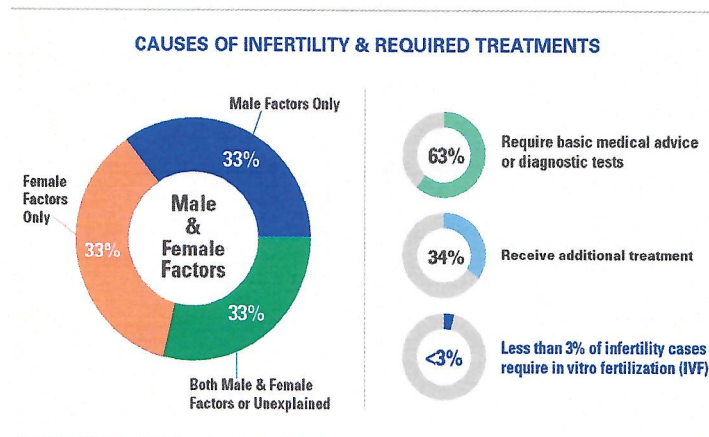


Dear Chairman Lefor, Vice-Chairman Keiser, and distinguished members of the House Industry, Business, and Labor Committee,

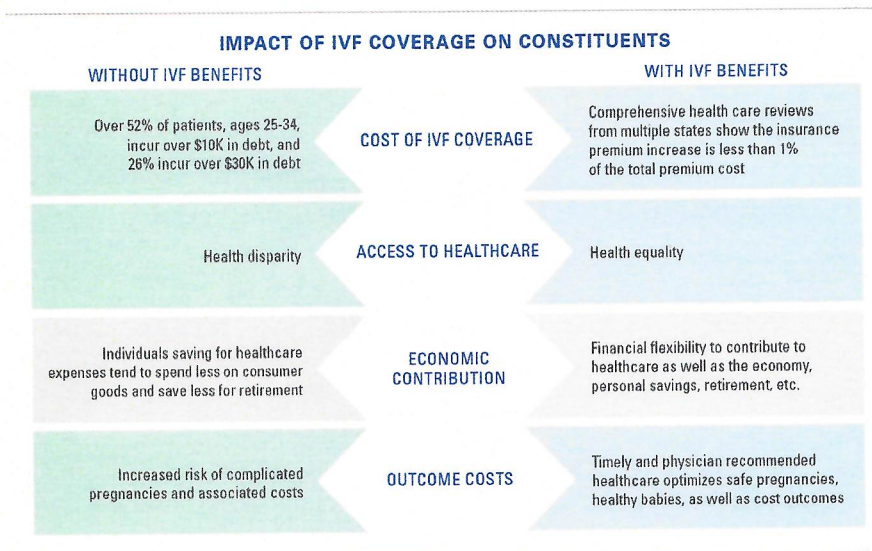
I am writing in support of House Bill 1147: An Act to create and enact section 54-52.1-04.19 of the North Dakota Century Code, relating to public employee fertility health benefits. The original bill was co-authored by myself, Davina Fankhauser of Fertility Within Reach, and William Harrie of Nilles Law in Fargo, ND, along with patient advocate, Tara Brandner of Everlasting Hope. I ask for your support of HB 1147 because we want North Dakota residents to have access to timely and appropriate health care, optimizing safe pregnancies and healthy babies.

What is the cost to do this? We know from existing laws that providing for the diagnosis of infertility, fertility treatment, and fertility preservation, the national average per member per month (PMPM) added to an individual's premium is \$1.39. Most states find these benefits are 1% or less of the total health care costs. These laws have been in place for decades and have become part of the fabric of the states' health care system.

In North Dakota, approximately 37% of the population, or 278,000¹ people, are of reproductive age. This breakdown is 163,700 men (21% of residents) and 114,400 women (15% of residents). 1 in 6, or 17%, of those of reproductive age, will experience infertility. That comes to 47,260 North Dakotans. Only 3% of infertility cases require assisted reproductive technology (ART), such as in vitro fertilization (IVF) and 97% of infertility cases are treated with conventional drug therapy or surgical procedures. That means approximately, 1,417 North Dakota residents may require IVF.



National and global health organizations, including the American Medical Association, have determined infertility is a disease. Unfortunately, in North Dakota this chronic medical condition is not covered by insurance like other diseases are. Beginning in 1986, states around the country initiated insurance related laws for fertility health benefits because it was not only providing optimal health care, but also supported the economy of the state. Since 2018, six states have added fertility health benefits varying from three cycles of in vitro fertilization (IVF) to an unlimited amount of treatments. The impact on constituents is significant.



