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A BILL
25-34

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Women’s Health and Cancer Rights Federal Law Conformity Act of 2000 to require an individual or group plan to provide coverage for the diagnosis and treatment of infertility and standard fertility preservation services, and to require a health insurer offering health insurance coverage through Medicaid and the DC Healthcare Alliance program to cover the diagnosis and medication treatment of infertility.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Expanding Access to Fertility Treatment Amendment Act of 2023”.

Sec. 2. The Women’s Health and Cancer Rights Federal Law Conformity Act of 2000, effective April 3, 2001 (D.C. Law 13-254; D.C. Official Code § 31-3831 *et seq.*), is amended as follows:

(a) Section 5d (D.C. Official Code § 31-3834.04) is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase “drugs, devices, products, and services under sections 5a, 5b, and 5c.” and inserting the phrase “or fertility enhancing drugs, devices, products, and services under sections 5a, 5b, 5c, and 5f.” in its place.

(2) Subsection (c) is amended as follows:

(A) The lead-in language is amended by striking the phrase “, or 5c” and inserting the phrase “, 5c, or 5f” in its place.

28 (B) Paragraph (1) is amended by striking the phrase “contraceptive drugs”
29 and inserting the phrase “contraceptive or fertility enhancing drugs” in its place.

30 (C) Paragraph (2) is amended by striking the phrase “contraceptive drugs”
31 and inserting the phrase “contraceptive or fertility enhancing drugs” in its place.

32 (3) Subsection (d) is amended as follows:

33 (A) Paragraph (1) is amended by striking the phrase “contraceptive drugs”
34 and inserting the phrase “contraceptive or fertility enhancing drugs” in its place.

35 (B) Paragraph (2) is amended by striking the phrase “drugs, devices,
36 products, and services under section 5a, 5b, and 5c.” and inserting the phrase “or fertility
37 enhancing drugs, devices, products, and services under section 5a, 5b, 5c, and 5f.” in its place.

38 (b) A new section 5f is added to read as follows:

39 “Sec. 5f. Coverage of fertility treatments.

40 “(a)(1) Beginning January 1, 2025, a health insurer offering a large group health benefit
41 plan shall provide coverage for the diagnosis and treatment of infertility, including in vitro
42 fertilization and standard fertility preservation services, as provided in paragraph (2) of this
43 subsection; provided that the treatment would be consistent with a physician’s or surgeon’s
44 overall plan of care.

45 “(2) The health benefit plan shall cover:

46 “(A) At least 3 complete oocyte retrievals with unlimited embryo transfers
47 from those oocyte retrievals or from any oocyte retrieval performed prior to January 1, 2025, in

48 accordance with the guidelines of ASRM, using single embryo transfer when recommended and
49 medically appropriate; and

50 “(B) The medical costs related to an embryo transfer to be made from an
51 enrollee to a third-party; except that the enrollee’s coverage shall not extend to any medical costs
52 of the surrogate or gestational carrier after the embryo transfer procedure.

53 “(b)(1) Beginning January 1, 2025, a health insurer offering an individual health benefit
54 plan or small group health plan shall provide coverage for the diagnosis and treatment of
55 infertility, including in vitro fertilization and standard fertility preservation services, as provided
56 in paragraph (2) of this subsection; provided that the treatment would be consistent with a
57 physician’s or surgeon’s overall plan of care.

58 “(2) The health benefit plan shall cover:

59 “(A) At least 3 complete oocyte retrievals with unlimited embryo transfers
60 from those oocyte retrievals or from any oocyte retrieval performed prior to January 1, 2025, in
61 accordance with the guidelines of ASRM, using single embryo transfer when recommended and
62 medically appropriate; and

63 “(B) The medical costs related to an embryo transfer to be made from an
64 enrollee to a third-party; except that the enrollee’s coverage shall not extend to any medical costs
65 of the surrogate or gestational carrier after the embryo transfer procedure.

66 “(c) Beginning January 1, 2024, health insurance coverage through Medicaid and the DC
67 Healthcare Alliance program shall provide coverage for the diagnosis of infertility and any

68 medically necessary ovulation enhancing drugs and medical services related to prescribing and
69 monitoring the use of such drugs, which shall include at least 3 cycles of ovulation-enhancing
70 medication treatment over an enrollee’s lifetime.

