To protect and expand nationwide access to fertility treatment, including in vitro fertilization.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2024

Ms. Duckworth (for herself, Mrs. Murray, Mr. Booker, Mr. Schumer, Ms. Baldwin, Mr. Bennet, Mr. Blumenthal, Ms. Butler, Mr. Carper, Mr. Casey, Mr. Coons, Mr. Durbin, Mr. Fetterman, Mrs. Gillibrand, Ms. Hassan, Mr. Heinrich, Mr. Hickenlooper, Ms. Hirono, Mr. Kaine, Mr. King, Ms. Klobuchar, Mr. Luján, Mr. Markey, Mr. Merkley, Mr. Murphy, Mr. Padilla, Mr. Reed, Ms. Rosen, Mr. Sanders, Mr. Schatz, Ms. Smith, Ms. Stabenow, Ms. Warren, Mr. Welch, Mr. Whitehouse, Mr. Wyden, Mr. Warner, and Mr. Brown) introduced the following bill; which was read the first time

JUNE 4, 2024

Read the second time and placed on the calendar

A BILL

To protect and expand nationwide access to fertility treatment, including in vitro fertilization.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Right to IVF Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Severability.

TITLE I—ACCESS TO FAMILY BUILDING

Sec. 101. Short title.
Sec. 102. Purposes.
Sec. 103. Definitions.
Sec. 104. Fertility treatment rights.
Sec. 105. Applicability and preemption.

TITLE II—VETERAN FAMILIES HEALTH SERVICES

Sec. 200. Short title.

Subtitle A—Reproductive and Fertility Preservation Assistance for Members of the Uniformed Services

Sec. 201. Definitions.
Sec. 202. Provision of fertility treatment and counseling to certain members of the uniformed services and spouses, partners, and gestational surrogates of such members.
Sec. 203. Establishment of fertility preservation procedures after an injury or illness.
Sec. 204. Cryopreservation and storage of reproductive genetic material of members of the uniformed services on active duty.
Sec. 205. Assistance with and continuity of care regarding reproductive and fertility preservation services.
Sec. 206. Coordination between Department of Defense and Department of Veterans Affairs on furnishing of fertility treatment and counseling.
Sec. 207. Regulations.

Subtitle B—Reproductive Assistance for Veterans

Sec. 211. Inclusion of fertility treatment and counseling under the definition of medical services in title 38.
Sec. 212. Fertility treatment and counseling for certain veterans and spouses, partners, and gestational surrogates of such veterans.
Sec. 213. Assistance with and continuity of care regarding reproductive and fertility preservation services.
Sec. 214. Coordination of reproduction and fertility research for veterans.

TITLE III—ACCESS TO FERTILITY TREATMENT AND CARE

Sec. 301. Short title.
Sec. 302. Standards relating to benefits for fertility treatment.
Sec. 303. Requirement for State Medicaid plans to provide medical assistance for fertility treatment.
Sec. 304. Medicare coverage of fertility treatment.

TITLE IV—FAMILY BUILDING FEHB FAIRNESS

Sec. 401. Short title.
Sec. 402. Fertility treatment benefits.

1 SEC. 2. SEVERABILITY.

2 If any provision of this Act, or the application of such provision to any person, entity, government, or circumstance is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons, entities, governments, or circumstances shall not be affected thereby.

8 TITLE I—ACCESS TO FAMILY BUILDING

10 SEC. 101. SHORT TITLE.

11 This title may be cited as the “Access to Family Building Act”.

13 SEC. 102. PURPOSES.

14 The purposes of this title are as follows:

15 (1) To permit patients to seek and receive fertility treatment, including assisted reproductive technology services, and to permit health care providers that choose to provide fertility treatment, to provide such services without States enacting harmful or unwarranted limitations or requirements that single out the provision of assisted reproductive services for restrictions that are not consistent with widely ac-
cepted and evidence-based medical standards of care, and which do not significantly advance reproductive health or the efficacy and safety of fertility treatment, or make fertility treatment more difficult to access.

(2) To promote the right and ability of a patient residing in any State to choose to receive fertility treatment provided in accordance with widely accepted and evidence-based medical standards of care by a health care provider who chooses to provide such services.

(3) To protect an individual’s right to make decisions, in consultation with the individual’s health care provider, about the most appropriate medical care to maximize the chance of becoming pregnant and giving birth to a healthy, living, human child with the help of fertility treatment.

SEC. 103. DEFINITIONS.

In this title:

(1) FERTILITY TREATMENT.—The term “fertility treatment” includes the following:

(A) Preservation of human oocytes, sperm, or embryos for later reproductive use.
(B) Artificial insemination, including intravaginal insemination, intracervical insemination, and intrauterine insemination.

(C) Assisted reproductive technology, including in vitro fertilization and other treatments or procedures in which reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, are handled, when clinically appropriate.

(D) Genetic testing of embryos.

(E) Medications prescribed or obtained over-the-counter, as indicated for fertility.

(F) Gamete donation.

(G) Such other information, referrals, treatments, procedures, medications, laboratory testing, technologies, and services relating to fertility as the Secretary of Health and Human Services determines appropriate.

(2) Health care provider.—The term “health care provider” means any entity or individual (including any physician, nurse practitioner, physician assistant, pharmacist, health care support personnel, clinical staff, and any other individual, as determined by the Secretary of Health and Human Services) that—
(A) is engaged or seeks to engage in the
delivery of fertility treatment, including through
the provision of evidence-based information,
counseling, referrals, or items and services that
relate to, aid in, or provide fertility treatment;
and

(B) if required by State law to be licensed,
certified, or otherwise authorized to engage in
the delivery of such services—

   (i) is so licensed, certified, or otherwise authorized; or
   
   (ii) would be so licensed, certified, or otherwise authorized but for the fact that
   the individual or entity has provided, is providing, or plans to provide fertility
   treatment in accordance with section 104.

(3) HEALTH INSURANCE ISSUER.—The term
“health insurance issuer” has the meaning given
such term in section 2791(b) of the Public Health
Service Act (42 U.S.C. 300gg–91(b)).

(4) MANUFACTURER.—The term “manufac-
turer” means the manufacturer of a drug or device
approved, cleared, authorized, or licensed under sec-
tion 505, 510(k), 513(f)(2), or 515 of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C. 355,
360(k), 360c(f)(2), 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) or otherwise legally marketed.

(5) **STATE.**—The term “State” includes each of the 50 States, the District of Columbia, Puerto Rico, each territory and possession of the United States, and any political subdivision thereof.

(6) **WIDELY ACCEPTED AND EVIDENCE-BASED MEDICAL STANDARDS OF CARE.**—The term “widely accepted and evidence-based medical standards of care” means any medical services, procedures, and practices that are in accordance with the guidelines of the American Society for Reproductive Medicine.

