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Revised Fiscal Note

(replaces fiscal note dated January 23, 2024)

Drafting Number: LLS 24-0702 Date: February 16, 2024
Prime Sponsors: Rep. Froelich Bill Status: House Health & Human Services
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Bill Topic: IMPLEMENT FERTILITY COVERAGE FOR HEALTH PLANS

Summary of Fiscal Impact: State Revenue, State Expenditure, State Diversion, TABOR Refund, Local Government, Statutory Public Entity

The bill requires individual and small group health benefit plans to begin covering fertility diagnosis, treatment, and preservation services in 2025. The bill increases state expenditures starting in FY 2025-26.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the introduced bill. It has been updated to include new information about state defrayal of insurer costs for fertility service coverage.

Table 1
State Fiscal Impacts Under HB 24-1025

Table with 4 columns: Category, Budget Year FY 2024-25, Out Year FY 2025-26, Out Year FY 2026-27. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Diversion (General Fund, Cash Funds, Net Transfer), and Other Budget Impacts.

## Summary of Legislation

House Bill 20-1158 required that all health benefit plans regulated by the Division of Insurance (DOI) under the Department of Regulatory Agencies (DORA) 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 for individual and small group plans and prohibits plans from imposing restrictions based on participation in fertility services provided by or to a third party.

## Background and Assumptions

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. 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 an individual or small group health benefit plan cover infertility services and a final determination has not been issued. Based on information available as of this writing, it is assumed that state defrayal will be necessary and the fiscal notes estimates the cost of this coverage using available actuarial information from other states.

## State Diversions

This bill diverts about \$35,000 from the General Fund in FY 2024-25 and \$16.5 million in FY 2025-26 and future years. This revenue diversion occurs because the bill increases costs in the Department of Regulatory Agencies, Division of Insurance, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

## State Expenditures

The bill increases costs in DORA by about \$35,000 in FY 2025-26 and \$16.5 million in FY 2026-27 and ongoing, paid from the Division of Insurance Cash Fund. It may also increase costs in the Department of Health Care Policy and Financing (HCPF). Expenditures are shown in Table 2 and detailed below

**Table 2  
Expenditures Under HB 24-1025**

	<b>FY 2024-25</b>	<b>FY 2025-26</b>	<b>FY 2026-27</b>
<b>Department of Regulatory Agencies</b>			
Personal Services	-	\$28,442	\$28,442
State Defrayal	-	-	\$16,511,862
Centrally Appropriated Costs <sup>1</sup>	-	\$6,262	\$6,262
FTE – Personal Services	-	0.3 FTE	0.3 FTE
<b>Total Costs</b>	-	<b>\$34,704</b>	<b>\$16,546,566</b>
<b>Total FTE</b>	-	<b>0.3 FTE</b>	<b>0.3 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Regulatory Agencies.** DORA will pay an estimated \$16.5 million to insurance carriers in FY 2026-27, and requires 0.3 FTE to manage the process for these payments one year prior starting in FY 2025-26, as described below.

- **State defrayal payments.** DORA will reimburse carriers for any costs to cover fertility services for individual and small group health plan enrollees (totaling 237,000 people) after January 1, 2025. An actuarial analysis in Washington state found that requiring carriers to cover fertility services would increase premiums by about \$60 per year for all members of an individual plan and \$24 per year for small group plans.<sup>1</sup> The fiscal note estimates costs based on this finding, plus an assumed additional 18 percent to cover carrier's administrative costs based on recent medical loss ratio reports. Based on the time needed to process and finalize claims following the start of coverage, it is assumed that DORA will begin receiving request from insurance carriers for reimbursement in April 2026 and that these claims will require one year to process. As a result, the state defrayal payments are assumed to begin in FY 2026-27.
- **Staff.** DORA requires 0.3 FTE to set up and administer the state defrayal process and process the reimbursement claims from insurers. This staff will start in July 2025, based on the timeline outlined in the state defrayal payment section.
- **Enforcement.** DORA may experience a minimal increase in workload to review consumer inquiries and complaints regarding the new coverage requirement, and take enforcement action in the event of noncompliance. This work can be accomplished within existing resources.

<sup>1</sup> Office of the Insurance Commissioner Washington State. (2023, June 30). Fertility Treatment Benefit: Implementation Cost Analysis. <https://drive.google.com/file/d/1GZgdqTWg2y2wtCrcWPN0jsFSJS2Shfkt/view>

**Department of Health Care Policy and Financing.** The fertility treatment coverage requirement applies 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 who currently or were previously pregnant.

## 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

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).