The amended version of HB 1147 does provide a more generous amount of financial coverage from what is currently offered. While this will increase access to this healthcare, I would still encourage you to consider this benefit in terms of number of treatment cycles rather than an allotted dollar amount. Why? The procedures required during an IVF cycle can vary based on the patient's diagnosis, resulting in some people using their dollar benefits faster than others. For example, 1/3 of infertility is due to male factor infertility which can require an additional procedure by an embryologist during their IVF cycle. The number of cycles allows those with male factor infertility to access the same amount of treatment attempts as those with a diagnosis of female factor or unknown infertility. My recommendation would be a minimum of three IVF cycles.

In some states, insurance carriers are voluntarily offering insurance benefits for fertility preservation. This indicates that providing these benefits are reasonable and affordable. Since 2018, ten states have adopted laws providing benefits for fertility preservation. States recognize, one of the most effective strategies in the realm of preventative medicine is to bank reproductive cells when medically necessary. The cost among states vary from \$0.01 PMPM to \$0.06 PMPM. The financial range is based on the treatment protocol, age and gender of the patient. The procedure for men, while significantly less than women, is also a financial burden. My nonprofit recognized an underserved population and began a grant program called Banking on the Future. We pay for the first year of storing cryopreserved material for those 21 years and younger and negotiated discounted rates of storage for subsequent years. Parents of children in need are overwhelmed by the additional expense and often, regrettably, choose not to preserve their child's fertility. It does not need to be this way. North Dakota can help both youth and adults have health and hope for their future.

What about your constituent, the employer? Those of reproductive age also make up for the majority of North Dakota's workforce. More employers are voluntarily adding fertility health benefits to recruit and retain workers.² Adding these benefits has proven to be cost-effective. If offered appropriately, insurance coverage can reduce costs related to high-risk pregnancy, premature birth, and other associated expenses. Should you favorably report HB 1147 out of



committee, you will help 1 in 6 couples develop a deep loyalty to their employer and finally be able to contribute to the economy. Without having to save for medical treatments, people are able to buy a car, or a house, as well as invest in their retirement.

I would like to address two issues that came up during the Employee Benefits Programs Committee hearing.

First, the original legislation was written so treatment provided would optimize chances of success and reduce the risk of multiple births. Research shows patients are less anxious and take fewer risks with their treatments if they believe they have insurance coverage for their care. Meghan Honan of BCBS of ND testified that infertility treatment leads to multiples. This statement supports studies that identified states without insurance laws for fertility care have higher rates of multiples. To be fair, as long as there is any population in North Dakota without insurance benefits for fertility care, there will be medical decisions based on financial fears, leading to devastating outcomes, including a link between treatments and multiples.

Second, a North Dakota patient who is a cancer survivor spoke. Sometimes, women who undergo cancer treatment not only experience permanent damage to their ovaries, but they are unable to carry a child. Without fertility preservation, these patients may need third party reproduction including donor eggs, donor embryos, donor sperm (if the patient is male), and yes, perhaps a gestational carrier. Please note, a carrier is just that, they carry the embryo that comes from the intended parents. This could be the sister or cousin of a patient, helping their loved one build a family. Although the medical costs of IVF with third party reproduction are the same as treatment without third party, these patients are denied the necessary health option.

It is our hope that you will Favorably vote HB1147 out of committee so it may move forward in the legislative process.

For additional information, I have attached The Policymaker's Guide to Fertility Health Benefits. This will share details related to costs, quotes from insurance executives, as well as citations which support all evidence-based data provided.

It would be my honor to answer any further questions you may have.

Sincerely yours,

Davina Fankhauser

Co-Founder and President | Fertility Within Reach, Inc.

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The Policymaker's Guide to Fertility Health Benefits

Evidence-Based Data for Informed Decisions



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ADVOCATING FOR FERTILITY HEALTH BENEFITS

“ I can honestly say with 100% certainty that our son Jake would have *never* been conceived if my employer had not offered us a health insurance plan that included IVF coverage.”

Rob Walden
Resident of Mesa, Arizona



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Infertility: The Facts¹

A Silent Problem that You Can Help Address

HOW MANY PEOPLE ARE AFFECTED BY INFERTILITY?

1 in 6 couples in the U.S. are affected by infertility.²

WHAT IS INFERTILITY?

