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: 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.

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). In some ART cases, patients require third party reproduction (donor egg, donor sperm, donor embryo, or gestational carriers) due to medical conditions or treatments resulting in poor egg or sperm quality, or conditions that make carrying a pregnancy unsafe. 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.
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.
Fertility Preservation

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 IMPORTANCE OF FERTILITY PRESERVATION

<table>
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<tr>
<td>Insurers voluntarily offer fertility preservation benefits.</td>
<td>Law makers amend existing healthcare law to include fertility preservation.</td>
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<tr>
<th>CONNECTICUT (2017)</th>
<th>NEW YORK (2019)</th>
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<tr>
<td>Governor signs into law Melissa’s Law for Fertility Preservation</td>
<td>State expands infertility benefits and includes fertility preservation.</td>
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<td>State expands infertility benefits to include fertility preservation.</td>
<td>State gains fertility care law, which includes fertility preservation.</td>
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<tr>
<td>Law makers add fertility preservation to state’s exiting healthcare coverage.</td>
<td>Governor signs into law fertility preservation benefits for cancer patients.</td>
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<td>State gains an infertility law, which includes fertility preservation.</td>
<td>State expands infertility benefits to include fertility preservation.</td>
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PREMIUM IMPACTS
The Maryland Health Care Commission estimated the potential impact on insurance premiums for coverage for fertility preservation would result in 0.4% to 0.6% increase per month (PMPM).⁷

California Health Benefits Review Program discovered the insurance premium increase to provide fertility preservation benefits for small-group and individual markets came to only $0.0092 PMPM.⁸
Common Fertility Misconceptions & Truths

**MISCONCEPTION**
Fertility 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**
Fertility 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.”
Impacts of Fertility Benefits
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**

Fertility 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.\textsuperscript{12,13}

**HEALTHCARE COSTS\textsuperscript{14}**

Associated with Multiple vs Singleton Pregnancies

<table>
<thead>
<tr>
<th>Pregnancy Type</th>
<th>Cost</th>
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<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>

**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.\textsuperscript{15}
## Including Fertility Benefits vs No Fertility Health Benefits

<table>
<thead>
<tr>
<th>Without Benefits</th>
<th>With Benefits</th>
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<tr>
<td><strong>Mental Health</strong></td>
<td></td>
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<tr>
<td>Depression and anxiety associated with untreated infertility[^8]</td>
<td>Achieving family-building goals increases morale and satisfaction</td>
</tr>
<tr>
<td><strong>Health Insurance Use &amp; Premiums</strong></td>
<td></td>
</tr>
<tr>
<td>Individuals save only for medical expenses</td>
<td>Financial flexibility to contribute to economy, establish 401Ks, retirement planning, etc.</td>
</tr>
<tr>
<td><strong>Family Relationships</strong></td>
<td></td>
</tr>
<tr>
<td>Stress on relationships with spouse, family and friends</td>
<td>Supportive relationships</td>
</tr>
<tr>
<td><strong>High-Risk Pregnancies</strong></td>
<td></td>
</tr>
<tr>
<td>Increased risk of complicated pregnancy and outcomes</td>
<td>Timely and appropriate healthcare optimizes health and cost outcomes</td>
</tr>
<tr>
<td><strong>Long-Term Care of Premature Babies</strong></td>
<td></td>
</tr>
<tr>
<td>Costs related to disabilities, occupational and physical therapies, surgeries, etc.</td>
<td>Premature related costs are dramatically reduced</td>
</tr>
<tr>
<td><strong>Making Medical Decisions</strong></td>
<td></td>
</tr>
<tr>
<td>Patients transfer more embryos, which can result in multiple births[^7,^8]</td>
<td>Patients’ healthcare decisions are based on appropriate medical advice, not financial concerns, and transfer fewer embryos[^9]</td>
</tr>
</tbody>
</table>

[^8]: Depression and anxiety associated with untreated infertility[^8]  
[^9]: Premature related costs are dramatically reduced
Types of Fertility Laws

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

TYPES OF FERTILITY LAWS

LAWS TO OFFER
Insurers are required to offer fertility benefits to employers, but employers may choose whether to add the benefit to the plan.

LAWS TO COVER
Insurers and employers are required to provide fertility health benefits.

FEDERAL & STATE LAWS
Employee Retirement Income Security Act (ERISA) decrees self-insured companies and small businesses are exempt from state fertility laws. Employers can still provide benefits, and many do, because they see the value and affordability of fertility benefits for their employees.

FERTILITY 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 fertility and fertility preservation.
The Truth About Fertility & Healthcare Premiums

WILL IVF RAISE INSURANCE PREMIUM COSTS?

