

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4553

FISCAL  
NOTE

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[Introduced January 27, 2020; Referred to the  
Committee on Banking and Insurance then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §33-15F-1, §33-15F-2, §33-15F-3, §33-15F-4 and §33-15F-5, all relating to  
3 requiring certain health insurance providers to provide fertility services coverage; providing  
4 legislative findings; defining terms; providing conditions and activities, infertility and fertility  
5 diagnoses and medical procedures to be covered; providing requirements relating to  
6 diagnosis, treatment and other related activities; establishing required and prohibited  
7 services insurance coverage; and directing the Insurance Commissioner to promulgate  
8 legislative rules.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 15F. COVERAGE OF INFERTILITY SERVICES.**

**§33-15F-1. Legislative findings.**

1 The Legislature finds that it is in the public interest to make medical treatment for infertility  
2 and related conditions affordable for West Virginia residents and employers, so as to attract and  
3 retain young families, expand the state's health care resources, reduce overall health care costs,  
4 and improve health outcomes for the resulting children. Therefore, the purpose of this article is to  
5 provide for the coverage of infertility services by health insurance providers providing health  
6 insurance to West Virginia residents.

**§33-15F-2. Definitions.**

1 As used in this article:

2 "Commissioner" means the Insurance Commissioner.

3 "Experimental infertility procedure" means a procedure for which the published medical  
4 evidence regarding risks, benefits, and overall safety and efficacy is not sufficient to regard the  
5 procedure as an established medical practice.

6 "Fertility treatment" means health care services or products provided with the intent to  
7 achieve a pregnancy that results in a live birth with healthy outcomes.

8 "Health carrier" means an entity subject to the insurance laws and rules of this state, or

9 subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide,  
 10 deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an  
 11 insurance company, a health maintenance organization, a health service corporation, or any other  
 12 entity providing a plan of health insurance, health benefits, or health services including, but not  
 13 limited to, those governed by §5-16-1 et seq., §33-16-1 et seq., §33-24-1 et seq., and §33-25A-8  
 14 et seq. of this code.

15 “Infertility” means a disease, caused by an illness, injury, underlying disease, or condition,  
 16 where an individual’s ability to become pregnant or to carry a pregnancy to live birth is impaired,  
 17 or where an individual’s ability to cause pregnancy and live birth in the individual’s partner is  
 18 impaired.

19 “Medically necessary” means health care services or products provided to an enrollee for  
 20 the purpose of preventing, stabilizing, diagnosing, or treating an illness, injury, or disease or the  
 21 symptoms of an illness, injury or disease in a manner that is:

- 22 (A) Consistent with generally accepted standards of medical practice;
- 23 (B) Clinically appropriate in terms of type, frequency, extent, site, and duration;
- 24 (C) Demonstrated through scientific evidence to be effective in improving health  
 25 outcomes;
- 26 (D) Representative of “best practices” in the medical profession; and
- 27 (E) Not primarily for the convenience of the enrollee or physician or other health care  
 28 provider.

29 “Standard fertility preservation services” means procedures consistent with established  
 30 medical practices and professional guidelines published by the American Society for  
 31 Reproductive Medicine or the American Society of Clinical Oncology.

**§33-15F-3. Diagnosis of infertility, fertility treatment, and fertility preservation.**

1 Each health carrier providing benefits for medical or hospital expenses, shall provide to  
 2 recipients of such insurance, the following:

3 (1) Coverage for the diagnosis of the etiology of infertility;

4 (2) Medically necessary fertility treatment including evaluations, laboratory assessments,  
5 medications, and treatments associated with the procurement of donor eggs, sperm and embryos;

6 (3) Fertility preservation when a person is expected to undergo surgery, radiation,  
7 chemotherapy, or other medical treatment that is recognized by medical professionals to cause a  
8 risk of impairment of fertility; and

9 (4) Standard fertility preservation services, including the procurement and  
10 cryopreservation of embryos, eggs, sperm, and reproductive material determined not to be an  
11 experimental infertility procedure. Storage shall be covered from the time of cryopreservation for  
12 the duration of the policy term. Storage offered for a longer period of time, as approved by the  
13 health carrier, shall be an optional benefit.

**§33-15F-4. Prohibited and permissible limitations on coverage.**

1 (a) Health carriers may not:

2 (1) Impose deductibles, copayments, coinsurance, benefit maximums, waiting periods or  
3 any other limitations on coverage for required benefits which are different from those imposed  
4 upon benefits for services not related to infertility or any limitations on coverage of fertility  
5 medications that are different from those imposed on any other prescription medications;

6 (2) Impose pre-existing condition exclusions or pre-existing condition waiting periods on  
7 coverage for required benefits or use any prior diagnosis of or prior treatment for infertility as a  
8 basis for excluding, limiting or otherwise restricting the availability of coverage for required  
9 benefits; or

10 (3) Impose limitations on coverage based solely on arbitrary factors including, but not  
11 limited to, number of attempts or dollar amounts or age, or provide different benefits to, or impose  
12 different requirements upon, or required of, other patients.

13 (b) Limitations on coverage shall be based on clinical guidelines and the insured person's  
14 medical history. Clinical guidelines shall be maintained in written form and shall be available to

15 any policy holder upon request. Standards or guidelines developed by the American Society for  
 16 Reproductive Medicine, the American College of Obstetrics and Gynecology, or the Society for  
 17 Assisted Reproductive Technology may serve as a basis for these clinical guidelines. Making,  
 18 issuing, circulating, or causing to be made, issued or circulated, any clinical guidelines that are  
 19 based upon data that are not reasonably current or that do not cite with specificity any references  
 20 relied upon shall constitute an unfair and deceptive act and practice in the business of insurance.

21 (c) This article may not be construed to provide benefits for:

22 (1) An experimental infertility procedure;

23 (2) Nonmedical costs related to third party reproduction; or

24 (3) Reversal of voluntary sterilization.

25 (d) In instances where an insured person is utilizing a surrogate or gestational carrier due  
 26 to a medical cause of infertility unrelated to voluntary sterilization or failed reversal, the insured's  
 27 coverage shall not extend to medical costs relating to the preparation for reception or introduction  
 28 of embryos, oocytes, or donor sperm into a surrogate or gestational carrier.

**§33-15F-5. Rulemaking.**

1 The Insurance Commissioner shall promulgate legislative rules necessary to administer  
 2 the provisions of this article pursuant to §29A-3-1 et seq. of this code.

NOTE: The purpose of this bill is to require health insurance providers in this state to provide insurance coverage for fertility services.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.