Infertility is a disease of the reproductive system, resulting in not being able to conceive after one year of trying (or six months if a woman is older than 35). Women who can get pregnant but are unable to stay pregnant are also infertile.

WHAT CAUSES INFERTILITY?

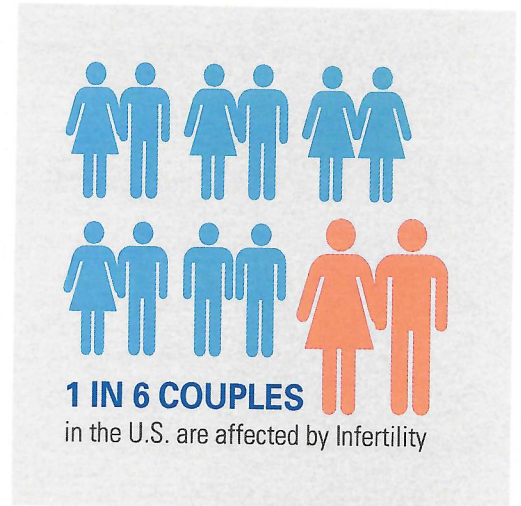
Approximately one-third of infertility is due to male factors such as azoospermia (no sperm cells), congenital disorders (disease or physical abnormality present from birth), and trauma. Another one-third of infertility is related to female factors including, but not limited to, endometriosis, ectopic pregnancy, uterine fibroids. The remaining one-third of infertility can be attributed to problems in both partners or is unexplained.

WHO IS AFFECTED BY INFERTILITY?

Both men and women experience infertility equally.

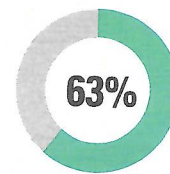
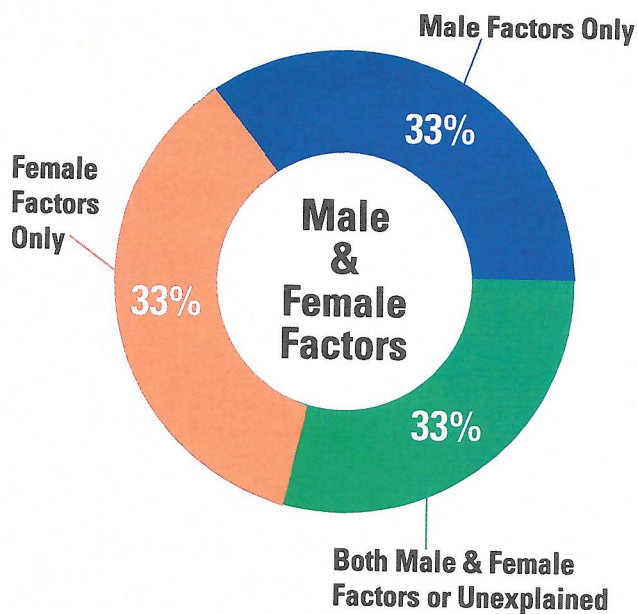
HOW IS INFERTILITY TREATED?

3% of infertility cases require assisted reproductive technology (ART), such as in vitro fertilization (IVF). In some ART cases, patients require third party reproduction (donor egg, donor sperm, donor embryo, or gestational carriers) due to medical conditions or treatments resulting in poor egg or sperm quality, or conditions that make carrying a pregnancy unsafe. 97% of infertility cases are treated with conventional drug therapy or surgical procedures.

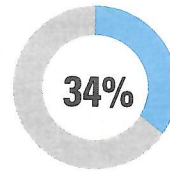


In 1998, the U.S. Supreme Court stated that reproduction is a "major life activity," and "**conditions that interfere with reproduction should be regarded as disabilities,**" as per The Americans with Disabilities Act of 1991.⁴

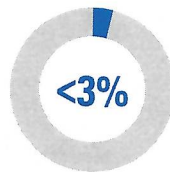
CAUSES OF INFERTILITY⁵ & REQUIRED TREATMENTS



Require basic medical advice or diagnostic tests



Receive additional treatment



Less than 3% of infertility cases require in vitro fertilization (IVF)

WHAT LEGAL PROTECTIONS DO INFERTILITY PATIENTS HAVE?

U.S. and district courts have ruled individuals with infertility can have accommodations and protections under The Americans with Disabilities Act and The Family Medical Leave Act.

