

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 27

(Senator Conway)

Finance

Health and Government Operations

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**Health Insurance - Benefits for In Vitro Fertilization - Donor Sperm**

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This bill expands the grounds on which a couple may qualify for mandatory health insurance coverage of in vitro fertilization (IVF) services to include the fertilization of a patient's eggs with donor sperm if the patient's spouse is unable to produce sperm due to nonobstructive azoospermia and the patient has a history of ovarian hyperstimulation syndrome.

The bill applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in Maryland on or after October 1, 2010.

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**Fiscal Summary**

**State Effect:** Minimal increase in expenditures (all funds) for the State Employee and Retiree Health and Welfare Benefits Program (State plan) beginning in FY 2012. Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee in FY 2011. Review of filings can be handled with existing MIA budgeted resources.

**Local Effect:** To the extent that IVF coverage mandated under the bill exceeds that currently provided by local governments, expenditures increase minimally for some local governments beginning in FY 2011.

**Small Business Effect:** None. The bill does not apply to the small group market.

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## Analysis

**Current Law:** Carriers that provide pregnancy-related services may not exclude benefits for all outpatient expenses arising from IVF procedures performed on the policyholder or subscriber or the dependent spouse of the policyholder or subscriber. Benefits must be provided to the same extent as other pregnancy-related procedures for insurers and nonprofit health service plans and other infertility services for health maintenance organizations.

To qualify for IVF benefits the patient's eggs must be fertilized with the spouse's sperm. In addition (1) the patient must be the policyholder or subscriber or the dependent spouse of the policyholder or subscriber; (2) the patient and the patient's spouse must have a history of infertility of at least two years duration or infertility associated with endometriosis, diethylstilbestrol exposure, blockage or removal of one or more fallopian tubes, or abnormal male factors; (3) the patient must have been unable to attain a successful pregnancy through a less costly infertility treatment available under the policy or contract; and (4) the IVF procedures must be performed at specified medical facilities. IVF benefits may be limited to three IVF attempts per live birth, not to exceed a maximum lifetime benefit of \$100,000.

**Background:** According to the American Society for Reproductive Medicine (ASRM), infertility is defined as an inability to achieve a successful pregnancy after 12 months for women younger than age 35.

About 6.1 million couples nationally (10% of couples of childbearing age) experience infertility. In IVF, eggs are surgically removed from the ovary and mixed with sperm outside the body. After about 40 hours, the eggs are examined to see if they have become fertilized by the sperm and are dividing into cells. The fertilized eggs (embryos) are placed in a woman's uterus, bypassing the fallopian tubes. While IVF accounts for less than 5% of all infertility treatments in the United States, it is often the most successful method of achieving pregnancy for infertility related to blocked or absent fallopian tubes or low sperm counts.

In Maryland, there were 4,062 IVF cycles reported by the federal Centers for Disease Control and Prevention in 2006. The cost per IVF cycle typically ranges from \$15,000 to \$20,000.

Every four years, the Maryland Health Care Commission (MHCC) examines the fiscal impact of mandated health insurance benefits. In 2008, MHCC found that these benefits account for 15.4% of total premium costs for group health insurance and 18.6% of total premium costs for individual policies. IVF treatment accounts for 0.8% of total premium costs for group health insurance and 1% of total premium costs for individual policies.

According to Cornell University's Department of Urology, 10% of men who seek a fertility evaluation are affected by nonobstructive azoospermia. The National Institutes of Health reports that 10% of women who undergo IVF develop ovarian hyperstimulation syndrome. Based on these statistics, Legislative Services estimates that the probability of a couple pursuing IVF services with the two accompanying conditions is just 1%.

### *Health Insurance Mandates as They Relate to State and Local Governments and the Small Group Market*

Employers have two major options when providing health insurance benefits. They can purchase a fully insured plan from an insurance company or they can self-insure by assuming risk and paying all claims for services themselves, usually through a third-party administrator. The federal Employee Retirement Income Security Act (ERISA) preempts states' ability to require private employers to offer insurance coverage and exempts the coverage offered by self-insured entities from state insurance regulation. Therefore, the health insurance requirements under Title 15, Subtitles 4, 7, and 8 of the Insurance Article apply only to fully insured health benefit plans.

Government entities that self-fund their health benefit plans are *not exempt* under ERISA from state regulation and health insurance mandates. In Maryland, these entities have instead been exempt from these requirements based on the State definition of "insurance business." An insurance business includes the transaction of all matters pertaining to an insurance contract, either before or after it takes effect and all matters arising from an insurance contract or a claim under it. Insurance business *does not* include pooling by public entities for self-insurance of casualty, property, or health risks.

In 2008, the Maryland Association of Counties and the Maryland Association of Boards of Education conducted an informal survey of counties and county school boards about their insurance plans, to which 22 counties and 19 school boards responded. Of the 22 responding counties, 13 were self-insured, 4 were fully insured, and 5 offered both self-insured and fully insured options. Of the 19 responding county school boards, 14 were self-insured, 1 was fully insured, and 4 offered both self-insured and fully insured options. The fully insured plans offered by counties and county school boards are subject to State insurance laws.

Maryland's small group market Comprehensive Standard Health Benefit Plan (CSHBP) is not subject to mandated benefits applicable to the large group market. Rather, MHCC reviews CSHBP on an annual basis and considers making benefit or cost sharing changes at that time. CSHBP does not cover IVF services.

**State Fiscal Effect:** Although not required to follow health insurance mandates, the State plan generally does. Thus, this estimate is based on the assumption that the State plan will follow the bill's requirement. However, as the State plan contract runs on a fiscal year basis, the benefits specified under the bill would not be included until the fiscal 2012 plan year.

The Department of Budget and Management (DBM) reports that, in fiscal 2009, 548 women received IVF services under the State plan, at a cost of \$4.69 million. It is difficult to determine how many additional couples will qualify for IVF services under the bill given that data is not collected on the number of couples who have both conditions and therefore do not qualify for IVF service coverage. However, Legislative Services advises that, while there will be some increase in IVF services under the bill, the impact to the State plan will likely be minimal.

State plan expenditures are split 59% general funds, 30% special funds, and 11% federal funds.

**Local Fiscal Effect:** Local government expenditures (for those that purchase fully insured plans from an insurance company) increase minimally for some local governments beginning in fiscal 2011 due to the IVF mandate.

**Additional Comments:** According to CareFirst BlueCross/BlueShield, the impact to its risk-based business (which does not include State plan costs) would be \$543,720 per year. This estimate is based on a premium increase of \$0.23 per contract per month, from \$4.54 to \$4.77. This estimate is based on a 5% increase in IVF services per year, which Legislative Services believes to be somewhat high.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** CareFirst Blue Cross/Blue Shield, Department of Budget and Management, Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, American Society for Reproductive Medicine, National Institutes of Health, Cornell University's Department of Urology, Department of Legislative Services

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