State of Wisconsin
2023 - 2024 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 610

March 12, 2024 – Offered by Senators ROYS, HESSELBEIN, AGARD, CARPENTER, L. JOHNSON, LARSON, PFAFF, SMITH, SPREITZER and WIRCH.

AN ACT ***to create*** 253.17, 609.74 and 632.895 (15m) of the statutes; **relating to:** right to assisted reproductive technologies, coverage of of infertility services under health insurance policies and plans, and granting rule–making authority.

Analysis by the Legislative Reference Bureau

This bill provides that any individual in this state may access any assisted reproductive technology without prohibition or unreasonable limitation or interference and that health care providers have a corresponding right to provide assisted reproductive technology services and information or advice related to assisted reproductive technologies. "Assisted reproductive technology" is defined under the bill to mean any procreative procedure that involves the handling of human eggs or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, pronuclear stage transfer, and tubal embryo transfer. Further, the bill provides that a statute that provides that any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony does not apply to the receipt or provision of assisted reproductive technology services; any promotion, encouragement, or counseling in favor of assisted reproductive technology; or any referral for assisted reproductive technology either directly or through an intermediary.

The bill requires health insurance policies and self–insured governmental health plans that cover medical or hospital expenses to cover the diagnosis of and treatment for infertility and standard fertility preservation services. Coverage required under the bill must include at least four completed egg retrievals with unlimited embryo transfers in accordance with certain guidelines, and single embryo transfer may be used when recommended and medically appropriate. Under the bill, policies and plans are prohibited from imposing any exclusion, limitation, or other restriction on coverage of medications that are required to be covered under the bill that is not imposed on any other prescription medications covered under the policy or plan. Similarly, policies and plans may not impose any exclusion, limitation, cost–sharing requirement, benefit maximum, waiting period, or other restriction on diagnosis, treatment, or services for which coverage is required under the bill that is different from any exclusion, limitation, cost–sharing requirement, benefit maximum, waiting period, or other restriction imposed on benefits for other services. Also, policies and plans may not impose any exclusion, limitation, or other restriction on diagnosis, treatment, or services for which coverage is required under the bill on the basis that an insured person participates in fertility services provided by or to a third party. Current law refers to health insurance policies as disability insurance policies.

This proposal may contain a health insurance mandate requiring a social and financial impact report under s. 601.423, stats.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 253.17 of the statutes is created to read:

253.17 Right to assisted reproductive technologies. (1) In this section:

(a) "Assisted reproductive technology" means any procreative procedure that involves the handling of human eggs or embryos. "Assisted reproductive technology" includes in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, pronuclear stage transfer, and tubal embryo transfer.

(b) "Health care provider" has the meaning given in s. 146.81 (1).

(2) Any individual in this state may access any assisted reproductive technology without prohibition or unreasonable limitation or interference, and a health care provider has a corresponding right to provide assisted reproductive

technology services and information or advice related to assisted reproductive technologies.

(3) Section 940.04 does not apply to any of the following:

(a) The receipt or provision of assisted reproductive technology services.

(b) Any promotion, encouragement, or counseling in favor of assisted reproductive technology.

(c) Any referral for assisted reproductive technology either directly or through an intermediary.

SECTION 2. 609.74 of the statutes is created to read:

609.74 Coverage of infertility services. Defined network plans and preferred provider plans are subject to s. 632.895 (15m).

SECTION 3. 632.895 (15m) of the statutes is created to read:

632.895 **(15m)** COVERAGE OF INFERTILITY SERVICES. (a) In this subsection:

1. "Diagnosis of and treatment for infertility" means any recommended procedure or medication at the direction of a physician that is consistent with established, published, or approved medical practices or professional guidelines from the American College of Obstetricians and Gynecologists, or its successor organization, or the American Society for Reproductive Medicine, or its successor organization.