United States Supreme Court

Bragdon v. Abbott, 1998

In 1998, the Supreme Court of the United States ruled, in *Bragdon v. Abbott*, that infertility was considered a "major life activity" and could be included within The Americans with Disabilities Act.

District Courts

LaPorta v. Wal-Mart, 2001

District court case *LaPorta v. Wal-Mart* found infertility could constitute a disability under The Americans with Disabilities Act. Approval of an employee's requested day off for infertility service, even with short notice, would be considered a reasonable accommodation.

Culpeper v. BlueCross BlueShield of Tennessee, 2013

In *Culpeper v. BlueCross BlueShield of Tennessee*, the district court found an employee could demonstrate that his or her infertility, or that of his or her spouse, constitutes a serious health condition under The Family Medical Leave Act and thus has protection.



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Fertility Preservation

WHAT IS FERTILITY PRESERVATION?

Fertility preservation involves medical procedures to protect cells such as sperm, eggs, or reproductive tissue so that a person can use them in the future to have biological children. The process of cryopreserving reproductive cells is considered standard medical care conducted by experts in assisted reproductive technology. People with certain diseases, disorders, and life events that affect fertility may benefit from fertility preservation.⁶

STATES RECOGNIZE THE IMPORTANCE OF FERTILITY PRESERVATION

MASSACHUSETTS (2012)

Insurers voluntarily offer fertility preservation benefits.

CONNECTICUT (2017)

Governor signs into law *Melissa's Law for Fertility Preservation*

RHODE ISLAND (2017)

State expands infertility benefits to include fertility preservation.

MARYLAND (2018)

Law makers add fertility preservation to state's existing healthcare coverage.

DELAWARE (2018)

State gains an infertility law, which includes fertility preservation.

ILLINOIS (2018)

Law makers amend existing healthcare law to include fertility preservation.

NEW YORK (2019)

State expands infertility benefits and includes fertility preservation.

NEW HAMPSHIRE (2019)

State gains fertility care law, which includes fertility preservation.

CALIFORNIA (2019)

Governor signs into law fertility preservation benefits for cancer patients.

NEW JERSEY (2020)

State expands infertility benefits to include fertility preservation.

PREMIUM IMPACTS

The Maryland Health Care Commission estimated the potential impact on insurance premiums for coverage for fertility preservation would result in 0.4% to 0.6% increase per month (PMPM).⁷

California Health Benefits Review Program discovered the insurance premium increase to provide fertility preservation benefits for small-group and individual markets came to only \$0.0092 PMPM.⁸

Common Fertility Misconceptions & Truths

MISCONCEPTION

Fertility treatments are excessive. People can have a family if they just relax or adopt a child.

TRUTH

Timely and appropriate healthcare is offered to optimize the use of recommended treatment and increase the number of safe pregnancies and healthy babies.

There is no scientific evidence to support “relaxation” as a reliable treatment to overcome the disease of infertility.

Adoption is not a reliable option for all. Private adoption can be expensive, and unaffordable to most couples. Adopting a foster child is an unreliable option since the goal of foster care is to reunite children with their biological family.

MISCONCEPTION

Insurers are opposed to covering fertility treatments such as IVF, due to cost.

TRUTH

“All clinics in Aetna’s Institutes of Excellence network for infertility services offer elective single embryo transfer (eSET). Research shows that transferring one embryo at a time results in dramatically lower rates of twins and multiple births, and can thereby reduce the associated health risks.”

James D. Cross, M.D., Former Vice President of National Medical Policy and Operations, Aetna

“Multiples are more likely to require long stays in the neonatal intensive care unit (NICU), which increases costs. It’s important for employers and health plans to connect the dots between the cost of the infertility benefit and the significant savings on the maternity and neonatal side.”

Alex Dlugi, National Medical Director, Infertility, Optum

MISCONCEPTION

Fertility benefits are not affordable for businesses with fiscally tight budgets.

TRUTH

The scope of benefits offered can work within an employer’s budget. San Jose, California-based tech company Cisco Systems Inc., offers fertility benefits of \$15,000 lifetime maximum for medical treatment and \$10,000 for prescription drugs, simply because it’s “the right thing to do.”

