Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1003 (Delegate Kach)
Appropriations

State Employee and Retiree Health and Welfare Benefits Program - Benefits

This bill prohibits the Secretary of Budget and Management, beginning with the fiscal 2014 benefit year, from including in vitro fertilization (IVF) in the State Employee and Retiree Health and Welfare Benefits Program (State plan). Instead, the Secretary must use the savings from the elimination of the IVF benefit to support a benefit for autism spectrum disorder (ASD). The Secretary must consult with the Maryland Health Care Commission (MHCC) to develop the benefit for ASD.

Fiscal Summary

State Effect: State plan expenditures decline by an estimated $6.8 million in FY 2014 from elimination of the IVF benefit. Expenditures simultaneously increase by a significant amount to provide a benefit for ASD. Actual expenditures will depend on the benefit developed, State plan enrollment, and utilization.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Secretary of Budget and Management may arrange any benefit option for inclusion in the State plan. Although not required to follow State health insurance mandates, the State plan generally does on a voluntary basis.

In Vitro Fertilization: Health insurers, nonprofit health service plans (such as CareFirst BlueCross BlueShield), and health maintenance organizations (HMOs) that provide pregnancy-related services are required to cover outpatient expenses related to IVF. 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, the patient must be the policyholder or subscriber or a covered dependent of the policyholder or subscriber; the patient's eggs must be fertilized with the spouse's sperm; the patient must have been unable to attain a successful pregnancy through a less costly infertility treatment available under the policy or contract; and the IVF 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.

Autism Spectrum Disorder: While Maryland law does not specifically require a mandated benefit for ASD, carriers must cover habilitative services for children younger than age 19. Habilitative services are occupational therapy, physical therapy, and speech therapy for the treatment of a child with a congenital or genetic birth defect to enhance the child's ability to function. Congenital or genetic birth defect includes autism or an ASD. Health insurance carriers are not required to provide reimbursement for habilitative services delivered through early intervention or school services.

Background:

State Plan Enrollment: In fiscal 2012, the State plan covers 109,000 employees and retirees as well as 110,371 dependents, for a total enrollment of 219,371. In fiscal 2011, 477 women received IVF services under the State plan and approximately 285 individuals had a diagnosis of autism.

In Vitro Fertilization: About 7.3 million women and their partners nationally (12% of the reproductive age population) experience infertility. 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 4,777 IVF cycles reported by the federal Centers for Disease Control and Prevention (CDC) in 2009.

Every four years, MHCC examines the fiscal impact of mandated health insurance benefits. MHCC's January 2012 report found that IVF treatment accounts for total premium costs of 1.4% for group health insurance, 1.5% for individual policies, and 1.3% for the State plan. The report notes that significantly less than half of surveyed employers with self-funded health insurance plans (those exempt from the mandate) provide IVF services that comply with the mandate. Many self-funded plans do not view

IVF as medically necessary; therefore, the marginal cost of the mandate (the full cost minus the value of the benefit that would be covered in the *absence* of a mandate) is 1.2% to 1.3% of premium – nearly as high as the full cost of the mandate. Nationally, only 15 states (including Maryland) have laws that require infertility benefits.

Autism Spectrum Disorder: ASDs are developmental disabilities that cause substantial impairments in social interaction and communication and the presence of unusual behaviors and interests. An ASD begins before age three and lasts throughout a person's lifetime. ASDs include autistic disorder, pervasive developmental disorder – not otherwise specified, and Asperger syndrome. ASDs occur in all racial, ethnic, and socioeconomic groups and are four times more likely to occur in boys than in girls. CDC estimates that the prevalence of ASDs is 1 in 110 children or approximately 1%. While there is no "cure" for ASDs, early diagnosis and intervention may lead to significantly improved outcomes.

Children with autism may access certain services through State and locally administered education programs, as required by the federal Individuals with Disabilities Education Act (IDEA). IDEA parts B and C also require early intervention program services for toddlers and preschool-aged children.

The Maryland Medicaid Waiver for Children with Autism Spectrum Disorder provides intensive individual support services, therapeutic integration services, supported employment, respite care, family training, environmental accessibility adaptations, and residential habilitation to qualified individuals with ASDs. The waiver program is targeted to individuals who likely would be institutionalized without supports. In fiscal 2011, the waiver served 901 participants at an average annual per capita cost, including nonwaiver services, of $47,025 in Medicaid expenditures (50% general funds, 50% federal funds). As of December 31, 2011, 3,684 children were on the autism waiver registry (waiting list).

The Developmental Disabilities Administration (DDA) currently serves 1,787 individuals where autism is indicated as their disability category. Another 1,937 individuals with autism indicated as a disability are waiting for a service from DDA. DDA also maintains a Future Needs Registry for individuals with service needs that are more than three years away. There are 974 individuals on this registry who indicate autism as a disability.

According to the National Conference of State Legislatures, until 2007, only Indiana required insurance coverage for autism. Currently, 34 states and the District of Columbia have laws related to autism and insurance coverage. At least 29 states (including Pennsylvania, Virginia, and West Virginia) specifically require insurers to provide coverage for the treatment of autism. State laws vary with regard to age limitations and annual limitations on coverage.

