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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 insurance 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;
- ▶ requires the Public Employees Health Program to provide coverage for fertility preservation treatments for an eligible member diagnosed with cancer;
- ▶ imposes reporting requirements; 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:

None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 [26-18-420.1](#), Utah Code Annotated 1953

31 [49-20-420.1](#), Utah Code Annotated 1953

32 [76-07-401](#), Utah Code Annotated 1953

33 [76-07-402](#), Utah Code Annotated 1953



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

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

37 **26-18-420.1. Medicaid waiver for fertility preservation services.**

38 (1) As used in this section:

39 (a) "Infertility" means a disease or condition:

40 (i) characterized by:

41 (A) the failure to impregnate or conceive; or

42 (B) an individual's inability to reproduce, individually or with the individual's partner;

43 and

44 (ii) diagnosed by a physician through:

45 (A) diagnostic testing; or

46 (B) physical findings related to the patient's age, medical history, sexual history, or

47 reproductive history.

48 (b) "Qualified enrollee" means an individual who:

49 (i) is enrolled in the Medicaid program;

50 (ii) has been diagnosed with a form of cancer by a physician;

51 (iii) is at least 18 years old but not older than 35 years old; and

52 (iv) is expected to undergo medication therapy, surgery, radiation, chemotherapy, or

53 other medical treatment that is recognized by medical professionals to cause a risk of infertility.

54 (c) "Physician" means an individual licensed to practice under Title 58, Chapter 67,

55 Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

56 (d) "Standard fertility preservation services" means fertility preservation procedures

57 and services that:

58 (i) are consistent with established medical practices or professional guidelines

59 published by the American Society for Reproductive Medicine or the American Society of
60 Clinical Oncology; and

61 (ii) include:

62 (A) three completed oocyte retrievals; and

63 (B) unlimited embryo transfers in accordance with the guidelines of the American
64 Society for Reproductive Medicine, using single embryo transfer when recommended and
65 medically appropriate.

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

68 (3) If the waiver described in Subsection (2) is approved, the Medicaid program shall
69 provide coverage to a qualified enrollee for standard fertility preservation services.

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

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

73 (b) January 1, 2023.

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

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

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

80 Section 2. Section **49-20-420.1** is enacted to read:

81 **49-20-420.1. Coverage for fertility preservation services.**

82 (1) As used in this section:

83 (a) "Infertility" means a disease or condition:

84 (i) characterized by:

85 (A) the failure to impregnate or conceive; or

86 (B) an individual's inability to reproduce, individually or with the individual's partner;

87 and

88 (ii) diagnosed by a physician through:

89 (A) diagnostic testing; or

90 (B) physical findings related to the patient's age, medical history, sexual history, or
91 reproductive history.

92 (b) "Qualified individual" means a covered individual who:

93 (i) has been diagnosed by a physician as having a form of cancer;

94 (ii) is at least 18 years old but not older than 35 years old; and

95 (iii) is expected to undergo medication therapy, surgery, radiation, chemotherapy, or
96 other medical treatment that is recognized by medical professionals to cause a risk of infertility.

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

99 (d) "Standard fertility preservation services" means fertility preservation procedures
100 and services that:

101 (i) are consistent with established medical practices or professional guidelines
102 published by the American Society for Reproductive Medicine or the American Society of
103 Clinical Oncology; and

104 (ii) include:

105 (A) three completed oocyte retrievals; and

106 (B) unlimited embryo transfers in accordance with the guidelines of the American
107 Society for Reproductive Medicine, using single embryo transfer when recommended and
108 medically appropriate.

109 (2) For a plan year that begins on or after July 1, 2021, the program shall provide
110 coverage to a qualified individual for standard fertility preservation services.

111 (3) Before November 1, 2023, and before November 1 of each third year after 2023,
112 the program shall:

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

115 (b) report the amount described in Subsection (3)(a) to the Health and Human Services
116 Interim Committee and the Social Services Appropriations Subcommittee.

117 Section 3. Section **76-07-401** is enacted to read:

118 **Part 4. Genetic Material Misuse**

119 **76-07-401. Definitions.**

120 As used in this part:

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

- 123 (a) intrauterine or intracervical insemination;
- 124 (b) donation of eggs or sperm;
- 125 (c) donation of embryos;
- 126 (d) in vitro fertilization and embryo transfer; and
- 127 (e) intracytoplasmic sperm injection.

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

- 130 (a) a sperm;
- 131 (b) an egg; or
- 132 (c) nuclear DNA from one individual combined with the:
 - 133 (i) cytoplasm of another individual; or
 - 134 (ii) cytoplasmic DNA of another individual.

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

136 Section 4. Section **76-07-402** is enacted to read:

137 **76-07-402. Genetic material misuse.**

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

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