

115TH CONGRESS  
2D SESSION

# H. R. 5965

To require health insurance coverage for the treatment of infertility.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2018

Ms. DELAURO introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Oversight and Government Reform, Armed Services, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require health insurance coverage for the treatment of infertility.

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 “Access to Infertility  
5 Treatment and Care Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Infertility is a medical disease recognized by  
9 the World Health Organization, the American Soci-

1 ety for Reproductive Medicine, and the American  
2 Medical Association that affects men and women  
3 equally.

4 (2) According to the Centers for Disease Con-  
5 trol and Prevention, 1 in 8 couples have difficulty  
6 getting pregnant or sustaining a pregnancy.

7 (3) Infertility affects a broad spectrum of pro-  
8 spective parents. No matter what race, religion, sex-  
9 uality, or economic status one is, infertility does not  
10 discriminate.

11 (4) Approximately one-third of infertility is at-  
12 tributed to the female partner, one-third is attrib-  
13 uted to the male partner, and one-third is caused by  
14 a combination of problems in both partners or is un-  
15 explained.

16 (5) Infertility disproportionately affects individ-  
17 uals with particular health complications. For cancer  
18 patients and others who must undergo treatments  
19 such as chemotherapy, radiation therapy, hormone  
20 therapy, or surgery that are likely to harm the re-  
21 productive system and organs, fertility preservation  
22 becomes necessary.

23 (6) Leading causes of infertility include chronic  
24 conditions and diseases of the endocrine or metabolic  
25 systems, such as primary ovarian insufficiency, poly-

1 cystic ovarian syndrome, endometriosis, thyroid dis-  
2 orders, menstrual cycle defects, autoimmune dis-  
3 orders, hormonal imbalances, testicular disorders,  
4 and urological health issues. Other causes include  
5 structural problems or blockages within the repro-  
6 ductive system, exposure to infectious diseases, occu-  
7 pational or environmental hazards, or genetic influ-  
8 ences.

9 (7) Recent improvements in therapy and  
10 cryopreservation make pregnancy possible for more  
11 people than in past years.

12 (8) Like all other diseases, infertility and its  
13 treatments should be covered by health insurance.

14 (9) A 2017 national survey of employer-spon-  
15 sored health plans found that 44 percent of employ-  
16 ers with at least 500 employees did not cover infer-  
17 tility services, and 25 percent of companies with  
18 20,000 or more employees did not cover infertility  
19 services.

20 (10) States that do not require insurance cov-  
21 erage of assisted reproductive technology have higher  
22 rates of multiple births.

23 (11) The ability to have a family should not be  
24 denied to anyone on account of a lack of insurance  
25 coverage for medically necessary treatment.

1 **SEC. 3. STANDARDS RELATING TO BENEFITS FOR TREAT-**  
2 **MENT OF INFERTILITY AND IATROGENIC IN-**  
3 **FERTILITY.**

4 (a) IN GENERAL.—Part A of title XXVII of the Pub-  
5 lic Health Service Act (42 U.S.C. 300gg et seq.) is amend-  
6 ed by inserting after section 2728 the following:

7 **“SEC. 2729. STANDARDS RELATING TO BENEFITS FOR**  
8 **TREATMENT OF INFERTILITY AND IATRO-**  
9 **GENIC INFERTILITY.**

10 “(a) IN GENERAL.—A group health plan or a health  
11 insurance issuer offering group or individual health insur-  
12 ance coverage shall ensure that such plan or coverage pro-  
13 vides coverage for—

14 “(1) the treatment of infertility, including non-  
15 experimental assisted reproductive technology proce-  
16 dures, if such plan or coverage provides coverage for  
17 obstetrical services; and

18 “(2) the treatment of iatrogenic infertility.

