

106TH CONGRESS  
2D SESSION

# S. 2160

To require health plans to include infertility benefits, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 2, 2000

Mr. TORRICELLI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require health plans to include infertility benefits, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Fair Access to Infer-

5       tility Treatment and Hope Act of 2000”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) infertility affects 6,100,000 men and

9       women;

10              (2) infertility is a disease which affects men

11       and women with equal frequency;

1           (3) approximately 1 in 10 couples cannot con-  
2           ceive without medical assistance;

3           (4) recent medical breakthroughs make infer-  
4           tility a treatable disease; and

5           (5) only 25 percent of all health plan sponsors  
6           provide coverage for infertility services.

7 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**  
8 **COME SECURITY ACT OF 1974.**

9           (a) IN GENERAL.—Subpart B of part 7 of subtitle  
10 B of title I of the Employee Retirement Income Security  
11 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-  
12 ing at the end the following:

13 **“SEC. 714. REQUIRED COVERAGE FOR INFERTILITY BENE-**  
14 **FITS.**

15           “(a) IN GENERAL.—A group health plan, and a  
16 health insurance issuer providing health insurance cov-  
17 erage in connection with a group health plan, shall ensure  
18 that coverage is provided for infertility benefits.

19           “(b) INFERTILITY BENEFITS.—In subsection (a), the  
20 term ‘infertility benefits’ at a minimum includes—

21           “(1) diagnostic testing and treatment of infer-  
22           tility;

23           “(2) drug therapy, artificial insemination, and  
24           low tubal ovum transfers;

1           “(3) in vitro fertilization, intra-cytoplasmic  
2 sperm injection, gamete donation, embryo donation,  
3 assisted hatching, embryo transfer, gamete intra-fal-  
4 lopian tube transfer, zygote intra-fallopian tube  
5 transfer; and

6           “(4) any other medically indicated nonexperi-  
7 mental services or procedures that are used to treat  
8 infertility or induce pregnancy.

9           “(c) IN VITRO FERTILIZATION.—

10           “(1) LIMITATION.—

11           “(A) IN GENERAL.—Subject to subpara-  
12 graph (B), coverage of procedures under sub-  
13 section (b)(3) may be limited to 4 completed  
14 embryo transfers.

15           “(B) ADDITIONAL TRANSFERS.—If a live  
16 birth follows a completed embryo transfer under  
17 a procedure described in subparagraph (A), not  
18 less than 2 additional completed embryo trans-  
19 fers shall be provided.

20           “(2) REQUIREMENT.—Coverage of procedures  
21 under subsection (b)(3) shall be provided if—

22           “(A) the individual has been unable to at-  
23 tain or sustain a successful pregnancy through  
24 reasonable, less costly medically appropriate  
25 covered infertility treatments; and

1           “(B) the procedures are performed at med-  
2           ical facilities that conform with the minimal  
3           guidelines and standards for assisted reproduc-  
4           tive technology of the American College of Ob-  
5           stetric and Gynecology or the American Society  
6           for Reproductive Medicine.

7           “(d) PROHIBITIONS.—A group health plan, and a  
8           health insurance issuer providing health insurance cov-  
9           erage in connection with a group health plan, may not—

10           “(1) deny to an individual eligibility, or contin-  
11           ued eligibility, to enroll or to renew coverage under  
12           the terms of the plan because of the individual’s or  
13           enrollee’s use or potential use of items or services  
14           that are covered in accordance with the requirements  
15           of this section;

16           “(2) provide monetary payments or rebates to  
17           a covered individual to encourage such individual to  
18           accept less than the minimum protections available  
19           under this section; or

20           “(3) provide incentives (monetary or otherwise)  
21           to a health care professional to induce such profes-  
22           sional to withhold from a covered individual services  
23           described in subsection (a).

24           “(e) RULES OF CONSTRUCTION.—

1           “(1) IN GENERAL.—Nothing in this section  
2 shall be construed—

3           “(A) as preventing a group health plan  
4 and a health insurance issuer providing health  
5 insurance coverage in connection with a group  
6 health plan from imposing deductibles, coinsur-  
7 ance, or other cost-sharing or limitations in re-  
8 lation to benefits for services described in this  
9 section under the plan, except that such a de-  
10 ductible, coinsurance, or other cost-sharing or  
11 limitation for any such service may not be  
12 greater than such a deductible, coinsurance, or  
13 cost-sharing or limitation for any similar service  
14 otherwise covered under the plan;

15           “(B) as requiring a group health plan and  
16 a health insurance issuer providing health in-  
17 surance coverage in connection with a group  
18 health plan to cover experimental or investiga-  
19 tional treatments of services described in this  
20 section, except to the extent that the plan or  
21 issuer provides coverage for other experimental  
22 or investigational treatments or services.

