Fertility Care Is Healthcare: A Mandate to Cover Fertility Healthcare in California Promotes Reproductive Equity

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Executive summary: Infertility is a prevalent disease that causes mental and financial distress for those who suffer from it. For Californians affected by infertility, treatment access is limited by high out-of-pocket costs, as the State does not currently require health insurance plans to cover the cost of fertility services. However, California is currently considering a bill (SB 729) to mandate coverage of fertility care in the large-group insurance market. We recommend the State Assembly pass SB 729 as written to increase the availability of fertility treatments in a politically and economically feasible way. Additionally, we recommend the state amend informed consent procedures to better relay the fertility care options available to patients. Individually and jointly, these measures will alleviate the financial burden of fertility healthcare on California families.

I. Background: Infertility and fertility care

Infertility is a reproductive disease that impairs the conception of a child or the ability to carry a pregnancy to term (American Society for Reproductive Medicine 2023a). Infertility impacts one in six heterosexual couples in the United States, and the need for fertility treatments increases when including single individuals and members of the LGBTQ+ community. (Thoma et al. 2013; American Society for Reproductive Medicine 2023a). Infertility negatively impacts mental health, as people suffering from infertility have depression rates twice those of the general population, hovering around 30-40% (Domar et al. 1992; Crawford, Hoff, and Mersereau 2017). Accessible fertility care is thought to provide significant individual and societal benefits and is becoming increasingly routine (Rooney and Domar 2018). Since the first *in vitro* fertilization (IVF) birth in 1978, IVF and other fertility care procedures have given millions of families the opportunity to have children; 70,000 children are born through fertility treatments like IVF in the U.S. annually (Society for Assisted Reproductive Technology 2020).

i. Statement of the issue

The high cost of fertility care represents a significant barrier to low- and middle-income Californians who cannot afford the more frequent and intensive fertility treatments of their wealthier peers, which results in significantly lower utilization and success rates (Smith et al. 2011). Because California does not mandate that insurers cover fertility services, individuals must pay out-of-pocket. According to a study in Northern California, average out-of-pocket costs ranged from $1,182 for fertility medications to $38,015 for IVF with a donor egg (Weigel et al. 2020; Katz et al. 2011). Assuming multiple rounds of

treatment, these costs rise to $5,894 and $72,642, respectively, putting fertility treatment out of reach for most Californians, who make a median of $40,901 per year (Weigel et al. 2020; Katz et al. 2011; U.S. Census Bureau 2021). Out-of-pocket costs for patients are only expected to increase in the coming years, as medical care costs have typically outpaced general inflation since 2000 (Rakshit et al. 2023). Determined patients often take extreme measures to finance fertility care, with many refinancing homes, drawing down 401(k)s, or taking on debt (Klein 2020; Dickler 2019; Leonhardt 2019). The number of births achieved through fertility services in California is predicted to increase by 55% if fertility coverage were mandated by the state (California Health Benefits Review Program 2022), demonstrating the high demand for fertility healthcare that goes unmet due to cost. The state's delayed action on this issue continues to drive residents into financial and emotional turmoil in their pursuit of healthcare.

Employers and insurers strongly resist legislative mandates for insurance coverage of fertility care, as covering these services will increase insurers' expenses and businesses' employee healthcare premiums (California Health Benefits Review Program 2023). Employee health insurance is a significant business expense, costing employers in 2021 an average of $6,440 for individuals and $16,253 for family premiums (Kaiser Family Foundation 2021). If these costs become prohibitive, businesses may downsize or relocate to less costly states. Data from several states with fertility coverage mandates (MA, CT, RI, DE, NY), however, indicate that total premiums only increased by about 1% (Fertility Within Reach 2022). Thus, although fertility care costs are prohibitive to many individuals, they are a comparatively small burden to employers and insurers when costs are readily redistributed amongst all policyholders. Lastly, coverage of fertility care services can help reduce costs for insurance companies by reducing the incidence of multiple births. Patients paying out-of-pocket for fertility care are more likely than those with insurance coverage to incur the risks associated with a multiple pregnancy by transferring more than one embryo when undergoing IVF (Reynolds et al. 2003). With neonatal and maternity costs that are 5 times higher for twins and 20 times higher for triplets, insurance companies may begin to embrace fertility care as a way to save money in other areas of coverage (Centers for Disease Control and Prevention 2019; Lemos et al. 2013).

ii. Current and future legislation

The current California Health and Safety Code and Insurance Code require every group health care plan to offer coverage of infertility treatment, with the notable exception of IVF (*California Health and Safety Code* 2023; *California Insurance Code* 2023). The provision does not apply to religious employers, Health Maintenance Organizations that cover fewer than 20 employees, or the state's Medicaid program, Medi-Cal (American Society for Reproductive Medicine 2023b).

