

118TH CONGRESS
1ST SESSION

S. 2386

To require health insurance coverage for the treatment of infertility.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2023

Mr. BOOKER (for himself, Mr. MENENDEZ, Ms. DUCKWORTH, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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-
10 ety for Reproductive Medicine, and the American

1 Medical Association that affects men and women
2 equally.

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

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

10 (4) According to the Centers for Disease Con-
11 trol and Prevention, 11 percent of women in the
12 United States between the ages of 15 and 44 have
13 difficulty getting pregnant or staying pregnant.
14 Similarly, 9 percent of men in the United States be-
15 tween the ages of 15 and 44 experience infertility.

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) Coverage for infertility services under
21 State Medicaid programs is limited. The Medicaid
22 programs of only 5 States provide diagnostic testing
23 for women and men in all of their program eligibility
24 pathways; the Medicaid program of only one State
25 provides coverage for certain medications for women

1 experiencing infertility; and no State Medicaid pro-
 2 grams cover intrauterine insemination or in vitro
 3 fertilization.

4 (11) States that do not require private insur-
 5 ance coverage of assisted reproductive technology
 6 have higher rates of multiple births.

7 (12) The ability to have a family should not be
 8 denied to anyone on account of a lack of insurance
 9 coverage for medically necessary treatment.

10 **SEC. 3. STANDARDS RELATING TO BENEFITS FOR TREAT-**
 11 **MENT OF INFERTILITY AND PREVENTION OF**
 12 **IATROGENIC INFERTILITY.**

13 (a) IN GENERAL.—

14 (1) PHSA.—Part D of title XXVII of the Pub-
 15 lic Health Service Act (42 U.S.C. 300gg–111 et
 16 seq.) is amended by adding at the end the following:

17 **“SEC. 2799A–11. STANDARDS RELATING TO BENEFITS FOR**
 18 **TREATMENT OF INFERTILITY AND PREVEN-**
 19 **TION OF IATROGENIC INFERTILITY.**

20 “(a) IN GENERAL.—A group health plan or a health
 21 insurance issuer offering group or individual health insur-
 22 ance coverage shall ensure that such plan or coverage pro-
 23 vides coverage for—

24 “(1) the treatment of infertility, including non-
 25 experimental assisted reproductive technology proce-

1 dures, if such plan or coverage provides coverage for
2 obstetrical services; and

3 “(2) standard fertility preservation services
4 when a medically necessary treatment may directly
5 or indirectly cause iatrogenic infertility.

6 “(b) DEFINITIONS.—In this section:

7 “(1) the term ‘assisted reproductive technology’
8 means treatments or procedures that involve the
9 handling of human egg, sperm, and embryo outside
10 of the body with the intent of facilitating a preg-
11 nancy, including in vitro fertilization, egg, embryo,
12 or sperm cryopreservation, egg or embryo donation,
13 and gestational surrogacy;

14 “(2) the term ‘infertility’ means a disease, char-
15 acterized by the failure to establish a clinical preg-
16 nancy—

17 “(A) after 12 months of regular, unpro-
18 tected sexual intercourse; or

19 “(B) due to a person’s incapacity for re-
20 production either as an individual or with his or
21 her partner, which may be determined after a
22 period of less than 12 months of regular, un-
23 protected sexual intercourse, or based on med-
24 ical, sexual and reproductive history, age, phys-
25 ical findings, or diagnostic testing; and

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

4 “(c) REQUIRED COVERAGE.—

5 “(1) COVERAGE FOR INFERTILITY.—Subject to
6 paragraph (3), a group health plan and a health in-
7 surance issuer offering group or individual health in-
8 surance coverage that includes coverage for obstet-
9 rical services shall provide coverage for treatment of
10 infertility determined appropriate by the treating
11 provider, including, as appropriate, ovulation induc-
12 tion, egg retrieval, sperm retrieval, artificial insemi-
13 nation, in vitro fertilization, genetic screening,
14 intracytoplasmic sperm injection, and any other non-
15 experimental treatment, as determined by the Sec-
16 retary in consultation with appropriate professional
17 and patient organizations.

