

HOUSE BILL REPORT

2SHB 1151

As Passed House:

March 7, 2023

Title: An act relating to mandating health plans to provide coverage for the diagnosis of infertility, treatment for infertility, and standard fertility preservation services.

Brief Description: Mandating coverage for fertility services.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Stonier, Macri, Reed, Peterson, Berry, Ramel, Fitzgibbon, Cortes, Callan, Simmons, Reeves, Lekanoff, Bergquist, Fosse and Ormsby).

Brief History:

Committee Activity:

Health Care & Wellness: 1/18/23, 2/8/23 [DPS];

Appropriations: 2/20/23, 2/23/23 [DP2S(w/o sub HCW)].

Floor Activity:

Passed House: 3/7/23, 65-30.

Brief Summary of Second Substitute Bill

- Requires large group health plans, including health plans offered to public employees, to cover the diagnosis of infertility, treatment for infertility, and standard fertility preservation services.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Orwall, Simmons, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Barnard, Harris and

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Minority Report: Without recommendation. Signed by 2 members: Representatives Graham and Mosbrucker.

Staff: Kim Weidenaar (786-7120).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 23 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Berg, Chopp, Davis, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Schmick.

Minority Report: Without recommendation. Signed by 7 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye and Steele.

Staff: David Pringle (786-7310).

Background:

Fertility Treatment.

In 2021 the Department of Health (DOH) completed a mandated benefit sunrise review of a proposal to mandate coverage for fertility services. The proposal required health plans, including plans offered to public employees, to provide coverage for the diagnosis of infertility, treatment for infertility, and standard fertility preservation services, as well as four completed oocyte retrievals with unlimited embryo transfers. The DOH found that health plans generally did not include coverage for fertility treatments, that out-of-pocket costs for these services are generally expensive, and that the mandated benefit would likely result in increased costs to the state, health carriers, and enrollees, but may decrease out-of-pocket costs for patients and allow for better quality care and informed decision-making.

The 2022 Supplemental Operating Budget included a proviso requiring the Insurance Commissioner (Commissioner), in consultation with the Health Care Authority, to complete an analysis of the cost to implement a fertility treatment benefit as described in the 2021 mandated benefit sunrise review. The Commissioner must contract with consultants to obtain utilization and cost data from health carriers in Washington to provide an estimate of the fiscal impact of providing the benefit. The analysis must include a utilization and cost analysis for the following services: infertility diagnosis, fertility medications, intrauterine

insemination, in vitro fertilization, and egg freezing. The Commissioner must report the findings by June 30, 2023.

Essential Health Benefits Benchmark Plan.

Passed in 2010, the federal Patient Protection and Affordable Care Act (ACA) enacted a variety of provisions related to private health insurance coverage, including establishing essential health benefits, out-of-pocket maximums, prohibiting annual or lifetime limits, and discrimination prohibitions.

The ACA requires most individual and small group market health plans to cover 10 categories of essential health benefits. To determine the specific services covered within each category, federal rules allow states to choose a benchmark plan and to supplement that plan to ensure it covers all 10 categories. State law designates the largest small group plan in the state as the benchmark plan. Consistent with federal law, the Commissioner must supplement the benchmark plan to ensure that all 10 categories of essential health benefits are included.

Summary of Second Substitute Bill:

Large group health plans, including health plans offered to public employees and their covered dependents, issued or renewed on or after January 1, 2025, must include coverage for standard fertility preservation services. Plans issued or renewed on or after January 1, 2026, must include coverage for the diagnosis of and treatment for infertility. Beginning January 1, 2025, for persons who underwent standard fertility preservation services and January 1, 2026, for all individuals the coverage must include two complete oocyte retrievals with unlimited embryo transfers in accordance with the American Society for Reproductive Medicine's guidelines, using single embryos when medically appropriate. The health plans may not include any:

- exclusions or limitations on coverage of fertility medications different than those imposed on other prescription medications;
- exclusions or limitations on coverage of any fertility services based on a covered individual's participation in fertility services provided by or to a third party; or
- deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitations on coverage for these services that are different from those imposed upon benefits for other services.

For purpose of these requirements, "diagnosis of and treatment for infertility" means the recommended procedures and medications from the direction of a licensed physician that are consistent with established, published, or approved medical practices or professional guidelines from the American College of Obstetricians and Gynecologists or the American Society for Reproductive Medicine. "Standard fertility preservation services" means procedures that are consistent with the established medical practices or professional guidelines published by the American Society of Reproductive Medicine or the American Society of Clinical Oncology for a person who has a medical condition or is expected to

undergo medication therapy, surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical professionals to cause a risk of impairment to fertility.

"Infertility" means a disease, condition, or status characterized by:

- the failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sexual intercourse;
- a person's inability to reproduce either as a single individual or with the person's partner without medical intervention;
- a licensed physician's or osteopathic physician's findings based on a patient's medical, sexual, and reproductive history, age, physical findings, or diagnostic testing; or
- disability as an impairment of function.

