

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: _____

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 or other disease;
- ▶ requires the Public Employees Health Program to provide coverage for fertility preservation treatments for an eligible member diagnosed with cancer or other disease;
- ▶ 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.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **26-18-420.1**, Utah Code Annotated 1953

33 **49-20-420.1**, Utah Code Annotated 1953

34 **76-07-401**, Utah Code Annotated 1953

35 **76-07-402**, Utah Code Annotated 1953



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

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

39 **26-18-420.1. Medicaid waiver for fertility preservation services.**

40 (1) As used in this section:

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

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

45 (c) "Standard fertility preservation service" means a fertility preservation procedure
46 and service that:

47 (i) is not considered experimental or investigational by the American Society for
48 Reproductive Medicine or the American Society of Clinical Oncology; and

49 (ii) is consistent with established medical practices or professional guidelines
50 published by the American Society for Reproductive Medicine or the American Society of
51 Clinical Oncology, including:

52 (A) sperm banking;

53 (B) oocyte banking;

54 (C) embryo banking;

55 (D) banking of reproductive tissues; and

56 (E) storage of reproductive cells and tissues.

57 (d) "Qualified enrollee" means an individual who:

58 (i) is enrolled in the Medicaid program;

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

60 (iii) the treatment for that cancer or other disease includes surgery, radiation,

61 chemotherapy, or other medical treatment that is recognized by medical professionals to cause
62 a risk of sterility or iatrogenic infertility.

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

65 (3) If the waiver or state plan amendment described in Subsection (2) is approved, the
66 Medicaid program shall provide coverage to a qualified enrollee for standard fertility
67 preservation services.

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

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

71 (b) January 1, 2023.

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

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

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

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

79 **49-20-420.1. Coverage for fertility preservation services.**

80 (1) As used in this section:

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

83 (b) "Physician" means an individual licensed to practice under Title 58, Chapter
84 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

85 (c) Standard fertility preservation service" means a fertility preservation procedure and
86 service that:

87 (i) is not considered experimental or investigational by the American Society for

88 Reproductive Medicine or the American Society of Clinical Oncology; and
89 (ii) is consistent with established medical practices or professional guidelines
90 published by the American Society for Reproductive Medicine or the American Society of
91 Clinical Oncology, including:
92 (A) sperm banking;
93 (B) oocyte banking;
94 (C) embryo banking;
95 (D) banking of reproductive tissues; and
96 (E) storage of reproductive cells and tissues.
97 (d) "Qualified individual" means a covered individual who:
98 (i) has been diagnosed with a form of cancer or another disease by a physician; and
99 (ii) the treatment for that cancer or other disease includes surgery, radiation,
100 chemotherapy, or other medical treatment that is recognized by medical professionals to cause
101 a risk of sterility or iatrogenic infertility.
102 (2) For a plan year that begins on or after July 1, 2021, the program shall provide
103 coverage to a qualified individual for standard fertility preservation services.
104 (3) Before November 1, 2023, and before November 1 of each third year after 2023,
105 the program shall:
106 (a) calculate the change in state spending attributable to the coverage described in this
107 section; and
108 (b) report the amount described in Subsection (3)(a) to the Health and Human Services
109 Interim Committee and the Social Services Appropriations Subcommittee.
110 Section 3. Section **76-07-401** is enacted to read:
111 **Part 4. Genetic Material Misuse**
112 **76-07-401. Definitions.**
113 As used in this part:
114 (1) "Assisted reproductive treatment" means a method of causing pregnancy by any
115 means other than through sexual intercourse, including:
116 (a) intrauterine or intracervical insemination;
117 (b) donation of eggs or sperm;
118 (c) donation of embryos;

- 119 (d) in vitro fertilization and embryo transfer; and
120 (e) intracytoplasmic sperm injection.
121 (2) "Gamete" means a cell containing a haploid complement of DNA that has the
122 potential to form an embryo when combined with another gamete, including:
123 (a) a sperm;
124 (b) an egg; or
125 (c) nuclear DNA from one individual combined with the:
126 (i) cytoplasm of another individual; or
127 (ii) cytoplasmic DNA of another individual.
128 (3) "Health care provider" means an individual listed in Subsection [78B-3-403\(12\)](#).
129 Section 4. Section **76-07-402** is enacted to read:
130 **76-07-402. Genetic material misuse.**
131 (1) A health care provider may not knowingly use the health care provider's own
132 gamete, when providing assisted reproductive treatment to a patient, without the patient's
133 written consent.
134 (2) A health care provider who violates Subsection (1) is guilty of a third degree
135 felony.