23           “(2) LIMITATIONS.—As used in paragraph (1),  
24 the term ‘limitation’ includes restricting the type of

1 health care professionals that may provide such  
2 treatments or services.

3 “(f) NOTICE UNDER GROUP HEALTH PLAN.—The  
4 imposition of the requirements of this section shall be  
5 treated as a material modification in the terms of the plan  
6 described in section 102(a)(1), for purposes of assuring  
7 notice of such requirements under the plan, except that  
8 the summary description required to be provided under the  
9 last sentence of section 104(b)(1) with respect to such  
10 modification shall be provided by not later than 60 days  
11 after the first day of the first plan year in which such  
12 requirements apply.”.

13 (b) CLERICAL AMENDMENT.—The table of contents  
14 in section 1 of the Employee Retirement Income Security  
15 Act of 1974 (29 U.S.C. 1001 note) is amended by insert-  
16 ing after the item relating to section 713 the following  
17 new item:

“Sec. 714. Required coverage for infertility benefits for federal employees health  
benefits plans.”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply with respect to plan years begin-  
20 ning on or after January 1, 2001.

21 **SEC. 4. PUBLIC HEALTH SERVICE ACT.**

22 (a) IN GENERAL.—Subpart 2 of part A of title  
23 XXVII of the Public Health Service Act (42 U.S.C.

1 300gg–4 et seq.) is amended by adding at the end the  
 2 following:

3 **“SEC. 2707. REQUIRED COVERAGE FOR INFERTILITY BENE-**  
 4 **FITS.**

5 “(a) IN GENERAL.—A group health plan, and a  
 6 health insurance issuer providing health insurance cov-  
 7 erage in connection with a group health plan, shall ensure  
 8 that coverage is provided for infertility benefits.

9 “(b) INFERTILITY BENEFITS.—In subsection (a), the  
 10 term ‘infertility benefits’ at a minimum includes—

11 “(1) diagnostic testing and treatment of infer-  
 12 tility;

13 “(2) drug therapy, artificial insemination, and  
 14 low tubal ovum transfers;

15 “(3) in vitro fertilization, intra-cytoplasmic  
 16 sperm injection, gamete donation, embryo donation,  
 17 assisted hatching, embryo transfer, gamete intra-fal-  
 18 lopian tube transfer, zygote intra-fallopian tube  
 19 transfer; and

20 “(4) any other medically indicated nonexperi-  
 21 mental services or procedures that are used to treat  
 22 infertility or induce pregnancy.

23 “(c) IN VITRO FERTILIZATION.—

24 “(1) LIMITATION.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), coverage of procedures under sub-  
3 section (b)(3) may be limited to 4 completed  
4 embryo transfers.

5           “(B) ADDITIONAL TRANSFERS.—If a live  
6 birth follows a completed embryo transfer under  
7 a procedure described in subparagraph (A), not  
8 less than 2 additional completed embryo trans-  
9 fers shall be provided.

10          “(2) REQUIREMENT.—Coverage of procedures  
11 under subsection (b)(3) shall be provided if—

12           “(A) the individual has been unable to at-  
13 tain or sustain a successful pregnancy through  
14 reasonable, less costly medically appropriate  
15 covered infertility treatments; and

16           “(B) the procedures are performed at med-  
17 ical facilities that conform with the minimal  
18 guidelines and standards for assisted reproduc-  
19 tive technology of the American College of Ob-  
20 stetric and Gynecology or the American Society  
21 for Reproductive Medicine.

22          “(d) PROHIBITIONS.—A group health plan, and a  
23 health insurance issuer providing health insurance cov-  
24 erage in connection with a group health plan, may not—

1           “(1) deny to an individual eligibility, or contin-  
2           ued eligibility, to enroll or to renew coverage under  
3           the terms of the plan because of the individual’s or  
4           enrollee’s use or potential use of items or services  
5           that are covered in accordance with the requirements  
6           of this section;

7           “(2) provide monetary payments or rebates to  
8           a covered individual to encourage such individual to  
9           accept less than the minimum protections available  
10          under this section; or

11          “(3) provide incentives (monetary or otherwise)  
12          to a health care professional to induce such profes-  
13          sional to withhold from a covered individual services  
14          described in subsection (a).

