

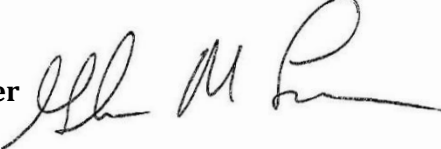
Government of the District of Columbia  
Office of the Chief Financial Officer



**Glen Lee**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Glen Lee  
Chief Financial Officer 

**DATE:** May 30, 2023

**SUBJECT:** Fiscal Impact Statement – Expanding Access to Fertility Treatment  
Amendment Act of 2023

**REFERENCE:** Bill 25-34, Draft Committee Print as provided to the Office of Revenue  
Analysis on May 24, 2023

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**Conclusion**

Funds are not sufficient in the fiscal year 2023 budget and proposed fiscal year 2024 through fiscal year 2027 budget and financial plan to implement the bill. The total cost of the bill is \$1.69 million in fiscal year 2024 and \$13 million over the financial plan. There are no costs in fiscal year 2023.

The proposed fiscal year 2024 budget includes \$1.69 million (\$750,000 local; \$940,000 federal) and \$3.05 million (\$1.36 million local; \$1.67 million federal) over the financial plan to implement Medicaid and D.C. Healthcare Alliance<sup>1</sup> coverage of infertility diagnosis and medically necessary ovulation enhancing drugs as well as to pay the Department of Insurance, Securities and Banking's (DISB) costs under the bill. However, additional funding is needed at the Health Benefit Exchanged to implement infertility diagnosis and treatment coverage mandates for private health insurance providers.<sup>2</sup>

**Background**

The bill requires Medicaid, the Health Care Alliance (Alliance), and private insurers to provide coverage for diagnosis and treatment of infertility.

Beginning January 1, 2024, Medicaid and the Alliance must provide coverage for the diagnosis of infertility and any medically necessary ovulation enhancing drugs and medical services related to

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<sup>1</sup> Amendatory Section 5f(c).

<sup>2</sup> Amendatory Section 5f(b).

prescribing and monitoring the use of such drugs, including at least three cycles of ovulation-enhancing medication treatment over an enrollee's lifetime.

The bill directs the Department of Health Care Finance (DHCF) to prepare a report on whether in vitro fertilization and standard fertility preservation services are medically reasonable and necessary procedures under federal law, possible methods for covering in vitro fertilization and standard fertility preservation services including any potentially applicable waiver authorities, and the costs that would need to be allocated against federal and local funds for such coverage, under both Medicaid fee-for-service and managed care organization plans. DHCF must provide its report to Council within 180 days of the effective date of the bill.

Beginning January 1, 2025, private health insurers offering large group health plans, small group health plans, and individual health plans must provide coverage for the diagnosis and treatment of infertility, including in vitro fertilization and standard fertility preservation services.<sup>3</sup> The bill also prohibits private health insurers from:

- Imposing deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitations on coverage for the diagnosis and treatment of infertility, including treating the prescription of fertility medications different from those imposed upon benefits for services not related to infertility;
- Placing pre-existing condition exclusions or waiting periods on coverage for the treatment of infertility, or using prior treatment for infertility as a basis for excluding, limiting, or otherwise restricting coverage; and
- Limiting coverage, providing different benefits, or imposing different requirements for fertility treatment based solely on arbitrary factors including number of attempts, dollar amounts, age, or upon a class protected under the Human Rights Act.

### **Financial Plan Impact**

Funds are not sufficient in the fiscal year 2023 budget and proposed fiscal year 2024 through fiscal year 2027 budget and financial plan to implement the bill. The total cost of the bill is \$1.69 million in fiscal year 2024 and \$13 million over the financial plan. There are no costs in fiscal year 2023.