18 “(2) COVERAGE FOR IATROGENIC INFER-
19 TILITY.—A group health plan and a health insur-
20 ance issuer offering group or individual health insur-
21 ance coverage shall provide coverage of fertility pres-
22 ervation services for individuals who undergo medi-
23 cally necessary treatment that may cause iatrogenic
24 infertility, as determined by the treating provider,
25 including cryopreservation of gametes and other pro-

1 cedures, as determined by the Secretary, consistent
 2 with established medical practices and professional
 3 guidelines published by professional medical organi-
 4 zations.

5 “(3) LIMITATION ON COVERAGE OF ASSISTED
 6 REPRODUCTIVE TECHNOLOGY.—A group health plan
 7 and a health insurance issuer offering group or indi-
 8 vidual health insurance coverage shall provide cov-
 9 erage for assisted reproductive technology as re-
 10 quired under paragraph (1) if—

11 “(A) the individual is unable to bring a
 12 pregnancy to a live birth through minimally
 13 invasive infertility treatments, as determined
 14 appropriate by the treating provider, with con-
 15 sideration given to participant’s, beneficiary’s,
 16 or enrollee’s specific diagnoses or condition for
 17 which coverage is available under the plan or
 18 coverage; and

19 “(B) the treatment is performed at a med-
 20 ical facility that is in compliance with any
 21 standards set by an appropriate Federal agen-
 22 cy.

23 “(d) LIMITATION.—Cost-sharing, including
 24 deductibles and coinsurance, or other limitations for infer-
 25 tility and services to prevent iatrogenic infertility may not

1 be imposed with respect to the services required to be cov-
 2 ered under subsection (c) to the extent that such cost-
 3 sharing exceeds the cost-sharing applied to similar services
 4 under the group health plan or health insurance coverage
 5 or such other limitations are different from limitations im-
 6 posed with respect to such similar services.

7 “(e) PROHIBITIONS.—A group health plan and a
 8 health insurance issuer offering group or individual health
 9 insurance coverage may not—

10 “(1) provide incentives (monetary or otherwise)
 11 to a participant, beneficiary, or enrollee to encourage
 12 such participant, beneficiary, or enrollee not to be
 13 provided infertility treatments or fertility preserva-
 14 tion services to which such participant, beneficiary,
 15 or enrollee is entitled under this section or to pro-
 16 viders to induce such providers not to provide such
 17 treatments to qualified participants, beneficiaries, or
 18 enrollees;

19 “(2) prohibit a provider from discussing with a
 20 participant, beneficiary, or enrollee infertility treat-
 21 ments or fertility preservation technology or medical
 22 treatment options relating to this section; or

23 “(3) penalize or otherwise reduce or limit the
 24 reimbursement of a provider because such provider
 25 provided infertility treatments or fertility preserva-

1 tion services to a qualified participant, beneficiary,
2 or enrollee in accordance with this section.

3 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion shall be construed to require a participant, bene-
5 ficiary, or enrollee to undergo infertility treatments or fer-
6 tility preservation services.

7 “(g) NOTICE.—A group health plan and a health in-
8 surance issuer offering group or individual health insur-
9 ance coverage shall provide notice to each participant, ben-
10 eficiary, and enrollee under such plan or coverage regard-
11 ing the coverage required by this section in accordance
12 with regulations promulgated by the Secretary. Such no-
13 tice shall be in writing and prominently positioned in any
14 literature or correspondence made available or distributed
15 by the plan or issuer and shall be transmitted—

16 “(1) in the next mailing made by the plan or
17 issuer to the participant, beneficiary, or enrollee;

18 “(2) as part of any yearly informational packet
19 sent to the participant, beneficiary, or enrollee; or

20 “(3) not later than January 1, 2024,
21 whichever is earlier.

22 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—
23 Nothing in this section shall be construed to prevent a
24 group health plan or a health insurance issuer offering
25 group or individual health insurance coverage from negoti-

1 ating the level and type of reimbursement with a provider
 2 for care provided in accordance with this section.”.

3 (2) ERISA.—

4 (A) IN GENERAL.—Subpart B of part 7 of
 5 subtitle B of title I of the Employee Retirement
 6 Income Security Act of 1974 (29 U.S.C. 1185
 7 et seq.) is amended by adding at the end the
 8 following:

9 **“SEC. 726. STANDARDS RELATING TO BENEFITS FOR**
 10 **TREATMENT OF INFERTILITY AND PREVEN-**
 11 **TION OF IATROGENIC INFERTILITY.**

12 “(a) IN GENERAL.—A group health plan or a health
 13 insurance issuer offering group health insurance coverage
 14 shall ensure that such plan or coverage provides coverage
 15 for—

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

20 “(2) standard fertility preservation services
 21 when a medically necessary treatment may directly
 22 or indirectly cause iatrogenic infertility.

