

**FERTILITY TREATMENT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Raymond P. Ward**

Senate Sponsor: Curtis S. Bramble

Cosponsor:

Rosemary T. Lesser

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**LONG TITLE**

**General Description:**

This bill expands Medicaid coverage for fertility preservation and criminalizes improper conduct related to fertility treatment.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the department to apply for a Medicaid waiver or state plan amendment with the Centers for Medicare and Medicaid Services to provide coverage for fertility preservation treatments for an individual diagnosed with cancer or other disease;
- ▶ imposes a reporting requirement; and
- ▶ establishes a criminal penalty for a health care provider that:
  - provides "assisted reproductive treatment" to a patient; and
  - uses the health care provider's own gamete without the written consent of the patient.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **26-18-420.1**, Utah Code Annotated 1953

32 **76-07-401**, Utah Code Annotated 1953

33 **76-07-402**, Utah Code Annotated 1953

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35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **26-18-420.1** is enacted to read:

37 **26-18-420.1. Medicaid waiver for fertility preservation services.**

38 (1) As used in this section:

39 (a) "Iatrogenic infertility" means an impairment of fertility or reproductive functioning  
40 caused by surgery, chemotherapy, radiation, or other medical treatment.

41 (b) "Physician" means an individual licensed to practice under Title 58, Chapter 67,  
42 Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

43 (c) "Qualified enrollee" means an individual who:

44 (i) is enrolled in the Medicaid program;

45 (ii) has been diagnosed with a form of cancer by a physician; and

46 (iii) needs treatment for that cancer that may cause a substantial risk of sterility or  
47 iatrogenic infertility, including surgery, radiation, or chemotherapy.

48 (d) "Standard fertility preservation service" means a fertility preservation procedure  
49 and service that:

50 (i) is not considered experimental or investigational by the American Society for  
51 Reproductive Medicine or the American Society of Clinical Oncology; and

52 (ii) is consistent with established medical practices or professional guidelines  
53 published by the American Society for Reproductive Medicine or the American Society of  
54 Clinical Oncology, including:

- 55           (A) sperm banking;
- 56           (B) oocyte banking;
- 57           (C) embryo banking;
- 58           (D) banking of reproductive tissues; and
- 59           (E) storage of reproductive cells and tissues.

60           (2) Before January 1, 2022, the department shall apply for a Medicaid waiver or a state  
 61 plan amendment with CMS to implement the coverage described in Subsection (3).

62           (3) If the waiver or state plan amendment described in Subsection (2) is approved, the  
 63 Medicaid program shall provide coverage to a qualified enrollee for standard fertility  
 64 preservation services.

65           (4) The Medicaid program may not provide the coverage described in Subsection (3)  
 66 before the later of:

- 67           (a) the day on which the waiver described in Subsection (2) is approved; and
- 68           (b) January 1, 2023.

69           (5) Before November 1, 2023, and before November 1 of each third year after 2023,  
 70 the department shall:

71           (a) calculate the change in state spending attributable to the coverage described in this  
 72 section; and

73           (b) report the amount described in Subsection (5)(a) to the Health and Human Services  
 74 Interim Committee and the Social Services Appropriations Subcommittee.

75           Section 2. Section **76-07-401** is enacted to read:

**Part 4. Genetic Material Misuse**

**76-07-401. Definitions.**

78           As used in this part:

79           (1) "Assisted reproductive treatment" means a method of causing pregnancy by any  
 80 means other than through sexual intercourse, including:

- 81           (a) intrauterine or intracervical insemination;

- 82           (b) donation of eggs or sperm;  
83           (c) donation of embryos;  
84           (d) in vitro fertilization and embryo transfer; and  
85           (e) intracytoplasmic sperm injection.  
86           (2) "Gamete" means a cell containing a haploid complement of DNA that has the  
87 potential to form an embryo when combined with another gamete, including:  
88           (a) a sperm;  
89           (b) an egg; or  
90           (c) nuclear DNA from one individual combined with the:  
91           (i) cytoplasm of another individual; or  
92           (ii) cytoplasmic DNA of another individual.  
93           (3) "Health care provider" means an individual listed in Subsection [78B-3-403\(12\)](#).  
94           Section 3. Section **76-07-402** is enacted to read:  
95           **76-07-402. Genetic material misuse.**  
96           (1) A health care provider may not knowingly use the health care provider's own  
97 gamete, when providing assisted reproductive treatment to a patient, without the patient's  
98 written consent.  
99           (2) A health care provider who violates Subsection (1) is guilty of a third degree  
100 felony.