

118TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To protect and expand nationwide access to fertility treatment, including  
in vitro fertilization.

\_\_\_\_\_  
IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_  
\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_  
\_\_\_\_\_

**A BILL**

To protect and expand nationwide access to fertility  
treatment, including in vitro fertilization.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Right to IVF Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Severability.

**TITLE I—ACCESS TO FAMILY BUILDING**

- Sec. 101. Short title.
- Sec. 102. Purposes.

- Sec. 103. Definitions.
- Sec. 104. Fertility treatment rights.
- Sec. 105. Applicability and preemption.

## TITLE II—VETERAN FAMILIES HEALTH SERVICES

- Sec. 200. Short title.

### Subtitle A—Reproductive and Fertility Preservation Assistance for Members of the Uniformed Services

- Sec. 201. Definitions.
- Sec. 202. Provision of fertility treatment and counseling to certain members of the uniformed services and spouses, partners, and gestational surrogates of such members.
- Sec. 203. Establishment of fertility preservation procedures after an injury or illness.
- Sec. 204. Cryopreservation and storage of reproductive genetic material of members of the uniformed services on active duty.
- Sec. 205. Assistance with and continuity of care regarding reproductive and fertility preservation services.
- Sec. 206. Coordination between Department of Defense and Department of Veterans Affairs on furnishing of fertility treatment and counseling.
- Sec. 207. Regulations.

### Subtitle B—Reproductive Assistance for Veterans

- Sec. 211. Inclusion of fertility treatment and counseling under the definition of medical services in title 38.
- Sec. 212. Fertility treatment and counseling for certain veterans and spouses, partners, and gestational surrogates of such veterans.
- Sec. 213. Assistance with and continuity of care regarding reproductive and fertility preservation services.
- Sec. 214. Coordination of reproduction and fertility research for veterans.

## TITLE III—ACCESS TO FERTILITY TREATMENT AND CARE

- Sec. 301. Short title.
- Sec. 302. Standards relating to benefits for fertility treatment.
- Sec. 303. Requirement for State Medicaid plans to provide medical assistance for fertility treatment.
- Sec. 304. Medicare coverage of fertility treatment.

## TITLE IV—FAMILY BUILDING FEHB FAIRNESS

- Sec. 401. Short title.
- Sec. 402. Fertility treatment benefits.

### 1 **SEC. 2. SEVERABILITY.**

2       If any provision of this Act, or the application of such  
 3 provision to any person, entity, government, or cir-  
 4 cumstance is held to be unconstitutional, the remainder

1 of this Act, or the application of such provision to all other  
2 persons, entities, governments, or circumstances shall not  
3 be affected thereby.

## 4 **TITLE I—ACCESS TO FAMILY** 5 **BUILDING**

### 6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “Access to Family  
8 Building Act”.

### 9 **SEC. 102. PURPOSES.**

10 The purposes of this title are as follows:

11 (1) To permit patients to seek and receive fer-  
12 tility treatment, including assisted reproductive tech-  
13 nology services, and to permit health care providers  
14 that choose to provide fertility treatment, to provide  
15 such services without States enacting harmful or un-  
16 warranted limitations or requirements that single  
17 out the provision of assisted reproductive services for  
18 restrictions that are not consistent with widely ac-  
19 cepted and evidence-based medical standards of care,  
20 and which do not significantly advance reproductive  
21 health or the efficacy and safety of fertility treat-  
22 ment, or make fertility treatment more difficult to  
23 access.

24 (2) To promote the right and ability of a pa-  
25 tient residing in any State to choose to receive fer-

1        tility treatment provided in accordance with widely  
2        accepted and evidence-based medical standards of  
3        care by a health care provider who chooses to pro-  
4        vide such services.

5            (3) To protect an individual’s right to make de-  
6        cisions, in consultation with the individual’s health  
7        care provider, about the most appropriate medical  
8        care to maximize the chance of becoming pregnant  
9        and giving birth to a healthy, living, human child  
10       with the help of fertility treatment.

