

109TH CONGRESS
1ST SESSION

H. R. 735

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, chapter 89 of title 5, United States Code, and title 10, United States Code, to require coverage for the treatment of infertility.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2005

Mr. WEINER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, Government Reform, and Armed Services, 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

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, chapter 89 of title 5, United States Code, and title 10, 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 2005”.

1 (b) FINDINGS.—Congress makes the following find-
2 ings:

3 (1) Infertility is a disease affecting more than
4 6,000,000 American women and men, about 10 per-
5 cent of the reproductive age population.

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

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

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

12 **SEC. 2. STANDARDS RELATING TO BENEFITS FOR TREAT-**
13 **MENT OF INFERTILITY.**

14 (a) GROUP HEALTH PLANS.—

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

19 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**
20 **TREATMENT OF INFERTILITY.**

21 **“(a) REQUIREMENTS FOR COVERAGE OF TREAT-**
22 **MENT OF INFERTILITY.—**

23 **“(1) IN GENERAL.—**In a case in which a group
24 health plan, and a health insurance issuer offering
25 group health insurance coverage provides coverage

1 for obstetrical services, such plan or issuer shall in-
2 clude (consistent with this section) coverage for
3 treatment of infertility.

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

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

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

12 “(b) REQUIRED COVERAGE.—

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

1 tions such as the American Society for Reproductive
2 Medicine, RESOLVE, and the American College of
3 Obstetricians and Gynecologists.

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

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

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

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

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

23 “(I) conforms to the standards of
24 the American Society for Reproductive
25 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 2005, the Secretary of Health and Human
19 Services, in consultation with the American Society
20 for Reproductive Medicine and RESOLVE: the Na-
21 tional Infertility Association, shall review the re-
22 quirements for treatment of infertility established
23 under 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 treatments to qualified partici-
19 pants 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(b) 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.—A group health plan and a health
6 insurance issuer offering group health insurance coverage
7 in connection with such a plan shall comply with the re-
8 quirements of section 2707 of the Public Health Service
9 Act, and such requirements shall be deemed to be incor-
10 porated into this subsection.

11 “(b) NOTICE.—A health insurance issuer offering
12 health insurance coverage in connection with a group
13 health plan shall comply with the notice requirement
14 under section 713(b) with respect to the requirements re-
15 ferred to in subsection (a) as if such section applied to
16 such issuer and such issuer were a group health plan.”.

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

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

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

23 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
24 of title XXVII of the Public Health Service Act is amend-

1 ed by inserting after section 2752 the following new sec-
2 tion:

3 **“SEC. 2753. STANDARD RELATING TO BENEFITS FOR**
4 **TREATMENT OF INFERTILITY.**

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

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

17 (2) Section 2762(b)(2) of such Act (42 U.S.C.
18 300gg–62(b)(2)) is amended by striking “section 2751”
19 and inserting “sections 2751 and 2753”.

20 (c) EFFECTIVE DATES.—

21 (1) GROUP HEALTH PLANS AND GROUP
22 HEALTH INSURANCE COVERAGE.—Subject to para-
23 graph (3), the amendments made by subsection (a)
24 apply with respect to group health plans for plan

1 years beginning on or after the date occurring 6
2 months after the date of the enactment of this Act.

3 (2) INDIVIDUAL HEALTH INSURANCE COV-
4 ERAGE.—The amendments made by subsection (b)
5 apply with respect to health insurance coverage of-
6 fered, sold, issued, renewed, in effect, or operated in
7 the individual market on or after such date.

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

16 (A) the date on which the last collective
17 bargaining agreements relating to the plan ter-
18 minates (determined without regard to any ex-
19 tension thereof agreed to after the date of en-
20 actment of this Act), or

21 (B) the date occurring 6 months after the
22 date of the enactment of this Act.

23 For purposes of subparagraph (A), any plan amend-
24 ment made pursuant to a collective bargaining
25 agreement relating to the plan which amends the

1 plan solely to conform to any requirement added by
2 subsection (a) shall not be treated as a termination
3 of such collective bargaining agreement.

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

5 (a) IN GENERAL.—Section 8902 of title 5, United
6 States Code, is amended by adding at the end the fol-
7 lowing new subsection:

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

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

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

21 **SEC. 4. DEFENSE HEALTH CARE PLANS.**

22 (a) IN GENERAL.—(1) Chapter 55 of title 10, United
23 States Code, is amended by inserting after section 1099
24 the following new section:

1 **“§ 1099a. Health care plans: obstetrical and infertility**
2 **benefits**

3 “(a) IN GENERAL.—Any health care plan under this
4 chapter that provides obstetrical benefits shall also provide
5 (in a manner consistent with section 2707 of the Public
6 Health Service Act) coverage for the diagnosis and treat-
7 ment of infertility (as defined by such section).

8 “(b) REGULATIONS.—The Secretary of Defense shall
9 prescribe any regulations necessary to carry out this sec-
10 tion.”.

11 (2) The table of sections at the beginning of such
12 chapter is amended by adding at the end the following
13 new item:

“1099a. Health care plans: obstetrical and infertility benefits.”.

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

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