23 “(b) DEFINITIONS.—In this section:

24 “(1) the term ‘assisted reproductive technology’
 25 means treatments or procedures that involve the

1 handling of human egg, sperm, and embryo outside
2 of the body with the intent of facilitating a preg-
3 nancy, including in vitro fertilization, egg, embryo,
4 or sperm cryopreservation, egg or embryo donation,
5 and gestational surrogacy;

6 “(2) the term ‘infertility’ means a disease, char-
7 acterized by the failure to establish a clinical preg-
8 nancy—

9 “(A) after 12 months of regular, unpro-
10 tected sexual intercourse; or

11 “(B) due to a person’s incapacity for re-
12 production either as an individual or with his or
13 her partner, which may be determined after a
14 period of less than 12 months of regular, un-
15 protected sexual intercourse, or based on med-
16 ical, sexual and reproductive history, age, phys-
17 ical findings, or diagnostic testing; and

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

21 “(c) REQUIRED COVERAGE.—

22 “(1) COVERAGE FOR INFERTILITY.—Subject to
23 paragraph (3), a group health plan and a health in-
24 surance issuer offering group health insurance cov-
25 erage that includes coverage for obstetrical services

1 shall provide coverage for treatment of infertility de-
2 termined appropriate by the treating provider, in-
3 cluding, as appropriate, ovulation induction, egg re-
4 trieval, sperm retrieval, artificial insemination, in
5 vitro fertilization, genetic screening, intracytoplasmic
6 sperm injection, and any other non-experimental
7 treatment, as determined by the Secretary in con-
8 sultation with appropriate professional and patient
9 organizations.

10 “(2) COVERAGE FOR IATROGENIC INFER-
11 TILITY.—A group health plan and a health insur-
12 ance issuer offering group health insurance coverage
13 shall provide coverage of fertility preservation serv-
14 ices for individuals who undergo medically necessary
15 treatment that may cause iatrogenic infertility, as
16 determined by the treating provider, including
17 cryopreservation of gametes and other procedures,
18 as determined by the Secretary, consistent with es-
19 tablished medical practices and professional guide-
20 lines published by professional medical organiza-
21 tions.

22 “(3) LIMITATION ON COVERAGE OF ASSISTED
23 REPRODUCTIVE TECHNOLOGY.—A group health plan
24 and a health insurance issuer offering group health
25 insurance coverage shall provide coverage for as-

1 sisted reproductive technology as required under
2 paragraph (1) if—

3 “(A) the individual is unable to bring a
4 pregnancy to a live birth through minimally
5 invasive infertility treatments, as determined
6 appropriate by the treating provider, with con-
7 sideration given to participant’s or beneficiary’s
8 specific diagnoses or condition for which cov-
9 erage is available under the plan or coverage;
10 and

11 “(B) the treatment is performed at a med-
12 ical facility that is in compliance with any
13 standards set by an appropriate Federal agen-
14 cy.

15 “(d) LIMITATION.—Cost-sharing, including
16 deductibles and coinsurance, or other limitations for infer-
17 tility and services to prevent iatrogenic infertility may not
18 be imposed with respect to the services required to be cov-
19 ered under subsection (c) to the extent that such cost-
20 sharing exceeds the cost-sharing applied to similar services
21 under the group health plan or health insurance coverage
22 or such other limitations are different from limitations im-
23 posed with respect to such similar services.

1 “(e) PROHIBITIONS.—A group health plan and a
2 health insurance issuer offering group health insurance
3 coverage may not—

4 “(1) provide incentives (monetary or otherwise)
5 to a participant or beneficiary to encourage such
6 participant or beneficiary not to be provided infer-
7 tility treatments or fertility preservation services to
8 which such participant or beneficiary is entitled
9 under this section or to providers to induce such
10 providers not to provide such treatments to qualified
11 participants or beneficiaries;

12 “(2) prohibit a provider from discussing with a
13 participant or beneficiary infertility treatments or
14 fertility preservation technology or medical treat-
15 ment options relating to this section; or

16 “(3) penalize or otherwise reduce or limit the
17 reimbursement of a provider because such provider
18 provided infertility treatments or fertility preserva-
19 tion services to a qualified participant or beneficiary
20 in accordance with this section.