11 **SEC. 103. DEFINITIONS.**

12        In this title:

13            (1) FERTILITY TREATMENT.—The term “fer-  
14        tility treatment” includes the following:

15            (A) Preservation of human oocytes, sperm,  
16        or embryos for later reproductive use.

17            (B) Artificial insemination, including  
18        intravaginal insemination, intracervical insemi-  
19        nation, and intrauterine insemination.

20            (C) Assisted reproductive technology, in-  
21        cluding in vitro fertilization and other treat-  
22        ments or procedures in which reproductive ge-  
23        netic material, such as oocytes, sperm, fertilized  
24        eggs, and embryos, are handled, when clinically  
25        appropriate.

1 (D) Genetic testing of embryos.

2 (E) Medications prescribed or obtained  
3 over-the-counter, as indicated for fertility.

4 (F) Gamete donation.

5 (G) Such other information, referrals,  
6 treatments, procedures, medications, laboratory  
7 testing, technologies, and services relating to  
8 fertility as the Secretary of Health and Human  
9 Services determines appropriate.

10 (2) HEALTH CARE PROVIDER.—The term  
11 “health care provider” means any entity or indi-  
12 vidual (including any physician, nurse practitioner,  
13 physician assistant, pharmacist, health care support  
14 personnel, clinical staff, and any other individual, as  
15 determined by the Secretary of Health and Human  
16 Services) that—

17 (A) is engaged or seeks to engage in the  
18 delivery of fertility treatment, including through  
19 the provision of evidence-based information,  
20 counseling, referrals, or items and services that  
21 relate to, aid in, or provide fertility treatment;  
22 and

23 (B) if required by State law to be licensed,  
24 certified, or otherwise authorized to engage in  
25 the delivery of such services—

1 (i) is so licensed, certified, or other-  
2 wise authorized; or

3 (ii) would be so licensed, certified, or  
4 otherwise authorized but for the fact that  
5 the individual or entity has provided, is  
6 providing, or plans to provide fertility  
7 treatment in accordance with section 104.

8 (3) HEALTH INSURANCE ISSUER.—The term  
9 “health insurance issuer” has the meaning given  
10 such term in section 2791(b) of the Public Health  
11 Service Act (42 U.S.C. 300gg–91(b)).

12 (4) MANUFACTURER.—The term “manufac-  
13 turer” means the manufacturer of a drug or device  
14 approved, cleared, authorized, or licensed under sec-  
15 tion 505, 510(k), 513(f)(2), or 515 of the Federal  
16 Food, Drug, and Cosmetic Act (21 U.S.C. 355,  
17 360(k), 360c(f)(2), 360e) or section 351 of the Pub-  
18 lic Health Service Act (42 U.S.C. 262) or otherwise  
19 legally marketed.

20 (5) STATE.—The term “State” includes each of  
21 the 50 States, the District of Columbia, Puerto Rico,  
22 each territory and possession of the United States,  
23 and any political subdivision thereof.

24 (6) WIDELY ACCEPTED AND EVIDENCE-BASED  
25 MEDICAL STANDARDS OF CARE.—The term “widely

1 accepted and evidence-based medical standards of  
2 care” means any medical services, procedures, and  
3 practices that are in accordance with the guidelines  
4 of the American Society for Reproductive Medicine.

5 **SEC. 104. FERTILITY TREATMENT RIGHTS.**

6 (a) GENERAL RULE.—

7 (1) INDIVIDUAL RIGHTS.—An individual has a  
8 statutory right under this title, without prohibition,  
9 limitation, interference, or impediment, to the extent  
10 that such prohibition, limitation, interference, or im-  
11 pediment in any way or degree obstructs, delays, or  
12 affects commerce over which the Federal Govern-  
13 ment has jurisdiction, to—

14 (A) receive fertility treatment from a  
15 health care provider, in accordance with widely  
16 accepted and evidence-based medical standards  
17 of care;