Impacts of Fertility Benefits

Societal & Health

SOCIETAL

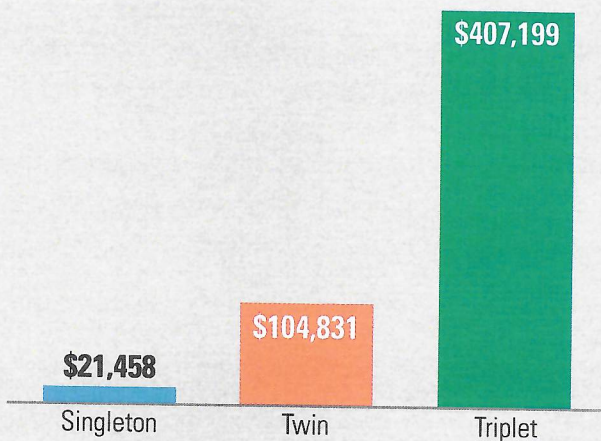
Achieving family-building goals increases morale and satisfaction. With treatment, patients can avoid the common experience of depression and anxiety. We also know employers offering benefits increase their competitiveness and have happier, healthier, more loyal employees. With optimal health, we have a stronger, more functional society.

HEALTH

Fertility insurance benefits enable patients to make healthcare decisions based on appropriate medical advice, not financial concerns, and transfer fewer embryos. Fewer high-risk pregnancies, preterm births, and use of neonatal intensive care units (NICU) result from fewer embryos transferred. Insurance benefits increase access of timely and appropriate healthcare which provides cost savings. The U.S. Centers for Disease Control and Prevention says the use of single embryo transfers can significantly reduce the risk of high-risk pregnancies and multiple births.^{12,13}

HEALTHCARE COSTS¹⁴

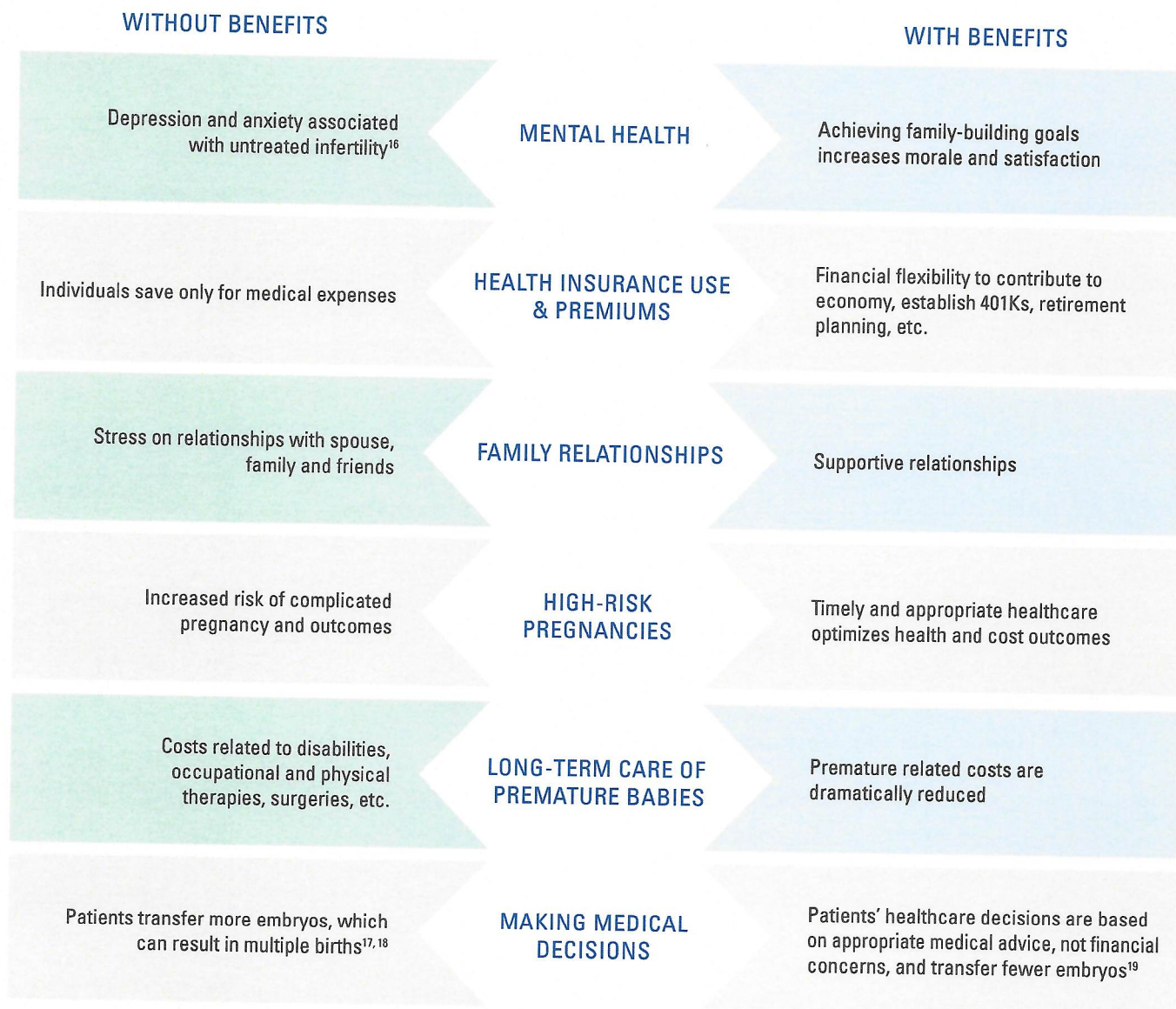
Associated with Multiple vs Singleton Pregnancies