The proposed fiscal year 2024 budget includes \$1.69 million (\$750,000 local; \$940,000 federal) and \$3.05 million (\$1.36 million local; \$1.67 million federal) over the financial plan to implement Medicaid and Alliance coverage of infertility diagnosis and medically necessary ovulation enhancing drugs as well as to pay DISB's costs under the bill. However, additional funding is needed at the Health Benefit Exchange to implement infertility diagnosis and treatment coverage mandates for private health insurance providers. The chart below summarizes the bill's total costs, while additional details on the components are described below the chart.

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<sup>3</sup> Including at least three complete oocyte retrievals with unlimited embryo transfers from those oocyte retrievals in accordance with the guidelines of the American Society for Reproductive Medicine, using single embryo transfer when recommended and medically appropriate. An oocyte is a cell in an ovary which may undergo meiotic division to form an ovum.

B25-34– Expanding Access to Fertility Treatment Amendment Act of 2023					
Total Cost (in thousands)					
	FY 2024	FY 2025	FY 2026	FY 2027	Total
DHCF - Local	\$700	\$194	\$208	\$223	\$1,325
DCHF - Federal	\$940	\$240	\$244	\$248	\$1,672
Department of Insurance, Securities and Banking	\$50	\$0	\$0	\$0	\$50
Health Benefit Exchange	\$0	\$2,662	\$3,610	\$3,671	\$9,943
<b>Total</b>	<b>\$1,690</b>	<b>\$3,096</b>	<b>\$4,062</b>	<b>\$4,142</b>	<b>\$12,990</b>

Medicaid and the Alliance

District Medicaid coverage already includes diagnosis of infertility but does not cover ovulation enhancing drugs. DHCF used beneficiary claims data to estimate that approximately 215 Medicaid beneficiaries will use ovulation enhancing drugs during the first year of coverage. After pent-up demand subsides after year one, DHCF anticipates that approximately 50 beneficiaries will use ovulation enhancing drugs on an annual basis. The total cost of Medicaid coverage of ovulation enhancing drugs is \$1.34 million (\$403,000 Local; \$940,000 Federal) in fiscal year 2024 and \$2.41 million over the financial plan. This funding has been included in the proposed fiscal year 2024 budget and financial plan.

The diagnosis of infertility and use of ovulation enhancing drugs is not covered by the Alliance. There are certain services associated with infertility that are captured in Alliance claims data that were used by DHCF to estimate how many individuals would use these services. DHCF estimates that 180 Alliance beneficiaries will likely be diagnosed with infertility in year one and around 50 beneficiaries will be diagnosed each year after pent-up demand subsides after the first year of coverage. DHCF estimates that 20 percent of these members will use ovulation enhancing drugs to treat infertility issues. The total cost to the Alliance program of covering diagnosis of infertility and use of ovulation enhancing drugs is \$297,000 in fiscal year 2024 and \$591,000 over the financial plan. The proposed fiscal year 2024 budget and financial plan includes sufficient funding to implement this Alliance coverage.

B25-34 – Expanding Access to Fertility Treatment Amendment Act of 2023					
Total Medicaid and Alliance Costs (in thousands)					
	FY 2024	FY 2025	FY 2026	FY 2027	Total
Medicaid Total Cost - Ovulation Enhancing Drugs <sup>(a)</sup>	\$1,343	\$343	\$354	\$366	\$2,406
- Local Portion <sup>(b)</sup>	\$403	\$103	\$110	\$118	\$734
- Federal Portion <sup>(c)</sup>	\$940	\$240	\$244	\$248	\$1,672
Alliance Ovulation Enhancing Drugs <sup>(d)</sup>	\$280	\$73	\$78	\$84	\$515
Alliance Infertility Diagnosis Coverage <sup>(e)</sup>	\$17	\$18	\$20	\$21	\$76
<b>Total Cost<sup>(f)</sup></b>	<b>\$1,640</b>	<b>\$434</b>	<b>\$452</b>	<b>\$471</b>	<b>\$2,997</b>

Table Notes:

(a) Assumes average course of treatment cost of \$3,000 and three treatment cycles per individual using ovulation enhancing drugs.

