

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 781

(Delegate Kelly, *et al.*)

Health and Government Operations

Finance

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Health Insurance - In Vitro Fertilization - Revisions

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This bill specifies the requirements to qualify for coverage for in vitro fertilization (IVF) benefits for an unmarried patient and alters the requirements to qualify for coverage for a married patient. **The bill takes effect January 1, 2021, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.**

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Fiscal Summary

**State Effect:** Minimal special fund revenue increase for the Maryland Insurance Administration in FY 2021 from the \$125 rate and form filing fee. Review of form filings requires contractual assistance in FY 2021 only. Expenditures for the State Employee and Retiree Health and Welfare Benefits Program increase by a significant amount beginning in FY 2021, as discussed below.

**Local Effect:** Health insurance costs increase for local governments that purchase fully insured plans. No effect on revenues.

**Small Business Effect:** Minimal. The bill generally does not apply to health insurance policies sold to small businesses.

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Analysis

**Bill Summary:** To qualify for IVF benefits, an unmarried patient must have (1) had three attempts of artificial insemination over the course of one year failing to result in pregnancy or (2) infertility associated with endometriosis, diethylstilbestrol exposure, blockage or removal of one or both fallopian tubes, or abnormal male factors.

The bill alters the requirements for a married patient to qualify for IVF benefits by (1) reducing the length of required involuntary infertility for the patient and the patient's spouse from at least two years' duration to at least one year's duration and (2) for same sex couples, reducing the number of required attempts of artificial insemination from six attempts over the course of two years to three attempts over the course of one year.

**Current Law:** Under Maryland law, certain carriers must provide coverage for IVF. 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 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.

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.

**Background:** Sixteen states require insurance coverage for IVF services; however, only five of these states' mandates (including Maryland's) apply only to married patients.

According to the U.S. Centers for Disease Control and Prevention, infertility is generally defined as not being able to get pregnant after one year (or longer) of unprotected sex. Because fertility in women is known to decline steadily with age, some providers evaluate and treat women aged 35 or older after six months of unprotected sex. About 6% of married women younger than age 44 are unable to get pregnant after one year and about 12% of women younger than age 44 have difficulty getting pregnant or carrying a pregnancy to term, regardless of marital status.

**State Expenditures:** The State Employee and Retiree Health and Welfare Benefits Program is largely self-insured for its medical contracts and, as such, with the exception of the one fully insured integrated health model medical plan (Kaiser), is not subject to this mandate. However, the program generally provides coverage for mandated health insurance benefits. For calendar 2020, all five medical plans offered under the program provide coverage for IVF per the Maryland mandate, with differing cost-sharing

requirements based on whether the provider is in network or out-of-network and whether the plan is an exclusive provider organization or a preferred provider organization. Kaiser provides coverage for 100% of the allowed benefit. In 2018, the cost of the IVF benefit for the program was \$2.9 million.

As the bill expands the number of individuals who qualify for IVF coverage and accelerates access to the benefit for married couples, expenditures for the program increase by a significant amount beginning in fiscal 2021. The amount of any such increase depends on the number of unmarried patients who seek IVF benefits and the number of married patients who qualify for IVF benefits sooner (some of whom may have otherwise conceived during that year with artificial insemination, a less costly fertility method). Premium costs for the Kaiser plan, which are paid by both the State and participants in the Kaiser plan, also increase. The amount of any such premium increase cannot be reliably determined without additional information.

The Department of Budget and Management advises that costs for the program increase by between \$930,000 and \$2.1 million annually (calendar-year basis). This reflects the cost for each IVF treatment, a 20% to 30% success rate for each treatment, at most three treatments per year, and the cost for each birth. It does not include additional costs related to adding any child dependents to the program for future years. The estimate is based on between 25 and 44 additional women attempting IVF annually, resulting in approximately 10 to 21 additional births per year.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 988 (Senators Hettleman and Lee) - Finance.

**Information Source(s):** U.S. Centers for Disease Control and Prevention; Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - February 13, 2020  
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