**SEC. 104. FERTILITY TREATMENT RIGHTS.**

(a) **GENERAL RULE.**—

(1) **INDIVIDUAL RIGHTS.**—An individual has a statutory right under this title, without prohibition, limitation, interference, or impediment, to the extent that such prohibition, limitation, interference, or impediment in any way or degree obstructs, delays, or affects commerce over which the Federal Government has jurisdiction, to—

(A) receive fertility treatment from a health care provider, in accordance with widely
accepted and evidence-based medical standards of care;

(B) continue or complete an ongoing fertility treatment previously initiated by a health care provider, in accordance with widely accepted and evidence-based medical standards of care;

(C) make decisions and arrangements regarding the donation, testing, use, storage, or disposition of reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos; and

(D) establish contractual agreements with a health care provider relating to the health care provider’s services in handling, testing, storing, shipping, and disposing of the individual’s reproductive genetic material in accordance with widely accepted and evidence-based medical standards of care.

(2) Health care provider rights.—A health care provider has a statutory right under this title, without prohibition, limitation, interference, or impediment, to the extent that such prohibition, limitation, interference, or impediment in any way or
degree obstructs, delays, or affects commerce over which the Federal Government has jurisdiction, to—

(A) provide, or assist with the provision of, fertility treatment provided in accordance with widely accepted and evidence-based medical standards of care;

(B) continue or complete the provision of, or assistance with, fertility treatment that was lawful when commenced and is provided in accordance with widely accepted and evidence-based medical standards of care;

(C) provide for, or assist with, the testing, use, storage, or disposition of reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, in accordance with widely accepted and evidence-based medical standards of care; and

(D) establish contractual agreements with individuals or manufacturers relating to the health care provider’s services in handling, testing, storing, shipping, and disposing of the individual’s reproductive genetic material.

(3) **Health Insurance Issuer Rights.**—A health insurance issuer has a statutory right under this title, without prohibition, limitation, inter-
ference, or impediment, to the extent that such pro-
hibition, limitation, interference, or impediment in
any way or degree obstructs, delays, or affects com-
merce over which the Federal Government has juris-
diction, to cover the provision of fertility treatment
provided in accordance with widely accepted and evi-
dence-based medical standards of care.

(4) MANUFACTURER RIGHTS.—A manufacturer
of a drug or device that is approved, cleared, author-
ized, or licensed under section 505, 510(k),
513(f)(2), or 515 of the Federal Food, Drug, and
Cosmetic Act (21 U.S.C. 355; 360(k); 360c(f)(2);
360e) or section 351 of the Public Health Service
Act (42 U.S.C. 262) or otherwise legally marketed
and intended for use in the provision of fertility
treatment, including the storage or transport of oo-
eyes, gametes, fertilized eggs, and embryos, has a
statutory right under this title, without prohibition,
limitation, interference, or impediment, to the extent
that such prohibition, limitation, interference, or im-
pediment in any way or degree obstructs, delays, or
affects commerce over which the Federal Govern-
ment has jurisdiction, to manufacture, import, mar-
ket, sell, and distribute such drug or device.
(b) STATE REGULATION OF MEDICINE.—The enforcement of State health and safety law regarding medical facilities or health care providers does not constitute a violation of subsection (a) if—

(1) such regulations are in accordance with widely accepted and evidence-based medical standards of care for providing fertility treatment; and

(2) the safety or health objective cannot be advanced by a different means that does not prohibit, limit, interfere with, or impede the rights described in subsection (a).

(c) ENFORCEMENT.—

(1) THE ATTORNEY GENERAL.—

(A) IN GENERAL.—The Attorney General may commence a civil action on behalf of the United States against any State; an individual, employee, official, agency head, contractor, organization, or instrumentality acting for, or on behalf of, such a State; or any individual acting under the color of, or pursuant to, State law, that implements, enforces, or threatens to enforce a limitation or requirement that prohibits, limits, interferes with, or impedes the statutory rights of an individual, a health care provider,
a health insurance issuer, or a manufacturer under subsection (a).

(B) Effect of violations.—The court shall hold unlawful and set aside a limitation or requirement described in subparagraph (A) if it is in violation of subsection (a).

(2) Private right of action.—

(A) In general.—Any individual or entity adversely affected by an alleged violation of subsection (a) may commence a civil action against an individual, employee, official, agency head, contractor, organization, or instrumentality acting for, or on behalf of, such a State that enacts, implements, or enforces a limitation or requirement that prohibits, limits, interferes with, or impedes the statutory rights of an individual, a health care provider, a health insurance issuer, or a manufacturer under subsection (a).

(B) Effect of violations.—The court shall hold unlawful and enjoin a limitation or requirement described in subparagraph (A) if it is in violation of subsection (a).

(3) Health care provider.—
(A) IN GENERAL.—A health care provider may commence a civil action for relief on such provider’s own behalf, on behalf of the provider’s staff, or on behalf of the provider’s patients who are or may be adversely affected by an alleged violation of subsection (a).

(B) EFFECT OF VIOLATIONS.—The court shall hold unlawful and enjoin a limitation or requirement described in subparagraph (A) if it is in violation of subsection (a).

(4) EQUITABLE RELIEF.—In any action under this section, the court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.

(5) COSTS.—

(A) IN GENERAL.—In any action under this section, the court shall award costs of litigation, as well as reasonable attorney’s fees, to any prevailing plaintiff.

(B) LIABILITY OF PLAINTIFFS.—A plaintiff shall not be liable to a defendant for costs or attorney’s fees in any non-frivolous action under this section unless such costs or attorney’s fees are imposed by the court as part of
sanctions for violations committed during the discovery process.

(6) JURISDICTION.—The district courts of the United States shall have jurisdiction over proceedings under this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

(7) RIGHT TO REMOVE.—

(A) IN GENERAL.—Any party shall have a right to remove an action brought under this subsection to the district court of the United States for the district and division embracing the place where such action is pending.

(B) REVIEW.—An order remanding the case to the State court from which it was removed under this paragraph is immediately reviewable by appeal or otherwise.

(d) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate regulations to carry out this section.

