The Policymaker’s Guide to Fertility Health Benefits
Evidence-Based Data for Informed Decisions
I can honestly say with 100% certainty that our son Jake would have never been conceived if my employer had not offered us a health insurance plan that included IVF coverage.

Rob Walden
Resident of Mesa, Arizona
INFERTILITY

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Infertility: The Facts
A Silent Problem that You Can Help Address

HOW MANY PEOPLE ARE AFFECTED BY INFERTILITY?
1 in 6 couples in the U.S. are affected by infertility.¹

WHAT IS INFERTILITY?
Infertility is a disease of the reproductive system, resulting in not being able to conceive after one year of trying (or six months if a woman is older than 35). Women who can get pregnant but are unable to stay pregnant are also infertile.

WHAT CAUSES INFERTILITY?
Approximately one-third of infertility is due to male factors such as azoospermia (no sperm cells), congenital disorders (disease or physical abnormality present from birth), and trauma. Another one-third of infertility is related to female factors including, but not limited to, endometriosis, ectopic pregnancy, uterine fibroids. The remaining one-third of infertility can be attributed to problems in both partners or is unexplained.

WHO IS AFFECTED BY INFERTILITY?
Both men and women experience infertility equally.

HOW IS INFERTILITY TREATED?
3% of infertility cases require assisted reproductive technology (ART), such as in vitro fertilization (IVF).³ 97% of infertility cases are treated with conventional drug therapy or surgical procedures.

In 1998, the U.S. Supreme Court stated that reproduction is a “major life activity,” and “conditions that interfere with reproduction should be regarded as disabilities,” as per The Americans with Disabilities Act of 1991.⁴
WHAT LEGAL PROTECTIONS DO INFERTILITY PATIENTS HAVE?

U.S. and district courts have ruled individuals with infertility can have accommodations and protections under The Americans with Disabilities Act and The Family Medical Leave Act.

**United States Supreme Court**

*Bragdon v. Abbott, 1998*

In 1998, the Supreme Court of the United States ruled, in Bragdon v. Abbott, that infertility was considered a “major life activity” and could be included within The Americans with Disabilities Act.

**District Courts**

*LaPorta v. Wal-Mart, 2001*

District court case LaPorta v. Wal-Mart found infertility could constitute a disability under The Americans with Disabilities Act. Approval of an employee’s requested day off for infertility service, even with short notice, would be considered a reasonable accommodation.

*Culpeper v. BlueCross BlueShield of Tennessee, 2013*

In Culpeper v. BlueCross BlueShield of Tennessee, the district court found an employee could demonstrate that his or her infertility, or that of his or her spouse, constitutes a serious health condition under The Family Medical Leave Act and thus has protection.
WHAT IS FERTILITY PRESERVATION?

Fertility preservation involves medical procedures to protect cells such as sperm, eggs, or reproductive tissue so that a person can use them in the future to have biological children. The process of cryopreserving reproductive cells is considered standard medical care conducted by experts in assisted reproductive technology. People with certain diseases, disorders, and life events that affect fertility may benefit from fertility preservation.6

STATES RECOGNIZE THE IMPORTANT OF FERTILITY PRESERVATION

<table>
<thead>
<tr>
<th>STATE</th>
<th>FERTILITY PRESERVATION COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>RHODE ISLAND (2017)</td>
<td>State expands infertility benefits to include fertility preservation.</td>
</tr>
<tr>
<td>MARYLAND (2018)</td>
<td>Law makers add fertility preservation to state’s exiting healthcare coverage.</td>
</tr>
<tr>
<td>DELAWARE (2018)</td>
<td>State gains an infertility law, which includes fertility preservation.</td>
</tr>
<tr>
<td>ILLINOIS (2018)</td>
<td>Law makers amend existing healthcare law to include fertility preservation.</td>
</tr>
</tbody>
</table>

PREMIUM IMPACTS

The Maryland Health Care Commission evaluated the potential impact of insurance coverage for fertility preservation. The report estimates the health insurance premiums would increase from 0.4% to 0.6% per member per month (PMPM).7

California Health Benefits Review Program discovered a preponderance of evidence that oocyte cryopreservation is an effective method of fertility preservation measured by three different outcomes: successful thawing of oocytes; successful implantation of embryos; and resulting live births.8 The insurance premium increase to provide fertility preservation benefits for small-group and individual markets came to only $0.0092 PMPM.
Common Infertility
Misconceptions & Truths

**MISCONCEPTION**
Infertility treatments are excessive. People can have a family if they just relax or adopt a child.

**TRUTH**
Timely and appropriate healthcare is offered to optimize the use of recommended treatment and increase the number of safe pregnancies and healthy babies.