19 “(b) DEFINITIONS.—In this section:

20 “(1) the term ‘assisted reproductive technology’  
21 means treatments or procedures that involve the  
22 handling of human egg, sperm, and embryo outside  
23 of the body with the intent of facilitating a preg-  
24 nancy, including in vitro fertilization, egg or embryo  
25 cryopreservation, egg or embryo donation, and gesta-  
26 tional surrogacy;

1           “(2) the term ‘infertility’ means a disease, de-  
2           fined by the failure to achieve a successful preg-  
3           nancy after 12 months or more, or for women over  
4           age 35, 6 months or more, of appropriate, timed un-  
5           protected intercourse or therapeutic donor insemina-  
6           tion; and

7           “(3) the term ‘iatrogenic infertility’ means an  
8           impairment of fertility due to surgery, radiation,  
9           chemotherapy, or other medical treatment.

10          “(c) REQUIRED COVERAGE.—

11           “(1) COVERAGE FOR INFERTILITY.—Subject to  
12           paragraph (3), a group health plan and a health in-  
13           surance issuer offering group or individual health in-  
14           surance coverage that includes coverage for obstet-  
15           rical services shall provide coverage for treatment of  
16           infertility determined appropriate by the treating  
17           physician, including, as appropriate, ovulation induc-  
18           tion, egg retrieval, sperm retrieval, artificial insemi-  
19           nation, in vitro fertilization, genetic screening,  
20           intracytoplasmic sperm injection, and any other non-  
21           experimental treatment, as determined by the Sec-  
22           retary in consultation with appropriate professional  
23           and patient organizations such as the American So-  
24           ciety for Reproductive Medicine, RESOLVE: The

1 National Infertility Association, and the American  
2 College of Obstetricians and Gynecologists.

3 “(2) COVERAGE FOR IATROGENIC INFERTILITY.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall provide coverage for treatment of fertility preservation services for individuals who undergo medically necessary treatment that may cause iatrogenic infertility, as determined by the treating physician, including cryopreservation of gametes and other procedures, as determined by the Secretary, consistent with established medical practices and professional guidelines published by professional medical organizations, including the American Society for Clinical Oncology and the American Society for Reproductive Medicine.

17 “(3) LIMITATION ON COVERAGE OF ASSISTED  
18 REPRODUCTIVE TECHNOLOGY.—A group health plan  
19 and a health insurance issuer offering group or individual health insurance coverage shall provide coverage for assisted reproductive technology as required under paragraph (1) if—

23 “(A) the individual has been unable to  
24 bring a pregnancy to a live birth through less  
25 costly infertility treatments, as determined ap-

1           appropriate by the treating physician, with consid-  
2           eration given to participant’s or beneficiary’s  
3           specific diagnoses or condition for which cov-  
4           erage is available under the plan or coverage;  
5           and

6                   “(B) the treatment is performed at a med-  
7           ical facility that—

8                           “(i) conforms to the standards of the  
9                           American Society for Reproductive Medi-  
10                          cine and the Society for Assisted Repro-  
11                          ductive Technology; and

12                           “(ii) is in compliance with any stand-  
13                          ards set by an appropriate Federal agency.

14           “(d) LIMITATION.—Cost-sharing, including deduct-  
15           ibles and coinsurance, or other limitations for infertility  
16           and iatrogenic infertility therapy may not be imposed with  
17           respect to the services required to be covered under sub-  
18           section (c) to the extent that such cost-sharing exceeds  
19           the cost-sharing applied to similar services under the  
20           group health plan or health insurance coverage or such  
21           other limitations are different from limitations imposed  
22           with respect to such similar services.

23           “(e) PROHIBITIONS.—A group health plan and a  
24           health insurance issuer offering group or individual health  
25           insurance coverage may not—

1           “(1) provide incentives (monetary or otherwise)  
2           to a participant or beneficiary to encourage such  
3           participant or beneficiary not to be provided infer-  
4           tility or iatrogenic infertility treatments to which  
5           such participant or beneficiary is entitled under this  
6           section or to providers to induce such providers not  
7           to provide such treatments to qualified participants  
8           or beneficiaries;

9           “(2) prohibit a provider from discussing with a  
10          participant or beneficiary infertility or iatrogenic in-  
11          fertility treatment techniques or medical treatment  
12          options relating to this section; or

13          “(3) penalize or otherwise reduce or limit the  
14          reimbursement of a provider because such provider  
15          provided infertility or iatrogenic infertility treat-  
16          ments to a qualified participant or beneficiary in ac-  
17          cordance with this section.