(e) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—For purposes of this title, a State law, or the administration, implementation, or
enforcement of a State law, constitutes a prohibition, limitation, interference, or impediment on a health care provider providing, an individual receiving, a health insurance issuer covering, or a manufacturer marketing drugs or devices for fertility treatment, provided in accordance with widely accepted and evidence-based medical standards of care, as described in subsection 104, if the administration, implementation, interpretation, or enforcement of such law has an effect that—

(A) imposes requirements or limitations that are inconsistent with providing, receiving, providing health insurance coverage for, or providing drugs or devices for fertility treatment in accordance with widely accepted and evidence-based medical standards of care or that otherwise violate the purpose and requirements of this Act, which may include—

(i) requiring that a health care provider provide, and patients undertake, medically unnecessary procedures and services, including tests and procedures, providing medically inaccurate information regarding fertility treatment, or requiring additional unnecessary in-person visits to a
health care provider, that are inconsistent with widely accepted and evidence-based medical standards of care;

   (ii) imposing limitations or requirements concerning physical offices, clinics, facilities, equipment, staffing, or hospital transfer arrangements of facilities where fertility treatment is provided, or the credentials or hospital privileges or status of personnel at such facilities, that are not consistent with widely accepted and evidence-based medical standards of care; or

   (iii) limiting a health care provider’s right or ability to provide, or a patient’s right to receive, or imposing limitations that reduce the efficacy of, fertility treatment in accordance with widely accepted and evidence-based medical standards of care, including retrieval of multiple eggs during oocyte retrieval; performance of insemination procedures, including intrauterine insemination; intracytoplasmic sperm injections to fertilize multiple human eggs; and cryopreservation of one or more eggs or embryos for fertility pres-
ervation and subsequent transfer, if determined appropriate by the health care provider and patient;

(B) infringes, limits, or restricts the ability of a health care provider, patient, health insurance issuer, or manufacturer, to exercise or enforce their statutory rights under this title on the basis of marital status, sex (including sexual orientation and gender identity) or any other protected class that is covered by Federal law;

(C) limits a health care provider’s or patient’s right or ability to determine the most appropriate disposition of fertilized eggs or embryos, including by defining a gamete or embryo in such a way as to prevent the disposition of gametes and embryos;

(D) limits a health care provider’s ability to provide, or a patient’s ability to receive, fertility treatment via telemedicine, in accordance with widely accepted and evidence-based medical standards of care;

(E) limits or prohibits a health care provider’s ability to provide, or a patient’s ability to receive, fertility counseling or fertility treat-
ment based on the residency of the patient, or
prohibits or limits the ability of any individual
to assist or support a patient seeking fertility
treatment;

(F) imposes requirements or limitations
that compel health care providers to provide, or
patients to receive, medically unnecessary care,
or withhold medically necessary care, in a man-
ner that is not consistent with widely accepted
and evidence-based medical standards of care
for fertility treatment, including mandating the
transfer of embryos that a health care provider
would not reasonably expect, based on widely
accepted and evidence-based medical standards
of care, to lead to a healthy pregnancy or a live
birth;

(G) limits a health care provider’s right or
ability to prescribe or dispense, or a patient’s
right or ability to receive or use, medications
for fertility treatment in accordance with widely
accepted and evidence-based medical standards
of care, unless such a limitation is generally ap-
licable to the prescription, dispensing, or dis-
tribution of medications; or
(H) limits a health care provider’s right or ability to perform a human sperm retrieval procedure in accordance with widely accepted and evidence-based medical standards of care.

(2) CLARIFICATION.—The descriptions of specific State laws that would violate the statutory rights and protections described in paragraph (1) shall not be construed to limit potential violations of the statutory rights and protections under this title to only the restrictions and limitations listed in paragraph (1), and potential violations of this title may result from novel State restrictions and limitations that are not listed under paragraph (1).

(3) EXCLUSION.—It shall not constitute a prohibition, limitation, interference, or impediment to a health care provider providing, an individual receiving, a health insurance issuer covering, or a manufacturer marketing a drug or device for purposes of, fertility treatment under this title for an entity to act in compliance with the Food and Drug Administration’s regulation of drugs, devices, biological products, human cells, tissues, or cellular or tissue-based products used in fertility treatment, consistent with widely accepted and evidence-based medical standards of care for fertility treatment.
SEC. 105. APPLICABILITY AND PREEMPTION.

(a) IN GENERAL.—

(1) GENERAL APPLICATION.—

(A) EFFECT ON STATE LAW.—This title supersedes any State law that is inconsistent with the statutory rights established under this title and precludes the implementation of such a law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act.

(B) PROHIBITION.—No State shall administer, implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this title, notwithstanding any other provision of Federal law.

(2) EXCLUSION.—Preemption of State law under paragraph (1) does not apply to—

(A) State law regarding the resolution of disputes between 2 individuals with rights described in section 104(a)(1) with respect to the same reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos; or

(B) any other State law, to the extent that such law does not conflict with this title and protects an individual’s right and ability to re-
ceive fertility treatment in accordance with widely accepted and evidence-based medical standards of care, including any such law that holds a health care provider accountable for not providing fertility treatment in accordance with widely accepted and evidence-based medical standards of care.

(3) **Preservation of federal public health authorities.**—Nothing in this title shall have the effect of superseding, negating, or limiting provisions of Federal law, including the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.), and regulations promulgated under such statutes, with respect to the regulation of drugs, devices, biological products, human cells, tissues, or cellular or tissue-based products used in fertility treatment.

(4) **Preservation of HIPAA rules.**—Nothing in this title shall have the effect of superseding, negating, or limiting the provisions of the privacy, security, and breach notification regulations in parts 160 and 164 of title 45, Code of Federal Regulations (or successor regulations).
(5) **Subsequently enacted federal legislation.**—Federal statutory law adopted after the date of the enactment of this Act is subject to this title unless such law explicitly excludes such application by reference to this title.

(b) **Defense.**—In any cause of action against an individual or entity who is subject to a limitation or requirement that violates this title, in addition to the remedies specified in section 104(b), this title shall also apply to, and may be raised as a defense by, such an individual or entity.

**TITLE II—VETERAN FAMILIES HEALTH SERVICES**

**SEC. 200. SHORT TITLE.**

This title may be cited as the “Veteran Families Health Services Act”.

**Subtitle A—Reproductive and Fertility Preservation Assistance for Members of the Uniformed Services**

**SEC. 201. DEFINITIONS.**

In this subtitle:

(1) **Active duty.**—The term “active duty” has the meaning given that term in section 101(18) of title 37, United States Code.
(2) UNIFORMED SERVICES.—The term “un-
formed services” has the meaning given that term in
section 101(a)(5) of title 10, United States Code.

SEC. 202. PROVISION OF FERTILITY TREATMENT AND
COUNSELING TO CERTAIN MEMBERS OF THE
UNIFORMED SERVICES AND SPOUSES, PART-
NERS, AND GESTATIONAL SURROGATES OF
SUCH MEMBERS.

(a) FERTILITY TREATMENT AND COUNSELING.—

   (1) IN GENERAL.—The Secretary of Defense
shall make available fertility treatment and coun-
seling to a member of the uniformed services or a
spouse, partner, or gestational surrogate of such a
member.

