HB 838

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 838 (Delegate Hill, *et al.*)
Health and Government Operations Finance

Health Insurance - Coverage for Infertility Services

This bill alters required conditions for health insurance coverage of in vitro fertilization (IVF) in order to extend the mandated benefit to same-sex married couples. Insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) that provide coverage for infertility benefits *other than IVF* are prohibited from requiring certain conditions of coverage for same-sex married couples.

The bill takes effect July 1, 2015, 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 $228,000 (59% general funds, 30% special funds, 11% federal funds) in FY 2016 from increased utilization of the mandated benefits during the first half of calendar 2016. Future years reflect annualization and 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 2016. Review of filings can be handled with existing budgeted MIA resources.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	-	$0	$0	$0	$0
GF Expenditure	$134,500	$279,800	$302,200	$326,400	$352,500
SF Expenditure	$68,400	$142,300	$153,700	$165,900	$179,200
FF Expenditure	$25,100	$52,200	$56,300	$60,800	$65,700
Net Effect	($228,000)	($474,200)	($512,200)	($553,200)	($597,400)

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 may increase.

Small Business Effect: None.

Analysis

Bill Summary: Carriers that provide coverage for infertility benefits other than IVF may not require, as a condition of that coverage, for a patient who is married to an individual of the same sex, that (1) the patient's spouse's sperm be used in the covered treatments or procedures or (2) patient demonstrate infertility exclusively by means of a history of unsuccessful heterosexual intercourse.

The bill clarifies that carriers that provide pregnancy-related benefits may not exclude benefits for outpatient expenses related to IVF for married couples if, *for a patient whose spouse is of the opposite sex*, the patient's oocytes are fertilized with the patient's spouse's sperm.

A patient and the patient's spouse may demonstrate a history of *involuntary* infertility by a history of (1) if the patient and the patient's spouse are of opposite sexes, intercourse of at least two years' duration failing to result in pregnancy or (2) if the patient and the patient's spouse are of the same sex, six attempts of artificial insemination over the course of two years failing to result in pregnancy.

The bill clarifies that IVF coverage requirements do not apply to certain health insurance policies that are issued or delivered in the small group market and for which the MIA has determined that IVF benefits are not essential health benefits.

The bill also requires that IVF procedures be performed at medical facilities that conform to *applicable guidelines or minimum standards issued by* the American College of Obstetricians and Gynecologists *or the American Society for Reproductive Medicine*.

Carriers are not responsible for any costs incurred by a policyholder, subscriber, or dependent in obtaining donor sperm. A denial of coverage for IVF benefits constitutes an adverse decision. The bill also prohibits the law from being construed to require coverage for a treatment or procedure that would not treat a diagnosed medical condition of a patient.

Current Law: Carriers 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 both fallopian tubes, or abnormal male factors. In addition, the patient must be the policyholder or subscriber or the dependent spouse 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 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.

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, under "any health program or activity, any part of which is receiving Federal financial assistance…or under any program or activity that is administered by an Executive agency or any entity established under [Title I of ACA]." Section 1557 is the first federal civil rights law to prohibit sex discrimination in health care.

Background: Maryland's mandated benefit for IVF procedures was enacted before Maryland law recognized same-sex marriages and before enactment of ACA. The Director of the federal Office of Civil Rights, in a letter dated July 12, 2012, stated that the prohibition against sex discrimination in covered health programs, activities, and facilities necessarily includes discrimination based on sexual orientation both because sexual orientation is a relational term based on one's sex and because the stigmatizing of same-sex relationships is a function of gender stereotypes. Counsel to the Maryland General Assembly, therefore, advises that ACA requires same-sex couples to be treated equally with respect to the IVF mandate.

State Expenditures: According to the Department of Budget and Management, State plan expenditures increase by an estimated $228,000 in fiscal 2016, which reflects expenditures for the second half of fiscal 2016 only (benefits under the State plan are administered on a calendar year basis). The State plan currently covers both artificial insemination and IVF. Expenditures reflect increased utilization of IVF benefits by same-sex married couples. This estimate assumes that the cost of any sperm donor charges would not be covered, as specified under the bill.

Future year State plan expenditures reflect annualization and 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.

As a point of reference, in fiscal 2013, 483 State plan members received IVF benefits with total claims of $3.0 million, with an average claim per member of $6,287. In fiscal 2014, 540 members received such benefits with total claims of $3.5 million, with an average claim per member of $6,659. This estimate reflects an estimated 13.6% increase in IVF expenditures on an annualized basis over fiscal 2014 claims. Total State plan spending is approximately $1.3 billion annually; thus, this increase represents roughly a

0.04% increase in total State plan spending. State plan expenditures are split approximately 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. According to MIA, of the total number of covered lives enrolled in commercial health insurance in the State in 2013, only 37.1% were in plans subject to State regulation, while 62.9% were in plans not subject to such regulation.

CareFirst BlueCross BlueShield advises that the bill could increase premium rates by $1.2 million – to as much as $7.0 million – annually due to the increased utilization of IVF procedures.

Additional Information

Prior Introductions: None.

Cross File: SB 416 (Senator Kagan, *et al.*) - Finance.

Information Source(s): CareFirst BlueCross BlueShield, Maryland Insurance Administration, Department of Budget and Management, Department of Health and Mental Hygiene, Department of Legislative Services

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