21 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion shall be construed to require a participant or bene-
23 ficiary to undergo infertility treatments or fertility preser-
24 vation services.

1 “(g) NOTICE.—A group health plan and a health in-
2 surance issuer offering group health insurance coverage
3 shall provide notice to each participant and beneficiary
4 under such plan or coverage regarding the coverage re-
5 quired by this section in accordance with regulations pro-
6 mulgated by the Secretary. Such notice shall be in writing
7 and prominently positioned in any literature or cor-
8 respondence made available or distributed by the plan or
9 issuer and shall be transmitted—

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

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

14 “(3) not later than January 1, 2024,
15 whichever is earlier.

16 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—
17 Nothing in this section shall be construed to prevent a
18 group health plan or a health insurance issuer offering
19 group health insurance coverage from negotiating the level
20 and type of reimbursement with a provider for care pro-
21 vided in accordance with this section.”.

22 (B) CLERICAL AMENDMENT.—The table of
23 contents in section 1 of the Employee Retirement
24 Income Security Act of 1974 (29 U.S.C.
25 1001 et seq.) is amended by inserting after the

1 item relating to section 725 the following new
 2 item:

“Sec. 726. Standards relating to benefits for treatment of infertility and prevention of iatrogenic infertility.”.

3 (3) IRC.—

4 (A) IN GENERAL.—Subchapter B of chap-
 5 ter 100 of the Internal Revenue Code of 1986
 6 is amended by adding at the end the following:

7 **“SEC. 9826. STANDARDS RELATING TO BENEFITS FOR**
 8 **TREATMENT OF INFERTILITY AND PREVEN-**
 9 **TION OF IATROGENIC INFERTILITY.**

10 “(a) IN GENERAL.—A group health plan shall ensure
 11 that such plan provides coverage for—

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

16 “(2) standard fertility preservation services
 17 when a medically necessary treatment may directly
 18 or indirectly cause 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, embryo,

1 or sperm cryopreservation, egg or embryo donation,
 2 and gestational surrogacy;

3 “(2) the term ‘infertility’ means a disease, char-
 4 acterized by the failure to establish a clinical preg-
 5 nancy—

6 “(A) after 12 months of regular, unpro-
 7 tected sexual intercourse; or

8 “(B) due to a person’s incapacity for re-
 9 production either as an individual or with his or
 10 her partner, which may be determined after a
 11 period of less than 12 months of regular, un-
 12 protected sexual intercourse, or based on med-
 13 ical, sexual and reproductive history, age, phys-
 14 ical findings, or diagnostic testing; and

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

18 “(c) REQUIRED COVERAGE.—

19 “(1) COVERAGE FOR INFERTILITY.—Subject to
 20 paragraph (3), a group health plan that includes
 21 coverage for obstetrical services shall provide cov-
 22 erage for treatment of infertility determined appro-
 23 priate by the treating provider, including, as appro-
 24 priate, ovulation induction, egg retrieval, sperm re-
 25 trieval, artificial insemination, in vitro fertilization,

1 genetic screening, intracytoplasmic sperm injection,
2 and any other non-experimental treatment, as deter-
3 mined by the Secretary in consultation with appro-
4 priate professional and patient organizations.

5 “(2) COVERAGE FOR IATROGENIC INFER-
6 TILITY.—A group health plan shall provide coverage
7 of fertility preservation services for individuals who
8 undergo medically necessary treatment that may
9 cause iatrogenic infertility, as determined by the
10 treating provider, including cryopreservation of
11 gametes and other procedures, as determined by the
12 Secretary, consistent with established medical prac-
13 tices and professional guidelines published by profes-
14 sional medical organizations.

15 “(3) LIMITATION ON COVERAGE OF ASSISTED
16 REPRODUCTIVE TECHNOLOGY.—A group health plan
17 shall provide coverage for assisted reproductive tech-
18 nology as required under paragraph (1) if—

19 “(A) the individual is unable to bring a
20 pregnancy to a live birth through minimally
21 invasive infertility treatments, as determined
22 appropriate by the treating provider, with con-
23 sideration given to participant’s or beneficiary’s
24 specific diagnoses or condition for which cov-
25 erage is available under the plan; and

1 “(B) the treatment is performed at a med-
2 ical facility that is in compliance with any
3 standards set by an appropriate Federal agen-
4 cy.

