

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Insurance, Securities and Banking



Hearing on

Bill 24-0829, the “Medical Malpractice Clarification Amendment Act of 2022”

Bill 24-0831, the “Reproductive Health Care Insurance Coverage Expansion Amendment Act of 2022”

Bill 24-0699, the “Expanding Access to Fertility Treatment Amendment Act of 2022”

Testimony of

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Before the

Committee on Business & Economic Development
Councilmember Kenyan R. McDuffie, Chairperson
Council of the District of Columbia

October 25, 2022

1:00 PM

Via Virtual Meeting Platform

Good afternoon, Chairperson McDuffie, and members of the Committee on Business & Economic Development. My name is Philip Barlow, and I am the Associate Commissioner for Insurance at the Department of Insurance, Securities and Banking, or DISB. DISB regulates insurance, securities, banking, and other financial services in the District of Columbia. Our mission is three-fold: (1) to cultivate a regulatory environment that protects consumers and attracts and retains financial services firms to the District; (2) to empower and educate residents on financial matters; and (3) to provide financing to District small businesses.

Thank you for the opportunity to testify today on the following bills:

- Bill 24-0829, the “Medical Malpractice Clarification Amendment Act of 2022”
- Bill 24-0831, the “Reproductive Health Care Insurance Coverage Expansion Amendment Act of 2022”
- Bill 24-0699, the “Expanding Access to Fertility Treatment Amendment Act of 2022”

B24-0829 “Medical Malpractice Clarification Amendment Act of 2022”

The Medical Malpractice Clarification Amendment Act of 2022 would prohibit medical malpractice insurers from taking adverse action against a health professional who provides legal abortion care. DISB supports the bill but has a few points that it would for the committee to consider.

The adverse action specifies “health professional” which is defined as anyone licensed or permitted to practice a health occupation by the Department of Health. While most health professionals likely will have medical malpractice

coverage on themselves, some entities (*e.g.*, clinics) may have their own medical malpractice policy not tied to a particular health professional. Therefore, we recommend amending the legislation to add the phrase, “or a facility that engages health professionals” after the phrase “against a health professional” in the new section 3a.

B24-0831 “Reproductive Health Care Insurance Coverage Expansion Amendment Act of 2022”

The Reproductive Health Care Insurance Coverage Expansion Amendment Act of 2022 would require private insurance companies to cover abortion care without imposing cost-sharing requirements. The Department also supports this bill.

With regard to the Affordable Care Act (ACA), elective abortion is currently covered in the District’s benchmark plan, although it is not one of the [essential health benefits](#) (EHBs) under the ACA. The ACA requires all health insurance plans sold on a state or federal exchange to meet minimum standards, or EHBs. States that require insurance plans to offer benefits above and beyond the EHBs, must, in most cases, pay for them. Specifically, the state assumes the cost of any amount attributable to the benefit’s impact on premium for recipients of Advance Premium Tax Credits.

So, although elective abortion is in the benchmark plan, since it is not an EHB we currently have some ACA plans that do not cover abortion services or cover with cost sharing. Some other plans that exclude abortion services include student health plans, and some large group or self-funded plans.

The legislation will likely require some time for adjustments to plan documents by the insurers. Typically, when new requirements are included, some time is provided for insurers to bring forms into compliance, but that is unlikely to be provided for this legislation, so there will be some inconsistency between the law and policy language for a while. Also, there are many people in the District who are not covered by plans we regulate, including Medicaid recipients, Federal Employees Health Benefit Program employees and retirees, self-insured plans and residents who work for employers based in other states.

Note that some services may not be required without cost-sharing requirements for certain High Deductible Health Plans (HDHP) with a joint Health Savings Account (HSA). As such, these plans should likely be explicitly excluded from the requirement of covering abortion care without cost-sharing. For additional information, see [IRS Publication 969](#) (2021) and related materials.

B24-0699 “Expanding Access to Fertility Treatment Amendment Act of 2022”

The Expanding Access to Fertility Treatment Amendment Act of 2022 would expand coverage provided through private insurers, Medicaid, and the DC Healthcare Alliance to include diagnosis and treatment for infertility. It would also prohibit health insurers from imposing additional costs or certain limitations on coverage and from placing pre-existing condition exclusions or waiting periods on coverage. Please note that as a new mandate there will likely be a financial cost to the District specific to the ACA plans sold on DC Health Link in the individual and small group markets. While benefits are currently available for the diagnosis of infertility, they are limited to infertility counseling and testing; and the District's benchmark plan explicitly excludes coverage for:

All assisted reproductive technologies including artificial insemination and intrauterine insemination, in vitro fertilization, gamete intra-fallopian tube transfer, zygote intra-fallopian transfer cryogenic preservation or storage of eggs and embryo and related evaluative procedures, drugs, diagnostic services, and medical preparations related to the same.

DISB does not know at this time what the cost attributable to the new mandate might be, but we do know that nearly 3,300 people on the Exchange receive an Advanced Premium Tax Credit (APTC), as of October 2022; and the average total subsidy is around \$343¹ per recipient.

¹ <https://www.kff.org/health-reform/state-indicator/average-monthly-advance-premium-tax-credit-aptc/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22district-of-columbia%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

Similar to the Reproductive Health Care Insurance Coverage Expansion Amendment Act of 2022, the proposed effective date of this new benefit would result in an inconsistency between the law and policy language for a period and this will cause premiums to increase.

Conclusion

The Department is fully supportive of the Council's efforts to increase access to care and hope that we have offered information and valuable suggestions in our testimony. Thank you for the opportunity to testify on these bills and I am happy to answer any questions you may have.