Fertility care coverage was expanded for a subpopulation of patients in 2020 when the passage of SB 600 mandated that non-Medi-Cal insurers cover fertility preservation (FP) services when a covered treatment such as chemotherapy causes iatrogenic infertility (Portantino 2019; Weigel et al. 2020). SB 600 recategorized iatrogenic infertility treatment as basic healthcare, making fertility care more affordable, but leaving many patients unaware of their eligibility (Patel et al. 2020).

California's "mandate to *offer*'' differs from a "mandate to *cover*," which requires health care plans cover infertility treatment costs. Currently, 14 states mandate insurers cover fertility care, including IVF, although each state varies in the types of services covered, extent of coverage, and qualifications for coverage (The National Infertility Association 2023). States like New Jersey and Connecticut, with longstanding "mandate to cover'' laws, reveal significant increases in utilization of fertility care services post-mandate, demonstrating the positive association between insurance coverage and access to fertility healthcare for residents of these states (Crawford et al. 2016). States with comprehensive insurance mandates also have improved fertility care metrics like fewer embryos used per IVF transfer and higher live birth rates per cycle of IVF compared to states without (Peipert et al. 2022). In 2020 New York implemented the nation's most comprehensive "mandate to cover'' law, requiring large-group health

insurance policies cover 3 cycles of IVF, and became the only state to require that Medicaid cover 3 cycles of fertility-enhancing drugs per lifetime ("New York State Medicaid Update" 2019; The National Infertility Association 2022). While a major step towards improving fertility care accessibility, benefits for Medicaid recipients still lag behind those of employer-based care in New York.

The California state legislature is considering Senate Bill (SB) 729, which would transition California's Health & Safety and Insurance codes to "mandate to cover" (Menjivar et al. 2023). SB 729 would require all large-group health insurance plans (excluding Medi-Cal) to "provide coverage for the diagnosis and treatment of infertility and fertility services." Unlike New York's law, SB 729 does not stipulate an IVF cycle limit, allowing patients more opportunity to conceive. SB 729 also updates the definition of infertility to ensure that unpartnered and LGBTQ+ couples qualify for coverage. SB 729 has been passed in the Senate and has been sent to the Assembly, where it has been placed on the suspense file and is awaiting a hearing by the Assembly Appropriations Committee before it can move to the Assembly floor for a vote. In this memo, we examine the changes in the proposed legislation and offer further recommendations and considerations for increasing access to fertility care for Californians while minimizing costs to small businesses and California taxpayers.

II. Policy options

i. Recommend the California State Assembly pass SB 729 as amended.

Although SB 729 originally mandated insurance coverage for fertility care in individual, small-group, and large-group insurance markets, the Senate amended it to restrict the "mandate to cover" to large-group insurance plans only. Thus, although the California Health Benefits Review Program (CHBRP) estimates that premiums will rise by ~0.5% in the first year of the mandate, the bill minimizes the greatest predicted increases to premiums and enrollee cost sharing, which were anticipated to occur in small-group and individual health plans (California Health Benefits Review Program 2023). By focusing on large-group plans only, the bill also avoids requiring the State to pay insurers or purchasers of Qualified Health Plans for benefits that exceed Essential Health Benefits (EHBs), as stipulated by the Affordable Care Act (California Health Benefits Review Program 2023). The amended SB 729 was passed by the Senate in a 31-3 vote, demonstrating bipartisan support.