5 “(d) LIMITATION.—Cost-sharing, including
6 deductibles and coinsurance, or other limitations for infer-
7 tility and services to prevent iatrogenic infertility may not
8 be imposed with respect to the services required to be cov-
9 ered under subsection (c) to the extent that such cost-
10 sharing exceeds the cost-sharing applied to similar services
11 under the group health plan or such other limitations are
12 different from limitations imposed with respect to such
13 similar services.

14 “(e) PROHIBITIONS.—A group health plan may not—

15 “(1) provide incentives (monetary or otherwise)
16 to a participant or beneficiary to encourage such
17 participant or beneficiary not to be provided infer-
18 tility treatments or fertility preservation services to
19 which such participant or beneficiary is entitled
20 under this section or to providers to induce such
21 providers not to provide such treatments to qualified
22 participants or beneficiaries;

23 “(2) prohibit a provider from discussing with a
24 participant or beneficiary infertility treatments or

1 fertility preservation technology or medical treat-
2 ment options relating to this section; or

3 “(3) penalize or otherwise reduce or limit the
4 reimbursement of a provider because such provider
5 provided infertility treatments or fertility preserva-
6 tion services to a qualified participant or beneficiary
7 in accordance with this section.

8 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to require a participant or bene-
10 ficiary to undergo infertility treatments or fertility preser-
11 vation services.

12 “(g) NOTICE.—A group health plan shall provide no-
13 tice to each participant and beneficiary under such plan
14 regarding the coverage required by this section in accord-
15 ance with regulations promulgated by the Secretary. Such
16 notice shall be in writing and prominently positioned in
17 any literature or correspondence made available or distrib-
18 uted by the plan and shall be transmitted—

19 “(1) in the next mailing made by the plan to
20 the participant or beneficiary;

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

23 “(3) not later than January 1, 2024,
24 whichever is earlier.

1 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—
 2 Nothing in this section shall be construed to prevent a
 3 group health plan from negotiating the level and type of
 4 reimbursement with a provider for care provided in ac-
 5 cordance with this section.”.

6 (B) CLERICAL AMENDMENT.—The table of
 7 sections for subchapter B of chapter 100 of the
 8 Internal Revenue Code of 1986 is amended by
 9 adding at the end the following new item:

“Sec. 9826. Standards relating to benefits for treatment of infertility and pre-
 ventation of iatrogenic infertility.”.

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

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by
 16 subsections (a) and (b) shall apply for plan years be-
 17 ginning on or after the date that is 6 months after
 18 the date of enactment of this Act.

19 (2) COLLECTIVE BARGAINING EXCEPTION.—

20 (A) IN GENERAL.—In the case of a group
 21 health plan maintained pursuant to one or more
 22 collective bargaining agreements between em-
 23 ployee representatives and one or more employ-
 24 ers ratified before the date of enactment of this

Act, the amendments made by subsection (a) shall not apply to plan years beginning before the later of—

(i) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

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

(B) CLARIFICATION.—For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

SEC. 4. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.

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

“(q)(1) In this subsection, the terms ‘infertility’ and ‘iatrogenic infertility’ have the meanings given those terms in section 2799A–11 of the Public Health Service Act.

1 “(2) A contract under this chapter shall provide, in
 2 a manner consistent with section 2799A–11 of the Public
 3 Health Service Act, coverage for—

4 “(A) the diagnosis and treatment of infertility,
 5 including nonexperimental assisted reproductive
 6 technology procedures, if that contract covers obstet-
 7 rical benefits; and

8 “(B) standard fertility preservation services
 9 when a medically necessary treatment may directly
 10 or indirectly cause iatrogenic infertility.

11 “(3) Coverage for the diagnosis or treatment of infer-
 12 tility and fertility preservation services under a health ben-
 13 efits plan described in section 8903 or 8903a may not be
 14 subject to any copayment or deductible greater than the
 15 copayment or deductible, respectively, applicable to obstet-
 16 rical benefits under the plan.

17 “(4) Subsection (m)(1) shall not, with respect to a
 18 contract under this chapter, prevent the inclusion of any
 19 terms that, under paragraph (2) of this subsection, are
 20 required by reason of section 2799A–11 of the Public
 21 Health Service Act.”.