(b) Assumes 30 percent local share.

The Honorable Phil Mendelson

FIS: Bill 25-34, "Expanding Access to Fertility Treatment Amendment Act of 2023," Draft Committee Print as provided to the Office of Revenue Analysis on May 24, 2023

- (c) Assumes 70 percent federal share.
- (d) Assumes average course of treatment cost of \$3,000 and three treatment cycles per individual using ovulation enhancing drugs.
- (e) Assumes \$58 cost per member seeking an infertility diagnosis.
- (f) Assumes higher demand in fiscal year 2024 and annual cost growth of 1.7 percent.

### **Private Health Insurance Market**

The Affordable Care Act requires states to establish Essential Health Benefits (EHB) that all Qualified Health Plans (QHP) in the individual and small group market (DC Health Link) must cover. Benefits mandated by the District after January 1, 2012 are considered additional health benefits.<sup>4</sup> Federal law requires the District to make payments to defray the cost of additional required benefits by either paying enrollees directly or by paying QHPs on behalf of enrollees. Each QHP in the District must quantify the cost attributable to an additional required benefit.

The bill's mandate for private insurers to provide coverage for the diagnosis and treatment of infertility (including in vitro fertilization and standard fertility preservation services) will require the District to make defrayal payments to QHPs in the individual and small group market.<sup>5</sup> The Office of Revenue Analysis estimates that defrayal payments will cost \$2.66 million in fiscal year 2025 and \$9.94 million over the financial plan. The final cost of defrayal payments will be provided in the DISB actuary study described below. Defrayal payments will be administered by the Health Benefit Exchange Authority and payments will be made directly to QHPs on behalf of enrollees.

B25-34 - Expanding Access to Fertility Treatment Amendment Act of 2023					
Total Defrayal Costs (in thousands)					
	FY 2024	FY 2025	FY 2026	FY 2027	Total
Defrayal Cost	0	\$2,663	\$3,610	\$3,671	\$9,944

#### Table Notes

- (a) Assumes January 1, 2025 start date.
- (b) Assumes 15,000 individual market enrollees and 87,000 small group enrollees.
- (c) Assumes annual cost increase of \$34.80 per enrollee and cost growth of 1.7 percent.

The Department of Insurance, Securities and Banking (DISB) reviews health insurance rate filings to determine if rate changes submitted by QHPs will be approved, disapproved, or rejected before the plan is released into the District's health insurance marketplace. DISB must hire an actuary to project the actual amount of money that must be budgeted to defray the cost of additional benefits. DISB must also contract with a subject matter expert in order to establish regulations governing defrayal payments. The total cost of contracting with an actuary and a subject matter expert is \$50,000 in fiscal year 2024. The proposed fiscal year 2024 budget and financial plan includes sufficient funding to contract with an actuary and a subject matter expert. The fiscal impact of defrayal costs will be updated to incorporate DISB actuary projections when they become available.

<sup>4</sup> 45 CFR 155.170(c)(2)(iii).

<sup>5</sup> Large group health plans are not required to cover EHBs and do not participate in the District's health benefit exchange.

The Honorable Phil Mendelson

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<b>B25-34 – Expanding Access to Fertility Treatment Amendment Act of 2023</b>					
<b>Total DISB Costs (in thousands)</b>					
	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>Total</b>
Subject Matter Expert	\$20	\$0	\$0	\$0	\$20
Actuary	\$30	\$0	\$0	\$0	\$30
<b>Total</b>	<b>\$50</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$50</b>

It is possible the bill's requirements may impact prices of large group health plans such as those provided to District government employees. Any increases in premiums due to the bill's requirements may increase the cost of the District's portion of employee's insurance premiums. Health plans currently offered to District employees include some coverage for fertility treatment, but the impact of the bill's specific provisions regarding deductibles, co-payments, co-insurance, benefit maximums and other limitations is unknown at this time.