Applied Behavior Analysis: Applied behavior analysis (ABA) is the process of applying interventions based on the principles of learning derived from experimental psychology research to systematically change behavior. According to the American Academy of Pediatrics, the effectiveness of ABA-based intervention in ASDs has been well documented through five decades of research. Others, including several Maryland carriers, believe that ABA is investigative/experimental and an educational rather than a medical treatment. Thus, insurance coverage is not typically provided for these services.

Prior Legislative Proposals Regarding Autism Coverage: Three bills have been introduced in the Maryland General Assembly since 2009 to mandate health insurance coverage for ASDs. In each instance, the State plan would have voluntarily complied with the mandate. SB 759/HB 783 of 2011, SB 1028/HB 1091 of 2010, and SB 394/ HB 273 of 2009 generally would have required coverage for the diagnosis and evidence-based, medically necessary treatment of ASDs, including ABA. SB 1028/ HB 1091 of 2010 also authorized carriers, after providing coverage for one year, to apply for an exemption from the mandate if they could prove that costs for the mandate would lead to a premium increase of more than 2% for the following year. The bills were heard by the Senate Finance and House Health and Government Operations committees, respectively. SB 759 of 2011 received an unfavorable report from the Senate Finance Committee. HB 273 of 2009 and HB 783 of 2011 were withdrawn. No further action was taken on the remaining bills.

MHCC Evaluations of Coverage of Autism Services: A February 2012 analysis conducted by Oliver Wyman on behalf of MHCC provided estimates of the cost of a more limited benefit for ASDs than previously proposed in legislation based on the percentage of the eligible population that is expected to obtain treatment (*i.e.,* a low-, medium-, or high-treatment prevalence). The following estimates represent the low- and high-treatment prevalence levels for the three options evaluated.

- **Option 1.** Coverage of ASDs, including ABA, for children younger than age 9, with a $36,000 annual limit. Under this scenario, the cost is estimated to be $17.70 to $44.06 per enrollee per year.

- **Option 2.** Coverage of ASDs, including ABA, for children younger than age 13, with a $36,000 annual limit for children younger than age 6 and a $20,000 annual limit for children ages 6 to 12. Under this scenario, the cost is estimated to be $16.62 to $43.53 per enrollee per year.

- **Option 3.** Coverage of ASDs, including ABA, for children younger than age 9, with a $36,000 annual limit for children younger than age 6 and a $20,000 annual

limit for children ages 6 to 8. Under this scenario, the cost of the mandate is estimated to be $14.06 to $36.31 per enrollee per year.

State Fiscal Effect: The Department of Budget and Management (DBM) reports that, in fiscal 2011, 477 women received IVF services under the State plan at a cost of $5.7 million. DBM estimates that State plan expenditures on IVF are anticipated to be $6.3 million in fiscal 2013. Based on anticipated 8% annual inflation, State plan expenditures decline by $6.8 million in fiscal 2014, $7.3 million in fiscal 2015, $7.9 million in fiscal 2016, and $8.6 million in fiscal 2017 from elimination of coverage for IVF. To the extent that utilization of other infertility services increases in the absence of coverage for IVF, these savings may be reduced.

As directed under the bill, savings from elimination of IVF coverage must be redirected to provide a benefit for ASD. Actual expenditures will depend on the benefit developed by the Secretary of Budget and Management in consultation with MHCC, including which specific services are covered, any limits of provider visits or annual dollar limits on coverage, and utilization of the benefit. According to DBM, the State plan already covers much more than most employer plans with regard to treatment of ASDs. However, the State plan does not currently cover ABA.

The most recent cost estimates for an autism benefit with ABA and without limits on age or utilization (as provided in the fiscal and policy note for SB 759/HB 783 of 2011) projected that State plan expenditures would be *at least* $5.8 million in fiscal 2014; $6.4 million in fiscal 2015; and $7.0 million in fiscal 2016. However, they could be *as much as* $22.2 million in fiscal 2014; $24.2 million in fiscal 2015; and $26.4 million in fiscal 2016.

Using the estimated cost ranges provided in the February 2012 analysis conducted by Oliver Wyman on behalf of MHCC, State plan expenditures could increase by $3.1 million to $9.7 million annually for an ASD benefit (including ABA) with limitations on age and annual dollar limits on benefits. These figures do not include any inflationary adjustments.

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

Legislative Services notes that, while there are believed to be a relatively small number of individuals enrolled in the State plan with ASDs, diagnoses of ASDs are increasing at a rate of 10% to 17% annually. Such growth may be even greater among State plan enrollees. For example, DBM estimated that there were 188 individuals with autism in the State plan in 2009, 220 in 2010, and 285 in 2011. These figures reflect annual increases of 17% and 30%, respectively. Thus, State plan expenditures for an ASD

benefit could be heavily influenced by rapid increases in the number of children diagnosed with ASDs in future years.

Additional Comments: Legislative Services notes that, as DBM currently voluntarily complies with all State health insurance mandates, this bill would create a discrepancy between State plan benefits and benefits provided under all other fully insured health insurance products sold by health insurers, nonprofit health service plans, and HMOs in the State. State employees would have access to a mandated ASD benefit that no other insurer is currently required to provide and would not have access to IVF services that other insurers are required to provide.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): American Academy of Pediatrics, Autism Speaks, U.S. Centers for Disease Control and Prevention, National Conference of State Legislatures, Department of Budget and Management, Department of Health and Mental Hygiene, Department of Legislative Services

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510