Advantages

- Increases affordability of fertility care to about 9 million Californians who are covered by large-group insurance (California Health Benefits Review Program 2023)
- Allows those qualifying for infertility care to include unpartnered and LGBTQ+ individuals
- Alleviates burden on small businesses for whom premium increases could significantly impact hiring decisions.
- Does not trigger payments to defray the cost of additional required benefits beyond EHBs

Challenges

- Excludes nearly 10 million Medi-Cal recipients and 5 million Californians in small-group and individual markets (California Health Benefits Review Program 2023).
- Leaves out employees of companies that are self-insured and the uninsured
- May exacerbate existing racial inequalities in access to fertility care (Figure 1B)

ii. Recommend the California State Assembly amend SB 729 to include Medi-Cal.

Although infertility rates are stable across socioeconomic classes, less affluent residents often cannot afford the exorbitant cost of infertility care (Kelley et al. 2019). Despite SB 729's intent to improve equity in fertility care, the coverage mandate explicitly excludes Medi-Cal, restricting access for over 10 million underserved Californians. Given that Latinx Californians are nearly twice as likely as their white counterparts to receive health insurance through Medi-Cal (Charles, Babey, and Wolstein 2022) (Figure 1B), SB 729 inadvertently creates a racial disparity in fertility care access. To address this disparity, the fertility care mandate proposed in SB729 can be amended to include Medi-Cal.

Advantages

- Increased access to infertility care for over 10 million low- and middle-income Californians (California Health Benefits Review Program 2020; 2023) (Figure 1A).
- Improves racial inequities in fertility care by extending the mandate to an insurance provider that serves a greater proportion of people of color (Figure 1B).
- Does not trigger payments to defray the cost of additional required benefits beyond EHBs

Challenges

- Extending the fertility care mandate to Medi-Cal is predicted to add an additional $82,311,000 to California's annual expenditures (California Health Benefits Review Program 2020).
- Leaves out employees of companies that are self-insured and the uninsured
- Amending SB 729 in the Assembly would require it to be passed again in the Senate, where an expanded bill is likely to be challenged.

iii. Legislate informed consent regarding the availability of fertility preservation options.

The passage of SB729 and related legislation is only part of the solution to expanding access to fertility care as many will remain unaware of the options available to them even when fertility services are expanded. Though many countries and some U.S. states, including California, mandate the coverage of fertility preservation (FP) services, these services are often underutilized because patients are unaware of their eligibility. Across the world, studies have shown that only half of the eligible women undergoing cancer treatment receive fertility counseling (Zebrack 2009; Corney and Swinglehurst 2014; Garvelink et al. 2015). In the U.S., cross-sectional studies of reproductive-age women undergoing treatment for cancer revealed that less than 45% of patients are aware of available FP services (Patel et al. 2020). This lack of awareness may be because FP consultation is left to the discretion of the physician. To this point, only 47% of oncologists surveyed by the American Society of Clinical Oncology report counseling their reproductive-age patients on FP procedures (Quinn et al. 2009). While this is frequently attributed to the perceived urgency of beginning treatment, studies point to insignificant differences in treatment outcomes for those who underwent FP treatment compared to those who did not (Marklund et al. 2021). Thus, to ensure patients are aware of their current and future fertility care eligibility, changes to standards of care in various medical fields must be made. To this end, the California Health and Safety codes referencing informed consent (sections 1690, 109275, 109280, 109282, and 109278) can be amended to require verbal and written explanation of fertility care eligibility, meeting the recommendations of major medical societies like the American Society of Clinical Oncology and the American Society for Reproductive Medicine, who currently recommend fertility consultation for every eligible patient (Oktay et al. 2018; American Society for Reproductive Medicine 2019).

Advantages

- Improve awareness of eligibility for FP treatment with a minor alteration of existing informed consent requirements.
- Increase utilization of FP services to which patients are entitled.
- Improved survivor life satisfaction.

Challenges

- Increased administrative burden in an effort to gain informed consent.
- Increased disclosure requirements may increase the number of malpractice suits for smaller practices.
- Increased demand for FP services will lead to greater than expected numbers of insurance claims, burdening other insured persons.