There is no scientific evidence to support “relaxation” as a reliable treatment to overcome the disease of infertility.

Adoption is not a reliable option for all. Private adoption can be expensive, and unaffordable to most couples. Adopting a foster child is an unreliable option since the goal of foster care is to reunite children with their biological family.

**MISCONCEPTION**
Insurers are opposed to covering fertility treatments such as IVF, due to cost.

**TRUTH**
“All clinics in Aetna’s Institutes of Excellence network for infertility services offer elective single embryo transfer (eSET). Research shows that transferring one embryo at a time results in dramatically lower rates of twins and multiple births, and can thereby reduce the associated health risks.”

James D. Cross, M.D., Former Vice President of National Medical Policy and Operations, Aetna

“Multiples are more likely to require long stays in the neonatal intensive care unit (NICU), which increases costs. It’s important for employers and health plans to connect the dots between the cost of the infertility benefit and the significant savings on the maternity and neonatal side.”

Alex Dlugi, National Medical Director, Infertility, Optum

**MISCONCEPTION**
Infertility benefits are not affordable for businesses with fiscally tight budgets.

**TRUTH**
The scope of benefits offered can work within an employer’s budget. San Jose, California-based tech company Cisco Systems Inc., offers fertility benefits of $15,000 lifetime maximum for medical treatment and $10,000 for prescription drugs, simply because it’s “the right thing to do.”
Societal & Health

**SOCIETAL**

Achieving family-building goals increases morale and satisfaction. With treatment, patients can avoid the common experience of depression and anxiety. We also know employers offering benefits increase their competitiveness and have happier, healthier, more loyal employees. With optimal health, we have a stronger, more functional society.

**HEALTH**

Infertility insurance benefits enable patients to make healthcare decisions based on appropriate medical advice, not financial concerns, and transfer fewer embryos. Fewer high-risk pregnancies, preterm births, and use of neonatal intensive care units (NICU) result from fewer embryos transferred. Insurance benefits increase access of timely and appropriate healthcare which provides cost savings. The U.S. Centers for Disease Control and Prevention says the use of single embryo transfers can significantly reduce the risk of high-risk pregnancies and multiple births.12,13

**WHAT DO NATIONAL INSURERS SAY?**

Insurers such as Aetna and Optum support evidence-based infertility treatment utilizing elective single embryo transfers (eSET). The incentive of IVF with eSET or rapid progression to IVF with eSET is predicted to be the most cost-effective strategy for patients, employers, and insurers.15

**HEALTHCARE COSTS**

Associated with Multiple vs Singleton Pregnancies

<table>
<thead>
<tr>
<th></th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singleton</td>
<td>$21,458</td>
</tr>
<tr>
<td>Twin</td>
<td>$104,831</td>
</tr>
<tr>
<td>Triplet</td>
<td>$407,199</td>
</tr>
</tbody>
</table>

