

Introduced by

Senators Grabinger, Heckaman, Oban

Representatives Brandenburg, Hanson, Mitskog

1 A BILL ~~for an Act to create and enact a new section to chapter 26.1-36 and a new section to~~  
2 ~~chapter 54-52.1 of the North Dakota Century Code, relating to health insurance coverage for~~  
3 ~~infertility treatment; and to provide for application:~~ for an Act to create and enact a new section to  
4 chapter 54-52.1 of the North Dakota Century Code, relating to public employees retirement  
5 system uniform group insurance coverage of infertility benefits; to provide for a report to the  
6 legislative assembly; and to provide an effective date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 ~~SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created~~  
9 ~~and enacted as follows:~~

10 ~~Infertility treatment coverage.~~

11 ~~1. As used in this section:~~

12 ~~a. "Iatrogenic infertility" means an impairment of fertility due to surgery, radiation,~~  
13 ~~chemotherapy, or other medical treatment.~~

14 ~~b. "Infertility" means a disease or condition that results in impaired function of the~~  
15 ~~reproductive system as a result of which an individual is unable to procreate or to~~  
16 ~~carry a pregnancy to live birth, including:~~

17 ~~(1) Absent or incompetent uterus.~~

18 ~~(2) Damaged, blocked, or absent fallopian tubes.~~

19 ~~(3) Damaged, blocked, or absent male reproductive tract.~~

20 ~~(4) Damaged, diminished, or absent sperm.~~

21 ~~(5) Damaged, diminished, or absent oocytes.~~

22 ~~(6) Damaged, diminished, or absent ovarian function.~~

23 ~~(7) Endometriosis.~~

24 ~~(8) Hereditary genetic disease or condition that would be passed to offspring.~~

- 1 ~~\_\_\_\_\_ (9) Adhesions.~~
- 2 ~~\_\_\_\_\_ (10) Uterine fibroids.~~
- 3 ~~\_\_\_\_\_ (11) Sexual dysfunction impeding intercourse.~~
- 4 ~~\_\_\_\_\_ (12) Teratogens or idiopathic causes.~~
- 5 ~~\_\_\_\_\_ (13) Polycystic ovarian syndrome.~~
- 6 ~~\_\_\_\_\_ (14) Inability to become pregnant or cause pregnancy of unknown etiology.~~
- 7 ~~\_\_\_\_\_ (15) Two or more pregnancy losses, including ectopic pregnancies.~~
- 8 ~~\_\_\_\_\_ (16) Uterine congenital anomalies, including those caused by diethylstilbestrol.~~
- 9 ~~\_\_\_\_\_ (17) Surgical sterilization if no living children have been conceived with the~~
- 10 ~~\_\_\_\_\_ current partner.~~
- 11 ~~\_\_\_\_\_ c. "Policy" means an accident and health insurance policy, contract, or evidence of~~
- 12 ~~\_\_\_\_\_ coverage on a group, individual, blanket, franchise, or association basis.~~
- 13 ~~\_\_\_\_\_ d. "Standard fertility preservation services" means fertility preservation procedures~~
- 14 ~~\_\_\_\_\_ consistent with established medical practices and professional guidelines~~
- 15 ~~\_\_\_\_\_ published by professional medical organizations, such as the American society~~
- 16 ~~\_\_\_\_\_ for clinical oncology and the American society for reproductive medicine.~~
- 17 ~~\_\_\_\_\_ 2. An insurer may not deliver, issue, execute, or renew a policy that provides medical,~~
- 18 ~~\_\_\_\_\_ hospital, or prescription drug benefits coverage for pregnancy-related claims unless~~
- 19 ~~\_\_\_\_\_ that policy provides medical or hospital or prescription drug coverage for fertility care~~
- 20 ~~\_\_\_\_\_ services, including in vitro fertilization services for individuals who suffer from a~~
- 21 ~~\_\_\_\_\_ disease or condition that results in the inability to procreate or to carry a pregnancy to~~
- 22 ~~\_\_\_\_\_ live birth and standard fertility preservation services for individuals who must undergo~~
- 23 ~~\_\_\_\_\_ medically necessary treatment that may cause iatrogenic infertility. The benefits must~~
- 24 ~~\_\_\_\_\_ be provided to insureds to the same extent as other pregnancy-related benefits and as~~
- 25 ~~\_\_\_\_\_ medically appropriate must include coverage for:~~
- 26 ~~\_\_\_\_\_ a. Intrauterine insemination.~~
- 27 ~~\_\_\_\_\_ b. Assisted hatching.~~
- 28 ~~\_\_\_\_\_ c. Cryopreservation and thawing of eggs, sperm, and embryos.~~
- 29 ~~\_\_\_\_\_ d. Cryopreservation of ovarian tissue.~~
- 30 ~~\_\_\_\_\_ e. Cryopreservation of testicular tissue.~~
- 31 ~~\_\_\_\_\_ f. Embryo biopsy.~~

