

111TH CONGRESS
1ST SESSION

H. R. 697

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and chapter 89 of title 5, United States Code, to require coverage for the treatment of infertility.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2009

Mr. WEINER (for himself, Ms. WASSERMAN SCHULTZ, Mrs. LOWEY, Mr. NADLER of New York, Mr. GRIJALVA, Ms. SCHWARTZ, Ms. LEE of California, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and chapter 89 of title 5, United States Code, to require coverage for the treatment of infertility.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Family Building Act of 2009”.

1 (b) FINDINGS.—Congress makes the following find-
2 ings:

3 (1) Infertility is a disease affecting more than
4 6,000,000 American women and men, about 10 per-
5 cent of the reproductive age population.

6 (2) Recent improvements in therapy make preg-
7 nancy possible for more couples than in past years.

8 (3) The majority of group health plans do not
9 provide coverage for infertility therapy.

10 (4) A fundamental part of the human experi-
11 ence is fulfilling the desire to reproduce.

12 **SEC. 2. STANDARDS RELATING TO BENEFITS FOR TREAT-**
13 **MENT OF INFERTILITY.**

14 (a) GROUP HEALTH PLANS.—

15 (1) PUBLIC HEALTH SERVICE ACT AMEND-
16 MENT.—(A) Subpart 2 of part A of title XXVII of
17 the Public Health Service Act is amended by adding
18 at the end the following new section:

19 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**
20 **TREATMENT OF INFERTILITY.**

21 **“(a) REQUIREMENTS FOR COVERAGE OF TREAT-**
22 **MENT OF INFERTILITY.—**

23 **“(1) IN GENERAL.—**In a case in which a group
24 health plan, and a health insurance issuer offering
25 group health insurance coverage provides coverage

1 for obstetrical services, such plan or issuer shall in-
2 clude (consistent with this section) coverage for
3 treatment of infertility.

4 “(2) INFERTILITY DEFINED.—For purposes of
5 this section, the term ‘infertility’ means a disease or
6 condition that results in the abnormal function of
7 the reproductive system, which results in—

8 “(A) the inability to conceive after 1 year
9 of unprotected intercourse, or

10 “(B) the inability to carry a pregnancy to
11 live birth.

12 “(b) REQUIRED COVERAGE.—

13 “(1) IN GENERAL.—A group health plan, and a
14 health insurance issuer offering group health insur-
15 ance coverage shall provide coverage for treatment
16 of infertility deemed appropriate by a participant or
17 beneficiary and the treating physician. Such treat-
18 ment shall include ovulation induction, artificial in-
19 semination, in vitro fertilization (IVF), gamete
20 intrafallopian transfer (GIFT), zygote intrafallopian
21 transfer (ZIFT), intracytoplasmic sperm injection
22 (ICSI), and any other treatment provided it has
23 been deemed as ‘non-experimental’ by the Secretary
24 after consultation with appropriate professional and
25 patient organizations such as the American Society

1 for Reproductive Medicine, RESOLVE, and the
2 American College of Obstetricians and Gynecologists.
3

4 “(2) LIMITATION ON COVERAGE OF ASSISTED
5 REPRODUCTIVE TECHNOLOGY.—

6 “(A) IN GENERAL.—In the case of assisted
7 reproductive technology, coverage shall be provided if—
8

9 “(i) the participant or beneficiary has
10 been unable to bring a pregnancy to a live
11 birth through less costly medically appropriate infertility treatments for which coverage is available under the insured’s policy, plan, or contract;
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15 “(ii) the participant or beneficiary has
16 not undergone 4 complete oocyte retrievals,
17 except that if a live birth follows a completed oocyte retrieval, then at least 2
18 more completed oocyte retrievals shall be
19 covered, with a lifetime cap of 6 retrievals;
20
21 and

22 “(iii) the treatment is performed at a
23 medical facility that—

1 “(I) conforms to the standards of
2 the American Society for Reproductive
3 Medicine; and

4 “(II) is in compliance with any
5 standards set by an appropriate Fed-
6 eral agency.