   (2) ELIGIBILITY FOR TREATMENT AND COUN-
seling.—Fertility treatment and counseling shall be
furnished under paragraph (1) without regard to the
sex, sex characteristics, gender identity, sexual ori-
entation, infertility diagnosis, or marital status of
the member of the uniformed services or their part-
ner.

   (3) IN VITRO FERTILIZATION.—In the case of
in vitro fertilization treatment furnished under para-
graph (1), the Secretary may furnish to an indi-
vidual under such paragraph—
(A) not more than three completed oocyte
retrievals; and
(B) unlimited embryo transfers.

(b) PROCUREMENT OF REPRODUCTIVE GENETIC MA-
TERIAL.—If a member of the uniformed services is unable
to provide their reproductive genetic material, such as oo-
eytes, sperm, fertilized eggs, and embryos, for purposes
of fertility treatment under subsection (a), the Secretary
shall, at the election of such member, allow such member
to receive such treatment with donated reproductive ge-
etic material and pay or reimburse such member the rea-
sonable costs of procuring such material from a donor.

(c) RULES OF CONSTRUCTION.—

(1) IMPACT ON EXISTING AUTHORITY.—Nothing
in this section shall be construed to rescind the
authority of the Secretary to provide in vitro fer-
tilization benefits pursuant to section 1074(c)(4) of
title 10, United States Code.

(2) SOURCING OF GESTATIONAL SURROGATE OR
REPRODUCTIVE GENETIC MATERIAL.—Nothing in
this section shall be construed to require the Sec-
retary—

(A) to find or certify a gestational surro-
gate for a member of the uniformed services or
to connect a gestational surrogate with such a
member; or

(B) to find or certify reproductive genetic
material, such as oocytes, sperm, fertilized eggs,
and embryos, from a donor for a member of the
uniformed services or to connect such a member
with reproductive genetic material from a
donor.

(d) DEFINITIONS.—In this section:

(1) FERTILITY TREATMENT.—The term “fer-
tility treatment” includes the following:

(A) Preservation of human oocytes, sperm,
or embryos for later reproductive use.

(B) Artificial insemination, including
intravaginal insemination, intracervical insemi-
nation, and intrauterine insemination.

(C) Assisted reproductive technology, in-
cluding in vitro fertilization and other treat-
ments or procedures in which reproductive ge-
netic material, such as oocytes, sperm, fertilized
eggs, and embryos, are handled, when clinically
appropriate.

(D) Genetic testing of embryos.

(E) Medications prescribed or obtained
over-the-counter, as indicated for fertility.
(F) Gamete donation.

(G) Such other information, referrals, treatments, procedures, medications, laboratory testing, technologies, and services relating to fertility as the Secretary of Defense determines appropriate.

(2) GESTATIONAL SURROGATE.—The term “gestational surrogate” means an individual who agrees to become pregnant through in vitro fertilization under a gestational surrogacy agreement using gametes that are not the gametes of that individual.

(3) PARTNER.—The term “partner”, with respect to a member of the uniformed services, means an individual selected by the member who agrees to be a parent, with the member, of a child born as a result of the use of any fertility treatment under this section.

SEC. 203. ESTABLISHMENT OF FERTILITY PRESERVATION PROCEDURES AFTER AN INJURY OR ILLNESS.

(a) IN GENERAL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Health Affairs, shall establish procedures for the retrieval of reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, as soon as medically appropriate, from a member of the uniformed services in cases in which the
fertility of such member is potentially jeopardized as a re-
sult of an injury or illness incurred or aggravated while
serving on active duty in the uniformed services in order
to preserve the medical options of such member.

(b) Inclusion of Information in Advanced Di-
rectives and Military Testamentary Instru-
ments.—The Secretary of Defense shall ensure that any
advance medical directive, as defined in section 1044c(b)
of title 10, United States Code, or military testamentary
instrument, as defined in section 1044d(b) of such title,
completed by a member of the uniformed services includes
questions about the consent of the member to fertility
preservation procedures under subsection (a).

(e) Disposal of Reproductive Genetic Mate-
rial.—Subject to section 204, in accordance with regula-
tions prescribed by the Secretary for purpose of this sub-
section, the Secretary shall dispose of reproductive genetic
material retrieved from a member of the uniformed serv-
ices under subsection (a)—

(1) with the specific consent of the member; or

(2) if the member—

(A) has lost the ability to consent perma-
nently, as determined by a medical professional,
or has died; and
(B) has not specified the use of their reproductive genetic material in an advance directive or testamentary instrument executed by the member.

SEC. 204. CRYOPRESERVATION AND STORAGE OF REPRODUCTIVE GENETIC MATERIAL OF MEMBERS OF THE UNIFORMED SERVICES ON ACTIVE DUTY.

(a) IN GENERAL.—The Secretary of Defense shall provide members of the uniformed services on active duty in the uniformed services with the opportunity to cryopreserve and store their reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, prior to—

(1) deployment to a combat zone; or

(2) a duty assignment that includes a hazardous assignment, including—

(A) assignments resulting in exposure to perfluoroalkyl or polyfluoroalkyl substances; and

(B) such other assignments as determined by the Secretary.

(b) PERIOD OF TIME.—

(1) IN GENERAL.—The Secretary shall provide for the cryopreservation and storage of reproductive
genetic material of any member of the uniformed services under subsection (a) in a facility of the Department of Defense or of a private entity and the transportation of such material, at no cost to the member, until the date that is one year after the retirement, separation, or release of the member from the uniformed services.

(2) **Continued cryopreservation and storage.**—At the end of the one-year period specified in paragraph (1), the Secretary shall permit an individual whose reproductive genetic material was cryopreserved and stored as described in that paragraph to select, including pursuant to an advance medical directive or military testamentary instrument completed under subsection (c), one of the following options:

(A) To continue such cryopreservation and storage in such facility with the cost of such cryopreservation and storage borne by the individual.

(B) To transfer the material to a private cryopreservation and storage facility selected by the individual.

(C) To transfer the material to a facility of the Department of Veterans Affairs if
cryopreservation and storage is available to the individual at such facility and the individual is eligible for such services.

(3) Disposal of Reproductive Genetic Material.—

(A) No Selection.—If an individual described in paragraph (2) does not make a selection under subparagraph (A), (B), or (C) of such paragraph, the Secretary may dispose of the reproductive genetic material of the individual not earlier than the date that is 90 days after the end of the one-year period specified in paragraph (1) with respect to the individual.

(B) Election by Individual.—At the election of an individual described in paragraph (2), the Secretary may dispose of the reproductive genetic material of the individual.