- 1 ~~g. Consultation and diagnostic testing.~~
- 2 ~~h. Fresh and frozen embryo transfers.~~
- 3 ~~i. Four completed egg retrievals per lifetime, with unlimited embryo transfers in~~
- 4 ~~accordance with best practices for reproductive medicine, using single embryo~~
- 5 ~~transfer.~~
- 6 ~~j. In vitro fertilization, including in vitro fertilization using donor eggs, sperm, or~~
- 7 ~~embryos, and in vitro fertilization through which the embryo is transferred to a~~
- 8 ~~gestational carrier or surrogate.~~
- 9 ~~k. Intracytoplasmic sperm injection.~~
- 10 ~~l. Medications.~~
- 11 ~~m. Ovulation induction.~~
- 12 ~~n. Storage of oocytes, sperm, embryos, and tissue.~~
- 13 ~~o. Surgery, including microsurgical sperm aspiration.~~
- 14 ~~p. Medical and laboratory services, including use of preimplantation genetic testing,~~
- 15 ~~which reduce excess embryo creation through egg cryopreservation and thawing~~
- 16 ~~in accordance with an individual's religious or ethical beliefs.~~
- 17 ~~3. An insured qualifies for coverage under this section if all of the following requirements~~
- 18 ~~are met:~~
- 19 ~~a. A board-certified or board-eligible obstetrician-gynecologist, subspecialist in~~
- 20 ~~reproductive endocrinology, oncologist, urologist, or andrologist verifies the~~
- 21 ~~insured is diagnosed with infertility or is at risk of iatrogenic infertility.~~
- 22 ~~b. If the insured is diagnosed with infertility, the insured has not been able to obtain~~
- 23 ~~a successful pregnancy through reasonable effort with less costly infertility~~
- 24 ~~treatments covered by the policy, except as follows:~~
- 25 ~~(1) No more than three treatment cycles of ovulation induction or intrauterine~~
- 26 ~~inseminations may be required before in vitro fertilization services are~~
- 27 ~~covered.~~
- 28 ~~(2) If in vitro fertilization is medically necessary, cycles of ovulation induction or~~
- 29 ~~intrauterine inseminations may not be required before in vitro fertilization~~
- 30 ~~services are covered.~~

1 ~~————— (3) In vitro fertilization procedure must be performed at a practice that conforms~~  
2 ~~to American society for reproductive medicine and American congress of~~  
3 ~~obstetricians and gynecologists guidelines.~~

4 ~~————— c. For in vitro fertilization services, retrievals are completed before the insured is~~  
5 ~~forty five years old and transfers are completed before the insured is fifty years~~  
6 ~~old.~~

7 ~~————— 4. A policy may not impose any exclusions, limitations, or other restrictions on coverage~~  
8 ~~of fertility medications different from those imposed on any other prescription~~  
9 ~~medications, and may not impose deductibles, copayments, coinsurance, benefit~~  
10 ~~maximums, waiting periods, or any other limitations on coverage for required fertility~~  
11 ~~care services, which are different from those imposed upon benefits for services not~~  
12 ~~related to infertility.~~

13 ~~————— 5. A policy is not required to cover experimental fertility care services, monetary~~  
14 ~~payments to gestational carriers or surrogates, or the reversal of voluntary sterilization~~  
15 ~~undergone after the insured successfully procreated with the insured's partner at the~~  
16 ~~time the reversal is desired.~~

17 ~~————— **SECTION 2.** A new section to chapter 54-52.1 of the North Dakota Century Code is created~~  
18 ~~and enacted as follows:~~

19 ~~————— **Insurance to cover infertility treatments.**~~

20 ~~————— The board shall provide medical and prescription drug benefits coverage under a contract~~  
21 ~~for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section~~  
22 ~~54-52.1-04.2 for infertility treatment in the same manner as provided under section 1 of this Act.~~

23 ~~————— **SECTION 3. APPLICATION.** This Act is not subject to section 54-03-28, and therefore is~~  
24 ~~not required to be accompanied by a cost benefit analysis; is not limited in application to the~~  
25 ~~public employees retirement system's uniform group health benefits programs; does not require~~  
26 ~~the public employees retirement system study the effect of the fertility treatment coverage~~  
27 ~~during the 2019-20 interim; and does not expire in two years. This Act applies to insurance~~  
28 ~~policies and health benefits programs that are issued or renewed on and after the effective date~~  
29 ~~of this Act.~~

30 **SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created  
31 and enacted as follows:

**Infertility treatment coverage.**

1. As used in this section:

a. "Iatrogenic infertility" means an impairment of fertility due to surgery, radiation, chemotherapy, or other medical treatment.

b. "Infertility" means a disease or condition that results in impaired function of the reproductive system as a result of which an individual is unable to procreate or to carry a pregnancy to live birth, including:

(1) Absent or incompetent uterus.

(2) Damaged, blocked, or absent fallopian tubes.

(3) Damaged, blocked, or absent male reproductive tract.

(4) Damaged, diminished, or absent sperm.

(5) Damaged, diminished, or absent oocytes.

(6) Damaged, diminished, or absent ovarian function.

