

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1

(Senator Kagan)

Finance

Health and Government Operations

Health Insurance - In Vitro Fertilization - Use of Spouse's Sperm - Exception

This bill alters the required conditions for health insurance coverage of in vitro fertilization (IVF) by creating an exception to the required use of the spouse's sperm. For a patient whose spouse is of the opposite sex, the patient's eggs must be fertilized with the spouse's sperm, *unless* (1) the spouse is unable to produce and deliver functional sperm and (2) the inability does not result from a vasectomy or other method of voluntary sterilization.

The bill takes effect July 1, 2016, and applies to all policies, contracts, and health benefit plans issued, delivered, renewed, or in force in the State on or after that date.

Fiscal Summary

State Effect: State Employee and Retiree Health and Welfare Benefits Program (State plan) expenditures increase by \$216,300 (59% general funds, 30% special funds, 11% federal funds) in FY 2017 due to increased medical claims. Future years reflect increases in utilization and inflation. Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee in FY 2017. Review of filings can likely be handled with existing budgeted MIA resources.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	-	\$0	\$0	\$0	\$0
GF Expenditure	\$127,600	\$137,800	\$148,900	\$160,800	\$173,600
SF Expenditure	\$64,900	\$70,100	\$75,700	\$81,700	\$88,300
FF Expenditure	\$23,800	\$25,700	\$27,800	\$30,000	\$32,400
Net Effect	(\$216,300)	(\$233,600)	(\$252,300)	(\$272,500)	(\$294,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: To the extent utilization of IVF increases, health care expenditures for local governments that provide fully insured medical benefits may increase.

Small Business Effect: None.

Analysis

Current Law: Health insurance carriers that provide pregnancy-related benefits are required to cover outpatient expenses arising from IVF performed on a policyholder or subscriber or the dependent spouse of the policyholder or subscriber.

To qualify for IVF benefits, the patient and the patient's spouse must have a history of involuntary infertility of at least two years' duration or infertility associated with endometriosis, diethylstilbestrol exposure, blockage or removal of one or both fallopian tubes, or abnormal male factors. The patient must have been unable to attain a successful pregnancy through a less costly infertility treatment available under the policy or contract, and IVF must be performed at specified medical facilities. In addition, for a patient whose spouse is of the opposite sex, the patient's eggs must be fertilized with the spouse's sperm.

IVF benefits may be limited to three IVF attempts per live birth, not to exceed a maximum lifetime benefit of \$100,000. Carriers are not responsible for any costs incurred by a policyholder or subscriber to obtain donor sperm.

Section 1557 of the federal Patient Protection and Affordable Care Act (ACA) prohibits discrimination on the grounds of race, color, national origin, sex, age, or disability. This provision has been interpreted as prohibiting discrimination on the basis of sexual orientation in plans covered by the ACA, such as qualified health plans offered on the Maryland Health Benefit Exchange.

Background: Chapters 482 and 483 of 2015 altered the required conditions for coverage of IVF to extend the mandated benefit to same-sex couples. Specifically, the Acts allowed couples of the same sex to demonstrate involuntary infertility by a history of six attempts at artificial insemination over the course of two years failing to result in pregnancy and clarified that the requirement that a patient's spouse's sperm be used applies only to a patient whose spouse is of the opposite sex.

The Attorney General's bill review letter noted that the change to the IVF mandate, though necessary to alleviate discrimination against women in same-sex couples, inadvertently creates an inequality between same-sex couples (who can now qualify for the benefit if they meet the other statutory requirements) and opposite-sex couples in which the husband is unable to produce sperm (who cannot qualify for the benefit). The Attorney General concluded that it is unclear whether this differential treatment would violate ACA and advised that it may be desirable for the General Assembly to address the disparity in legislation.

State Expenditures: According to the Department of Budget and Management, State plan expenditures increase by an estimated \$216,310 in fiscal 2017, or approximately 0.025% of annual State plan spending. The State plan currently covers IVF. Expenditures reflect increased utilization of IVF and medical claims associated with the resulting pregnancies.

Future year State plan expenditures reflect projected increases in direct cost and utilization of 8% per year. State plan expenditures are split 59% general funds, 30% special funds, and 11% federal funds.

Additional Comments: The federal Employee Retirement Income Security Act preempts states' ability to require private employers to offer insurance coverage and exempts the coverage offered by self-insured entities from state insurance regulation. Thus, insured health benefit plans (those purchased directly from a carrier) are subject to Maryland's mandated benefits law, while other (self-insured) employment-based plans are not.

In 2015, a total of 2,899,428 lives (younger than age 65) were covered through commercial health benefit plans in Maryland. However, only 36% were covered under insured health benefit plans subject to State regulation. The remaining 64% were covered through group self-insured plans or the Federal Employees Health Benefit Plan, which are not regulated by MIA and are, for the most part, not subject to Maryland law.

Additional Information

Prior Introductions: None.

Cross File: HB 11 (Delegate Hill) - Health and Government Operations.

Information Source(s): Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - January 18, 2016
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