

111TH CONGRESS  
1ST SESSION

# H. R. 697

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2009

Mr. WEINER (for himself, Ms. WASSERMAN SCHULTZ, Mrs. LOWEY, Mr. NADLER of New York, Mr. GRIJALVA, Ms. SCHWARTZ, Ms. LEE of California, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Oversight 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 89 of title 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 2009”.

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. 2708. 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 after consultation with appropriate professional and  
25 patient organizations such as the American Society

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

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 provided if—  
8

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

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

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

1 “(I) conforms to the standards of  
2 the American Society for Reproductive  
3 Medicine; and

4 “(II) is in compliance with any  
5 standards set by an appropriate Fed-  
6 eral agency.

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

18 “(3) REVIEW BY THE SECRETARY.—Not later  
19 than 5 years after the date of enactment of the  
20 Family Building Act of 2009, the Secretary, in con-  
21 sultation with the American Society for Reproductive  
22 Medicine and RESOLVE: the National Infertility  
23 Association, shall review the requirements for treat-  
24 ment of infertility established under paragraphs (1)  
25 and (2).

1       “(c) LIMITATION.—Deductibles, coinsurance, and  
2 other cost-sharing or other limitations for infertility ther-  
3 apy may not be imposed to the extent they exceed the  
4 deductibles, coinsurance, and limitations that are applied  
5 to similar services under the group health plan or health  
6 insurance coverage.

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

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

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

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

1           “(4) penalize or otherwise reduce or limit the  
2           reimbursement of a provider because such provider  
3           provided infertility treatments to a qualified partici-  
4           pant or beneficiary in accordance with this section.

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

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

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

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

23                 (B) Section 2723(c) of such Act (42 U.S.C.  
24          300gg-23(c)) is amended by striking “section 2704”  
25          and inserting “sections 2704 and 2708”.

1           (2) ERISA AMENDMENT.—(A) Subpart B of  
 2           part 7 of subtitle B of title I of the Employee Re-  
 3           irement Income Security Act of 1974 is amended by  
 4           adding at the end the following new section:

5   **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR**  
 6                           **TREATMENT OF INFERTILITY.**

7           “(a) IN GENERAL.—A group health plan and a health  
 8           insurance issuer offering group health insurance coverage  
 9           in connection with such a plan shall comply with the re-  
 10          quirements of section 2708 of the Public Health Service  
 11          Act, and such requirements shall be deemed to be incor-  
 12          porated into this subsection.

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

19                (B) Section 732(a) of such Act (29 U.S.C.  
 20          1191a(a)) is amended by striking “section 711” and  
 21          inserting “sections 711 and 714”.

22                (C) The table of contents in section 1 of such  
 23          Act is amended by inserting after the item relating  
 24          to section 714 the following new item:

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



1 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
 2 of title XXVII of the Public Health Service Act is amend-  
 3 ed by inserting after section 2753 the following new sec-  
 4 tion:

5 **“SEC. 2754. STANDARD RELATING TO BENEFITS FOR**  
 6 **TREATMENT OF INFERTILITY.**

7 “(a) IN GENERAL.—The provisions of section 2708  
 8 shall apply to health insurance coverage offered by a  
 9 health insurance issuer in the individual market in the  
 10 same manner as they apply to health insurance coverage  
 11 offered by a health insurance issuer in connection with a  
 12 group health plan in the small or large group market.

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

19 (2) Section 2762(b)(2) of such Act (42 U.S.C.  
 20 300gg–62(b)(2)) is amended by striking “section 2751”  
 21 and inserting “sections 2751 and 2753”.

22 (c) EFFECTIVE DATES.—

23 (1) GROUP HEALTH PLANS AND GROUP  
 24 HEALTH INSURANCE COVERAGE.—Subject to para-  
 25 graph (3), the amendments made by subsection (a)

1       apply with respect to group health plans for plan  
2       years beginning on or after the date occurring 6  
3       months after the date of the enactment of this Act.

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

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

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

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

24       For purposes of subparagraph (A), any plan amend-  
25       ment made pursuant to a collective bargaining

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

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

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

9        “(p)(1) Each contract under this chapter which pro-  
10       vides obstetrical benefits shall also provide (in a manner  
11       consistent with section 2708 of the Public Health Service  
12       Act) coverage for the diagnosis and treatment of infertility  
13       (as defined by such section).

14       “(2) Subsection (m)(1) shall not, with respect to any  
15       contract under this chapter, prevent the inclusion of any  
16       terms which, under paragraph (1), are required by reason  
17       of section 2708(h) of the Public Health Service Act.”.

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

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