exam furnished in a State for which such
8 State is responsible for incurring the full out-of-
9 pocket costs under section 2010 of the Omnibus
10 Crime Control and Safe Streets Act of 1968.

11 “(2) NOTIFICATION.—In the case that a group
12 health plan receives a claim for a forensic medical
13 exam to which the provisions of subsection (a) would
14 apply but for application of paragraph (1) and such
15 plan denies such claim or imposes cost sharing on
16 such claim, such plan shall—

17 “(A) at the time of such denial or imposi-
18 tion, notify the individual with respect to whom
19 such exam was furnished of the manner in
20 which such individual may seek reimbursement
21 for such exam (or for the amount of such cost
22 sharing so imposed, as applicable) from the
23 State in which such exam was furnished; and

24 “(B) after receiving authorization from
25 such individual, notify the appropriate State

1 agency of the State in which such exam was
2 furnished of such claim.

3 “(c) APPLICATION OF SURPRISE BILLING PROVI-
4 SIONS.—

5 “(1) IN GENERAL.—The provisions of sections
6 2799A–1 and 2799B–1 of the Public Health Service
7 Act, 716 of the Employee Retirement Income Secu-
8 rity Act of 1974, and 9816 shall apply to a forensic
9 medical exam for which a group health plan is re-
10 sponsible for providing coverage at no cost sharing
11 under this section furnished to an enrollee, partici-
12 pant, or beneficiary of such plan by a provider that
13 does not have in effect a contractual relationship de-
14 scribed in subsection (a) with such plan for fur-
15 nishing such exam as if such exam was an emer-
16 gency service furnished by a nonparticipating pro-
17 vider in an emergency department of a hospital.

18 “(2) DEFINITIONS.—In this subsection, the
19 terms ‘emergency service’ and ‘nonparticipating pro-
20 vider’ have the meanings given such terms in sub-
21 paragraphs (C)(i) and (G), respectively, of sections
22 2799A–1(a)(3) of the Public Health Service Act,
23 716(a)(3) of the Employee Retirement Income Secu-
24 rity Act of 1974, and section 9816(a)(3).

1 “(d) DEFINITION.—For purposes of this section, the
 2 term ‘forensic medical exam’ means, with respect to an
 3 individual—

4 “(1) an examination for physical trauma;
 5 “(2) a determination of penetration or force;
 6 “(3) an interview of such individual; and
 7 “(4) the collection and evaluation of evidence
 8 from such individual.”.

9 (2) TECHNICAL AMENDMENT.—The table of
 10 sections for such subchapter is amended by adding
 11 at the end the following new item:

“Sec. 9826. Required coverage of forensic medical exams with no cost sharing.”.

12 (d) CONFORMING AMENDMENT.—Section 223(c)(2)
 13 of the Internal Revenue Code of 1986 is amended by add-
 14 ing at the end the following new subparagraph:

15 “(H) SAFE HARBOR FOR FORENSIC MED-
 16 ICAL EXAMS.—A plan shall not fail to be treat-
 17 ed as a high deductible health plan by reason
 18 of failing to have a deductible for any item or
 19 service for which such plan is required to pro-
 20 vide coverage at no cost sharing under section
 21 9826.”.

22 (e) IMPLEMENTATION.—The Secretaries of Labor,
 23 Health and Human Services, and the Treasury may imple-
 24 ment the amendments made by this section through in-

1 terim final rules, subregulatory guidance, program in-
2 struction, or otherwise.

3 (f) EFFECTIVE DATE.—The amendments made by
4 subsections (a) through (d) shall apply with respect to
5 plan years beginning on or after January 1, 2025.

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