The Insurance Commissioner is authorized to adopt rules to implement, administer, and enforce the provisions related to health carriers. This act may be known and cited as the Washington State Building Families Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) Almost everyone knows someone who has struggled to have a child and the expenses associated with these services. The ability to grow one's family is based on the ability to pay. In vitro fertilization (IVF) creates difficult financial choices that families should not have to make. Sometimes pursuing IVF means taking an extra job or sacrificing a career to have health care access. Individuals with insurance coverage are able to quickly get diagnoses and treatment, but that should not just be for those who work for the right employer. Insurance often does not cover any of these costs and people who pursue these services have to scrape by, take out loans, or pull money from retirement accounts. The struggle with fertility is already an emotional burden and the cost of these services adds a financial one. Without a mandate to cover these services, the ability to have a family is a product of financial privilege. For those struggling with fertility, the clock is ticking.

Cancer patients may need fertility preservation services. Some cancer treatments have the potential to sterilize patients, but there are proven and effective options to preserve fertility in advance. For pediatric cancer patients, these decisions may have to be made at a very young age and sometimes by the parents. Fertility preservation services are costly and often not covered by insurance. Cancer already takes so much from the patient, but it does not need to steal the ability to be a parent in the future.

All Washingtonians should be afforded the ability to grow their own family. Everyone

should have access to these technologies. Infertility is recognized as a disease and millions of Washingtonians pay premiums for medical care that does not even cover diagnostic tests for infertility. Five states have recently mandated coverage of this care and some states have required this coverage for years. Most patients with a diagnosis do not require IVF.

(Opposed) In vitro fertilization commodifies people and reduces them to a lab and technical process. The dignity of all people should be affirmed and all life should be protected. Unused and unwanted embryos are likely to be destroyed or remain frozen.

In vitro fertilization does not treat infertility, it does no more to treat infertility than adoption does. Medical benefits should not cover IVF. This bill requires insurance companies subsidize interventions that are unethical and harm children. While infertility is heartbreaking it cannot be resolved by harming children. Many children are speaking out against this practice. As a donor you are intentionally separating a biological parent from the child and third party reproduction is not the same as adoption. Unlike adoption, IVF does not include background checks.

The Office of the Insurance Commissioner is working on a study that is due in June that provides an actuarial analysis of the costs of this mandate. The Legislature should wait to make this decision until the report is ready and the costs can be analyzed. The bills that include benefit mandates must be considered in totality. California found that the impact on premiums of a similar bill could be a total cost to the state of \$900 million.

Staff Summary of Public Testimony (Appropriations):

(In support) The fertility treatments covered by this bill are incredibly expensive. Without coverage, a patient needs a bank account with tens of thousands of dollars to consider treatment, so there is an equity issue at stake. Some other states have passed these coverage mandates. Massachusetts saw a less than 1 percent increase in premiums, and other states have seen similarly small increases in cost. The expected increase will be quite small in Washington as well. This bill will save money, as most patients don't need expensive treatments. Insured patients make safer choices and have fewer multiple births. Multiple births cause insurers to cover many additional costs. Young people with cancer can preserve fertility and make choices about having a family later. The bill creates better outcomes at lower cost. Someone who chooses to be a single mom by choice may find their age and health conditions make it hard to start a family without medical intervention. The costs of this type of medical intervention are inequitably shared across the state right now.

(Opposed) None.

Persons Testifying (Health Care & Wellness): (In support) Representative Monica Jurado Stonier, prime sponsor; Tyler Ketterl; Allison Carney, Wollam; Valerie Balch; Chris Herndon; Katherine Tarlock; Kaycee Oatman; Matthew Hepner, International Brotherhood of Electrical Workers and Certified Electrical Workers of Washington; Rodolfo Turla;

Nicole Schroeder; and Alexis Oliver.

(Opposed) Jennifer Friesen, Them Before Us; Jennifer Ziegler, Association of Washington Health Care Plans; Kyle Ratuiste, Washington State Catholic Conference; and Ángel Alvarado, Respect Life Ministry.

Persons Testifying (Appropriations): Representative Monica Jurado Stonier, prime sponsor; Sara Cassidey, Association of Washington Assistant Attorneys General–Washington Federation of State Employees Local 5297; and Chris Hernden, Betsy Campbell, and Lori Marshall, RESOLVE National Infertility Association.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): Adam Zarrin, Leukemia and Lymphoma Society; Victor Shevlyagin; Betsy Campbell, Resolve National Infertility Association; Andrea Hikoe; Robin Von Davies, Washington State University's Elson S. Floyd College of Medicine Obstetrics and Gynecology Interest Group; Brittany Horrocks; Kalli Burns; Molly Ring; Chalia Stallings-Ala'ilima, Association of Washington Assistant Attorneys General, Washington Federation of State Employees Local 5297; Sara Cassidey; Heather Villanueva; and Katie Eilers, Department of Health.

Persons Signed In To Testify But Not Testifying (Appropriations): None.