WHAT DO NATIONAL INSURERS SAY?

Insurers such as Aetna and Optum support evidence-based infertility treatment utilizing elective single embryo transfers (eSET). The incentive of IVF with eSET or rapid progression to IVF with eSET is predicted to be the most cost-effective strategy for patients, employers, and insurers.¹⁵

INCLUDING FERTILITY BENEFITS VS NO FERTILITY HEALTH BENEFITS



Types of Fertility Laws

WHAT ARE THE BENEFITS OF FERTILITY INSURANCE LAWS?

State-based fertility insurance laws increase access to reproductive therapies and services by reducing the financial burden to patients seeking treatment.

TYPES OF FERTILITY LAWS²⁰

LAWS TO OFFER

Insurers are required to offer fertility benefits to employers, but employers may choose whether to add the benefit to the plan.

LAWS TO COVER

Insurers and employers are required to provide fertility health benefits.

FEDERAL & STATE LAWS

Employee Retirement Income Security Act (ERISA) decrees self-insured companies and small businesses are exempt from state fertility laws.

Employers can still provide benefits, and many do, because they see the value and affordability of fertility benefits for their employees.

FERTILITY INSURANCE LAWS ARE AFFORDABLE

States that review evidence from economic and medical research, as well as testimony of constituents, insurers, and employers, often conclude they can save costs and promote greater health and wellness for their citizens by supporting legislation for insurance benefits for the treatment of fertility and fertility preservation.

The Truth About Fertility & Healthcare Premiums

WILL IVF RAISE INSURANCE PREMIUM COSTS?

Any additional service or treatment is bound to have an impact on costs. However, the effect of infertility coverage on the premium cost, as a whole, is very insignificant. Comprehensive state mandate reviews show that the increase is less than 1% of the total premium cost.^{21, 22, 23}

COMPARISON OF FIVE STATES WITH FERTILITY CARE INSURANCE LAWS

STATE	INSURANCE COVERAGE	COST IMPACT
MASSACHUSETTS <i>Established in 1987</i> <i>Updated in 2010</i>	Diagnosis and treatment of infertility. Most insurers voluntarily offer fertility preservation.	<1% total premium cost (0.12%-0.95%)
CONNECTICUT <i>Established in 1989</i> <i>Updated in 2017</i>	Diagnosis and treatment of infertility, as well as fertility preservation.	<1% total premium cost (0.9%)
RHODE ISLAND <i>Established in 1989</i> <i>Updated in 2017</i>	Diagnosis and treatment of infertility, as well as fertility preservation.	<1% total premium cost (0.36%)
DELAWARE <i>Established in 2018</i>	Diagnosis and treatment of infertility, as well as fertility preservation.	1% total premium cost
NEW YORK <i>Established in 2019</i>	Diagnosis and treatment of infertility, as well as fertility preservation.	1% total premium cost

What Can I Do?

Summary of What Legislators, Insurers and Employers Can Do

UTILIZE EVIDENCE-BASED DATA

All policymakers (legislators, insurers, and employers) make healthcare related decisions based on facts and information available to them. *The Policymaker's Guide for Fertility Health Benefits* serves as a tool to communicate the advantages of fertility benefits and point out the dangers and high costs associated with a lack of insurance coverage.

Without fertility benefits, our outcome costs are higher and health is at greater risk.

HERE'S HOW YOU CAN MAKE A DIFFERENCE

✔ ACCEPT

Realize fertility benefits provide access to affordable healthcare to optimize safe medical care and outcomes.