6
## INCLUDING INFERTILITY BENEFITS VS NO FERTILITY HEALTH BENEFITS

<table>
<thead>
<tr>
<th>WITHOUT BENEFITS</th>
<th>WITH BENEFITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MENTAL HEALTH</strong></td>
<td>Achieving family-building goals increases morale and satisfaction</td>
</tr>
<tr>
<td>Depression and anxiety associated with untreated infertility&lt;sup&gt;16&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>HEALTH INSURANCE USE &amp; PREMIUMS</strong></td>
<td>Financial flexibility to contribute to economy, establish 401Ks, retirement planning, etc.</td>
</tr>
<tr>
<td>Individuals save only for medical expenses</td>
<td></td>
</tr>
<tr>
<td><strong>FAMILY RELATIONSHIPS</strong></td>
<td>Supportive relationships</td>
</tr>
<tr>
<td>Stress on relationships with spouse, family and friends</td>
<td></td>
</tr>
<tr>
<td><strong>HIGH-RISK PREGNANCIES</strong></td>
<td>Timely and appropriate healthcare optimizes health and cost outcomes</td>
</tr>
<tr>
<td>Increased risk of complicated pregnancy and outcomes</td>
<td></td>
</tr>
<tr>
<td><strong>LONG-TERM CARE OF PREMATURE BABIES</strong></td>
<td>Premature related costs are dramatically reduced</td>
</tr>
<tr>
<td>Costs related to disabilities, occupational and physical therapies, surgeries, etc.</td>
<td></td>
</tr>
<tr>
<td><strong>MAKING MEDICAL DECISIONS</strong></td>
<td>Patients’ healthcare decisions are based on appropriate medical advice, not financial concerns, and transfer fewer embryos&lt;sup&gt;19&lt;/sup&gt;</td>
</tr>
<tr>
<td>Patients transfer more embryos, which can result in multiple births&lt;sup&gt;17, 18&lt;/sup&gt;</td>
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</table>
Types of Infertility Laws

WHAT ARE THE BENEFITS OF INFERTILITY INSURANCE LAWS?
State-based infertility insurance laws increase access to reproductive therapies and services by reducing the financial burden to patients seeking treatment.

TYPES OF INFERTILITY LAWS

<table>
<thead>
<tr>
<th>LAWS TO OFFER</th>
<th>LAWS TO COVER</th>
<th>FEDERAL &amp; STATE LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurers are required to offer infertility benefits to employers, but employers may choose whether to add the benefit to the plan.</td>
<td>Insurers and employers are required to provide infertility health benefits.</td>
<td>Employee Retirement Income Security Act (ERISA) decrees self-insured companies and small businesses are exempt from state infertility laws. Employers can still provide benefits, and many do, because they see the value and affordability of fertility benefits for their employees.</td>
</tr>
</tbody>
</table>

INFERTILITY INSURANCE LAWS ARE AFFORDABLE
States that review evidence from economic and medical research, as well as testimony of constituents, insurers, and employers, often conclude they can save costs and promote greater health and wellness for their citizens by supporting legislation for insurance benefits for the treatment of infertility and fertility preservation.
Healthcare Premium
Misconceptions & Truths

**MISCONCEPTION**
IVF coverage will raise insurance premium costs so it’s not worth adding infertility benefits.

**TRUTH**
Any service or treatment provided is bound to make an impact on costs; the effect of infertility coverage on the premium cost, as a whole is very insignificant.

* Comprehensive state mandate reviews from Massachusetts, Connecticut and Rhode Island show that the increase is less than 1% of the total premium cost.\(^{21, 22, 23}\)

**COMPARISON OF THREE STATES WITH INFERTILITY INSURANCE LAWS**

**Massachusetts** *(Established in 1987 and updated 2010)*
- **Benefit:** Laws to cover diagnosis and treatment of infertility; not required to cover experimental procedures or surrogacy.
- **Cost Impact 2009:** <1% total premium cost (0.95-0.23%)
- **Cost Impact 2014:** <1% total premium cost (0.12%-0.95%)

**Connecticut** *(Established in 1989 and updated 2017)*
- **Benefit:** Laws to cover diagnosis and treatment of infertility, as well as fertility preservation; lifetime coverage of two IVF cycles.
- **Cost Impact 2010:** <1% total premium cost (0.9%)

**Rhode Island** *(Established in 1989 and updated 2017)*
- **Benefit:** Laws to cover diagnosis and treatment of infertility, as well as fertility preservation; co-payment cannot exceed 20%.
- **Cost Impact 2010:** <1% total premium cost (0.36%)
What Can I Do?