III. Policy recommendation and implementation

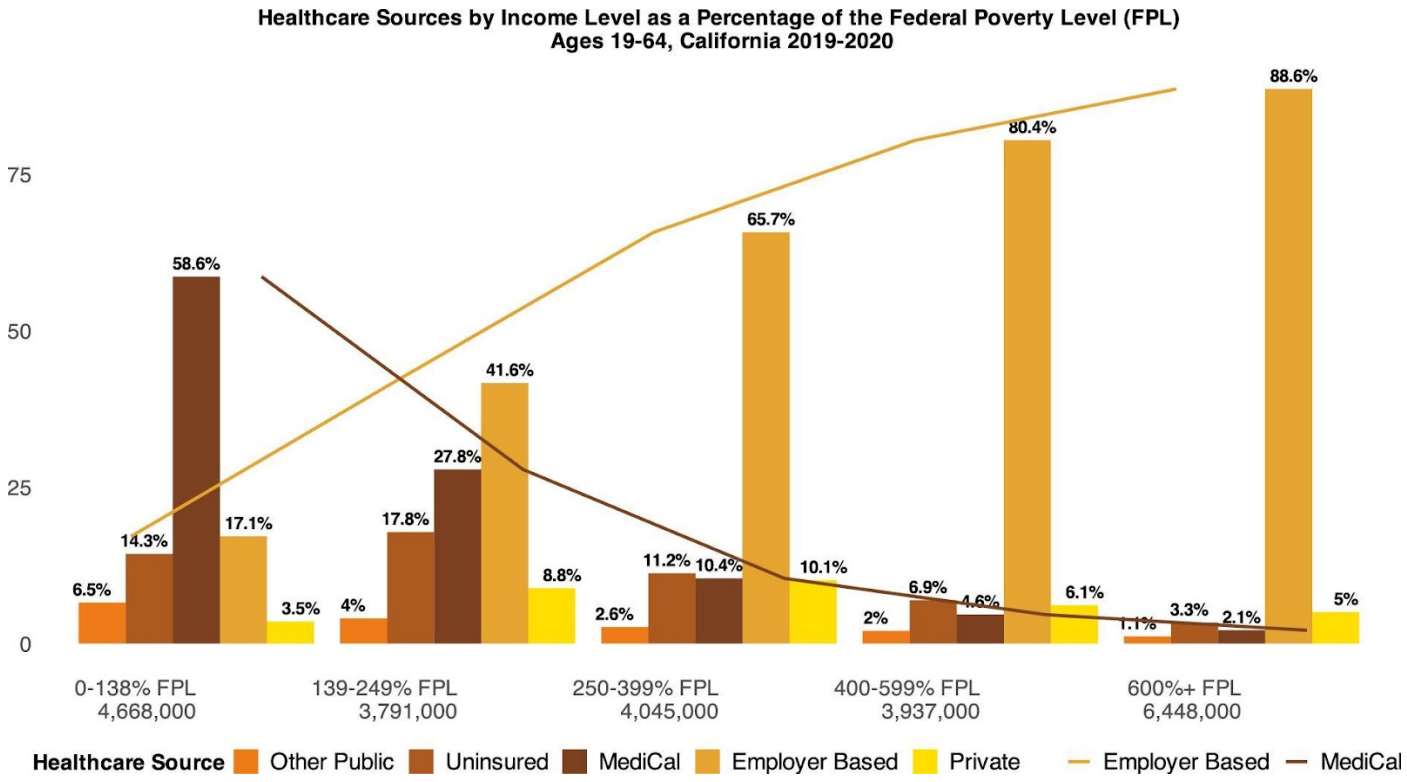
Infertility is an underserved disease that disproportionately impacts the poor and people of color due to inequities in fertility care access. Here, we have proposed several policy options to increase fertility care access in California. To balance reproductive equity with political and economic feasibility, we recommend Option 1, that the California State Assembly pass SB 729 as amended, which extends a "mandate to cover" fertility care services in the large-group insurance market and a

"mandate to offer" fertility care services in small-group and individual markets. Several years of similar proposed legislation (AB 2781, AB 2029) show that Californians embrace fertility care as healthcare. SB 729 is an excellent opportunity for legislation to reflect this, redefining infertility to include the family-building needs of all Californians, including IVF coverage in the state's current "mandate to offer," and increasing fertility care access to 9 million Californians with minimal expenses to businesses and the State.

