

BILL NO.

Introduced by

Representative Brandenburg

1 A BILL for an Act to create and enact a new section to chapter 54-52.1 of the North Dakota
2 Century Code, relating to public employee fertility health benefits; to provide for a report to the
3 legislative assembly; to provide for application; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Health insurance benefits coverage - Fertility health care.**

8 1. As used in this section:

- 9 a. "Diagnosis of infertility" means the services, procedures, testing, or medications
10 recommended by a licensed physician which are consistent with established,
11 published, or approved best practices or professional standards or guidelines,
12 including the American society of reproductive medicine, the American college of
13 obstetricians and gynecologists, or the American society of clinical oncology for
14 diagnosing and treating infertility.
- 15 b. "Fertility treatment" means health care services, procedures, testing,
16 medications, monitoring, treatments, or products, including genetic testing and
17 assisted reproductive technologies, including oocyte retrievals, in vitro
18 fertilization, and fresh and frozen embryo transfers, provided with the intent to
19 achieve a pregnancy that results in a live birth with a healthy outcome.
- 20 c. "Infertility" means a disease or condition characterized by:
- 21 (1) The failure to conceive a pregnancy or to carry a pregnancy to live birth
22 after unprotected sexual intercourse;
- 23 (2) An individual's inability to cause pregnancy and live birth either as a covered
24 individual or with the covered individual's partner; or

- 1 (3) A licensed health care provider's findings and statement based on a
2 patient's medical, sexual, and reproductive history, age, physical findings, or
3 diagnostic testing.
- 4 d. "Medically necessary" means a health care service or product provided in a
5 manner:
- 6 (1) Consistent with the findings and recommendations of a licensed physician,
7 based on a patient's medical history, sexual and reproductive history, age,
8 partner, physical findings, or diagnostic testing;
- 9 (2) Consistent with generally accepted standards of medical practice as set
10 forth by a professional medical organization with a specialization in any
11 aspect of reproductive health, including the American society for
12 reproductive medicine or the American college of obstetricians and
13 gynecologists; or
- 14 (3) Clinically appropriate in terms of type, frequency, extent, site, and duration.
- 15 e. "Monitoring" includes, ultrasounds, transvaginal ultrasounds, laboratory testing,
16 and followup appointments.
- 17 f. "Third-party reproductive care for the benefit of the covered individual" means the
18 use of eggs, sperm, or embryos donated to the covered individual or partner by a
19 donor, or the use of a gestational carrier, to achieve a live birth with a healthy
20 outcome.
- 21 2. The board shall provide coverage for the expenses of the diagnosis of infertility and
22 fertility treatment services if recommended and medically necessary.
- 23 a. Coverage must include:
- 24 (1) Three completed cycles of intrauterine insemination, in accordance with
25 best practices, including the standards and guidelines of the American
26 society of reproductive medicine.
- 27 (2) Fertility treatment services necessary to achieve two live births, or a
28 maximum of four completed oocyte retrievals with four fresh and frozen
29 embryo transfers, in accordance with best practices, including the guidelines
30 of the American society for reproductive medicine, and using no more than
31 two embryos per transfer.

- 1 (3) Diagnosis of infertility and fertility treatment services, including third-party
2 reproductive care for the benefit of the covered individual or partner.
- 3 (4) Fertility treatment, consisting of a method of causing pregnancy other than
4 sexual intercourse which is provided with the intent to create a legal
5 parent-child relationship between the covered individual and the resulting
6 child in accordance with chapter 14-20.
- 7 (5) Medical and laboratory services that reduce excess embryo creation
8 through egg cryopreservation and thawing in accordance with a covered
9 individual's religious or ethical beliefs.
- 10 (6) Five years of cryopreservation services.
- 11 b. This section may not be construed to deny the included coverage in this section
12 to an individual who forgoes a particular fertility treatment service if the
13 individual's physician determines the fertility treatment service is likely to be
14 unsuccessful.
- 15 3. To be covered under this section, the diagnosis of infertility and fertility treatment
16 services must be performed at a facility that conforms to best practices, including the
17 standards and guidelines developed by the American society for reproductive
18 medicine, the American college of obstetricians and gynecologists, or the American
19 society of clinical oncology.
- 20 4. Coverage under this section must be made available to all covered individuals,
21 including covered individuals who have entered coverage during special enrollment or
22 open enrollment.
- 23 5. Coverage under this section must be in accordance with best practices, including the
24 standards or guidelines developed by the American society of reproductive medicine,
25 the American college of obstetricians and gynecologists, or the American society of
26 clinical oncology. If a carrier makes, issues, circulates, or causes to be made, issued,
27 or circulated, clinical guidelines based on data not reasonably current or which do not
28 cite with specificity, the act constitutes unfair or deceptive acts or practices in the
29 business of insurance as prohibited by chapter 26.1-04.
- 30 6. Benefits under this section may not be limited based on:

- 1 a. A copayment, deductible, coinsurance, benefit maximum, waiting period, or other
2 limitation on coverage different from maternity benefits provided under the health
3 benefits;
4 b. An exclusion, limitation, or other restriction on coverage of fertility medication
5 different from restrictions imposed on any other prescription medication;
6 c. A requirement that provides different benefits to, or imposes different
7 requirements on, a class protected under chapter 14-02.4 than that provided to or
8 required of other covered individuals; or
9 d. A pre-existing condition exclusion, pre-existing condition waiting period on
10 coverage for required benefits, or a prior diagnosis of infertility, fertility treatment,
11 or standard fertility preservation services.

12 **SECTION 2. PUBLIC EMPLOYEES RETIREMENT SYSTEM - FERTILITY HEALTH**

13 **BENEFITS - REPORT TO LEGISLATIVE ASSEMBLY.** Pursuant to section 54-03-28, the public
14 employees retirement system shall prepare and submit for introduction a bill to the seventieth
15 legislative assembly to repeal the expiration date for this Act and to extend the coverage of
16 fertility health benefits to all group and individual health insurance policies. The public
17 employees retirement system shall append a report to the bill regarding the effect of the fertility
18 health benefits requirement on the system's health insurance programs, information on the
19 utilization and costs relating to the coverage, and a recommendation regarding whether the
20 coverage should be continued.

21 **SECTION 3. APPLICATION.** This Act applies to health benefits coverage that begins after
22 June 30, 2025, and which does not extend past June 30, 2027.

23 **SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2027, and after that
24 date is ineffective.