15          “(e) RULES OF CONSTRUCTION.—

16          “(1) IN GENERAL.—Nothing in this section  
17          shall be construed—

18                 “(A) as preventing a group health plan  
19                 and a health insurance issuer providing health  
20                 insurance coverage in connection with a group  
21                 health plan from imposing deductibles, coinsur-  
22                 ance, or other cost-sharing or limitations in re-  
23                 lation to benefits for services described in this  
24                 section under the plan, except that such a de-  
25                 ductible, coinsurance, or other cost-sharing or

1 limitation for any such service may not be  
2 greater than such a deductible, coinsurance, or  
3 cost-sharing or limitation for any similar service  
4 otherwise covered under the plan;

5 “(B) as requiring a group health plan and  
6 a health insurance issuer providing health in-  
7 surance coverage in connection with a group  
8 health plan to cover experimental or investiga-  
9 tional treatments of services described in this  
10 section, except to the extent that the plan or  
11 issuer provides coverage for other experimental  
12 or investigational treatments or services.

13 “(2) LIMITATIONS.—As used in paragraph (1),  
14 the term ‘limitation’ includes restricting the type of  
15 health care professionals that may provide such  
16 treatments or services.

17 “(f) NOTICE UNDER GROUP HEALTH PLAN.—The  
18 imposition of the requirements of this section shall be  
19 treated as a material modification in the terms of the plan  
20 described in section 102(a)(1), for purposes of assuring  
21 notice of such requirements under the plan, except that  
22 the summary description required to be provided under the  
23 last sentence of section 104(b)(1) with respect to such  
24 modification shall be provided by not later than 60 days

1 after the first day of the first plan year in which such  
2 requirements apply.”.

3 (b) INDIVIDUAL MARKET.—Part B of title XXVII of  
4 the Public Health Service Act (42 U.S.C. 300gg–41 et  
5 seq.) is amended—

6 (1) by redesignating the first subpart 3 (relat-  
7 ing to other requirements) as subpart 2; and

8 (2) by adding at the end of subpart 2 the fol-  
9 lowing new section:

10 **“SEC. 2753. REQUIRED COVERAGE FOR INFERTILITY BENE-**  
11 **FITS.**

12 “The provisions of section 2707 shall apply to health  
13 insurance coverage offered by a health insurance issuer  
14 in the individual market in the same manner as they apply  
15 to health insurance coverage offered by a health insurance  
16 issuer in connection with a group health plan in the small  
17 or large group market.”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply with respect to health insurance  
20 coverage offered, sold, issued, renewed, in effect, or oper-  
21 ated on or after January 1, 2001.

1 **SEC. 5. REQUIRED COVERAGE FOR INFERTILITY BENEFITS**  
2 **FOR FEDERAL EMPLOYEES HEALTH BENE-**  
3 **FITS PLANS.**

4 (a) TYPES OF BENEFITS.—Section 8904(a)(1) of  
5 title 5, United States Code, is amended by adding at the  
6 end the following:

7 “(G) Infertility benefits.”.

8 (b) HEALTH BENEFITS PLAN CONTRACT REQUIRE-  
9 MENT.—Section 8902 of title 5, United States Code, is  
10 amended by adding at the end the following:

11 “(p)(1) Each contract under this chapter shall in-  
12 clude a provision that ensures infertility benefits as pro-  
13 vided under this subsection.

14 “(2) Infertility benefits under this subsection shall  
15 include—

16 “(A) diagnostic testing and treatment of infer-  
17 tility;

18 “(B) drug therapy, artificial insemination, and  
19 low tubal ovum transfers;

20 “(C) in vitro fertilization, intra-cytoplasmic  
21 sperm injection, gamete donation, embryo donation,  
22 assisted hatching, embryo transfer, gamete intra-fal-  
23 lopian tube transfer, zygote intra-fallopian tube  
24 transfer; and

1           “(D) any other medically indicated nonexperi-  
2           mental services or procedures that are used to treat  
3           infertility or induce pregnancy.

4           “(3)(A)(i) Subject to clause (ii), procedures under  
5           paragraph (2)(C) shall be limited to 4 completed embryo  
6           transfers.

7           “(ii) If a live birth follows a completed embryo trans-  
8           fer, 2 additional completed embryo transfers shall be pro-  
9           vided.

10          “(B) Procedures under paragraph (2)(C) shall be  
11          provided if—

12                 “(i) the individual has been unable to attain or  
13                 sustain a successful pregnancy through reasonable,  
14                 less costly medically appropriate covered infertility  
15                 treatments; and

16                 “(ii) the procedures are performed at medical  
17                 facilities that conform with the minimal guidelines  
18                 and standards for assisted reproductive technology  
19                 of the American College of Obstetric and Gynecology  
20                 or the American Society for Reproductive Medi-  
21                 cine.”.

22          (c) EFFECTIVE DATE.—The amendments made by  
23          this section shall apply to contract years beginning on or  
24          after January 1, 2001.

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