

106TH CONGRESS  
1ST SESSION

# H. R. 2706

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and chapter 5, United States Code, to require coverage for the treatment of infertility.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1999

Mr. WEINER introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Education and the Workforce, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and chapter 5, United States Code, to require coverage for the treatment of infertility.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Family Building Act of 1999”.

6       (b) FINDINGS.—Congress makes the following find-  
7       ings:

1           (1) Infertility is a disease affecting more than  
2           6,000,000 American women and men, about 10 per-  
3           cent of the reproductive age population.

4           (2) Recent improvements in therapy make preg-  
5           nancy possible for more couples than in past years.

6           (3) The majority of group health plans do not  
7           provide coverage for infertility therapy.

8           (4) A fundamental part of the human experi-  
9           ence is fulfilling the desire to reproduce.

10 **SEC. 2. STANDARDS RELATING TO BENEFITS FOR TREAT-**  
11 **MENT OF INFERTILITY.**

12           (a) GROUP HEALTH PLANS.—

13           (1) PUBLIC HEALTH SERVICE ACT AMEND-  
14           MENT.—(A) Subpart 2 of part A of title XXVII of  
15           the Public Health Service Act is amended by adding  
16           at the end the following new section:

17 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**  
18 **TREATMENT OF INFERTILITY.**

19           “(a) REQUIREMENTS FOR COVERAGE OF TREAT-  
20           MENT OF INFERTILITY.—

21           “(1) IN GENERAL.—In a case in which a group  
22           health plan, and a health insurance issuer offering  
23           group health insurance coverage provides coverage  
24           for obstetrical services, such plan or issuer shall in-

1 clude (consistent with this section) coverage for  
2 treatment of infertility.

3 “(2) INFERTILITY DEFINED.—For purposes of  
4 this section, the term ‘infertility’ means a disease or  
5 condition that results in the abnormal function of  
6 the reproductive system, which results in—

7 “(A) the inability to conceive after 1 year  
8 of unprotected intercourse, or

9 “(B) the inability to carry a pregnancy to  
10 live birth.

11 “(b) REQUIRED COVERAGE.—

12 “(1) IN GENERAL.—A group health plan, and a  
13 health insurance issuer offering group health insur-  
14 ance coverage shall provide coverage for treatment  
15 of infertility deemed appropriate by a participant or  
16 beneficiary and the treating physician. Such treat-  
17 ment shall include ovulation induction, artificial in-  
18 semination, in vitro fertilization (IVF), gamete  
19 intrafallopian transfer (GIFT), zygote intrafallopian  
20 transfer (ZIFT), intracytoplasmic sperm injection  
21 (ICSI), and any other treatment provided it has  
22 been deemed as ‘non-experimental’ by the Secretary  
23 of Health and Human Services after consultation  
24 with appropriate professional and patient organiza-  
25 tions such as the American Society for Reproductive

1 Medicine, RESOLVE, and the American College of  
2 Obstetricians and Gynecologists.

3 “(2) LIMITATION ON COVERAGE OF ASSISTED  
4 REPRODUCTIVE TECHNOLOGY.—

5 “(A) IN GENERAL.—In the case of assisted  
6 reproductive technology, coverage shall be pro-  
7 vided if—

8 “(i) the participant or beneficiary has  
9 been unable to bring a pregnancy to a live  
10 birth through less costly medically appro-  
11 priate infertility treatments for which cov-  
12 erage is available under the insured’s pol-  
13 icy, plan, or contract;

14 “(ii) the participant or beneficiary has  
15 not undergone 4 complete oocyte retrievals,  
16 except that if a live birth follows a com-  
17 pleted oocyte retrieval, then at least 2  
18 more completed oocyte retrievals shall be  
19 covered, with a lifetime cap of 6 retrievals;

20 “(iii) the treatment is performed at a  
21 medical facility that—

22 “(I) conforms to the standards of  
23 the American Society for Reproductive  
24 Medicine; and

1 “(II) is in compliance with any  
2 standards set by an appropriate Fed-  
3 eral agency.