(7) Endometriosis.

(8) Hereditary genetic disease or condition that would be passed to offspring.

(9) Adhesions.

(10) Uterine fibroids.

(11) Sexual dysfunction impeding intercourse.

(12) Teratogens or idiopathic causes.

(13) Polycystic ovarian syndrome.

(14) Inability to become pregnant or cause pregnancy of unknown etiology.

(15) Two or more pregnancy losses, including ectopic pregnancies.

(16) Uterine congenital anomalies, including those caused by diethylstilbestrol.

(17) Surgical sterilization if no living children have been conceived with the current partner.

c. "Policy" means health benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2.

d. "Standard fertility preservation services" means fertility preservation procedures consistent with established medical practices and professional guidelines.

1 published by professional medical organizations, such as the American society  
2 for clinical oncology and the American society for reproductive medicine.

3 2. For all policies that become effective after June 30, 2019, and which do not extend  
4 past June 30, 2021, the board shall provide health benefits coverage for fertility care  
5 services, including in vitro fertilization services for individuals who suffer from a  
6 disease or condition that results in the inability to procreate or to carry a pregnancy to  
7 live birth and standard fertility preservation services for individuals who must undergo  
8 medically necessary treatment that may cause iatrogenic infertility. The benefits must  
9 be provided to insureds to the same extent as other pregnancy-related benefits and as  
10 medically appropriate must include coverage for:

11 a. Intrauterine insemination.

12 b. Assisted hatching.

13 c. Cryopreservation and thawing of eggs, sperm, and embryos.

14 d. Cryopreservation of ovarian tissue.

15 e. Cryopreservation of testicular tissue.

16 f. Embryo biopsy.

17 g. Consultation and diagnostic testing.

18 h. Fresh and frozen embryo transfers.

19 i. Four completed egg retrievals per lifetime, with unlimited embryo transfers in  
20 accordance with best practices for reproductive medicine, using single embryo  
21 transfer.

22 j. In vitro fertilization, including in vitro fertilization using donor eggs, sperm, or  
23 embryos, and in vitro fertilization through which the embryo is transferred to a  
24 gestational carrier or surrogate.

25 k. Intracytoplasmic sperm injection.

26 l. Medications.

27 m. Ovulation induction.

28 n. Storage of oocytes, sperm, embryos, and tissue.

29 o. Surgery, including microsurgical sperm aspiration.

1 p. Medical and laboratory services, including use of preimplantation genetic testing,  
2 which reduce excess embryo creation through egg cryopreservation and thawing  
3 in accordance with an individual's religious or ethical beliefs.

4 3. An insured qualifies for coverage under this section if all of the following requirements  
5 are met:

6 a. A board-certified or board-eligible obstetrician-gynecologist, subspecialist in  
7 reproductive endocrinology, oncologist, urologist, or andrologist verifies the  
8 insured is diagnosed with infertility or is at risk of iatrogenic infertility.

9 b. If the insured is diagnosed with infertility, the insured has not been able to obtain  
10 a successful pregnancy through reasonable effort with less costly infertility  
11 treatments covered by the policy, except as follows:

12 (1) No more than three treatment cycles of ovulation induction or intrauterine  
13 inseminations may be required before in vitro fertilization services are  
14 covered.

15 (2) If in vitro fertilization is medically necessary, cycles of ovulation induction or  
16 intrauterine inseminations may not be required before in vitro fertilization  
17 services are covered.

18 (3) In vitro fertilization procedure must be performed at a practice that conforms  
19 to American society for reproductive medicine and American congress of  
20 obstetricians and gynecologists guidelines.

21 c. For in vitro fertilization services, retrievals are completed before the insured is  
22 forty-five years old and transfers are completed before the insured is fifty years  
23 old.

24 4. A policy may not impose any exclusions, limitations, or other restrictions on coverage  
25 of fertility medications different from those imposed on any other prescription  
26 medications, and may not impose deductibles, copayments, coinsurance, benefit  
27 maximums, waiting periods, or any other limitations on coverage for required fertility  
28 care services, which are different from those imposed upon benefits for services not  
29 related to infertility.

30 5. A policy is not required to cover experimental fertility care services, monetary  
31 payments to gestational carriers or surrogates, or the reversal of voluntary sterilization

undergone after the insured successfully procreated with the insured's partner at the time the reversal is desired.

**SECTION 2. PUBLIC EMPLOYEES RETIREMENT SYSTEM - COVERAGE OF FERTILITY BENEFITS - REPORT TO LEGISLATIVE ASSEMBLY.** Pursuant to section 54-03-28, the public employees retirement system shall prepare and submit for introduction a bill to the sixty-seventh legislative assembly to repeal the expiration date for section 1 of this Act and to extend the coverage of fertility benefits to apply to all group and individual health insurance policies. The public employees retirement system shall append to the bill a report regarding the effect of the fertility benefits coverage requirement on the system's health insurance programs, information on the utilization and costs relating to the coverage, and a recommendation regarding whether the coverage should continue.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through July 31, 2021, and after that date is ineffective.