A BILL FOR AN ACT

CONCERNING INSURANCE COVERAGE FOR INFERTILITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill enacts the "Colorado Building Families Act", which requires health benefit plans issued or renewed in Colorado on or after January 1, 2022, to cover diagnosis of infertility, treatment for infertility, and fertility preservation services. The coverage for fertility medications must not impose any limits that are not applicable to coverage under the plan for other prescription medications, and the plan cannot impose
deductibles, copayments, coinsurance, benefit maximums, waiting periods, or other limitations that are not applicable to other medical services covered under the plan.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Colorado Building Families Act".

SECTION 2. In Colorado Revised Statutes, 10-16-104, add (23) as follows:

10-16-104. Mandatory coverage provisions - definitions - rules. (23) Infertility diagnosis and treatment - fertility preservation services. (a) Except as provided in subsection (23)(e) of this section and subject to subsection (23)(f) of this section, all individual and group health benefit plans issued or renewed in this state shall provide coverage for the diagnosis of and treatment for infertility and standard fertility preservation services.

(b) The coverage required by this subsection (23) includes three completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the ASRM, using single embryo transfer when recommended and medically appropriate.

(c) The health benefit plan shall not impose:

(i) Any exclusions, limitations, or other restrictions on coverage of fertility medications that are different from the exclusions, limitations, or other restrictions imposed on any other prescription medications covered under the health benefit plan; or
(II) DEDUCTIBLES, COPAYMENTS, COINSURANCE, BENEFIT MAXIMUMS, WAITING PERIODS, OR OTHER LIMITATIONS ON COVERAGE FOR THE DIAGNOSIS OF AND TREATMENT FOR INFERTILITY AND STANDARD FERTILITY PRESERVATION SERVICES, EXCEPT AS OTHERWISE SPECIFIED IN THIS SUBSECTION (23), THAT ARE DIFFERENT FROM DEDUCTIBLES, COPAYMENTS, COINSURANCE, BENEFIT MAXIMUMS, WAITING PERIODS, OR OTHER LIMITATIONS IMPOSED ON BENEFITS FOR SERVICES COVERED UNDER THE HEALTH BENEFIT PLAN THAT ARE NOT RELATED TO INFERTILITY.

(d) The commissioner shall adopt rules consistent with and as are necessary to implement this subsection (23).

(e) A RELIGIOUS EMPLOYER MAY REQUEST AND A CARRIER SUBJECT TO THIS SUBSECTION (23) SHALL GRANT AN EXCLUSION FROM THE COVERAGE REQUIRED UNDER THIS SUBSECTION (23) IN A HEALTH BENEFIT PLAN IF THE REQUIRED COVERAGE CONFLICTS WITH THE RELIGIOUS ORGANIZATION'S BONA FIDE RELIGIOUS BELIEFS AND PRACTICES. A RELIGIOUS EMPLOYER THAT OBTAINS AN EXCLUSION UNDER THIS SUBSECTION (23)(e) SHALL PROVIDE ITS EMPLOYEES REASONABLE AND TIMELY NOTICE OF THE EXCLUSION OF THE COVERAGE DESCRIBED IN THIS SUBSECTION (23) FROM THE HEALTH BENEFIT PLAN THE RELIGIOUS EMPLOYER OFFERS TO ITS EMPLOYEES.

(f)(I) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (23), THE DIVISION SHALL SUBMIT TO THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES ITS DETERMINATION AS TO WHETHER THE COVERAGE SPECIFIED IN THIS SUBSECTION (23) IS IN ADDITION TO ESSENTIAL HEALTH BENEFITS AND WOULD BE SUBJECT TO DEFRAYAL BY THE STATE PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B) AND A REQUEST THAT THE FEDERAL DEPARTMENT
CONFIRM THE DIVISION’S DETERMINATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE DIVISION’S REQUEST AND SUBMISSION OF ITS DETERMINATION.

(II) THIS SUBSECTION (23) APPLIES TO HEALTH BENEFIT PLANS ISSUED OR RENEWED IN THIS STATE THAT ARE SUBJECT TO THIS SUBSECTION (23), AND THE DIVISION SHALL IMPLEMENT THE REQUIREMENTS OF THIS SUBSECTION (23), IF:

(A) THE DIVISION RECEIVES CONFIRMATION FROM THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT THE COVERAGE SPECIFIED IN THIS SUBSECTION (23) DOES NOT CONSTITUTE AN ADDITIONAL BENEFIT THAT REQUIRES DEFRAYAL BY THE STATE PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B); OR

(B) MORE THAN THREE HUNDRED SIXTY-FIVE DAYS HAVE PASSED SINCE THE DIVISION SUBMITTED ITS DETERMINATION AND REQUEST FOR CONFIRMATION THAT THE COVERAGE SPECIFIED IN THIS SUBSECTION (23) IS NOT AN ADDITIONAL BENEFIT THAT REQUIRES STATE DEFRAYAL PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B), AND THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS FAILED TO RESPOND TO THE REQUEST WITHIN THAT PERIOD, IN WHICH CASE THE DIVISION SHALL CONSIDER THE FEDERAL DEPARTMENT’S UNREASONABLE DELAY A PRECLUSION FROM REQUIRING DEFRAYAL BY THE STATE.

