

Introduced by

Representatives Brandenburg, Dobervich, Mitskog

Senators Erbele, Oban, K. Roers

1 A BILL for an Act to create and enact section 54-52.1-04.19 of the North Dakota Century Code,
2 relating to public employee fertility health benefits; to amend and reenact section 26.1-36.6-03
3 of the North Dakota Century Code, relating to self-insurance health plans; to provide for a
4 report; to provide for application; to provide an expiration date; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 26.1-36.6-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-36.6-03. Self-insurance health plans - Requirements.**

- 9 1. The following policy provisions apply to a self-insurance health plan or to the
10 administrative services only or third-party administrator, and are subject to the
11 jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10,
12 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17,
13 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39,
14 26.1-36-41, 26.1-36-44, and 26.1-36-46.
- 15 2. The following health benefit provisions applicable to a group accident and health
16 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are
17 subject to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07,
18 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3,
19 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10,
20 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15,
21 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and
22 26.1-36-43. Section 2 of this Act applies to a self-insurance health plan and is subject
23 to the jurisdiction of the commissioner.

1 **SECTION 2.** Section 54-52.1-04.19 of the North Dakota Century Code is created and
2 enacted as follows:

3 **54-52.1-04.19. Health insurance benefits coverage - Fertility health care.**

4 1. As used in this section:

5 a. "Diagnosis of infertility" means the services, procedures, testing, or medications
6 recommended by a licensed physician which are consistent with established,
7 published, or approved best practices or professional standards or guidelines,
8 such as the American society of reproductive medicine, the American college of
9 obstetricians and gynecologists, or the American society of clinical oncology for
10 diagnosing and treating infertility.

11 b. "Fertility treatment" means health care services, procedures, testing,
12 medications, monitoring, treatments, or products, including genetic testing and
13 assisted reproductive technologies such as oocyte retrievals, in vitro fertilization,
14 and fresh and frozen embryo transfers, provided with the intent to achieve a
15 pregnancy that results in a live birth with healthy outcomes.

16 c. "Infertility" means a disease or condition characterized by:

17 (1) The failure to conceive a pregnancy or to carry a pregnancy to live birth
18 after unprotected sexual intercourse;

19 (2) An individual's inability to cause pregnancy and live birth either as a covered
20 individual or with the covered individual's partner; or

21 (3) A licensed health care provider's findings and statement based on a
22 patient's medical, sexual, and reproductive history, age, physical findings, or
23 diagnostic testing.

24 d. "Medically necessary" means health care services or products provided in a
25 manner:

26 (1) Consistent with the findings and recommendations of a licensed physician,
27 based on a patient's medical history, sexual, and reproductive history, age,
28 partner, physical findings, or diagnostic testing;

29 (2) Consistent with generally accepted standards of medical practice as set
30 forth by a professional medical organization with a specialization in any

- 1 aspect of reproductive health, such as the American society for reproductive
2 medicine or the American college of obstetricians and gynecologists; or
3 (3) Clinically appropriate in terms of type, frequency, extent, site, and duration.
4 e. "Monitoring" includes, ultrasounds, transvaginal ultrasounds, laboratory testing,
5 and follow-up appointments.
6 e. "Standard fertility preservation services" means services, procedures, testing,
7 medications, treatments, cryopreservation of eggs, sperm, embryos, and
8 products consistent with established best medical practices or professional
9 guidelines such as those published by the American society for reproductive
10 medicine or the American society of clinical oncology for an individual who has a
11 medical condition or is expected to undergo medication therapy, surgery,
12 radiation, chemotherapy, or other medical treatment recognized by medical
13 professionals to result in, or increase the risk of, impaired fertility.
14 f. "Third-party reproductive care for the benefit of the covered individual" means the
15 use of eggs, sperm, or embryos donated to the covered individual or partner by a
16 donor, or the use of a gestational carrier, to achieve a live birth with healthy
17 outcomes.
18 2. The board shall provide coverage for the expenses of the diagnosis of infertility, fertility
19 treatment, and standard fertility preservation services if recommended and medically
20 necessary.
21 a. Coverage must include:
22 (1) Three completed cycles of intrauterine insemination, in accordance with
23 best practices, such as the standards and guidelines of the American
24 society of reproductive medicine.
25 (2) Fertility treatment and standard fertility preservation services,
26 ~~necessary to~~
27 ~~achieve two live births, or a maximum of four completed oocyte retrievals~~
28 ~~with unlimited fresh and frozen embryo transfers,~~ in accordance with best
29 practices, such as the guidelines of the American society for reproductive
~~medicine, and using no more than two embryos per transfer.~~