Any additional service or treatment is bound to have an impact on costs. However, the effect of infertility coverage on the premium cost, as a whole, is very insignificant. Comprehensive state mandate reviews show that the increase is less than 1% of the total premium cost.\textsuperscript{21, 22, 23}

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### COMPARISON OF FIVE STATES WITH FERTILITY CARE INSURANCE LAWS

<table>
<thead>
<tr>
<th>STATE</th>
<th>INSURANCE COVERAGE</th>
<th>COST IMPACT</th>
</tr>
</thead>
</table>
| **MASSACHUSETTS**  
Established in 1987  
Updated in 2010     | Diagnosis and treatment of infertility. Most insurers voluntarily offer fertility preservation. | <1% total premium cost  
(0.12%-0.95%)          |
| **CONNECTICUT**  
Established in 1989  
Updated in 2017 | Diagnosis and treatment of infertility, as well as fertility preservation. | <1% total premium cost  
(0.9%)                  |
| **RHODE ISLAND**  
Established in 1989  
Updated in 2017 | Diagnosis and treatment of infertility, as well as fertility preservation. | <1% total premium cost  
(0.36%)                  |
| **DELAWARE**  
Established in 2018 | Diagnosis and treatment of infertility, as well as fertility preservation. | 1% total premium cost          |
| **NEW YORK**  
Established in 2019 | Diagnosis and treatment of infertility, as well as fertility preservation. | 1% total premium cost          |
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. The most accurate cost analyses come from states with existing fertility care insurance laws.

**BECOME A CHAMPION FOR THE CAUSE**
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 fertility 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
Make public data pertaining to usage of benefits and premium costs to enable employers and legislators to understand fiscal impacts on your state.

OFFER BENEFITS
Offer fertility benefits in small-business health plans and an option available for purchase 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 CRITERIA
By developing criteria which follow current medical guidelines established by medical organizations such as the American Society for Reproductive Medicine, 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

“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 at Optum
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 data, such as how much an IVF cycle costs. Confirming facts with organizations like Fertility Within Reach will ensure informed decisions are made.

OFFER FERTILITY BENEFITS FOR A COMPETITIVE ADVANTAGE
With fertility benefits, you stay competitive in recruitment efforts while supporting your employees as they become parents.

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.

SHOW YOU CARE ABOUT YOUR EMPLOYEES’ HAPPINESS AND WELLBEING
Providing fertility coverage can help improve your employees work ethic and secure their loyalty.

ADD FERTILITY 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 fertility and IVF benefits, ask the brokerage firm to find other choices. Affordable healthcare policies, which include fertility 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 fertility, including IVF and medication benefits, and another plan could cover basic fertility, without IVF benefits.
SAMPLE COMPREHENSIVE EMPLOYEE BENEFIT PLANS

<table>
<thead>
<tr>
<th>AMERICAN EXPRESS COMPANY</th>
<th>MASSACHUSETTS GENERAL HOSPITAL</th>
<th>EXCEPTIONAL SOFTWARE STRATEGIES, INC.</th>
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</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>
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</table>

RECOMMENDED COMPONENTS OF A COMPREHENSIVE BENEFIT PLAN

- The scope of coverage includes the diagnosis of infertility, fertility care (such as IVF) and fertility preservation.
- IVF to be offered to those with medical need, as determined by a reproductive endocrinologist.
- To reduce healthcare disparity among employees, provide benefits, in terms of number of IVF cycles, instead of dollar limitations. Depending on individual treatment needs, some will utilize more dollars per cycle than others.
- Offer a minimum of four IVF cycles to help alleviate financial desperation when going through IVF, resulting in treatment decisions based on medical recommendations over financial concerns.
- Medication is part of the treatment protocol and needs to be included with benefits.
- Coverage for genetic testing can help reduce the number of IVF cycles utilized and minimize costs associated with miscarriage and genetic disorders.
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.

SUSAN CROCKIN, ESQ.
The Crockin Law & Policy Group, LLC, Newton, MA

AMY DEMMA, ESQ.
Law Offices of Amy Demma, New York, NY

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

CHRISSY HANISCO, ESQ.
The Stein Law Firm, PLLC, Concord, NH

BEN LANNON, M.D.
Boston IVF, Portland, ME

“Providing fertility health benefits is about offering timely and appropriate health care to increase the number of safe pregnancies and healthy babies.”

Davina Fankhauser
Co-Founder, Fertility Within Reach
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   http://www.healthcare.r.i.gov/documents/essential%20health%20benefits%20report%20to%20the%20HIC_rfs.pdf

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.