18          “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
19          tion shall be construed to require a participant or bene-  
20          ficiary to undergo infertility or iatrogenic infertility ther-  
21          apy.

22          “(g) NOTICE.—A group health plan and a health in-  
23          surance issuer offering group or individual health insur-  
24          ance coverage shall provide notice to each participant and  
25          beneficiary under such plan regarding the coverage re-



1 quired by this section in accordance with regulations pro-  
2 mulgated by the Secretary. Such notice shall be in writing  
3 and prominently positioned in any literature or cor-  
4 respondence made available or distributed by the plan or  
5 issuer and shall be transmitted—

6 “(1) in the next mailing made by the plan or  
7 issuer to the participant or beneficiary;

8 “(2) as part of any yearly informational packet  
9 sent to the participant or beneficiary; or

10 “(3) not later than January 1, 2020,  
11 whichever is earlier.

12 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
13 Nothing in this section shall be construed to prevent a  
14 group health plan or a health insurance issuer offering  
15 group or individual health insurance coverage from negoti-  
16 ating the level and type of reimbursement with a provider  
17 for care provided in accordance with this section.”

18 (b) CONFORMING AMENDMENT.—Section 2724(c) of  
19 the Public Health Service Act (42 U.S.C. 300gg–23(c))  
20 is amended by striking “section 2704” and inserting “sec-  
21 tions 2704 and 2708”.

22 (c) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by  
24 subsections (a) and (b) shall apply for plan years be-

1       ginning on or after the date that is 6 months after  
2       the date of enactment of this Act.

3               (2) COLLECTIVE BARGAINING EXCEPTION.—

4               (A) IN GENERAL.—In the case of a group  
5       health plan maintained pursuant to 1 or more  
6       collective bargaining agreements between em-  
7       ployee representatives and 1 or more employers  
8       ratified before the date of enactment of this  
9       Act, the amendments made by subsection (a)  
10      shall not apply to plan years beginning before  
11      the later of—

12              (i) the date on which the last collec-  
13      tive bargaining agreements relating to the  
14      plan terminates (determined without re-  
15      gard to any extension thereof agreed to  
16      after the date of enactment of this Act), or

17              (ii) the date occurring 6 months after  
18      the date of the enactment of this Act.

19              (B) CLARIFICATION.—For purposes of  
20      subparagraph (A), any plan amendment made  
21      pursuant to a collective bargaining agreement  
22      relating to the plan which amends the plan sole-  
23      ly to conform to any requirement added by sub-  
24      section (a) shall not be treated as a termination  
25      of such collective bargaining agreement.

1 **SEC. 4. FEDERAL EMPLOYEES HEALTH BENEFITS PRO-**  
2 **GRAM.**

3 (a) IN GENERAL.—Section 8902 of title 5, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 “(p) COVERAGE FOR DIAGNOSIS AND TREATMENT  
7 OF INFERTILITY AND IATROGENIC INFERTILITY.—

8 “(1) DEFINITIONS.—In this subsection, the  
9 terms ‘infertility’ and ‘iatrogenic infertility’ have the  
10 meanings given those terms in section 2729 of the  
11 Public Health Service Act.

12 “(2) REQUIRED COVERAGE.—A contract under  
13 this chapter shall provide, in a manner consistent  
14 with section 2729 of the Public Health Service  
15 Act—

16 “(A) coverage for the diagnosis and treat-  
17 ment of infertility, including nonexperimental  
18 assisted reproductive technology procedures, if  
19 such contract covers obstetrical benefits; and

20 “(B) coverage for the diagnosis and treat-  
21 ment of iatrogenic infertility.

22 “(3) COST.—Coverage for the diagnosis or  
23 treatment of infertility or iatrogenic infertility under  
24 a health benefits plan described in section 8903 or  
25 8903a may not be subject to any copayment or de-  
26 ductible greater than the copayment or deductible,

1       respectively, applicable to obstetrical benefits under  
2       the plan.