✔ ADAPT

Change policies to create a win-win environment for individuals, employers, and insurers.

✔ ACT

Implement fertility benefits to better the lives of the individuals you serve and directly reduce health disparity within the United States.

What Can Legislators Do?

UNDERSTAND HOW INFERTILITY IMPACTS CONSTITUENTS

Be aware of your constituents' needs, and consider their stories when you make healthcare policy decisions.

GAIN INFORMATION FROM EXPERTS

When relying on resources to understand fertility treatment, defer to specialists in the field of reproductive endocrinology to learn more about definitions, causes, procedures, and outcomes. The most accurate cost analyses come from states with existing fertility care insurance laws.

BECOME A CHAMPION FOR THE CAUSE

Defend the rights of infertile patients by opposing bills that prohibit the practice or funding of fertility treatment.

PROTECT YOUR CONSTITUENTS

Protect the rights of patients seeking insurance coverage for fertility treatment, regardless of race, gender, income, or sexual orientation.

GOVERNMENT TESTIMONIAL

“By lifting barriers to insurance coverage, we will ensure safe and affordable access to in vitro fertilization and help New Yorkers have better control over their reproductive health and family planning.”

Andrew M. Cuomo
Governor of New York

BACK EXISTING OR NEW BILLS THAT SUPPORT COVERAGE

Share this knowledge with other legislators who can sponsor or support fertility benefit bills.



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What Can Insurers Do?

RECOGNIZE THE AFFORDABILITY OF COVERAGE

Recognize the affordability and value of including fertility benefits in insurance plans and support their inclusion.

SHARE COSTS

Make public data pertaining to usage of benefits and premium costs to enable employers and legislators to understand fiscal impacts on your state.

OFFER BENEFITS

Offer fertility benefits in small-business health plans and an option available for purchase by employers.

CREATE A RIDER POLICY

Allow employees to purchase, in addition to their standard health plan, a rider policy with fertility benefits.

MEDICAL GUIDELINE CRITERIA

By developing criteria which follow current medical guidelines established by medical organizations such as the American Society for Reproductive Medicine, you are providing timely and appropriate healthcare and minimizing the use of assisted reproductive technologies, such as IVF.

CONTROL COSTS WHILE OPTIMIZING HEALTH OUTCOMES

Providing benefits can reduce costs related to high-risk pregnancy, premature birth, and other associated expenses.

INSURER TESTIMONIAL

“It’s important for employers and health plans to connect the dots between the cost of the infertility benefit and the significant savings on the maternity and neonatal side.”

Alex Dlugi
National Medical Director, Infertility
at *Optum*

What Can Employers Do?

UNDERSTANDING YOUR EMPLOYEES' RIGHTS

U.S. and district courts have ruled infertility patients are entitled to protections under The Americans with Disabilities Act and The Family Medical Leave Act. Employees able to demonstrate a medical need to take time off to treat their infertility, or that of his or her spouse, have the right to such accommodations.

VERIFY INFORMATION

Insurance brokers may lack accurate data, such as how much an IVF cycle costs. Confirming facts with organizations like Fertility Within Reach will ensure informed decisions are made.

OFFER FERTILITY BENEFITS FOR A COMPETITIVE ADVANTAGE

With fertility benefits, you stay competitive in recruitment efforts while supporting your employees as they become parents.

EMPLOYER TESTIMONIAL

“By and large, [most of our employees] are starting to build their families and buy homes, and so that has driven the kinds of benefits we offer. We wanted to expand our offering to include employees that had experienced fertility challenges...”

Cathy Donahoe
Vice President of Human Resources
at *Domo, Inc.*

SHOW YOU CARE ABOUT YOUR EMPLOYEES' HAPPINESS AND WELLBEING

Providing fertility coverage can help improve your employees work ethic and secure their loyalty.

ADD FERTILITY BENEFITS TO YOUR EXISTING POLICY

If you use a brokerage firm to select health plans, request options you can extend during open enrollment. If you are provided plans with high-cost fertility and IVF benefits, ask the brokerage firm to find other choices. Affordable healthcare policies, which include fertility and IVF benefits, exist. Follow-up to determine how you can access them.

ARRANGE FOR OPTIONS

To balance competitive benefits with affordable options, arrange for more than one health plan to be offered to your employees. One plan could contain coverage for fertility, including IVF and medication benefits, and another plan could cover basic fertility, without IVF benefits.



