

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2337

BY DELEGATES WESTFALL, YOUNG AND FLEISCHAUER

[Introduced February 12, 2021; 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, §33-15F-5, §33-15F-6, and
3 §33-15F-7, all relating to requiring medical insurance providers to include infertility
4 services in their policies; making findings; providing for determination of infertility;
5 providing prohibited and permissible limitations on coverage; requiring rule-making;
6 establishing an effective date; providing for severability; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15F. ACCESS TO FERTILITY CARE.

§33-15F-1. Findings.

1 The Legislature hereby finds that infertility is a disease of the reproductive system that
2 affects one in six couples. One-third of infertility is due to male factors, one-third to female factors,
3 and the remainder is attributed to factors in both partners or diagnostically unexplained. Some of
4 the individuals impacted are women born without a uterus, men with azoospermia (no sperm),
5 women with uterine abnormalities or endometriosis, women with a history of ectopic pregnancies,
6 cancer survivors, and military veterans who received explosive shrapnel injuries. Infertility is
7 treatable. Ninety-seven percent of infertility cases are treated with conventional drug therapy or
8 surgical procedures. Only three percent of cases require assisted reproductive technology, such
9 as in vitro fertilization (IVF). IVF can be a cost-effective treatment option because, with insurance
10 benefits, patients are known to make health care decisions based on appropriate medical advice
11 rather than financial concerns, and thus transfer fewer embryos per cycle. This can result in a
12 savings of \$80,000 or more per pregnancy in maternity care and neonatal care costs. Individuals
13 facing medical conditions where treatment, like chemotherapy, is known to impact future fertility,
14 as well as hopeful parents who are carriers for serious genetic conditions, are also impacted by
15 a lack of affordable access to fertility care. The Legislature finds that it is in the public interest to
16 make medical treatment for infertility and related conditions affordable for West Virginia residents
17 and employers, so as to attract and retain young families, expand the state's health care

18 resources, reduce overall health care costs, and improve health outcomes for the resulting
19 children.

§33-15F-2. Definitions.

1 For the purposes of 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.

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

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

20 (A) Consistent with generally accepted standards of medical practice;

21 (B) Clinically appropriate in terms of type, frequency, extent, site, and duration;

22 (C) Demonstrated through scientific evidence to be effective in improving health
23 outcomes;

24 (D) Representative of “best practices” in the medical profession; and

25 (E) Not primarily for the convenience of the enrollee or physician or other health care
26 provider.

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

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

1 (a) Each health carrier that issues or renews any group policy, plan, or contract of accident
2 or health insurance providing benefits for medical or hospital expenses, shall provide to certificate
3 holders of such insurance coverage for the diagnosis of the etiology of infertility.

4 (b) Each health carrier that issues or renews any group policy, plan, or contract of accident
5 or health insurance providing benefits for medical or hospital expenses, shall provide to certificate
6 holders of such insurance coverage for medically necessary fertility treatment. Enrollees shall be
7 provided coverage for evaluations, laboratory assessments, medications, and treatments
8 associated with the procurement of donor eggs, sperm, and embryos.

9 (c) Each health carrier that issues or renews any group policy, plan, or contract of accident
10 or health insurance providing benefits for medical or hospital expenses, shall provide to certificate
11 holders of such insurance coverage for fertility preservation when a person is expected to undergo
12 surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical
13 professionals to cause a risk of impairment of fertility. Coverage under this section shall include
14 coverage for standard fertility preservation services, including the procurement and
15 cryopreservation of embryos, eggs, sperm, and reproductive material determined not to be an
16 experimental infertility procedure. Storage shall be covered from the time of cryopreservation for
17 the duration of the policy term. Storage offered for a longer period of time, as approved by the
18 health carrier, shall be an optional benefit.

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

1 (a) No health carrier shall:

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 preexisting condition exclusions or preexisting 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.

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 required of other patients.

13 (b) Limitations on coverage shall be based on clinical guidelines and the enrollee's medical
14 history. Clinical guidelines shall be maintained in written form and shall be available to any
15 enrollee 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 enrollee is utilizing a surrogate or gestational carrier due to a
26 medical cause of infertility unrelated to voluntary sterilization or failed reversal, the enrollee'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. Rule-making.

1 The commissioner shall propose rules for legislative approval in accordance with §29A-3-
 2 1 et seq. of this code to implement this article. Until such rules are adopted, health carriers shall
 3 fulfill their obligations under this article by conforming to the standards of the American Society
 4 for Reproductive Medicine.

§33-15F-6. Severability.

1 If any provision of this article or the application thereof to any person or circumstances is
 2 held invalid, the invalidity does not affect other provisions or applications of the article which can
 3 be given effect without the invalid provisions or applications, and to this end the provisions of this
 4 article are severable.

§33-15F-7. Effective Date.

1 This article takes effect on January 1, 2022.

NOTE: The purpose of this bill is to require medical insurance providers to include infertility services in their policies. The bill makes findings. The bill provides for determination of infertility. The bill provides prohibited and permissible limitations on coverage. The bill requires rule-making. The bill establishes an effective date. The bill provides for severability. The bill defines terms.

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