(c) Advance Medical Directive and Military Testamentary Instrument.—A member of the uniformed services who elects to cryopreserve and store their reproductive genetic material under this section must complete an advance medical directive, as defined in section 1044e(b) of title 10, United States Code, and a military testamentary instrument, as defined in section 1044d(b) of such title, that explicitly specifies the use of their
cryopreserved and stored reproductive genetic material if such member dies or otherwise loses the capacity to consent to the use of their cryopreserved and stored reproductive genetic material.

(d) AGREEMENTS.—To carry out this section, the Secretary may enter into agreements with private entities that provide cryopreservation, transportation, and storage services for reproductive genetic material.

SEC. 205. ASSISTANCE WITH AND CONTINUITY OF CARE REGARDING REPRODUCTIVE AND FERTILITY PRESERVATION SERVICES.

The Secretary of Defense shall ensure that employees of the Department of Defense assist members of the uniformed services—

(1) in navigating the services provided under this subtitle;

(2) in finding a provider that meets the needs of such members with respect to such services; and

(3) in continuing the receipt of such services without interruption during a permanent change of station for such members.
SEC. 206. COORDINATION BETWEEN DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS ON FURNISHING OF FERTILITY TREATMENT AND COUNSELING.

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall share best practices and facilitate referrals, as they consider appropriate, on the furnishing of fertility treatment and counseling to individuals eligible for the receipt of such counseling and treatment from the Secretaries.

(b) MEMORANDUM OF UNDERSTANDING.—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into a memorandum of understanding—

(1) providing that the Secretary of Defense will ensure access by the Secretary of Veterans Affairs to reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, of veterans stored by the Department of Defense for purposes of furnishing fertility treatment under section 1720K of title 38, United States Code, as added by section 212(a); and

(2) authorizing the Department of Veterans Affairs to compensate the Department of Defense for the cryopreservation, transportation, and storage of reproductive genetic material of veterans under section 204(b)(2)(A).
SEC. 207. REGULATIONS.

Not later than two years after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations to carry out this subtitle.

Subtitle B—Reproductive Assistance for Veterans

SEC. 211. INCLUSION OF FERTILITY TREATMENT AND COUNSELING UNDER THE DEFINITION OF MEDICAL SERVICES IN TITLE 38.

Section 1701(6) of title 38, United States Code, is amended by adding at the end the following new subparagraph:

“(J) Fertility treatment and counseling under section 1720K of this title.”.

SEC. 212. FERTILITY TREATMENT AND COUNSELING FOR CERTAIN VETERANS AND SPOUSES, PARTNERS, AND GESTATIONAL SURROGATES OF SUCH VETERANS.

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

“§ 1720K. Fertility treatment and counseling for certain veterans and spouses, partners, and gestational surrogates of such veterans

“(a) Requirement.—
“(1) In general.—Notwithstanding any other provision of law, including the surrogacy laws of any State, the Secretary shall furnish fertility treatment and counseling for the benefit of a covered veteran to the veteran and the spouse, partner, gamete donor, or gestational surrogate of the veteran if the veteran, and the spouse, partner, gamete donor, or gestational surrogate of the veteran, as applicable, each provide informed consent for such treatment and counseling, including for each cycle of treatment authorized under this section, through a process prescribed by the Secretary.

“(2) Provision of treatment and counseling.—Fertility treatment and counseling shall be furnished under paragraph (1) without regard to the sex, sexual characteristics, gender identity, sexual orientation, infertility diagnosis, or marital status of the covered veteran or their partner.

“(3) In vitro fertilization.—In the case of in vitro fertilization treatment furnished under paragraph (1), the Secretary may furnish to an individual under such paragraph—

“(A) not more than three completed oocyte retrievals; and

“(B) unlimited embryo transfers.
“(4) Copayment.—The Secretary shall only furnish fertility treatment and counseling under paragraph (1) to a covered veteran who is required to pay to the United States a copayment amount as a condition for the receipt of hospital care, medical services, or medications under this chapter if the covered veteran agrees to pay such applicable copayment amount to the United States for such treatment and counseling.

“(b) Procurement of Reproductive Genetic Material.—

“(1) In general.—If a covered veteran is unable to provide their reproductive genetic material for purposes of fertility treatment under subsection (a), the Secretary shall, at the election of such veteran—

“(A) allow such veteran to receive such treatment with donated reproductive genetic material, if the donor provides informed consent for use of such material; and

“(B) pay or reimburse the veteran, donor, or a party acting on behalf of the donor the reasonable costs of procuring such material from the donor.
“(2) OTHER EXPENSES.—The Secretary may pay or reimburse a covered veteran a reasonable amount for personal travel and incidental expenses associated with procuring material from a donor under paragraph (1).

“(c) OUTREACH AND TRAINING.—The Secretary shall carry out an outreach and training program to ensure veterans and health care providers of the Department are aware of—

“(1) the availability of and eligibility requirements for fertility treatment and counseling under this section; and

“(2) any changes to fertility treatment and counseling covered under this section.

“(d) OWNERSHIP, USE, OR DISPOSITION OF REPRODUCTIVE GENETIC MATERIAL.—

“(1) IN GENERAL.—Issues or disputes regarding ownership of reproductive genetic material or future use or disposition of such material shall be the sole responsibility of the covered veteran, the spouse, partner, or gestational surrogate of the veteran, as applicable, and the private facility storing such material.

“(2) AGREEMENT REGARDING DONATED REPRODUCTIVE GENETIC MATERIAL.—As a condition
of the use of donated gametes or embryos under this section, the third-party donor and a provider of fertility treatment that has entered into a contract or agreement with the Secretary to provide such treatment under this section are required to enter into an arrangement or agreement governing the terms of the donation, to include ultimate disposition of any remaining gametes or embryos once a covered veteran has exhausted the fertility treatment available under this section, unless the veteran or the spouse or partner of the veteran has agreed to assume liability for the continued preservation of any remaining gametes or embryos and the Department is not party to the arrangement or agreement for such continued preservation.

“(3) ROLE OF DEPARTMENT.—The role of the Secretary under this section is limited to furnishing the treatment and counseling required under this section when requested by a covered veteran and determined necessary by the Secretary.

“(4) OWNERSHIP AND CUSTODY OF REPRODUCTIVE GENETIC MATERIAL.—The Secretary will not have ownership or custody of any reproductive genetic material obtained pursuant to treatment under this section and will not be involved in the ultimate
disposition of such material or disputes between or among any parties with respect to such material.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the Secretary—

“(1) to find or certify a gestational surrogate for a covered veteran or to connect a gestational surrogate with a covered veteran; or

“(2) to furnish maternity care to a covered veteran or spouse, partner, or gestational surrogate of a covered veteran beyond what is otherwise required or authorized by law.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘covered veteran’ means a veteran who is enrolled in the system of annual patient enrollment established under section 1705(a) of this title.