22 (b) EFFECTIVE DATE.—The amendment made by
 23 subsection (a) shall apply with respect to—

24 (1) any contract entered into or renewed for a
 25 contract year beginning on or after the date that is

1 180 days after the date of enactment of this Act;
 2 and

3 (2) any health benefits plan offered under a
 4 contract described in paragraph (1).

5 **SEC. 5. BENEFITS FOR TREATMENT OF INFERTILITY AND**
 6 **PREVENTION OF IATROGENIC INFERTILITY**
 7 **UNDER THE TRICARE PROGRAM.**

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

11 **“§ 1110c. Obstetrical and infertility benefits**

12 “(a) IN GENERAL.—Any health care plan under this
 13 chapter shall provide, in a manner consistent with section
 14 2799A–11 of the Public Health Service Act—

15 “(1) coverage for the diagnosis and treatment
 16 of infertility, including nonexperimental assisted re-
 17 productive technology procedures, if such plan covers
 18 obstetrical benefits; and

19 “(2) coverage for standard fertility preservation
 20 services when a medically necessary treatment may
 21 directly or indirectly cause iatrogenic infertility.

22 “(b) COPAYMENT.—The Secretary of Defense shall
 23 establish cost-sharing requirements for the coverage of di-
 24 agnosis and treatment of infertility and fertility preserva-
 25 tion services described in subsection (a) that are consistent

1 with the cost-sharing requirements applicable to health
 2 plans and health insurance coverage under section 2799A–
 3 11(d) of the Public Health Service Act.

4 “(c) REGULATIONS.—The Secretary of Defense shall
 5 prescribe any regulations necessary to carry out this sec-
 6 tion.

7 “(d) DEFINITIONS.—In this section, the terms ‘as-
 8 sisted reproductive technology’, ‘iatrogenic infertility’, and
 9 ‘infertility’ have the meanings given those terms in section
 10 2799A–11 of the Public Health Service Act.”.

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

“1110e. Obstetrical and infertility benefits.”.

14 **SEC. 6. TREATMENT OF INFERTILITY AND PREVENTION OF**
 15 **IATROGENIC INFERTILITY FOR VETERANS**
 16 **AND SPOUSES OR PARTNERS OF VETERANS.**

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

20 **“§ 1720K. Infertility treatment for veterans and**
 21 **spouses or partners of veterans.**

22 “(a) IN GENERAL.—The Secretary shall furnish
 23 treatment for infertility and fertility preservation services,
 24 including through the use of assisted reproductive tech-
 25 nology, to a veteran or a spouse or partner of a veteran

1 if the veteran, and the spouse or partner of the veteran,
 2 as applicable, apply jointly for such treatment through a
 3 process prescribed by the Secretary for purposes of this
 4 section.

5 “(b) DEFINITIONS.—In this section, the terms ‘as-
 6 sisted reproductive technology’ and ‘infertility’ have the
 7 meanings given those terms in section 2799A–11 of the
 8 Public Health Service Act.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 at the beginning of subchapter II of chapter 17 of such
 11 title is amended by inserting after the item relating to sec-
 12 tion 1720J the following new item:

“1720K. Infertility treatment for veterans and spouses or partners of vet-
 erans.”.

13 (c) REGULATIONS.—Not later than 18 months after
 14 the date of the enactment of this Act, the Secretary of
 15 Veterans Affairs shall prescribe regulations to carry out
 16 section 1720K of title 38, United States Code, as added
 17 by subsection (a).

18 **SEC. 7. REQUIREMENT FOR STATE MEDICAID PLANS TO**
 19 **PROVIDE MEDICAL ASSISTANCE FOR TREAT-**
 20 **MENT OF INFERTILITY AND PREVENTION OF**
 21 **IATROGENIC INFERTILITY.**

22 (a) IN GENERAL.—Section 1905 of the Social Secu-
 23 rity Act (42 U.S.C. 1396d) is amended—

24 (1) in subsection (a)(4)—

1 (A) by striking “; and (D)” and inserting
 2 “; (D)”;

3 (B) by striking “; and (E)” and inserting
 4 “; (E)”;

5 (C) by striking “; and (F)” and inserting
 6 “; (F)”;

