

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 142 (Delegate Amprey)
Health and Government Operations

Health Insurance - Coverage of In Vitro Fertilization - Revisions

This bill prohibits carriers from excluding *expenses* arising from in vitro fertilization (IVF), including outpatient services (as currently required), pre or post IVF procedures, preimplantation genetic testing, and medications. A carrier may not deny coverage of IVF because the policyholder or subscriber or the dependent spouse is a genetic carrier. Notwithstanding current requirements to qualify for IVF coverage, benefits must be covered if an appropriate health care provider makes specified determinations. The bill also repeals the requirement that a carrier exclude IVF coverage from a policy or contract at the request of a religious organization if the coverage conflicts with the organization's *bona fide* religious beliefs and practices. **The bill takes effect January 1, 2023, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.**

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) in FY 2023 from the \$125 rate and form filing fee. Review of form filings requires contractual assistance in FY 2023 only. Expenditures for the State Employee and Retiree Health and Welfare Benefits Program increase by a significant amount beginning in FY 2023, as discussed below.

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

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

Analysis

Bill Summary: The bill requires that, notwithstanding current requirements to qualify for coverage of IVF benefits, IVF benefits must be covered if an appropriate health care provider determines that (1) infertility of the patient is imminent; (2) the patient and the patient's spouse have been identified as genetic carriers and at risk for fetal anomaly through natural conception; (3) delaying IVF is detrimental to the patient's mental health; or (4) delaying IVF is otherwise not in the best interest of the patient. The bill does not define "genetic carrier."

Current Law: Under Maryland law, there are more than 50 mandated health insurance benefits that certain carriers must provide to their enrollees, including coverage for IVF. The federal Patient Protection and Affordable Care Act (ACA) requires nongrandfathered health plans to cover 10 essential health benefits (EHBs), which include items and services in the following categories: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including dental and vision care.

Under § 31-116 of the Insurance Article, EHBs must be included in the State benchmark plan and, notwithstanding any other benefits mandated by State law, must be the benefits required in (1) all individual health benefit plans and health benefit plans offered to small employers (except for grandfathered health plans) offered outside the Maryland Health Benefit Exchange (MHBE) and (2) all qualified health plans offered in MHBE.

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. 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.

To qualify for IVF benefits, a married patient and the patient's spouse must have a history of involuntary infertility of at least one year's duration or infertility associated with endometriosis, diethylstilbestrol exposure, blockage or removal of one or both fallopian tubes, or abnormal male factors. 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 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 married 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.

State Expenditures: The State Employee and Retiree Health and Welfare Benefits Program is largely self-insured for its medical contracts and, as such, except for 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, including IVF. The Department of Budget and Management (DBM) advises that the program currently covers all outpatient expenses related to IVF, including medications and pre and post IVF procedures, and does not deny coverage because an employee or dependent spouse is a genetic carrier; however, the program does not currently cover the cost of preimplantation genetic testing. DBM further advises that the bill's requirement that *notwithstanding current requirements for IVF coverage, benefits must be provided if an appropriate health care provider makes specified determinations significantly expands the number of individuals who do not currently qualify for IVF coverage but may seek coverage under the bill.*

Expenditures for the program increase by a significant amount beginning in fiscal 2023 based on the cost of providing coverage for IVF services for individuals who do not qualify under current requirements but will seek coverage under the bill, as well as preimplantation genetic testing. The amount of such an increase depends on the number of additional individuals who will seek IVF coverage and the number of individuals who require preimplantation genetic testing. Premium costs in the Kaiser plan, which are paid both by the State and participants in the Kaiser plan, also increase. The amount of any such increase cannot be reliably determined without additional information.

DBM advises that costs for the program increase by a total of between \$500,000 and \$4.1 million annually (calendar-year basis). The largest portion of the cost increase – between \$450,000 and \$3.7 million annually – is to provide IVF coverage to additional members. This reflects a range of between 20 and 100 additional members seeking IVF services under the bill, additional IVF treatments, a 20% to 30% success rate for each treatment, and the cost of additional births. It does not include any additional costs related to adding any child dependents to the program in future years. Costs further increase by between \$50,000 and \$420,000 annually to cover preimplantation genetic testing. This reflects a range of between 5% and 15% of all members who undergo IVF (including those eligible under current law and those newly eligible under the expansion of the mandate

under the bill) initiating preimplantation genetic testing at a cost of \$4,000 to \$8,000 per test. It does not include any costs for genetic testing *prior* to initiating the IVF process.

Additional Comments: A genetic carrier is a person who has a change in only one gene of a pair and the other gene of the pair is working normally. A carrier is sometimes said to have the disease trait but no physical symptoms of the disease. If both parents are carriers of gene mutations for the same disease, IVF preimplantation genetic diagnosis can screen an embryo to detect a genetic disorder before that embryo is transferred.

Under the ACA, each state must pay, for every health plan purchased through its exchange (in Maryland, MHBE), the additional premium associated with any state-mandated benefit beyond EHBs. As IVF is an existing mandate that is already included in EHBs, MIA advises that the bill's changes apply to the individual market. Should the federal government consider the expanded benefits under the bill as *new* mandated benefits, the State may be required to defray the cost of these benefits in the individual market.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Johns Hopkins Medicine; Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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