“(2) The term ‘fertility treatment’ includes the following:

“(A) Preservation of human oocytes, sperm, or embryos for later reproductive use.

“(B) Artificial insemination, including intravaginal insemination, intracervical insemination, and intrauterine insemination.

“(C) Assisted reproductive technology, including in vitro fertilization and other treat-
ments or procedures in which reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, are handled, when clinically appropriate.

“(D) Genetic testing of embryos.

“(E) Medications prescribed or obtained over-the-counter, as indicated for fertility.

“(F) Gamete donation.

“(G) Such other information, referrals, treatments, procedures, medications, laboratory testing, technologies, and services relating to fertility as the Secretary determines appropriate.

“(3) The term ‘gestational surrogate’ means an individual who agrees to become pregnant through in vitro fertilization under a gestational surrogacy agreement using gametes that are not the gametes of that individual.

“(4) The term ‘partner’, with respect to a covered veteran, means an individual selected by the veteran who agrees to be a parent, with the veteran, of a child born as a result of the use of any fertility treatment under this section.”.

(b) Clerical Amendment.—The table of sections at the beginning of subchapter II of chapter 17 of such
title is amended by inserting after the item relating to section 1720J the following new item:

“1720K. Fertility treatment and counseling for certain veterans and spouses, partners, and gestational surrogates of such veterans.”.

(e) SUNSET OF EXISTING AUTHORITY.—The authority under section 234 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2024 (division A of Public Law 118–42), or any similar authority subsequently enacted by law, shall cease on the effective date of regulations prescribed to carry out section 1720K of title 38, United States Code, as added by subsection (a).

SEC. 213. ASSISTANCE WITH AND CONTINUITY OF CARE REGARDING REPRODUCTIVE AND FERTILITY PRESERVATION SERVICES.

The Secretary of Veterans Affairs shall ensure that employees of the Department of Veterans Affairs assist veterans—

(1) in navigating the services provided under this subtitle and the amendments made by this subtitle;

(2) in finding a provider that meets the needs of such veterans with respect to such services; and

(3) in continuing the receipt of such services without interruption if such veterans move to a different geographic location.
SEC. 214. COORDINATION OF REPRODUCTION AND FERTILITY RESEARCH FOR VETERANS.

(a) In General.—Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 7330E. Coordination of reproduction and fertility research for veterans

“(a) COORDINATION OF RESEARCH REQUIRED.—The Secretary shall coordinate with the Secretary of Defense and the Secretary of Health and Human Services to conduct research to improve the ability of the Department of Veterans Affairs to meet the long-term reproductive health care needs of veterans who have a condition that affects the ability of the individual to reproduce.

“(b) DISSEMINATION OF INFORMATION.—The Secretary shall ensure that information produced by the research under this section that may be useful for other activities of the Department is disseminated throughout the Department.”.

(b) Clerical Amendment.—The table of sections at the beginning of subchapter II of chapter 73 of such title is amended by inserting after the item relating to section 7330D the following new item:

“7330E. Coordination of reproduction and fertility research for veterans.”.
TITLE III—ACCESS TO FERTILITY TREATMENT AND CARE

SEC. 301. SHORT TITLE.
This title may be cited as the “Access to Fertility Treatment and Care Act”.

SEC. 302. STANDARDS RELATING TO BENEFITS FOR FERTILITY TREATMENT.

(a) IN GENERAL.—

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

“SEC. 2799A–11. STANDARDS RELATING TO BENEFITS FOR FERTILITY TREATMENT.

“(a) IN GENERAL.—A group health plan or a health insurance issuer offering group or individual health insurance coverage shall provide coverage for fertility treatment, if such plan or coverage provides coverage for obstetrical services.

“(b) DEFINITION.—In this section, the term ‘fertility treatment’ includes the following:

“(1) Preservation of human oocytes, sperm, or embryos for later reproductive use.
“(2) Artificial insemination, including intravaginal insemination, intracervical insemination, and intrauterine insemination.

“(3) Assisted reproductive technology, including in vitro fertilization and other treatments or procedures in which reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, are handled, when clinically appropriate.

“(4) Genetic testing of embryos.

“(5) Medications prescribed or obtained over-the-counter, as indicated for fertility.

“(6) Gamete donation.

“(7) Such other information, referrals, treatments, procedures, medications, laboratory testing, technologies, and services relating to fertility as the Secretary determines appropriate.

“(c) REQUIRED COVERAGE.—A group health plan and a health insurance issuer offering group or individual health insurance coverage that includes coverage for obstetrical services shall provide coverage for fertility treatment determined appropriate by the health care provider, regardless of whether the participant, beneficiary, or enrollee receiving such treatment has been diagnosed with infertility as defined by the American Society for Reproductive Medicine, if the treatment is performed at, or pre-
scribed by, a medical facility that is in compliance with relevant standards set by an appropriate Federal agency.

“(d) LIMITATION.—Cost-sharing, including deductibles and coinsurance, or other limitations for fertility treatment may not be imposed with respect to the services required to be covered under subsection (e) to the extent that such cost-sharing exceeds the cost-sharing applied to other medical services under the group health plan or health insurance coverage or such other limitations are different from limitations imposed with respect to such medical services, except where such limitation is more favorable with respect to fertility treatment. The Secretary shall promulgate interim final regulations to carry out this subsection, notwithstanding the notice and comment requirements of section 553 of title 5, United States Code.

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

“(1) provide incentives (monetary or otherwise) to a participant, beneficiary, or enrollee to encourage such participant, beneficiary, or enrollee not to seek or obtain fertility treatment to which such participant, beneficiary, or enrollee is entitled under this section or to providers to induce such providers not
to provide medically appropriate fertility treatments
to participants, beneficiaries, or enrollees;

“(2) prohibit a provider from discussing with a
participant, beneficiary, or enrollee fertility treat-
ment relating to this section;

“(3) penalize or otherwise reduce or limit the
reimbursement of a provider because such provider
provided fertility treatment to a qualified partici-
pant, beneficiary, or enrollee in accordance with this
section; or

“(4) on the ground prohibited under title VI of
the Civil Rights Act of 1964, title IX of the Edu-
cation Amendments of 1972, the Age Discrimination
Act of 1975, section 504 of the Rehabilitation Act
of 1973, or section 1557 of the Patient Protection
and Affordable Care Act, exclude any individual
from coverage in accordance with this section, or
discriminate against any individual with respect to
such coverage.

“(f) RULE OF CONSTRUCTION.—Nothing in this sec-
tion shall be construed to require a participant, bene-
iciary, or enrollee to undergo fertility treatment.