(g) FOR PURPOSES OF THIS SUBSECTION (23):

(I) "ACOG" MEANS THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS OR ITS SUCCESSOR ORGANIZATION.

(II) "ASCO" MEANS THE AMERICAN SOCIETY OF CLINICAL ONCOLOGY OR ITS SUCCESSOR ORGANIZATION.

(III) "ASRM" MEANS THE AMERICAN SOCIETY FOR
REPRODUCTIVE MEDICINE OR ITS SUCCESSOR ORGANIZATION.

(IV) "DIAGNOSIS OF AND TREATMENT FOR INFERTILITY" MEANS THE PROCEDURES AND MEDICATIONS RECOMMENDED BY A LICENSED PHYSICIAN THAT ARE CONSISTENT WITH ESTABLISHED, PUBLISHED, OR APPROVED MEDICAL PRACTICES OR PROFESSIONAL GUIDELINES FROM ACOG OR ASRM FOR DIAGNOSING AND TREATING INFERTILITY.

(V) "FAILURE TO IMPREGNATE OR CONCEIVE" MEANS THE FAILURE TO ESTABLISH A CLINICAL PREGNANCY AFTER TWELVE MONTHS OF REGULAR, UNPROTECTED SEXUAL INTERCOURSE OR THERAPEUTIC DONOR INSEMINATION FOR A WOMAN UNDER THE AGE OF THIRTY-FIVE, OR AFTER SIX MONTHS OF REGULAR, UNPROTECTED SEXUAL INTERCOURSE OR THERAPEUTIC DONOR INSEMINATION FOR A WOMAN THIRTY-FIVE YEARS OF AGE OR OLDER. CONCEPTION RESULTING IN A MISCARRIAGE DOES NOT RESTART THE TWELVE-MONTH OR SIX-MONTH CLOCK TO QUALIFY AS HAVING INFERTILITY.

(VI) "INFERTILITY" MEANS A DISEASE OR CONDITION CHARACTERIZED BY:

(A) THE FAILURE TO IMPREGNATE OR CONCEIVE;

(B) A PERSON'S INABILITY TO REPRODUCE EITHER AS AN INDIVIDUAL OR WITH THE PERSON'S PARTNER; OR

(C) A LICENSED PHYSICIAN'S FINDINGS BASED ON A PATIENT'S MEDICAL, SEXUAL, AND REPRODUCTIVE HISTORY, AGE, PHYSICAL FINDINGS, OR DIAGNOSTIC TESTING.

(VII) "LICENSED PHYSICIAN" MEANS A PERSON LICENSED BY THE COLORADO MEDICAL BOARD PURSUANT TO ARTICLE 240 OF TITLE 12 TO PRACTICE MEDICINE IN THIS STATE.

(VIII) "STANDARD FERTILITY PRESERVATION SERVICES" MEANS
PROCEDURES AND SERVICES THAT ARE CONSISTENT WITH ESTABLISHED
MEDICAL PRACTICES OR PROFESSIONAL GUIDELINES PUBLISHED BY ASRM
OR ASCO FOR A PERSON WHO HAS A MEDICAL CONDITION OR IS EXPECTED
TO UNDERGO MEDICATION THERAPY, SURGERY, RADIATION,
CHEMOTHERAPY, OR OTHER MEDICAL TREATMENT THAT IS RECOGNIZED BY
MEDICAL PROFESSIONALS TO CAUSE A RISK OF IMPAIRMENT TO FERTILITY.

SECTION 3. Appropriation. For the 2020-21 state fiscal year, $3,337
is appropriated to the department of regulatory agencies for use by
the division of insurance. This appropriation is from the division of
insurance cash fund created in section 10-1-103 (3), C.R.S., and is based
on an assumption that the division will require an additional 0.1 FTE. To
implement this act, the division may use this appropriation for personal
services.

SECTION 4. Applicability. This act applies to health benefit
plans issued or renewed on or after January 1, 2022.

SECTION 5. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, or safety.