Date of Hearing: May 16, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 767 (Wicks) – As Amended April 30, 2019

Policy Committee: Health Vote: 11 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill requires large-group health plans and insurers to cover treatment of infertility. Specifically, this bill:

1) Requires coverage for a maximum of three cycles of in vitro fertilization and mature oocyte cryopreservation.

2) Requires plans and insurers to limit the coverage required by paragraph (1) to a lifetime maximum benefit of $75,000 paid at contracted rates per enrollee.

3) Defines "treatment of infertility" as procedures consistent with established medical practices in the treatment of infertility by a licensed physician and surgeon, including, but not limited to, diagnosis, diagnostic tests, medication, surgery, gamete intrafallopian transfer and in vitro fertilization (IVF).

4) Exempts Medi-Cal managed care and individual and small-group markets from the coverage requirement.

5) Eliminates a religious exemption that applies to the requirement to offer infertility coverage and does not allow a religious exemption to the requirement to cover infertility services.

FISCAL EFFECT:

1) According to the California Health Benefits Review Program (CHBRP), this bill has no cost to Medi-Cal.

   For CalPERS, CHBRP estimates costs of $14.5 million (GF/federal/special/local) with respect to infertility treatment.

2) CHBRP reports the following private market costs with respect to infertility treatment:

   a) Increased employer-funded premium costs in the private insurance market of approximately $350 million.

   b) Increased premium expenditures by employees purchasing insurance of $31 million, and increased out of pocket expenses of $156 million, offset by a decrease in out-of-pocket expenses for non-covered benefits of $87 million.

3) With respect to planned oocyte cryopreservation, CHBRP estimates if 2% of women aged 25–37 years used planned OC services, total expenditures would increase by $246 million (premiums for large-group insurance would increase by 0.67% and CalPERS HMO would increase by 0.80%). If 5% of women used the service, total expenditures would increase by $616 million (premium increases for large group insurance increase 1.08% and CalPERS HMO 1.29%). This assumes the average cost for OC is around $10,000.

4) Minor and absorbable one-time costs to the California Department of Insurance (Insurance Fund) to verify compliance.

5) Costs of about $140,000 in 2019-20, $300,000 in 201-21 and $200,000 ongoing to the Department of Managed Health Care (Managed Care Fund) to verify compliance.

COMMENTS:

1) **Purpose**. According to the author, because treatment of infertility is not commonly covered by insurance, many individuals diagnosed with fertility problems are not able to access necessary treatment. The author believes reproductive freedom should not be limited to those who can afford it and that this bill creates equity by allowing individuals who cannot afford to pay out of pocket to access fertility treatments.

2) **Background**. Currently, 14 states have laws that require insurance companies to cover infertility treatment and two states — California and Texas — have laws that require insurance companies to offer coverage for infertility treatment. There are a number of treatment options for women and men seeking medical help to achieve a pregnancy, including medical advice, medications, surgery, artificial insemination and assisted reproductive technology, which includes IVF and a related technology called intracytoplasmic sperm injection (ICSI). ICSI is an IVF procedure wherein a single sperm is injected into a mature egg.

   This bill also mandates coverage of "mature oocyte cryopreservation"– known in common parlance as egg freezing– a procedure in which viable, unfertilized eggs (oocytes) are frozen and preserved for future fertilization and implantation via IVF. This is generally performed when women are either undergoing medical treatment that may impair fertility (leading to what is called iatrogenic infertility) or when women choose to have their eggs frozen to increase the likelihood of having viable eggs in the event they experience difficulty conceiving when they are ready to become pregnant.

3) **CHBRP Analysis**. The CHBRP analysis of this bill notes the following pertinent facts and projections:

   a) Fertility treatments are medically effective and are associated with some maternal harm. However, coverage of IVF treatments may reduce risks associated with transferring a higher number of embryos per cycle (transferring just a single embryo is safer, and more likely to occur when a coverage mandate is in place).

   b) Most of the increased utilization and cost is associated with significant increases in IVF treatment. Prior to the mandate, IVF services

alone are estimated to have about 2,000 users and ICSI, which is done with IVF, has about 2,000 users annually. Post-mandate, CHBRP predicts an increase of roughly 4,000 IVF users and 5,000 IVF-ICSI users, as well as increases in other services, resulting in an additional 5,000 pregnancies and 4,000 babies.

c) Recent amendments to impose a $75,000 lifetime limit on infertility treatment and a three-cycle limit on IVF cycles per enrollee did not materially change the cost estimate from the prior bill version, although these restrictions may limit the cost growth associated with this mandate in future years. The limit may also encourage enrollees and insureds to attempt less costly treatments, such as IUI, prior to seeking IVF.

4) **Related Legislation**. SB 600 (Portantino) clarifies that an individual or group health plan contract or health insurance policy that covers hospital, medical or surgical expenses includes coverage for standard fertility preservation services when a medically necessary treatment may cause iatrogenic infertility to an enrollee or insured. SB 600 is currently pending in Senate Appropriations Committee.

5) **Prior Legislation**. SB 172 (Portantino), of the 2017-18 Legislative Session, expands the definition of basic health care services to include standard fertility preservation services when a medically necessary treatment may directly or indirectly cause iatrogenic infertility. SB 172 was held in the Senate Appropriations Committee. AB 912 (Quirk-Silva), of the 2013-14 Legislative Session, was similar to SB 600 (Portantino) and was vetoed by Governor Brown, who noted this coverage may be useful and desirable for many, but that the state should first implement the package of reforms required by the Affordable Care Act.

6) **Support**. According to American Society for Reproductive Medicine (ASRM), a sponsor of this bill, the right to procreate is a fundamental right, as recognized by Supreme Court case law. ASRM states this bill will give hope to many Californians who suffer from infertility and cannot financially access treatment options.

7) **Opposition**. Health plans and insurers and the California Chamber of Commerce oppose this bill, citing the high cost. Plans and insurers contend high-cost mandates will drive more employers away from fully insured products and towards self-insurance.

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