

AN ACT

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 health benefit 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.

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

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

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

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

(B) Paragraph (2) is amended by striking the phrase “drugs, devices, products, or services required to be covered under sections 5a, 5b, or 5c.” and inserting the phrase “or fertility enhancing drugs, devices, products, or services required to be covered under sections 5a, 5b, 5c, or 5f.” in its place.

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

“Sec. 5f. Coverage of fertility treatments.

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

“(2) The health benefit plan shall cover:

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

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

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

“(2) The health benefit plan shall cover:

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

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

“(c)(1) Beginning January 1, 2024, the DC Healthcare Alliance program shall provide health insurance coverage for the diagnosis of infertility and any medically necessary ovulation enhancing drugs and medical services related to prescribing and monitoring the use of such drugs, which shall include at least 3 cycles of ovulation-enhancing medication treatment over an enrollee’s lifetime.

“(2) By January 1, 2024, the Department of Health Care Finance shall submit an amendment to the Medicaid state plan to the Centers for Medicare & Medicaid Services to authorize coverage through Medicaid for the diagnosis of infertility and any medically necessary ovulation enhancing drugs and medical services related to prescribing and monitoring the use of such drugs, which shall include at least 3 cycles of ovulation-enhancing medication treatment over an enrollee’s lifetime.

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

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

“(f) A health insurer shall not impose:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Applicability.

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

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

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

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia