

107TH CONGRESS
1ST SESSION

S. 874

To require health plans to include infertility benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2001

Mr. TORRICELLI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require health plans to include infertility benefits, and
for other purposes.

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.**

4 This Act may be cited as the “Fair Access to Infer-

5 tility Treatment and Hope Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) infertility affects 6,100,000 men and

9 women;

10 (2) infertility is a disease which affects men

11 and women with equal frequency;

1 (3) approximately 1 in 10 couples cannot con-
 2 ceive without medical assistance;

3 (4) recent medical breakthroughs make infer-
 4 tility a treatable disease; and

5 (5) only 25 percent of all health plan sponsors
 6 provide coverage for infertility services.

7 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
 8 **COME SECURITY ACT OF 1974.**

9 (a) IN GENERAL.—Subpart B of part 7 of subtitle
 10 B of title I of the Employee Retirement Income Security
 11 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
 12 ing at the end the following:

13 **“SEC. 714. REQUIRED COVERAGE FOR INFERTILITY BENE-**
 14 **FITS.**

15 “(a) IN GENERAL.—A group health plan, and a
 16 health insurance issuer providing health insurance cov-
 17 erage in connection with a group health plan, shall ensure
 18 that coverage is provided for infertility benefits.

19 “(b) INFERTILITY BENEFITS.—In subsection (a), the
 20 term ‘infertility benefits’ at a minimum includes—

21 “(1) diagnostic testing and treatment of infer-
 22 tility;

23 “(2) drug therapy, artificial insemination, and
 24 low tubal ovum transfers;

1 “(3) in vitro fertilization, intra-cytoplasmic
 2 sperm injection, gamete donation, embryo donation,
 3 assisted hatching, embryo transfer, gamete intra-fal-
 4 lopian tube transfer, zygote intra-fallopian tube
 5 transfer; and

6 “(4) any other medically indicated nonexperi-
 7 mental services or procedures that are used to treat
 8 infertility or induce pregnancy.

9 “(c) IN VITRO FERTILIZATION.—

10 “(1) LIMITATION.—

11 “(A) IN GENERAL.—Subject to subpara-
 12 graph (B), coverage of procedures under sub-
 13 section (b)(3) may be limited to 4 completed
 14 embryo transfers.

15 “(B) ADDITIONAL TRANSFERS.—If a live
 16 birth follows a completed embryo transfer under
 17 a procedure described in subparagraph (A), not
 18 less than 2 additional completed embryo trans-
 19 fers shall be provided.

20 “(2) REQUIREMENT.—Coverage of procedures
 21 under subsection (b)(3) shall be provided if—

22 “(A) the individual has been unable to at-
 23 tain or sustain a successful pregnancy through
 24 reasonable, less costly medically appropriate
 25 covered infertility treatments; and

1 “(B) the procedures are performed at med-
 2 ical facilities that conform with the minimal
 3 guidelines and standards for assisted reproduc-
 4 tive technology of the American College of Ob-
 5 stetric and Gynecology or the American Society
 6 for Reproductive Medicine.

7 “(d) PROHIBITIONS.—A group health plan, and a
 8 health insurance issuer providing health insurance cov-
 9 erage in connection with a group health plan, may not—

10 “(1) deny to an individual eligibility, or contin-
 11 ued eligibility, to enroll or to renew coverage under
 12 the terms of the plan because of the individual’s or
 13 enrollee’s use or potential use of items or services
 14 that are covered in accordance with the requirements
 15 of this section;

16 “(2) provide monetary payments or rebates to
 17 a covered individual to encourage such individual to
 18 accept less than the minimum protections available
 19 under this section; or

20 “(3) provide incentives (monetary or otherwise)
 21 to a health care professional to induce such profes-
 22 sional to withhold from a covered individual services
 23 described in subsection (a).

24 “(e) RULES OF CONSTRUCTION.—

1 “(1) IN GENERAL.—Nothing in this section
2 shall be construed—

3 “(A) as preventing a group health plan
4 and a health insurance issuer providing health
5 insurance coverage in connection with a group
6 health plan from imposing deductibles, coinsur-
7 ance, or other cost-sharing or limitations in re-
8 lation to benefits for services described in this
9 section under the plan, except that such a de-
10 ductible, coinsurance, or other cost-sharing or
11 limitation for any such service may not be
12 greater than such a deductible, coinsurance, or
13 cost-sharing or limitation for any similar service
14 otherwise covered under the plan;

15 “(B) as requiring a group health plan and
16 a health insurance issuer providing health in-
17 surance coverage in connection with a group
18 health plan to cover experimental or investiga-
19 tional treatments of services described in this
20 section, except to the extent that the plan or
21 issuer provides coverage for other experimental
22 or investigational treatments or services.

23 “(2) LIMITATIONS.—As used in paragraph (1),
24 the term ‘limitation’ includes restricting the type of

1 health care professionals that may provide such
2 treatments or services.

3 “(f) NOTICE UNDER GROUP HEALTH PLAN.—The
4 imposition of the requirements of this section shall be
5 treated as a material modification in the terms of the plan
6 described in section 102(a)(1), for purposes of assuring
7 notice of such requirements under the plan, except that
8 the summary description required to be provided under the
9 last sentence of section 104(b)(1) with respect to such
10 modification shall be provided by not later than 60 days
11 after the first day of the first plan year in which such
12 requirements apply.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 in section 1 of the Employee Retirement Income Security
15 Act of 1974 (29 U.S.C. 1001 note) is amended by insert-
16 ing after the item relating to section 713 the following
17 new item:

“Sec. 714. Required coverage for infertility benefits for federal employees health
benefits plans.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to plan years begin-
20 ning on or after January 1, 2002.

21 **SEC. 4. PUBLIC HEALTH SERVICE ACT.**

22 (a) IN GENERAL.—Subpart 2 of part A of title
23 XXVII of the Public Health Service Act (42 U.S.C.

1 300gg–4 et seq.) is amended by adding at the end the
 2 following:

3 **“SEC. 2707. REQUIRED COVERAGE FOR INFERTILITY BENE-**
 4 **FITS.**

5 “(a) IN GENERAL.—A group health plan, and a
 6 health insurance issuer providing health insurance cov-
 7 erage in connection with a group health plan, shall ensure
 8 that coverage is provided for infertility benefits.

9 “(b) INFERTILITY BENEFITS.—In subsection (a), the
 10 term ‘infertility benefits’ at a minimum includes—

11 “(1) diagnostic testing and treatment of infer-
 12 tility;

13 “(2) drug therapy, artificial insemination, and
 14 low tubal ovum transfers;

15 “(3) in vitro fertilization, intra-cytoplasmic
 16 sperm injection, gamete donation, embryo donation,
 17 assisted hatching, embryo transfer, gamete intra-fal-
 18 lopian tube transfer, zygote intra-fallopian tube
 19 transfer; and

20 “(4) any other medically indicated nonexperi-
 21 mental services or procedures that are used to treat
 22 infertility or induce pregnancy.

23 “(c) IN VITRO FERTILIZATION.—

24 “(1) LIMITATION.—

1 “(A) IN GENERAL.—Subject to subpara-
 2 graph (B), coverage of procedures under sub-
 3 section (b)(3) may be limited to 4 completed
 4 embryo transfers.

5 “(B) ADDITIONAL TRANSFERS.—If a live
 6 birth follows a completed embryo transfer under
 7 a procedure described in subparagraph (A), not
 8 less than 2 additional completed embryo trans-
 9 fers shall be provided.

10 “(2) REQUIREMENT.—Coverage of procedures
 11 under subsection (b)(3) shall be provided if—

12 “(A) the individual has been unable to at-
 13 tain or sustain a successful pregnancy through
 14 reasonable, less costly medically appropriate
 15 covered infertility treatments; and

16 “(B) the procedures are performed at med-
 17 ical facilities that conform with the minimal
 18 guidelines and standards for assisted reproduc-
 19 tive technology of the American College of Ob-
 20 stetric and Gynecology or the American Society
 21 for Reproductive Medicine.

22 “(d) PROHIBITIONS.—A group health plan, and a
 23 health insurance issuer providing health insurance cov-
 24 erage in connection with a group health plan, may not—

1 “(1) deny to an individual eligibility, or contin-
 2 ued eligibility, to enroll or to renew coverage under
 3 the terms of the plan because of the individual’s or
 4 enrollee’s use or potential use of items or services
 5 that are covered in accordance with the requirements
 6 of this section;

7 “(2) provide monetary payments or rebates to
 8 a covered individual to encourage such individual to
 9 accept less than the minimum protections available
 10 under this section; or

11 “(3) provide incentives (monetary or otherwise)
 12 to a health care professional to induce such profes-
 13 sional to withhold from a covered individual services
 14 described in subsection (a).

