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Fiscal Note

Drafting Number:	LLS 24-0702	Date:	January 23, 2024
Prime Sponsors:	Rep. Froelich	Bill Status:	House Health & Human Services
		Fiscal Analyst:	Kristine McLaughlin 303-866-4776 kristine.mclaughlin@coleg.gov

Bill Topic: IMPLEMENT FERTILITY COVERAGE FOR HEALTH PLANS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Local Government
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill amends existing statutes regarding requiring small group health benefit plans to cover fertility diagnosis, treatment, and preservation services. The bill minimally increase state workload and potentially costs on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

Summary of Legislation

House Bill 20-1158 required that all Division of Insurance (DOI) regulated health benefit plans cover the diagnosis of and treatment for infertility and standard fertility preservation services, if the Federal Department of Health and Human Services (HHS) determines that these benefits would not require the state to defray the cost for premium increases attributable to the mandate.

This bill specifies the implementation date (January 1, 2025) for the mandated benefit to take effect and prohibits plans from imposing restrictions based on participation in fertility services provided by or to a third party.

State Expenditures

The bill increases state workload and potentially costs beginning in FY 2024-25 as explained below. These impacts were also discussed in the prior fiscal note for HB 20-1158, but will now occur at a definite point in the future, rather than following future federal action.

Department of Regulatory Agencies. The DOI may experience a minimal increase in workload under the bill, including reviewing insurer plans and rate filings, responding to consumer inquiries and complaints, and take enforcement action in the event of noncompliance. This work can be accomplished within existing resources. No change in appropriations is required.

Department of Health Care Policy and Financing. The fertility treatment coverage requirement apply to the Child Health Plan Plus (CHP+), which is administered by HCPF. It is assumed that any impact on costs under CHP+ will be minimal since the program primarily serves children and adults currently are or were previously pregnant.

State employee insurance. State employee insurance is subject to state regulation and would be required to comply with the coverage requirement in the bill. Any cost increase could contribute to higher insurance premiums, which would be shared by state agencies and employees. Because insurance premiums are influenced by a number of variables and the cost share between the state and employees has not been determined for future fiscal years, a cost to the state is not estimated.

Insurance mandate cost defrayal. As described, in the Technical Note below, the bill potentially increases costs for the state to defray the insurer costs to provide fertility coverage as a new mandated health benefit. At this time, an estimate of these potential costs is not available.

Local Government

Similar to state employee insurance, to the extent that the premiums increase for local government insurance plans, cost increases will be shared by local governments and employees.

Technical Note

Under the Affordable Care Act, any new mandated benefit created in state law beyond what is considered an essential health benefit is subject to state defrayal, meaning the state is required to pay for the additional costs incurred by insurers to provide the benefit. Only a few states have enacted benefit mandates that require state defrayals. Since enactment of HB 20-1158, the state and the federal Department of Health and Human Services have been engaged in ongoing discussions to determine whether a state defrayal would be necessary to mandate that small group health benefit plans cover infertility services and a final determination has not been issued.

If the official determination is that a state defrayal will be necessary, then state funding would be required enact the benefit mandate. This fiscal note is preliminary; when there is further clarification on the determination and the potential state defrayal costs, it will be updated.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State and Local Government Contacts

Health Care Policy and Financing

Regulatory Agencies