- 1 (3) Diagnosis of infertility, fertility treatment, and standard fertility preservation
2 services, including third-party reproductive care for the benefit of the
3 covered individual or partner.
- 4 (4) Fertility treatment, consisting of a method of causing pregnancy other than
5 sexual intercourse which is provided with the intent to create a legal parent-
6 child relationship between the covered individual and the resulting child in
7 accordance with chapter 14-20.
- 8 (5) Standard fertility preservation services, including the procurement,
9 cryopreservation, and storage of gametes, embryos, or other reproductive
10 tissue, and standard fertility preservation services if the covered individual
11 has a diagnosed medical condition or genetic condition that may cause
12 impairment of fertility affecting reproductive organs or processes. As used in
13 this paragraph, "may cause" means the disease itself, or the necessary
14 treatment, has a likely side effect of infertility as established by best
15 practices, such as the American society for reproductive medicine, the
16 American college of obstetricians and gynecologists, or the American
17 society of clinical oncology.
- 18 (6) Medical and laboratory services that reduce excess embryo creation
19 through egg cryopreservation and thawing in accordance with a covered
20 individual's religious or ethical beliefs.
- 21 b. This section may not be construed to deny the included coverage in this section
22 to an individual who forgoes a particular fertility treatment or standard fertility
23 preservation service if the individual's physician determines the fertility treatment
24 or standard fertility preservation service is likely to be unsuccessful.
- 25 3. To be covered under this section, the diagnosis of infertility, fertility treatment, and
26 standard fertility preservation services must be performed at a facility that conforms to
27 best practices, such as the standards and guidelines developed by the American
28 society of reproductive medicine, the American college of obstetricians and
29 gynecologists, or the American society of clinical oncology.

- 1 4. Coverage under this section must be made available to all covered individuals,
2 including covered individuals who have entered coverage during special enrollment or
3 open enrollment.
- 4 5. Coverage under this section must be in accordance with best practices, such as the
5 standards or guidelines developed by the American society of reproductive medicine,
6 the American college of obstetricians and gynecologists, or the American society of
7 clinical oncology. If a carrier makes, issues, circulates, or causes to be made, issued,
8 or circulated, clinical guidelines based upon data not reasonably current or do not cite
9 with specificity, this act constitutes unfair or deceptive acts or practices in the business
10 of insurance as prohibited by chapter 26.1-04.
- 11 6. Benefits under this section may not be limited based on:
- 12 a. A copayment, deductible, coinsurance, benefit maximum, waiting period, or other
13 limitation on coverage different from maternity benefits provided under the health
14 benefits;
- 15 b. An exclusion, limitation, or other restriction on coverage of fertility medication
16 different from restrictions imposed on any other prescription medication;
- 17 c. A requirement that provides different benefits to, or imposes different
18 requirements on, a class protected under chapter 14-02.4 than that provided to or
19 required of other covered individuals; or
- 20 d. A pre-existing condition exclusion, pre-existing condition waiting period on
21 coverage for required benefits, or a prior diagnosis of infertility, fertility treatment,
22 or standard fertility preservation services.
- 23 7. Notwithstanding the coverage required under this section, the board may limit the
24 coverage to a maximum of no less than fifty thousand dollars per covered individual.

25 **SECTION 3. APPLICATION.** This Act applies to health benefits coverage that begins after
26 June 30, 2021, and which does not extend past June 30, 2023.

27 **SECTION 4. PUBLIC EMPLOYEES RETIREMENT SYSTEM - FERTILITY HEALTH**
28 **BENEFITS.** Pursuant to section 54-03-28, the public employees retirement system shall
29 prepare and submit for introduction a bill to the sixty-eighth legislative assembly to repeal the
30 expiration date for this Act and to extend the coverage of fertility benefits to all group and
31 individual health insurance policies. The public employees retirement system shall append a

1 report to the bill regarding the effect of the fertility health benefits requirement on the system's
2 health insurance programs, information on the utilization and costs relating to the coverage, and
3 a recommendation regarding whether the coverage should be continued.

4 **SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that
5 date is ineffective.

6 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.