7 “(B) DEFINITION OF ASSISTED REPRO-
8 DUCTIVE TECHNOLOGY.—For purposes of this
9 paragraph, the term ‘assisted reproductive tech-
10 nology’ includes all treatments or procedures
11 that involve the handling of human egg and
12 sperm for the purpose of helping a woman be-
13 come pregnant. Types of assisted reproductive
14 technology include in vitro fertilization, gamete
15 intrafallopian transfer, zygote intrafallopian
16 transfer, embryo cryopreservation, egg or em-
17 bryo donation, and surrogate birth.

18 “(3) REVIEW BY THE SECRETARY.—Not later
19 than 5 years after the date of enactment of the
20 Family Building Act of 2009, the Secretary, in con-
21 sultation with the American Society for Reproductive
22 Medicine and RESOLVE: the National Infertility
23 Association, shall review the requirements for treat-
24 ment of infertility established under paragraphs (1)
25 and (2).

1 “(c) LIMITATION.—Deductibles, coinsurance, and
2 other cost-sharing or other limitations for infertility ther-
3 apy may not be imposed to the extent they exceed the
4 deductibles, coinsurance, and limitations that are applied
5 to similar services under the group health plan or health
6 insurance coverage.

7 “(d) PROHIBITIONS.—A group health plan, and a
8 health insurance issuer offering group health insurance
9 coverage in connection with a group health plan, may
10 not—

11 “(1) deny to a participant or beneficiary eligi-
12 bility, or continued eligibility, to enroll or to renew
13 coverage under the terms of the plan, solely for the
14 purpose of avoiding the requirements of this section;

15 “(2) provide incentives (monetary or otherwise)
16 to a participant or beneficiary to encourage such
17 participant or beneficiary not to be provided infer-
18 tility treatments to which they are entitled under
19 this section or to providers to induce such providers
20 not to provide such treatments to qualified partici-
21 pants or beneficiaries;

22 “(3) prohibit a provider from discussing with a
23 participant or beneficiary infertility treatment tech-
24 niques or medical treatment options relating to this
25 section; or

1 “(4) penalize or otherwise reduce or limit the
2 reimbursement of a provider because such provider
3 provided infertility treatments to a qualified partici-
4 pant or beneficiary in accordance with this section.

5 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
6 tion shall be construed to require a participant or bene-
7 ficiary to undergo infertility therapy.

8 “(f) NOTICE.—A group health plan under this part
9 shall comply with the notice requirement under section
10 713(b) of the Employee Retirement Income Security Act
11 of 1974 with respect to the requirements of this section
12 as if such section applied to such plan.

13 “(g) LEVEL AND TYPE OF REIMBURSEMENTS.—
14 Nothing in this section shall be construed to prevent a
15 group health plan or a health insurance issuer offering
16 group health insurance coverage from negotiating the level
17 and type of reimbursement with a provider for care pro-
18 vided in accordance with this section.

19 “(h) PREEMPTION.—The provisions of this section do
20 not preempt State law relating to health insurance cov-
21 erage to the extent such State law provides greater bene-
22 fits with respect to infertility treatments or prevention.”.

23 (B) Section 2723(c) of such Act (42 U.S.C.
24 300gg–23(c)) is amended by striking “section 2704”
25 and inserting “sections 2704 and 2708”.

1 (2) ERISA AMENDMENT.—(A) Subpart B of
 2 part 7 of subtitle B of title I of the Employee Re-
 3 irement Income Security Act of 1974 is amended by
 4 adding at the end the following new section:

5 **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR**
 6 **TREATMENT OF INFERTILITY.**

7 “(a) IN GENERAL.—A group health plan and a health
 8 insurance issuer offering group health insurance coverage
 9 in connection with such a plan shall comply with the re-
 10 quirements of section 2708 of the Public Health Service
 11 Act, and such requirements shall be deemed to be incor-
 12 porated into this subsection.

