Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 30 (Delegate Waldstreicher)
Health and Government Operations

Health Insurance - Coverage of In Vitro Fertilization Services

This bill requires an insurer, nonprofit health service plan, or health maintenance organization (carrier) that provides pregnancy-related benefits to cover in vitro fertilization (IVF) services for a couple if the patient and the patient's spouse have a history of infertility of at least one year duration rather than at least two years.

Fiscal Summary

State Effect: Potential significant increase in expenditures (all funds) for the State Employee and Retiree Health and Welfare Benefits Program (State plan) beginning in FY 2011. Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the $125 rate and form filing fee in FY 2011. Review of filings can be handled with existing MIA budgeted resources.

Local Effect: To the extent that IVF coverage mandated under the bill exceeds that currently provided by local governments, expenditures increase for some local governments beginning in FY 2011.

Small Business Effect: None. The bill does not apply to the small group market.

Analysis

Current Law: Carriers that provide pregnancy-related services may not exclude benefits for all outpatient expenses arising from IVF procedures performed on the policyholder or subscriber or the dependent spouse of the policyholder or subscriber. Benefits must be provided to the same extent as other pregnancy-related procedures for insurers and

nonprofit health service plans and other infertility services for health maintenance organizations.

To qualify for IVF benefits the patient and the patient's spouse must have a history of infertility of at least two years duration or infertility associated with endometriosis, diethylstilbestrol exposure, blockage or removal of one or more fallopian tubes, or abnormal male factors. In addition (1) the patient must be the policyholder or subscriber or the dependent spouse of the policyholder or subscriber; (2) the patient's eggs must be fertilized with the spouse's sperm; (3) the patient must have been unable to attain a successful pregnancy through a less costly infertility treatment available under the policy or contract; and (4) the IVF procedures must be performed at specified medical facilities. IVF benefits may be limited to three IVF attempts per live birth, not to exceed a maximum lifetime benefit of $100,000.

Background: According to the American Society for Reproductive Medicine (ASRM), infertility is defined as an inability to achieve a successful pregnancy after 12 months for women younger than age 35.

At least some carriers in Maryland calculate infertility by the amount of time a couple has failed to *successfully conceive*. In practical terms, this means that if a woman miscarries, the two-year "infertility clock" starts from the time of her miscarriage and is not calculated by the total length of time that a couple has been trying to conceive. This is a key difference from ASRM's definition, which *does not* restart the 12-month clock if a woman miscarries.

About 6.1 million couples nationally (10% of couples of childbearing age) experience infertility. In IVF, eggs are surgically removed from the ovary and mixed with sperm outside the body. After about 40 hours, the eggs are examined to see if they have become fertilized by the sperm and are dividing into cells. The fertilized eggs (embryos) are placed in a woman's uterus, bypassing the fallopian tubes. While IVF accounts for less than 5% of all infertility treatments in the United States, it is often the most successful method of achieving pregnancy for infertility related to blocked or absent fallopian tubes or low sperm counts.

In Maryland, there were 4,062 IVF cycles reported by the federal Centers for Disease Control and Prevention in 2006. The cost per IVF cycle typically ranges from $15,000 to $20,000.

Every four years, the Maryland Health Care Commission (MHCC) examines the fiscal impact of mandated health insurance benefits. In 2008, MHCC found that these benefits account for 15.4% of total premium costs for group health insurance and 18.6% of total

premium costs for individual policies. IVF treatment accounts for 0.8% of total premium costs for group health insurance and 1% of total premium costs for individual policies.

Health Insurance Mandates as they Relate to State and Local Governments

Employers have two major options when providing health insurance benefits. They can purchase a fully insured plan from an insurance company or they can self-insure by assuming risk and paying all claims for services themselves, usually through a third-party administrator. The federal Employee Retirement Income Security Act (ERISA) preempts states' ability to require private employers to offer insurance coverage and exempts the coverage offered by self-insured entities from state insurance regulation. Therefore, the health insurance requirements under Title 15, Subtitles 4, 7, and 8 of the Insurance Article apply only to fully insured health benefit plans.