2. "Infertility" means a disease, condition, or status characterized by any of the following:

a. The failure to establish a pregnancy or carry a pregnancy to a live birth after regular, unprotected sexual intercourse for, if the woman is under 35 years of age, no longer than 12 months or, if the woman is 35 years of age or older, no longer than

6 months including any time during those 12 months or 6 months that the woman has a pregnancy that results in a miscarriage.

b. An individual's inability to reproduce either as a single individual or with a partner without medical intervention.

c. A physician's findings based on a patient's medical, sexual, and reproductive history, age, physical findings, or diagnostic testing.

3. "Self–insured health plan" means a self–insured health plan of the state or a county, city, village, town, or school district.

4. "Standard fertility preservation service" means a procedure that is consistent with established medical practices or professional guidelines published by the American Society for Reproductive Medicine, or its successor organization, or the American Society of Clinical Oncology, or its successor organization, for an individual who has a medical condition or is expected to undergo medication therapy, surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical professionals to cause a risk of impairment to fertility.

(b) Subject to pars. (c) to (e), every disability insurance policy and self–insured health plan that provides coverage for medical or hospital expenses shall cover diagnosis of and treatment for infertility and standard fertility preservation services. Coverage required under this paragraph includes at least 4 completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine or its successor organization, and single embryo transfer may be used when recommended and medically appropriate.

(c) 1. A disability insurance policy or self–insured health plan may not do any of the following:

a. Impose any exclusion, limitation, or other restriction on coverage required under par. (b) on the basis of a covered individual's participation in fertility services provided by or to a 3rd party.

b. Impose any exclusion, limitation, or other restriction on coverage required under par. (b) of medications that is different from that imposed on any other prescription medications covered under the policy or plan.

c. Impose any exclusion, limitation, cost–sharing requirement, benefit maximum, waiting period, or other restriction on coverage required under par. (b) of diagnosis of and treatment for infertility and standard fertility preservation services that is different from an exclusion, limitation, cost–sharing requirement, benefit maximum, waiting period, or other restriction imposed on benefits for services that are covered by the policy or plan and that are not related to infertility.

2. A disability insurance policy or self–insured health plan shall provide coverage required under par. (b) to any covered individual under the policy or plan, including any covered spouse and nonspouse dependent, to the same extent as other pregnancy–related benefits covered under the policy or plan.

(d) The commissioner, after consulting with the department of health services on appropriate treatment for infertility, shall promulgate any rules necessary to implement this subsection. Before the promulgation of rules, disability insurance policies and self–insured health plans are considered to comply with the coverage requirements of par. (b) if the coverage conforms to the standards of the American Society for Reproductive Medicine or its successor organization.

(e) This subsection does not apply to a disability insurance policy that is a health benefit plan described under s. 632.745 (11) (b).

SECTION 4. Nonstatutory provisions.

(1) LEGISLATIVE INTENT. The legislature finds and determines that patients with infertility have the right to undergo fertility treatments, including in vitro fertilization, and rejects the notion of embryonic or fetal "personhood."

SECTION 5. Initial applicability.

(1) For policies and plans containing provisions inconsistent with the treatment of ss. 609.74 and 632.895 (15m), the treatment of ss. 609.74 and 632.895 (15m) first applies to policy or plan years beginning on January 1 of the year following the year in which this subsection takes effect, except as provided in subs. (2) and (3).

(2) For policies and plans that have a term greater than one year and contain provisions inconsistent with the treatment of ss. 609.74 and 632.895 (15m), the treatment of ss. 609.74 and 632.895 (15m) first applies to policy or plan years beginning on January 1 of the year following the year in which the policy or plan is extended, modified, or renewed, whichever is later.

(3) For policies and plans that are affected by a collective bargaining agreement containing provisions inconsistent with the treatment of ss. 609.74 and 632.895 (15m), the treatment of ss. 609.74 and 632.895 (15m) first applies to policy or plan years beginning on the effective date of this subsection or on the day on which the collective bargaining agreement is newly established, extended, modified, or renewed, whichever is later.

(END)