If SB 729 is passed and signed into law, any large-group health insurance plans issued, amended, or renewed after January 1, 2024, must include fertility care benefits. Compliance will be regulated at the state level by the California Department of Managed Health Care and the California Department of Insurance. Coverage of fertility care services will add an estimated 0.1-0.2% to medical care expenditures in the first two years (California Health Benefits Review Program 2023). To cover the costs of these services, insurance companies are expected to increase premiums: the CHBRP estimates that premiums will increase by $3-3.60 per member per month in the large-group market, an increase of only ~0.5%. Because the mandate will only apply to large-group insurance policies, the bill is not expected to place undue financial burden on small businesses. Lastly, as fertility clinics are required to report utilization rates under the Fertility Clinic Success Rate and Certification Act, public health officials should assess post-mandate changes to help policymakers address the remaining issues related to equitable access to care (Centers for Disease Control and Prevention 2023). The lessons learned during the implementation of SB 729 will inform lawmakers on best practices when crafting policies that will extend fertility care coverage to other insured groups in the future, including small-group, individual, and Medi-Cal markets. Though Option 2 may go further in expanding fertility care services to the diverse Medi-Cal policyholders, the 82 million dollar addition to state expenditures is not politically feasible at present. Delaying expansion of fertility care coverage to Medi-Cal will also give policymakers time to analyze the impacts of SB729 and ensure a Medi-Cal expansion is implemented in an efficient and equitable manner.

Whether or not SB 729 is passed, we cannot ignore the blindspots of current fertility care policies. Ensuring healthcare providers discuss fertility care options with their patients is perhaps the most important step to increasing awareness and use of current and future fertility care benefits. Thus, we also recommend Option 3, modifications to informed consent procedures at the point of care to increase the use of fertility care benefits through insurance providers and improve patient satisfaction and healthcare outcomes. As California seems poised to take legislative action to increase access to fertility care services, the state must prepare for increased demand for these services by ensuring that providers speak with their patients about the fertility care options available to them.

A.



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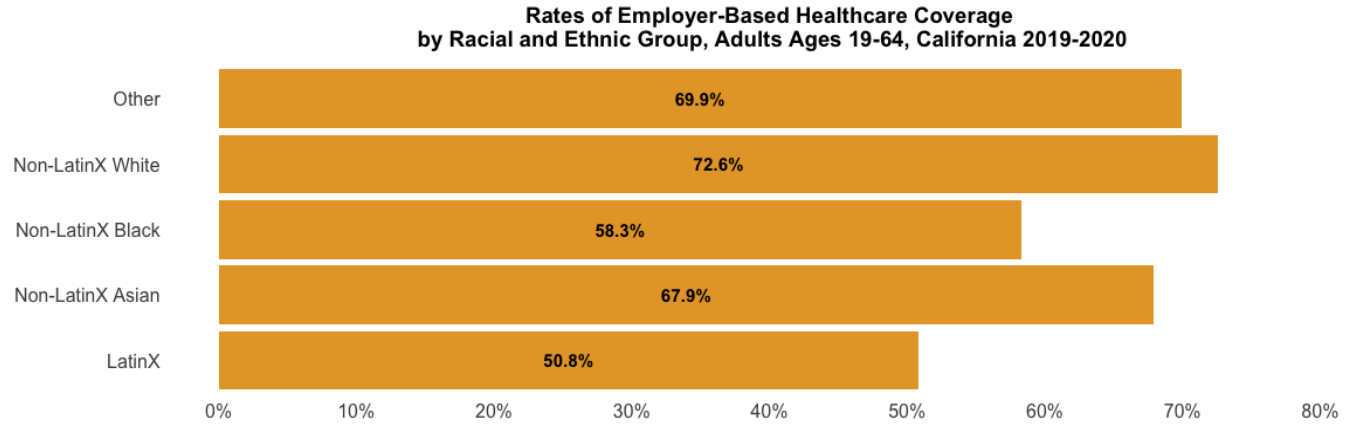

Figure 1. Californians' Sources of Health Insurance (adapted from Charles, Babey, and Wolstein 2022)**. (A)** Bar graph depicting the distribution of health insurance sources between households at various income levels (listed as percent of the Federal Poverty Level, FPL). Lines superimposed on the graph highlight the higher proportion of Medi-Cal insured households and decreased rates of employer-based healthcare for households at lower income levels. **(B)** Bar graph depicting rates of employer-based healthcare for various racial and ethnic groups reveals lower rates of employer-based health insurance for Black and LatinX Californians.

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