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

“(1) not later than the earlier of—

“(A) in the first standard mailing made by
the plan or issuer to the participant, bene-
ficiary, or enrollee following the effective date of
such regulations;

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

“(C) January 1, 2026;

“(2) in the case of a participant, beneficiary, or
enrollee not enrolled in the plan or coverage on the
date of transmission under paragraph (1), upon ini-
tial enrollment of such participant, beneficiary, or
enrollee; and

“(3) on an annual basis after the transmission
under paragraph (1) or (2).

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

(2) ERISA.—

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

“SEC. 726. STANDARDS RELATING TO BENEFITS FOR FERTILITY TREATMENT.

“(a) IN GENERAL.—A group health plan or a health insurance issuer offering group health insurance coverage shall provide coverage for fertility treatment, if such plan or coverage provides coverage for obstetrical services.

“(b) DEFINITION.—In this section, the term ‘fertility treatment’ includes the following:

“(1) Preservation of human oocytes, sperm, or embryos for later reproductive use.

“(2) Artificial insemination, including intravaginal insemination, intracervical insemination, and intrauterine insemination.

“(3) Assisted reproductive technology, including in vitro fertilization and other treatments or procedures in which reproductive genetic material, such as
ooocytes, sperm, fertilized eggs, and embryos, are
handled, when clinically appropriate.

“(4) Genetic testing of embryos.

“(5) Medications prescribed or obtained over-
the-counter, as indicated for fertility.

“(6) Gamete donation.

“(7) Such other information, referrals, treat-
ments, procedures, medications, laboratory testing,
technologies, and services relating to fertility as the
Secretary of Health and Human Services determines
appropriate.

“(c) REQUIRED COVERAGE.—A group health plan
and a health insurance issuer offering group health insur-
ance coverage that includes coverage for obstetrical serv-
ices shall provide coverage for fertility treatment deter-
mined appropriate by the health care provider, regardless
of whether the participant or beneficiary receiving such
treatment has been diagnosed with infertility as defined
by the American Society for Reproductive Medicine, if the
treatment is performed at, or prescribed by, a medical fa-
cility that is in compliance with relevant standards set by
an appropriate Federal agency.

“(d) LIMITATION.—Cost-sharing, including
deductibles and coinsurance, or other limitations for fer-
tility treatment may not be imposed with respect to the
services required to be covered under subsection (c) to the extent that such cost-sharing exceeds the cost-sharing applied to other medical services under the group health plan or health insurance coverage or such other limitations are different from limitations imposed with respect to such medical services, except where such limitation is more favorable with respect to fertility treatment. The Secretary shall promulgate interim final regulations to carry out this subsection, notwithstanding the notice and comment requirements of section 553 of title 5, United States Code.

“(e) Prohibitions.—A group health plan and a health insurance issuer offering group health insurance coverage may not—

“(1) provide incentives (monetary or otherwise) to a participant or beneficiary to encourage such participant or beneficiary not to seek or obtain fertility treatment to which such participant or beneficiary is entitled under this section or to providers to induce such providers not to provide medically appropriate fertility treatments to participants or beneficiaries;

“(2) prohibit a provider from discussing with a participant or beneficiary fertility treatment relating to this section;
“(3) penalize or otherwise reduce or limit the reimbursement of a provider because such provider provided fertility treatment to a qualified participant or beneficiary in accordance with this section; or

“(4) on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116), exclude any individual from coverage in accordance with this section, or discriminate against any individual with respect to such coverage.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require a participant or beneficiary to undergo fertility treatment.

“(g) NOTICE.—A group health plan and a health insurance issuer offering group health insurance coverage shall provide notice to each participant and beneficiary under such plan or coverage regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or cor-
correspondence made available or distributed by the plan or issuer and shall be transmitted—

“(1) not later than the earlier of—

“(A) in the first standard mailing made by the plan or issuer to the participant or beneficiary following the effective date of such regulations;

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

“(C) January 1, 2026;

“(2) in the case of a participant or beneficiary not enrolled in the plan or coverage on the date of transmission under paragraph (1), upon initial enrollment of such participant or beneficiary; and

“(3) on an annual basis after the transmission under paragraph (1) or (2).

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

(B) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
1001 et seq.) is amended by inserting after the item relating to section 725 the following new item:

“Sec. 726. Standards relating to benefits for fertility treatment.”.

(3) IRC.—

(A) IN GENERAL.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“SEC. 9826. STANDARDS RELATING TO BENEFITS FOR FERTILITY TREATMENT.

“(a) IN GENERAL.—A group health plan shall provide coverage for fertility treatment, if such plan provides coverage for obstetrical services.

“(b) DEFINITION.—In this section, the term ‘fertility treatment’ includes the following:

“(1) Preservation of human oocytes, sperm, or embryos for later reproductive use.

“(2) Artificial insemination, including intravaginal insemination, intracervical insemination, and intrauterine insemination.

“(3) Assisted reproductive technology, including in vitro fertilization and other treatments or procedures in which reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, are handled, when clinically appropriate.

“(4) Genetic testing of embryos.
“(5) Medications prescribed or obtained over-the-counter, as indicated for fertility.

“(6) Gamete donation.

“(7) Such other information, referrals, treatments, procedures, medications, laboratory testing, technologies, and services relating to fertility as the Secretary of Health and Human Services determines appropriate.

“(c) REQUIRED COVERAGE.—A group health plan that includes coverage for obstetrical services shall provide coverage for fertility treatment determined appropriate by the health care provider, regardless of whether the participant or beneficiary receiving such treatment has been diagnosed with infertility as defined by the American Society for Reproductive Medicine, if the treatment is performed at, or prescribed by, a medical facility that is in compliance with relevant standards set by an appropriate Federal agency.

“(d) LIMITATION.—Cost-sharing, including deductibles and coinsurance, or other limitations for fertility treatment may not be imposed with respect to the services required to be covered under subsection (c) to the extent that such cost-sharing exceeds the cost-sharing applied to other medical services under the group health plan or health insurance coverage or such other limitations are
different from limitations imposed with respect to such medical services, except where such limitation is more favorable with respect to fertility treatment. The Secretary shall promulgate interim final regulations to carry out this subsection, notwithstanding the notice and comment requirements of section 553 of title 5, United States Code.

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

“(1) provide incentives (monetary or otherwise) to a participant or beneficiary to encourage such participant or beneficiary not to seek or obtain fertility treatment to which such participant or beneficiary is entitled under this section or to providers to induce such providers not to provide medically appropriate fertility treatments to participants or beneficiaries;

“(2) prohibit a provider from discussing with a participant or beneficiary fertility treatment relating to this section;

“(3) penalize or otherwise reduce or limit the reimbursement of a provider because such provider provided fertility treatment to a qualified participant or beneficiary in accordance with this section; or

“(4) on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972
(20 U.S.C. 1681 et seq.), the Age Discrimination
Act of 1975 (42 U.S.C. 6101 et seq.), section 504
or section 1557 of the Patient Protection and Af-
fordable Care Act (42 U.S.C. 18116), exclude any
individual from coverage in accordance with this sec-
tion, or discriminate against any individual with re-
spect to such coverage.