7 (D) by inserting before the semicolon at
 8 the end the following: “; and (G) services and
 9 supplies to treat infertility and prevent iatro-
 10 genic infertility (as such terms are defined in
 11 section 2799A–11(b) of the Public Health Serv-
 12 ice Act) in accordance with subsection (jj)”;
 13 and

14 (2) by adding at the end the following new sub-
 15 section:

16 “(jj) REQUIREMENTS FOR COVERAGE OF INFER-
 17 TILITY TREATMENT AND PREVENTION OF IATROGENIC
 18 INFERTILITY.—For purposes of subsection (a)(4)(G), a
 19 State shall ensure that the medical assistance provided
 20 under the State plan (or waiver of such plan) for treat-
 21 ment of infertility and fertility preservation services com-
 22 plies with the requirements and limitations of section
 23 2799A–11(c) of the Public Health Service Act in the same
 24 manner as such requirements and limitations apply to

1 health insurance coverage offered by a group health plan
2 or health insurance issuer.”.

3 (b) NO COST SHARING FOR INFERTILITY TREAT-
4 MENT.—

5 (1) IN GENERAL.—Subsections (a)(2)(D) and
6 (b)(2)(D) of section 1916 of the Social Security Act
7 (42 U.S.C. 1396o(a)(2)(D)) are amended by insert-
8 ing “, services and supplies to treat infertility and
9 provide fertility preservation services described in
10 section 1905(a)(4)(G)” after “1905(a)(4)(C)” each
11 place it appears.

12 (2) APPLICATION TO ALTERNATIVE COST SHAR-
13 ING.—Section 1916A(b)(3)(B)(vii) of the Social Se-
14 curity Act (42 U.S.C. 1396o–1(b)(3)(B)(vii)) is
15 amended by inserting “ and services and supplies to
16 treat infertility and provide fertility preservation de-
17 scribed in section 1905(a)(4)(G)” before the period.

18 (c) PRESUMPTIVE ELIGIBILITY FOR INFERTILITY
19 TREATMENT.—Section 1920C of the Social Security Act
20 (42 U.S.C. 1396r–1c) is amended—

21 (1) in the section heading, by inserting “AND
22 INFERTILITY TREATMENT” after “FAMILY PLANNING
23 SERVICES”;

24 (2) in subsection (a)—

1 (A) by striking “State plan” and inserting
 2 “A State plan”;

3 (B) by striking “1905(a)(4)(C)” and in-
 4 serting “section 1905(a)(4)(C), services and
 5 supplies to treat infertility and prevent iatro-
 6 genic infertility described in section
 7 1905(a)(4)(G),”; and

8 (C) by inserting “or in conjunction with an
 9 infertility treatment service in an infertility
 10 treatment setting” before the period.

11 (d) INCLUSION IN BENCHMARK COVERAGE.—Section
 12 1937(b) of the Social Security Act (42 U.S.C. 1396u–
 13 7(b)) is amended by adding at the end the following new
 14 paragraph:

15 “(9) COVERAGE OF INFERTILITY TREATMENT
 16 AND PREVENTION OF IATROGENIC INFERTILITY.—
 17 Notwithstanding the previous provisions of this sec-
 18 tion, a State may not provide for medical assistance
 19 through enrollment of an individual with benchmark
 20 coverage or benchmark-equivalent coverage under
 21 this section unless such coverage includes medical
 22 assistance for services and supplies to treat infer-
 23 tility and provide fertility preservation described in
 24 section 1905(a)(4)(G) in accordance with such sec-
 25 tion.”.

1 (e) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall take effect on October 1, 2024.

5 (2) DELAY PERMITTED IF STATE LEGISLATION
6 REQUIRED.—In the case of a State plan approved
7 under title XIX of the Social Security Act which the
8 Secretary of Health and Human Services determines
9 requires State legislation (other than legislation ap-
10 propriating funds) in order for the plan to meet the
11 additional requirement imposed by this section, the
12 State plan shall not be regarded as failing to comply
13 with the requirements of such title solely on the
14 basis of the failure of the plan to meet such addi-
15 tional requirement before the first day of the first
16 calendar quarter beginning after the close of the
17 first regular session of the State legislature that
18 ends after the 1-year period beginning with the date
19 of the enactment of this section. For purposes of the
20 preceding sentence, in the case of a State that has
21 a 2-year legislative session, each year of the session
22 is deemed to be a separate regular session of the
23 State legislature.

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