Summary of What Legislators, Insurers and Employers Can Do

UTILIZE EVIDENCE-BASED DATA

All policymakers (legislators, insurers, and employers) make healthcare related decisions based on facts and information available to them. *The Policymaker’s Guide for Fertility Health Benefits* serves as a tool to communicate the advantages of fertility benefits and point out the dangers and high costs associated with a lack of insurance coverage.

Without fertility benefits, our outcome costs are higher and health is at greater risk.

HERE’S HOW YOU CAN MAKE A DIFFERENCE

☐ ACCEPT

*Realize fertility benefits provide access to affordable healthcare to optimize safe medical care and outcomes.*

☐ ADAPT

*Change policies to create a win-win environment for individuals, employers, and insurers.*

☐ ACT

*Implement fertility benefits to better the lives of the individuals you serve and directly reduce health disparity within the United States.*
What Can Legislators Do?

UNDERSTAND HOW INFERTILITY IMPACTS CONSTITUENTS

Be aware of your constituents’ needs, and consider their stories when you make healthcare policy decisions.

GAIN INFORMATION FROM EXPERTS

When relying on resources to understand fertility treatment, defer to specialists in the field of reproductive endocrinology to learn more about definitions, causes, procedures, and outcomes.

BECOME A CHAMPION FOR THE CAUSE

Protect and defend the rights of infertile patients by opposing bills that prohibit the practice or funding of fertility treatment.

PROTECT YOUR CONSTITUENTS

Protect the rights of patients seeking insurance coverage for fertility treatment, regardless of race, gender, income, or sexual orientation.

GOVERNMENT TESTIMONIAL

“By lifting barriers to insurance coverage, we will ensure safe and affordable access to in vitro fertilization and help New Yorkers have better control over their reproductive health and family planning.”

Andrew M. Cuomo
Governor of New York

BACK EXISTING OR NEW BILLS THAT SUPPORT COVERAGE

Share this knowledge with other legislators who can sponsor or support infertility benefit bills.
What Can Insurers Do?

RECOGNIZE THE AFFORDABILITY OF COVERAGE
Recognize the affordability and value of including fertility benefits in insurance plans and support their inclusion.

SHARE COSTS
Share data, for instance premium costs, with employers and legislators regarding fiscal impacts in your state.

OFFER BENEFITS
Offer fertility benefits in small-business health plans that can be purchased by employers.

CREATE A RIDER POLICY
Allow employees to purchase, in addition to their standard health plan, a rider policy with fertility benefits.

MEDICAL GUIDELINE PLANS
By developing plans which follow medical guidelines, you are providing timely and appropriate healthcare and minimizing the use of assisted reproductive technologies, such as IVF.

CONTROL COSTS WHILE OPTIMIZING HEALTH OUTCOMES
Providing benefits can reduce costs related to high-risk pregnancy, premature birth, and other associated expenses.

INSURER TESTIMONIAL

This approach (IVF with eSET) strikes the right balance between success and safety, giving women the opportunity to have a family while also reducing the risk of carrying multiple babies, which brings greater health risks for both mother and her babies.

Joanne Armstrong, M.D.
Ob-Gyn, Senior Medical Director and Head of Women’s Health at Aetna
What Can Employers Do?

UNDERSTANDING YOUR EMPLOYEES’ RIGHTS

U.S. and district courts have ruled infertility patients are entitled to protections under The Americans with Disabilities Act and The Family Medical Leave Act. Employees able to demonstrate a medical need to take time off to treat their infertility, or that of his or her spouse, have the right to such accommodations.

VERIFY INFORMATION

Insurance brokers may lack accurate infertility data, such as how much an average IVF cycle costs. Confirming facts with organization like Fertility Within Reach will help make informed decisions.

OFFER FERTILITY BENEFITS FOR A COMPETITIVE ADVANTAGE

With fertility benefits, you stay competitive in recruitment efforts while supporting your employees as they become parents.

SHOW YOU CARE ABOUT YOUR EMPLOYEES’ HAPPINESS AND WELLBEING

Providing fertility coverage can help improve your employees work ethic and secure their loyalty.