3           “(4) PREEMPTION.—Subsection (m)(1) shall  
4       not, with respect to a contract under this chapter,  
5       prevent the inclusion of any terms that, under para-  
6       graph (2) of this subsection, are required by reason  
7       of section 2729 of the Public Health Service Act.”.

8       (b) EFFECTIVE DATE.—The amendment made by  
9       subsection (a) shall apply with respect to any contract en-  
10      tered into or renewed for a contract year beginning on  
11      or after the date that is 180 days after the date of enact-  
12      ment of this Act, and any health benefits plan offered  
13      under such a contract.

14   **SEC. 5. BENEFITS FOR TREATMENT OF INFERTILITY AND**  
15                   **IATROGENIC INFERTILITY UNDER THE**  
16                   **TRICARE PROGRAM.**

17       (a) IN GENERAL.—Chapter 55 of title 10, United  
18      States Code, is amended by adding at the end the fol-  
19      lowing new section:

20   **“§ 1110c. Obstetrical and infertility benefits**

21       “(a) IN GENERAL.—Any health care plan under this  
22      chapter shall provide, in a manner consistent with section  
23      2729 of the Public Health Service Act—

24           “(1) coverage for the diagnosis and treatment  
25      of infertility, including nonexperimental assisted re-

1       productive technology procedures, if such plan covers  
2       obstetrical benefits; and

3               “(2) coverage for the diagnosis and treatment  
4       of iatrogenic infertility.

5       “(b) COPAYMENT.—The Secretary of Defense shall  
6       establish cost-sharing requirements for the coverage of di-  
7       agnosis and treatment of infertility and iatrogenic infer-  
8       tility described in subsection (a) that are consistent with  
9       the cost-sharing requirements applicable to health plans  
10      and health insurance coverage under section 2729(d) of  
11      the Public Health Service Act.

12      “(c) REGULATIONS.—The Secretary of Defense shall  
13      prescribe any regulations necessary to carry out this sec-  
14      tion.

15      “(d) DEFINITIONS.—In this section, the terms ‘infer-  
16      tility’ and ‘iatrogenic infertility’ have the meanings given  
17      those terms in section 2729 of the Public Health Service  
18      Act.”.

19      (b) CLERICAL AMENDMENT.—The table of sections  
20      at the beginning of chapter 55 of such title is amended  
21      by adding at the end the following new item:

“1110e. Obstetrical and infertility benefits.”.

1 **SEC. 6. TREATMENT OF INFERTILITY AND IATROGENIC IN-**  
2 **FERTILITY FOR VETERANS AND SPOUSES OR**  
3 **PARTNERS OF VETERANS.**

4 (a) IN GENERAL.—Subchapter II of chapter 17 of  
5 title 38, United States Code, is amended by adding at the  
6 end the following new section:

7 **“§ 1720J. Infertility treatment and counseling for vet-**  
8 **erans and spouses or partners of veterans**

9 “(a) IN GENERAL.—The Secretary shall furnish  
10 treatment for infertility and iatrogenic infertility, includ-  
11 ing through the use of assisted reproductive technology,  
12 to a veteran or a spouse or partner of a veteran if the  
13 veteran, and the spouse or partner of the veteran, as appli-  
14 cable, apply jointly for such treatment and counseling  
15 through a process prescribed by the Secretary for purposes  
16 of this section.

17 “(b) INFERTILITY DEFINED.—In this section, the  
18 terms ‘infertility’ and ‘iatrogenic infertility’ have the  
19 meanings given those terms in section 2729 of the Public  
20 Health Service Act.”.

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 at the beginning of chapter 17 of such title is amended  
23 by inserting after the item relating to section 1720I the  
24 following new item:

“1720J. Infertility treatment and counseling for veterans and spouses or part-  
ners of veterans.”.

1       (c) REGULATIONS.—Not later than 18 months after  
2 the date of the enactment of this Act, the Secretary of  
3 Veterans Affairs shall prescribe regulations to carry out  
4 section 1720J of title 38, United States Code, as added  
5 by subsection (a).

○