Benefit Plans & Recommendations

SAMPLE COMPREHENSIVE EMPLOYEE BENEFIT PLANS

AMERICAN EXPRESS COMPANY	MASSACHUSETTS GENERAL HOSPITAL	EXCEPTIONAL SOFTWARE STRATEGIES, INC.
Not subject to infertility laws	Not subject to infertility laws	Subject to infertility laws
U.S. Headquarters: New York, NY	U.S. Headquarters: Boston, MA	U.S. Headquarters: Linthicum, MD
Industry: Financial Services	Industry: Healthcare	Industry: Information Technology
U.S. Employees: 55,000	U.S. Employees: 20,000	U.S. Employees: 110
Fertility Benefits: \$35,000 for full-time and part-time employees	Fertility Benefits: No limit on the number of IVF cycles, plus unlimited prescription fertility drugs for approved cycles	Fertility Benefits: \$100,000 for treatments: 3 IUI and 3 IVF cycles maximum per live birth (treatment cycles available to reset after each live birth) and fertility preservation

RECOMMENDED COMPONENTS OF A COMPREHENSIVE BENEFIT PLAN

- The scope of coverage includes the diagnosis of infertility, fertility care (such as IVF) and fertility preservation.
- IVF to be offered to those with medical need, as determined by a reproductive endocrinologist.
- To reduce healthcare disparity among employees, provide benefits, in terms of number of IVF cycles, instead of dollar limitations. Depending on individual treatment needs, some will utilize more dollars per cycle than others.
- Offer a minimum of four IVF cycles to help alleviate financial desperation when going through IVF, resulting in treatment decisions based on medical recommendations over financial concerns.
- Medication is part of the treatment protocol and needs to be included with benefits.
- Coverage for genetic testing can help reduce the number of IVF cycles utilized and minimize costs associated with miscarriage and genetic disorders.

Acknowledgments

Wisdom from Industry Leaders

Content within this guide is evidence-based. This tool provides credible information by utilizing the knowledge and guidance of medical doctors, attorneys, health communication professionals, as well as testimony from policymakers and patients. We are grateful for the contribution of these industry leaders.

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Boston, MA

CHRISSEY HANISCO, ESQ.

The Stein Law Firm, PLLC, Concord, NH

BEN LANNON, M.D.

Boston IVF, Portland, ME

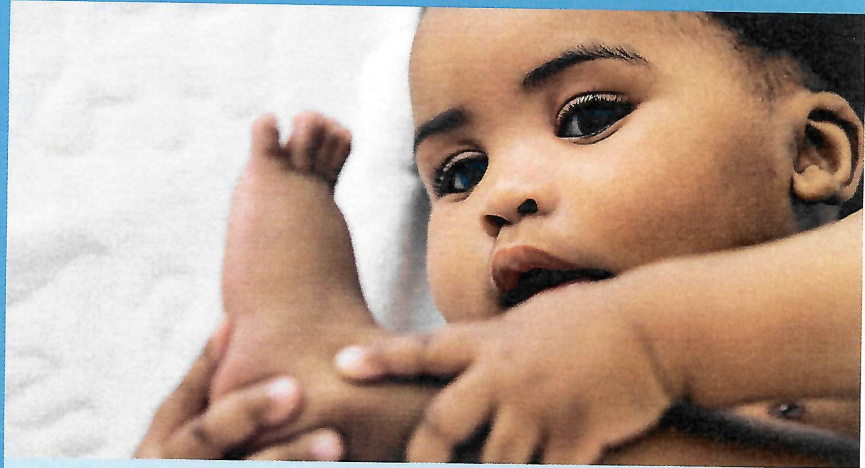
“Providing fertility health benefits is about offering timely and appropriate health care to increase the number of safe pregnancies and healthy babies.”

Davina Fankhauser
Co-Founder, Fertility Within Reach

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Fertility Within Reach encourages any person seeking additional information regarding legal protection related to family building to speak with an attorney in the field of Assisted Reproductive Technology law to determine how the courts apply related rulings in your state.



“ When my husband and I think of moving, for our careers, we now include states offering infertility laws in one of our determinants. We would not have our son had it not been for Illinois’ state infertility benefit law.”

REGINA TOWNSEND
Resident of Oak Park, Illinois

About



Fertility Within Reach

is a 501(c)(3) educational resource increasing access to fertility treatment and benefits through personalized consultations, workshops and legislative testimonies.



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