71 “(d) Within 180 days of the effective date of this section, the Department of Health Care
72 Finance shall submit a report to the Council after consulting with the Centers for Medicare &
73 Medicaid Services on whether in vitro fertilization and standard fertility preservation services are
74 medically reasonable and necessary procedures under federal law, possible methods for covering
75 in-vitro fertilization and standard fertility preservation services as a Medicaid covered benefit for
76 both fee-for-service and managed care organizations, including any potentially applicable waiver
77 authorities, and the amount of money that would need to be allocated to federal and local funds
78 for such coverage.

79 “(e) Coverage for the treatment of infertility shall be provided without discrimination on
80 the basis of age, ancestry, disability, domestic partner status, gender, gender expression, gender
81 identity, genetic information, marital status, national origin, race, religion, sex, or sexual
82 orientation.

83 “(f) A health insurer shall not impose:

84 “(1) Deductibles, copayments, coinsurance, benefit maximums, waiting
85 periods or any other limitations on coverage for the diagnosis and treatment of infertility,
86 including the prescription of fertility medications, different from those imposed upon benefits for
87 services not related to infertility;

88 “(2) Pre-existing condition exclusions or pre-existing condition waiting periods
89 on coverage for the diagnosis and treatment of infertility or use any prior diagnosis of or prior
90 treatment for infertility as a basis for excluding, limiting, or otherwise restricting the availability
91 of coverage for required benefits; or

92 “(3) Limitations on coverage based solely on arbitrary factors, including number
93 of attempts, dollar amounts, or age, or provide different benefits to, or impose different
94 requirements upon, a class protected under the Human Rights Act of 1977, effective December
95 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), than that provided to, or
96 required of, other patients.

97 “(g) Nothing in this section shall be construed to interfere with the clinical judgment of a
98 physician or surgeon.

99 “(h) The health insurer shall notify all policyholders and all prospective group
100 policyholders with whom they are negotiating of the availability of coverage provided under this
101 section.

102 “(i) For the purposes of this section, the term:

103 “(1) “ASRM” means the American Society for Reproductive Medicine.

104 “(2) “Infertility” means a disease, condition, or status characterized by:

105 “(A) The failure to establish a pregnancy or to carry a pregnancy to live
106 birth after regular, unprotected sexual intercourse in accordance with the guidelines of ASRM;

107 “(B) A person’s inability to reproduce without medical intervention either
108 as a single individual or with their partner; or

109 “(C) A licensed physician’s findings based on a patient’s medical, sexual,
110 and reproductive history, age, physical findings, or diagnostic testing.

111 “(3) “Treatment for infertility” means procedures consistent with established
112 medical practices in the treatment of infertility by licensed physicians and surgeons, including
113 diagnosis, diagnostic tests, medication, surgery, or gamete intrafallopian transfer.

114 “(4) “Standard fertility preservation services” means procedures that are
115 consistent with established medical practices or professional guidelines published by ASRM or
116 the American Society of Clinical Oncology for a person who has a medical condition or is
117 expected to undergo medication therapy, surgery, radiation, chemotherapy, or other medical
118 treatment that is recognized by medical professionals to cause a risk of impairment to fertility.

119 “(j) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
120 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue
121 rules to implement the provisions of this section.”.

122 Sec. 3. Applicability.

123 “(a) Amendatory section 5f(b) in section 2 shall apply upon the date of inclusion of its
124 fiscal effect in an approved budget and financial plan.

125 “(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect
126 in an approved budget and financial plan and provide notice to the Budget Director of the

127 Council of the certification.

128 “(c)(1) The Budget Director shall cause the notice of the certification to be published in
129 the District of Columbia Register.

130 “(2) The date of publication of the notice of the certification shall not affect the
131 applicability of this act.

132 Sec. 4. Fiscal impact statement.

133 The Council adopts the fiscal impact statement in the committee report as the fiscal
134 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
135 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

136 Sec. 5. Effective date.

137 This act shall take effect following approval by the Mayor (or in the event of veto by the
138 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
139 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
140 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
141 Columbia Register.