

ASSEMBLY THIRD READING

AB 767 (Wicks)

As Amended May 16, 2019

Majority vote

SUMMARY:

States the intent of the Legislature to consider the inclusion of infertility treatment in the definition of essential health benefits (EHBs).

COMMENTS:

California Health Benefits Review Program (CHBRP) analysis. It should be noted this bill was substantially amended in the Assembly Appropriations Committee. CHBRP states in its analysis of a previous version of this bill requiring infertility coverage for in vitro fertilization (IVF), and mature oocyte cryopreservation (OC), on a group basis, the following:

- 1) *Enrollees covered.* According to CHBRP, benefit coverage for infertility treatments, including IVF, would increase from 4.3% premandate to 100% postmandate. Benefit coverage of planned OC would increase from 0% premandate to 100% postmandate. This bill would likely exceed EHBs.
- 2) *Impact on expenditures.* According to CHBRP, this bill would increase total net annual expenditures by \$850.5 million or 0.49% for enrollees with Department of Managed Health Care (DMHC)-regulated group plans and California Department of Insurance (CDI)-regulated group policies. Per member per month (PMPM) premiums would increase between \$2.76 among CalPERS HMOs (an increase of 0.47%) and \$3.72 in the DMHC-regulated small-group market (an increase of 0.68%). CHBRP estimates that if 2% of women aged 25-37 years used planned OC services, the total expenditures would increase by \$319.7 million. If a higher share of women aged 25-37 used planned OC (5%), total expenditures would increase by \$799.2 million. This assumes the average cost for OC is \$10,078.
- 3) *EHBs.* State health insurance marketplaces, such as Covered California, are responsible for certifying and selling qualified health plans (QHPs) in the small-group and individual markets. QHPs are required to meet a minimum standard of benefits as defined by the federal Patient Protection and Affordable Care Act as EHBs. In California, EHBs are related to the benefit coverage available in the Kaiser Foundation Health Plan Small Group Health Maintenance Organization 30 plan, the state's benchmark plan for federal EHBs. States may require QHPs to offer benefits that exceed EHBs. However, a state that chooses to do so must make payments to defray the cost of those additionally mandated benefits, either by paying the purchaser directly or by paying the QHP. State rules related to provider types, cost-sharing, or reimbursement methods would not meet the definition of state benefit mandates that could exceed EHBs. This bill would require coverage for a new state benefit mandate that appears to exceed the definition of EHBs in California. CHBRP estimates that the state would potentially be required to defray the following amounts due to this bill: a) \$6.52 PMPM for each QHP enrollee in a small-group DMHC-regulated plans; and, b) \$7.14 PMPM for each QHP enrollee in a small-group CDI-regulated policy. CHBRP estimates that this translates to a state-responsibility of \$52.5 million total, which includes: a) \$51.5 million in payments to DMHC-regulated small group plans; and, b) \$1 million in payments to CDI-regulated small group policies.

- 4) *Medical effectiveness.* CHBRP found a preponderance of evidence that IVF is an effective treatment for infertility, resulting in increased pregnancy rates and live birth rates.
- 5) *Long-term impacts.* In the short-term, the aggregate pregnancy and birth rate is expected to increase postmandate due to increased utilization of infertility services. In the longer term, it is possible that the coverage of infertility services results in encouraging couples to undergo infertility treatment earlier than they would normally and where pregnancy might be achieved naturally.

Other states. According to CHBRP, 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. In 2019, New York amended its existing mandate through a budget measure in the 2020 state budget that mandates certain large-group insurance plans cover IVF, and requires all private insurance companies to cover medically necessary egg freezing. While most states with laws requiring insurance companies to offer or provide coverage for infertility treatment include coverage for IVF, California and Louisiana have laws that specifically exclude coverage for the procedure.

According to the Author:

According to the author, in a previous version of this bill, infertility is a disease that affects millions of women of child bearing age in this country. While IVF is one of many effective treatments for infertility, it is explicitly excluded from being offered by health plans in California. This prohibition of IVF health coverage in our state makes this treatment option unattainable for many couples who cannot afford it. Reproductive freedom should not be limited to those who can afford it. This bill would address this inequity in health coverage by requiring health plans and policies to provide IVF coverage so that women who seek infertility treatment can obtain IVF when needed.

Arguments in Support:

According to the American Society for Reproductive Medicine, a sponsor of this bill, the right to procreate is a fundamental right, as recognized by Supreme Court case law. With that long recognized right in observance, it is crucial that California continues its leadership role in the country and take an affirmative act by protecting access to all reproductive health care services.

Arguments in Opposition:

According to the California Chamber of Commerce, in a previous version, this bill would impose a new benefit mandate that exceeds EHBs established for individual and small group market plans and the state would be responsible for covering the cost to subsidize that benefit for individuals purchasing subsidized coverage through Covered California. The state has not enacted a benefit mandate that clearly exceeds EHB requirements. This mandate would set precedent and would result in ongoing annual costs to subsidize the provision of infertility treatment for individuals enrolled in health care coverage through Covered California.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, negligible state costs.

VOTES:

ASM HEALTH: 11-2-2

YES: Wood, Aguiar-Curry, Bonta, Burke, Carrillo, Limón, McCarty, Nazarian, Ramos, Rodriguez, Santiago

NO: Bigelow, Waldron

ABS, ABST OR NV: Mayes, Flora

ASM APPROPRIATIONS: 14-0-4

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Diep, Eggman, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

ABS, ABST OR NV: Bigelow, Brough, Fong, Obernolte

UPDATED:

VERSION: May 16, 2019

CONSULTANT: Kristene Mapile / HEALTH / (916) 319-2097

FN: 0000940