4 “(B) DEFINITION OF ASSISTED REPRO-  
5 DUCTIVE TECHNOLOGY.—For purposes of this  
6 paragraph, the term ‘assisted reproductive tech-  
7 nology’ includes all treatments or procedures  
8 that involve the handling of human egg and  
9 sperm for the purpose of helping a woman be-  
10 come pregnant. Types of Assisted Reproductive  
11 Technology include in vitro fertilization, gamete  
12 intrafallopian transfer, zygote intrafallopian  
13 transfer, embryo cryopreservation, egg or em-  
14 bryo donation, and surrogate birth.

15 “(3) REVIEW BY THE SECRETARY OF HEALTH  
16 AND HUMAN SERVICES.—Not later than 5 years  
17 after the date of enactment of the Family Building  
18 Act of 1999, the Secretary of Health and Human  
19 Services, in consultation with the American Society  
20 for Reproductive Medicine, RESOLVE, and the Na-  
21 tional Infertility Association shall review the require-  
22 ments for treatment of infertility established under  
23 paragraphs (1) and (2).

24 “(c) LIMITATION.—Deductibles, coinsurance, and  
25 other cost-sharing or other limitations for infertility ther-

1 apy may not be imposed to the extent they exceed the  
2 deductibles, coinsurance, and limitations that are applied  
3 to similar services under the group health plan or health  
4 insurance coverage.

5 “(d) PROHIBITIONS.—A group health plan, and a  
6 health insurance issuer offering group health insurance  
7 coverage in connection with a group health plan, may  
8 not—

9 “(1) deny to a participant or beneficiary eligi-  
10 bility, or continued eligibility, to enroll or to renew  
11 coverage under the terms of the plan, solely for the  
12 purpose of avoiding the requirements of this section;

13 “(2) provide incentives (monetary or otherwise)  
14 to a participant or beneficiary to encourage such  
15 participant or beneficiary not to be provided infer-  
16 tility treatments to which they are entitled under  
17 this section or to providers to induce such providers  
18 not to provide such measurements to qualified par-  
19 ticipants or beneficiaries;

20 “(3) prohibit a provider from discussing with a  
21 participant or beneficiary infertility treatment tech-  
22 niques or medical treatment options relating to this  
23 section; or

24 “(4) penalize or otherwise reduce or limit the  
25 reimbursement of a provider because such provider

1 provided infertility treatments to a qualified partici-  
 2 pant or beneficiary in accordance with this section.

3 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
 4 tion shall be construed to require a participant or bene-  
 5 ficiary to undergo infertility therapy.

6 “(f) NOTICE.—A group health plan under this part  
 7 shall comply with the notice requirement under section  
 8 713(g) of the Employee Retirement Income Security Act  
 9 of 1974 with respect to the requirements of this section  
 10 as if such section applied to such plan.

11 “(g) LEVEL AND TYPE OF REIMBURSEMENTS.—  
 12 Nothing in this section shall be construed to prevent a  
 13 group health plan or a health insurance issuer offering  
 14 group health insurance coverage from negotiating the level  
 15 and type of reimbursement with a provider for care pro-  
 16 vided in accordance with this section.

17 “(h) PREEMPTION.—The provisions of this section do  
 18 not preempt State law relating to health insurance cov-  
 19 erage to the extent such State law provides greater bene-  
 20 fits with respect to infertility treatments or prevention.”.

21 (B) Section 2723(c) of such Act (42 U.S.C.  
 22 300gg–23(c)) is amended by striking “section 2704”  
 23 and inserting “sections 2704 and 2707”.

24 (2) ERISA AMENDMENT.—(A) Subpart B of  
 25 part 7 of subtitle B of title I of the Employee Re-

1       tirement Income Security Act of 1974 is amended by  
2       adding at the end the following new section:

3       **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR**  
4               **TREATMENT OF INFERTILITY.**

5       “(a) IN GENERAL.—The provisions of section 2707  
6       shall apply in the same manner as they apply to health  
7       insurance coverage offered by a health insurance issuer  
8       in connection with a group health plan in the small or  
9       large group market.