“(f) RULE OF CONSTRUCTION.—Nothing in this sec-
tion shall be construed to require a participant or bene-

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

“(1) not later than the earlier of—

“(A) in the first standard mailing made by
the plan to the participant or beneficiary fol-
lowing the effective date of such regulations;

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

“(C) January 1, 2026;
“(2) in the case of a participant or beneficiary not enrolled in the plan on the date of transmission under paragraph (1), upon initial enrollment of such participant or beneficiary; and

“(3) on an annual basis after the transmission under paragraph (1) or (2).

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

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

“Sec. 9826. Standards relating to benefits for fertility treatment.”.

(b) CONFORMING AMENDMENTS.—

(1) PHSA.—Section 2724(c) of the Public Health Service Act (42 U.S.C. 300gg–23(c)) is amended by striking “section 2704” and inserting “sections 2704 and 2799A–11”.

(2) ERISA.—Section 731(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191(c)) is amended by striking “section 711” and inserting “sections 711 and 726”.

(c) EFFECTIVE DATES.—
(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply for plan years beginning on or after the date that is 6 months after the date of enactment of this Act.

(2) COLLECTIVE BARGAINING EXCEPTION.—

(A) IN GENERAL.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers 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 sub-
section (a) shall not be treated as a termination
of such collective bargaining agreement.

SEC. 303. REQUIREMENT FOR STATE MEDICAID PLANS TO
   PROVIDE MEDICAL ASSISTANCE FOR FERTILITY TREATMENT.

(a) In General.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—
   (1) in subsection (a)(4)(C), by inserting
   “(which shall include fertility treatment provided in
   accordance with subsection (kk))” after “family
   planning services and supplies”; and
   (2) by adding at the end the following new sub-
   section:
   “(kk) Requirements for Coverage of Fertility Treatment.—For purposes of subsection (a)(4)(C), a
   State shall ensure that the medical assistance provided
   under the State plan (or waiver of such plan) for fertility
   treatment complies with the requirements of section
   2799A–11(b) of the Public Health Service Act in the same
   manner as such requirements and limitations apply to
   health insurance coverage offered by a group health plan
   or health insurance issuer.”.

(b) Technical Amendment.—Section 1903(a)(5)
   of the Social Security Act (42 U.S.C. 1396b(a)(5)) is
   amended by inserting “described in section
1905(a)(4)(C)” after “family planning services and sup-
plies”.

(c) Effective Date.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the amendments made by this section
shall take effect on October 1, 2025.

(2) DELAY PERMITTED IF STATE LEGISLATION
REQUIRED.—In the case of a State plan approved
under title XIX of the Social Security Act which the
Secretary of Health and Human Services determines
requires State legislation (other than legislation ap-
propriating funds) in order for the plan to meet the
additional requirement imposed by this section, the
State plan shall not be regarded as failing to comply
with the requirements of such title solely on the
basis of the failure of the plan to meet such addi-
tional requirement before the first day of the first
calendar quarter beginning after the close of the
first regular session of the State legislature that
ends after the 1-year period beginning with the date
of the enactment of this section. For purposes of the
preceeding sentence, in the case of a State that has
a 2-year legislative session, each year of the session
is deemed to be a separate regular session of the
State legislature.
SEC. 304. MEDICARE COVERAGE OF FERTILITY TREATMENT.

(a) COVERAGE.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) in subparagraph (JJ), by inserting “and” after the semicolon at the end; and

(2) by adding at the end the following new subparagraph:

“(KK) fertility treatment (as defined in section 2799A–11(b) of the Public Health Service Act);”.

(b) PAYMENT AND WAIVER OF COINSURANCE.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

(1) by striking “and” before “(HH)”;

(2) by inserting before the semicolon at the end the following: “, and (II) with respect to fertility treatment (as described in section 1861(s)(2)(KK)), the amount paid shall be equal to 100 percent of the lesser of the actual charge for the treatment or the amount determined under the payment basis determined under section 1848”.

(c) WAIVER OF APPLICATION OF DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended—

(1) by striking “, and (13)” and inserting “(13)”;

and
(2) by striking “1861(n).” and inserting “1861(n), and (14) such deductible shall not apply with respect to fertility treatment (as described in section 1861(s)(2)(KK)).”.

(d) Payment Under Physician Fee Schedule.—Section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w–4(j)(3)) is amended by inserting “(2)(KK),” after “risk assessment),”.

(e) Conforming Amendment Regarding Coverage.—Section 1862(a)(1)(A) of the Social Security Act (42 U.S.C. 1395y(a)(1)(A)) is amended—

(1) by striking “or additional” and inserting “, additional”; and

(2) by inserting “, or fertility treatment (as described in section 1861(s)(2)(KK))” after “1861(ddd)(1))”.

(f) Effective Date.—The amendments made by this section shall apply to services furnished on or after January 1, 2025.

TITLE IV—FAMILY BUILDING FEHB FAIRNESS

SEC. 401. SHORT TITLE.

This title may be cited as the “Family Building FEHB Fairness Act”.

S 4445 PCS
SEC. 402. FERTILITY TREATMENT BENEFITS.

(a) In General.—Section 8904 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by adding at the end the following:

“(G) Fertility treatment benefits.”; and

(B) in paragraph (2)—

(i) by redesignating subparagraph (F) as subparagraph (G); and

(ii) by inserting after subparagraph (E) the following:

“(F) Fertility treatment benefits.”; and

(2) by adding at the end the following:

“(c) In this section, the term ‘fertility treatment’ in-

cludes the following:

“(1) Preservation of human oocytes, sperm, or embryos for later reproductive use.

“(2) Artificial insemination, including intravaginal insemination, intracervical insemination, and intrauterine insemination.

“(3) Assisted reproductive technology, including in vitro fertilization and other treatments or proce-

dures in which reproductive genetic material, such as oocytes, sperm, fertilized eggs, and embryos, are handled, when clinically appropriate.
“(4) Genetic testing of embryos.
“(5) Medications prescribed or obtained over-the-counter, as indicated for fertility.
“(6) Gamete donation.
“(7) Such other information, referrals, treatments, procedures, medications, laboratory services, technologies, and services relating to fertility as the Director of the Office of Personnel Management, in coordination with the Secretary of Health and Human Services, determines appropriate.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 1 year after the date of enactment of this Act.
A BILL

S. 4445

To protect and expand nationwide access to fertility treatment, including in vitro fertilization.