ADD INFERTILITY BENEFITS TO YOUR EXISTING POLICY

If you use a brokerage firm to select health plans, request options you can extend during open enrollment. If you are provided plans with high-cost infertility and IVF benefits, ask the brokerage firm to find other choices. Affordable healthcare policies, which include infertility and IVF benefits, exist. Follow-up to determine how you can access them.

ARRANGE FOR OPTIONS

To balance competitive benefits with affordable options, arrange for more than one health plan to be offered to your employees. One plan could contain coverage for infertility, including IVF and medication benefits, and another plan could cover basic infertility, without IVF benefits.

EMPLOYER TESTIMONIAL

“By and large, [most of our employees] are starting to build their families and buy homes, and so that has driven the kinds of benefits we offer. We wanted to expand our offering to include employees that had experienced fertility challenges...”

Cathy Donahoe
Vice President of Human Resources at Domo, Inc
# Real World Employer Sample Fertility Benefit Plans

## SAMPLE COMPREHENSIVE EMPLOYEE BENEFIT PLANS

<table>
<thead>
<tr>
<th>AMERICAN EXPRESS COMPANY</th>
<th>MASSACHUSETTS GENERAL HOSPITAL</th>
<th>EXCEPTIONAL SOFTWARE STRATEGIES, INC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not subject to infertility laws</td>
<td>Not subject to infertility laws</td>
<td>Subject to infertility laws</td>
</tr>
<tr>
<td><strong>U.S. Headquarters</strong>: New York, NY</td>
<td><strong>U.S. Headquarters</strong>: Boston, MA</td>
<td><strong>U.S. Headquarters</strong>: Linthicum, MD</td>
</tr>
<tr>
<td><strong>Industry</strong>: Financial Services</td>
<td><strong>Industry</strong>: Healthcare</td>
<td><strong>Industry</strong>: Information Technology</td>
</tr>
<tr>
<td><strong>U.S. Employees</strong>: 55,000</td>
<td><strong>U.S. Employees</strong>: 20,000</td>
<td><strong>U.S. Employees</strong>: 110</td>
</tr>
<tr>
<td><strong>Fertility Benefits</strong>: $35,000 for full-time and part-time employees</td>
<td><strong>Fertility Benefits</strong>: No limit on the number of IVF cycles, plus unlimited prescription fertility drugs for approved cycles</td>
<td><strong>Fertility Benefits</strong>: $100,000 for treatments: 3 IUI and 3 IVF cycles maximum per live birth (treatment cycles available to reset after each live birth) and fertility preservation</td>
</tr>
</tbody>
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Acknowledgments
Wisdom from Industry Leaders

Content within this guide is evidence-based. This tool provides credible information by utilizing the knowledge and guidance of medical doctors, attorneys, health communication professionals, as well as testimony from policymakers and patients. We are grateful for the contribution of these industry leaders.

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SERENA CHEN, M.D.
IRMS Institute for Reproductive Medicine, Livingston, NJ

MARK HORNSTEIN, M.D.
Brigham & Women’s Hospital, Boston, MA

EMERSON COLLEGE’S GRADUATE PROGRAM IN HEALTH COMMUNICATIONS
Boston, MA


"It’s important for employers and health plans to connect the dots between the cost of the infertility benefit and the significant savings on the maternity and neonatal side."

Alex Dlugi
National Medical Director, Infertility, Optum
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20. Kaiser Family Foundation. Mandated Coverage of Infertility Treatment. 2015. https://www.kff.org/womens-health-policy/state-indicator/infertility-coverage/?currentTimeframe=0&sortModel=%7B%22colId%22:%22%22Location%22,%22%22sort%22:%22asc%22%7D


Fertility Within Reach encourages any person seeking additional information regarding legal protection related to family building to speak with an attorney in the field of Assisted Reproductive Technology law to determine how the courts apply related rulings in your state.
When my husband and I think of moving, for our careers, we now include states offering infertility laws in one of our determinants. We would not have our son had it not been for Illinois’ state infertility benefit law.”

REGINA TOWNSEND
Resident of Oak Park, Illinois
About

Fertility Within Reach® is a 501(c)(3) educational resource increasing access to fertility treatment and benefits through personalized consultations, workshops and legislative testimonies.