

Representative Raymond P. Ward proposes the following substitute bill:

FERTILITY TREATMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill expands Medicaid coverage for fertility preservation and criminalizes improper conduct related to fertility treatment.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the department to apply for a Medicaid waiver or state plan amendment with the Centers for Medicare and Medicaid Services to provide coverage for fertility preservation treatments for an individual diagnosed with cancer or other disease;
- ▶ imposes a reporting requirement; and
- ▶ establishes a criminal penalty for a health care provider that:
 - provides "assisted reproductive treatment" to a patient; and
 - uses the health care provider's own gamete without the written consent of the patient.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **26-18-420.1**, Utah Code Annotated 1953

30 **76-07-401**, Utah Code Annotated 1953

31 **76-07-402**, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **26-18-420.1** is enacted to read:

35 **26-18-420.1. Medicaid waiver for fertility preservation services.**

36 (1) As used in this section:

37 (a) "Iatrogenic infertility" means an impairment of fertility or reproductive functioning
38 caused by surgery, chemotherapy, radiation, or other medical treatment.

39 (b) "Physician" means an individual licensed to practice under Title 58, Chapter 67,
40 Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

41 (c) "Qualified enrollee" means an individual who:

42 (i) is enrolled in the Medicaid program;

43 (ii) has been diagnosed with a form of cancer or other disease by a physician; and

44 (iii) needs treatment for that cancer or other disease that may cause a substantial risk of
45 sterility or iatrogenic infertility, including surgery, radiation, or chemotherapy.

46 (d) (i) "Standard Fertility Preservation Services" means a fertility preservation
47 procedure and service that is consistent with established medical practices or professional
48 guidelines published by the American Society for Reproductive Medicine or the American
49 Society of Clinical Oncology.

50 (ii) "Standard Fertility Preservation Services" includes:

51 (A) the retrieval and storage of two complete oocyte cycles; and

52 (B) the collection and storage of two sperm samples.

53 (2) Before January 1, 2022, the department shall apply for a Medicaid waiver or a state
54 plan amendment with CMS to implement the coverage described in Subsection (3).

55 (3) If the waiver or state plan amendment described in Subsection (2) is approved, the
56 Medicaid program shall provide coverage to a qualified enrollee for standard fertility

57 preservation services.

58 (4) The Medicaid program may not provide the coverage described in Subsection (3)
59 before the later of:

60 (a) the day on which the waiver described in Subsection (2) is approved; and

61 (b) January 1, 2023.

62 (5) Before November 1, 2023, and before November 1 of each third year after 2023,
63 the department shall:

64 (a) calculate the change in state spending attributable to the coverage described in this
65 section; and

66 (b) report the amount described in Subsection (5)(a) to the Health and Human Services
67 Interim Committee and the Social Services Appropriations Subcommittee.

68 Section 2. Section **76-07-401** is enacted to read:

69 **Part 4. Genetic Material Misuse**

70 **76-07-401. Definitions.**

71 As used in this part:

72 (1) "Assisted reproductive treatment" means a method of causing pregnancy by any
73 means other than through sexual intercourse, including:

74 (a) intrauterine or intracervical insemination;

75 (b) donation of eggs or sperm;

76 (c) donation of embryos;

77 (d) in vitro fertilization and embryo transfer; and

78 (e) intracytoplasmic sperm injection.

79 (2) "Gamete" means a cell containing a haploid complement of DNA that has the
80 potential to form an embryo when combined with another gamete, including:

81 (a) a sperm;

82 (b) an egg; or

83 (c) nuclear DNA from one individual combined with the:

84 (i) cytoplasm of another individual; or

85 (ii) cytoplasmic DNA of another individual.

86 (3) "Health care provider" means an individual listed in Subsection [78B-3-403\(12\)](#).

87 Section 3. Section **76-07-402** is enacted to read:

88 **76-07-402. Genetic material misuse.**

89 (1) A health care provider may not knowingly use the health care provider's own
90 gamete, when providing assisted reproductive treatment to a patient, without the patient's
91 written consent.

92 (2) A health care provider who violates Subsection (1) is guilty of a third degree
93 felony.