15 “(e) RULES OF CONSTRUCTION.—

16 “(1) IN GENERAL.—Nothing in this section
 17 shall be construed—

18 “(A) as preventing a group health plan
 19 and a health insurance issuer providing health
 20 insurance coverage in connection with a group
 21 health plan from imposing deductibles, coinsur-
 22 ance, or other cost-sharing or limitations in re-
 23 lation to benefits for services described in this
 24 section under the plan, except that such a de-
 25 ductible, coinsurance, or other cost-sharing or

1 limitation for any such service may not be
2 greater than such a deductible, coinsurance, or
3 cost-sharing or limitation for any similar service
4 otherwise covered under the plan;

5 “(B) as requiring a group health plan and
6 a health insurance issuer providing health in-
7 surance coverage in connection with a group
8 health plan to cover experimental or investiga-
9 tional treatments of services described in this
10 section, except to the extent that the plan or
11 issuer provides coverage for other experimental
12 or investigational treatments or services.

13 “(2) LIMITATIONS.—As used in paragraph (1),
14 the term ‘limitation’ includes restricting the type of
15 health care professionals that may provide such
16 treatments or services.

17 “(f) NOTICE UNDER GROUP HEALTH PLAN.—The
18 imposition of the requirements of this section shall be
19 treated as a material modification in the terms of the plan
20 described in section 102(a)(1), for purposes of assuring
21 notice of such requirements under the plan, except that
22 the summary description required to be provided under the
23 last sentence of section 104(b)(1) with respect to such
24 modification shall be provided by not later than 60 days

1 after the first day of the first plan year in which such
 2 requirements apply.”.

3 (b) INDIVIDUAL MARKET.—Part B of title XXVII of
 4 the Public Health Service Act (42 U.S.C. 300gg–41 et
 5 seq.) is amended—

6 (1) by redesignating the first subpart 3 (relat-
 7 ing to other requirements) as subpart 2; and

8 (2) by adding at the end of subpart 2 the fol-
 9 lowing new section:

10 **“SEC. 2753. REQUIRED COVERAGE FOR INFERTILITY BENE-**
 11 **FITS.**

12 “The provisions of section 2707 shall apply to health
 13 insurance coverage offered by a health insurance issuer
 14 in the individual market in the same manner as they apply
 15 to health insurance coverage offered by a health insurance
 16 issuer in connection with a group health plan in the small
 17 or large group market.”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply with respect to health insurance
 20 coverage offered, sold, issued, renewed, in effect, or oper-
 21 ated on or after January 1, 2002.

1 **SEC. 5. REQUIRED COVERAGE FOR INFERTILITY BENEFITS**
 2 **FOR FEDERAL EMPLOYEES HEALTH BENE-**
 3 **FITS PLANS.**

4 (a) TYPES OF BENEFITS.—Section 8904(a)(1) of
 5 title 5, United States Code, is amended by adding at the
 6 end the following:

7 “(G) Infertility benefits.”.

8 (b) HEALTH BENEFITS PLAN CONTRACT REQUIRE-
 9 MENT.—Section 8902 of title 5, United States Code, is
 10 amended by adding at the end the following:

11 “(p)(1) Each contract under this chapter shall in-
 12 clude a provision that ensures infertility benefits as pro-
 13 vided under this subsection.

14 “(2) Infertility benefits under this subsection shall
 15 include—

16 “(A) diagnostic testing and treatment of infer-
 17 tility;

18 “(B) drug therapy, artificial insemination, and
 19 low tubal ovum transfers;

20 “(C) in vitro fertilization, intra-cytoplasmic
 21 sperm injection, gamete donation, embryo donation,
 22 assisted hatching, embryo transfer, gamete intra-fal-
 23 lopian tube transfer, zygote intra-fallopian tube
 24 transfer; and

1 “(D) any other medically indicated nonexperi-
 2 mental services or procedures that are used to treat
 3 infertility or induce pregnancy.

4 “(3)(A)(i) Subject to clause (ii), procedures under
 5 paragraph (2)(C) shall be limited to 4 completed embryo
 6 transfers.

7 “(ii) If a live birth follows a completed embryo trans-
 8 fer, 2 additional completed embryo transfers shall be pro-
 9 vided.

10 “(B) Procedures under paragraph (2)(C) shall be
 11 provided if—

12 “(i) the individual has been unable to attain or
 13 sustain a successful pregnancy through reasonable,
 14 less costly medically appropriate covered infertility
 15 treatments; and

16 “(ii) the procedures are performed at medical
 17 facilities that conform with the minimal guidelines
 18 and standards for assisted reproductive technology
 19 of the American College of Obstetric and Gynecology
 20 or the American Society for Reproductive Medi-
 21 cine.”.

22 (c) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to contract years beginning on or
 24 after January 1, 2002.

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