Government entities that self-fund their health benefit plans are *not exempt* under ERISA from state regulation and health insurance mandates. In Maryland, these entities have instead been exempt from these requirements based on the State definition of "insurance business." An insurance business includes the transaction of all matters pertaining to an insurance contract, either before or after it takes effect and all matters arising from an insurance contract or a claim under it. Insurance business *does not* include pooling by public entities for self-insurance of casualty, property, or health risks.

In 2008, the Maryland Association of Counties and the Maryland Association of Boards of Education conducted an informal survey of counties and county school boards about their insurance plans, to which 22 counties and 19 school boards responded. Of the 22 responding counties, 13 were self-insured, 4 were fully insured, and 5 offered both self-insured and fully insured options. Of the 19 responding county school boards, 14 were self-insured, 1 was fully insured, and 4 offered both self-insured and fully insured options. The fully insured plans offered by counties and county school boards are subject to State insurance laws.

State Fiscal Effect: Although not required to follow health insurance mandates, the State plan generally does. Thus, this estimate is based on the assumption that the State plan will follow the bill's requirement.

A December 2009 report prepared by Mercer for MHCC examined the impact of changing the State IVF mandate so that the history of infertility requirement is reduced from two years to one year. The report acknowledged the difficulty of determining exactly how many additional IVF cycles would result since information does not exist regarding the reasons for, and the duration of, infertility for those who have received IVF. Likewise, there are no counts of the additional women who would be eligible for IVF treatments under the revised criteria.

The report compared costs in Maryland, with its two-year waiting period, and Massachusetts, which has a one-year waiting period. The report indicated that IVF utilization is 40% higher in Massachusetts than in Maryland. However, the Massachusetts mandate applies to all insurance markets, whereas the small group market in Maryland is excluded from such mandates. The report also acknowledges that other differences between the two states might account for the large difference in utilization. Therefore, the report used a model assuming that utilization would increase from anywhere between 10% and 40%. Legislative Services uses this range to illustrate possible increases in State plan expenditures.

These estimates are *for illustrative purposes only.* The Department of Budget and Management (DBM) reports that, in fiscal 2009, 548 women received IVF services under the State plan, at a cost of $4.69 million. **Exhibit 1** illustrates the utilization and cost increases that could result under a 10% increase and 40% increase in utilization of IVF services.

Exhibit 1
Annualized Impact of Enhancing IVF Mandate

	Current Mandate	**10% Increase**	**40% Increase**
Number of Women Receiving Services	548	603	767
Total Annual Cost	$4.69 million	$5.16 million	$6.57 million
Increased Cost		**$0.47 million**	**$1.88 million**

Source: Department of Legislative Services

In this example, a 10% increase results in an estimated 55 additional women qualifying for IVF servicers under the new mandate, at an annualized cost of approximately $0.47 million. If utilization increases by 40%, an estimated 219 additional women qualify under the new mandate, at an annualized cost of $1.88 million. Due to the bill's October 1, 2010 effective date, the fiscal 2011 increase in these examples would range from $0.35 million to $1.41 million.

Legislative Services notes that the estimate does not take into account any additional costs associated with an increase in complicated pregnancies, live births, and multiple births that can result from increased utilization of IVF.

Again, as DBM advises, estimating an actual utilization increase is extremely difficult and depends on a number of factors that cannot be quantified.

State plan expenditures are split 59% general funds, 30% special funds, and 11% federal funds.

Local Fiscal Effect: Local government expenditures (for those that purchase fully insured plans from an insurance company) increase for some local governments beginning in fiscal 2011 due to the IVF mandate.

Additional Comments: According to CareFirst BlueCross/BlueShield, the impact to its risk-based business (which does not include State plan costs) would be $1,914,840 per year. This estimate is based on a premium increase of $0.81 per contract per month, from $4.54 to $5.35.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): CareFirst Blue Cross/Blue Shield, Department of Budget and Management, Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, American Society for Reproductive Medicine, Department of Legislative Services

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