10       “(b) NOTICE.—A health insurance issuer under this  
11       part shall comply with the notice requirement under sec-  
12       tion 713(g) of the Employee Retirement Income Security  
13       Act of 1974 with respect to the requirements referred to  
14       in subsection (a) as if such section applied to such issuer  
15       and such issuer were a group health plan.”.

16               (B) Section 732(a) of such Act (29 U.S.C.  
17       1191a(a)) is amended by striking “section 711” and  
18       inserting “sections 711 and 714”.

19               (C) The table of contents in section 1 of such  
20       Act is amended by inserting after the item relating  
21       to section 713 the following new item:

“Sec. 714. Standards relating to benefits for treatment of infertility.”.

22       (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
23       of title XXVII of the Public Health Service Act is amend-  
24       ed by inserting after section 2752 the following new sec-  
25       tion:



1 **“SEC. 2753. STANDARD RELATING TO BENEFITS FOR**  
 2 **TREATMENT OF INFERTILITY.**

3 “(a) IN GENERAL.—The provisions of section 2707  
 4 shall apply to health insurance coverage offered by a  
 5 health insurance issuer in the individual market in the  
 6 same manner as they apply to health insurance coverage  
 7 offered by a health insurance issuer in connection with a  
 8 group health plan in the small or large group market.

9 “(b) NOTICE.—A health insurance issuer under this  
 10 part shall comply with the notice requirement under sec-  
 11 tion 713(g) of the Employee Retirement Income Security  
 12 Act of 1974 with respect to the requirements referred to  
 13 in subsection (a) as if such section applied to such issuer  
 14 and such issuer were a group health plan.”.

15 (2) Section 2762(b)(2) of such Act (42 U.S.C.  
 16 300gg-62(b)(2)) is amended by striking “section 2751”  
 17 and inserting “sections 2751 and 2753”.

18 (c) EFFECTIVE DATES.—

19 (1) GROUP HEALTH PLANS AND GROUP  
 20 HEALTH INSURANCE COVERAGE.—Subject to para-  
 21 graph (3), the amendments made by subsection (a)  
 22 apply with respect to group health plans for plan  
 23 years beginning on or after January 1, 2000.

24 (2) INDIVIDUAL HEALTH INSURANCE COV-  
 25 ERAGE.—The amendment made by subsection (b)  
 26 applies with respect to health insurance coverage of-

1       ferred, sold, issued, renewed, in effect, or operated in  
2       the individual market on or after such date.

3           (3) COLLECTIVE BARGAINING EXCEPTION.—In  
4       the case of a group health plan maintained pursuant  
5       to 1 or more collective bargaining agreements be-  
6       tween employee representatives and 1 or more em-  
7       ployers ratified before the date of enactment of this  
8       Act, the amendments made subsection (a) shall not  
9       apply to plan years beginning before the later of—

10           (A) the date on which the last collective  
11           bargaining agreements relating to the plan ter-  
12           minates (determined without regard to any ex-  
13           tension thereof agreed to after the date of en-  
14           actment of this Act), or

15           (B) January 1, 2000.

16       For purposes of subparagraph (A), any plan amend-  
17       ment made pursuant to a collective bargaining  
18       agreement relating to the plan which amends the  
19       plan solely to conform to any requirement added by  
20       subsection (a) shall not be treated as a termination  
21       of such collective bargaining agreement.

22   **SEC. 3. AMENDMENT TO TITLE 5, UNITED STATES CODE.**

23       (a) IN GENERAL.—Section 8902 of title 5, United  
24       States Code, is amended by adding at the end the fol-  
25       lowing:

1       “(p)(1) Each contract under this chapter which pro-  
2 vides obstetrical benefits shall also provide (in a manner  
3 consistent with section 2707 of the Public Health Service  
4 Act) coverage for the diagnosis and treatment of infertility  
5 (as defined by such section).

6       “(2) Subsection (m)(1) shall not, with respect to any  
7 contract under this chapter, prevent the inclusion of any  
8 terms which, under paragraph (1), are required by reason  
9 of section 2707(h) of the Public Health Service Act.”.

10       (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply with respect to contracts entered  
12 into or renewed for contract years beginning at least 6  
13 months after the date of enactment of this Act.