13 “(b) NOTICE.—A health insurance issuer offering
 14 health insurance coverage in connection with a group
 15 health plan shall comply with the notice requirement
 16 under section 713(b) with respect to the requirements re-
 17 ferred to in subsection (a) as if such section applied to
 18 such issuer and such issuer were a group health plan.”.

19 (B) Section 732(a) of such Act (29 U.S.C.
 20 1191a(a)) is amended by striking “section 711” and
 21 inserting “sections 711 and 714”.

22 (C) The table of contents in section 1 of such
 23 Act is amended by inserting after the item relating
 24 to section 714 the following new item:

“715. Standards relating to benefits for treatment of infertility.”.

1 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
 2 of title XXVII of the Public Health Service Act is amend-
 3 ed by inserting after section 2753 the following new sec-
 4 tion:

5 **“SEC. 2754. STANDARD RELATING TO BENEFITS FOR**
 6 **TREATMENT OF INFERTILITY.**

7 “(a) IN GENERAL.—The provisions of section 2708
 8 shall apply to health insurance coverage offered by a
 9 health insurance issuer in the individual market in the
 10 same manner as they apply to health insurance coverage
 11 offered by a health insurance issuer in connection with a
 12 group health plan in the small or large group market.

13 “(b) NOTICE.—A health insurance issuer under this
 14 part shall comply with the notice requirement under sec-
 15 tion 713(b) of the Employee Retirement Income Security
 16 Act of 1974 with respect to the requirements referred to
 17 in subsection (a) as if such section applied to such issuer
 18 and such issuer were a group health plan.”.

19 (2) Section 2762(b)(2) of such Act (42 U.S.C.
 20 300gg–62(b)(2)) is amended by striking “section 2751”
 21 and inserting “sections 2751 and 2753”.

22 (c) EFFECTIVE DATES.—

23 (1) GROUP HEALTH PLANS AND GROUP
 24 HEALTH INSURANCE COVERAGE.—Subject to para-
 25 graph (3), the amendments made by subsection (a)

1 apply with respect to group health plans for plan
2 years beginning on or after the date occurring 6
3 months after the date of the enactment of this Act.

4 (2) INDIVIDUAL HEALTH INSURANCE COV-
5 ERAGE.—The amendments made by subsection (b)
6 apply with respect to health insurance coverage of-
7 fered, sold, issued, renewed, in effect, or operated in
8 the individual market on or after such date.

9 (3) COLLECTIVE BARGAINING EXCEPTION.—In
10 the case of a group health plan maintained pursuant
11 to 1 or more collective bargaining agreements be-
12 tween employee representatives and 1 or more em-
13 ployers ratified before the date of enactment of this
14 Act, the amendments made by subsection (a) shall
15 not apply to plan years beginning before the later
16 of—

17 (A) the date on which the last collective
18 bargaining agreements relating to the plan ter-
19 minates (determined without regard to any ex-
20 tension thereof agreed to after the date of en-
21 actment of this Act), or

22 (B) the date occurring 6 months after the
23 date of the enactment of this Act.

24 For purposes of subparagraph (A), any plan amend-
25 ment made pursuant to a collective bargaining

1 agreement relating to the plan which amends the
2 plan solely to conform to any requirement added by
3 subsection (a) shall not be treated as a termination
4 of such collective bargaining agreement.

5 **SEC. 3. AMENDMENT TO TITLE 5, UNITED STATES CODE.**

6 (a) IN GENERAL.—Section 8902 of title 5, United
7 States Code, is amended by adding at the end the fol-
8 lowing new subsection:

9 “(p)(1) Each contract under this chapter which pro-
10 vides obstetrical benefits shall also provide (in a manner
11 consistent with section 2708 of the Public Health Service
12 Act) coverage for the diagnosis and treatment of infertility
13 (as defined by such section).

14 “(2) Subsection (m)(1) shall not, with respect to any
15 contract under this chapter, prevent the inclusion of any
16 terms which, under paragraph (1), are required by reason
17 of section 2708(h) of the Public Health Service Act.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply with respect to contracts entered
20 into or renewed for contract years beginning at least 6
21 months after the date of enactment of this Act.

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