18 (B) continue or complete an ongoing fer-  
19 tility treatment previously initiated by a health  
20 care provider, in accordance with widely accept-  
21 ed and evidence-based medical standards of  
22 care;

23 (C) make decisions and arrangements re-  
24 garding the donation, testing, use, storage, or  
25 disposition of reproductive genetic material,

1           such as oocytes, sperm, fertilized eggs, and em-  
2           bryos; and

3           (D) establish contractual agreements with  
4           a health care provider relating to the health  
5           care provider's services in handling, testing,  
6           storing, shipping, and disposing of the individ-  
7           ual's reproductive genetic material in accord-  
8           ance with widely accepted and evidence-based  
9           medical standards of care.

10          (2) HEALTH CARE PROVIDER RIGHTS.—A  
11          health care provider has a statutory right under this  
12          title, without prohibition, limitation, interference, or  
13          impediment, to the extent that such prohibition, lim-  
14          itation, interference, or impediment in any way or  
15          degree obstructs, delays, or affects commerce over  
16          which the Federal Government has jurisdiction, to—

17                 (A) provide, or assist with the provision of,  
18                 fertility treatment provided in accordance with  
19                 widely accepted and evidence-based medical  
20                 standards of care;

21                 (B) continue or complete the provision of,  
22                 or assistance with, fertility treatment that was  
23                 lawful when commenced and is provided in ac-  
24                 cordance with widely accepted and evidence-  
25                 based medical standards of care;

1 (C) provide for, or assist with, the testing,  
2 use, storage, or disposition of reproductive ge-  
3 netic material, such as oocytes, sperm, fertilized  
4 eggs, and embryos, in accordance with widely  
5 accepted and evidence-based medical standards  
6 of care; and

7 (D) establish contractual agreements with  
8 individuals or manufacturers relating to the  
9 health care provider's services in handling, test-  
10 ing, storing, shipping, and disposing of the indi-  
11 vidual's reproductive genetic material.

12 (3) HEALTH INSURANCE ISSUER RIGHTS.—A  
13 health insurance issuer has a statutory right under  
14 this title, without prohibition, limitation, inter-  
15 ference, or impediment, to the extent that such pro-  
16 hibition, limitation, interference, or impediment in  
17 any way or degree obstructs, delays, or affects com-  
18 merce over which the Federal Government has juris-  
19 diction, to cover the provision of fertility treatment  
20 provided in accordance with widely accepted and evi-  
21 dence-based medical standards of care.

22 (4) MANUFACTURER RIGHTS.—A manufacturer  
23 of a drug or device that is approved, cleared, author-  
24 ized, or licensed under section 505, 510(k),  
25 513(f)(2), or 515 of the Federal Food, Drug, and

1       Cosmetic Act (21 U.S.C. 355; 360(k); 360c(f)(2);  
2       360e) or section 351 of the Public Health Service  
3       Act (42 U.S.C. 262) or otherwise legally marketed  
4       and intended for use in the provision of fertility  
5       treatment, including the storage or transport of oo-  
6       cytes, gametes, fertilized eggs, and embryos, has a  
7       statutory right under this title, without prohibition,  
8       limitation, interference, or impediment, to the extent  
9       that such prohibition, limitation, interference, or im-  
10      pediment in any way or degree obstructs, delays, or  
11      affects commerce over which the Federal Govern-  
12      ment has jurisdiction, to manufacture, import, mar-  
13      ket, sell, and distribute such drug or device.

14      (b) STATE REGULATION OF MEDICINE.—The en-  
15      forcement of State health and safety law regarding med-  
16      ical facilities or health care providers does not constitute  
17      a violation of subsection (a) if—

18           (1) such regulations are in accordance with  
19           widely accepted and evidence-based medical stand-  
20           ards of care for providing fertility treatment; and

21           (2) the safety or health objective cannot be ad-  
22           vanced by a different means that does not prohibit,  
23           limit, interfere with, or impede the rights described  
24           in subsection (a).

25      (c) ENFORCEMENT.—

1 (1) THE ATTORNEY GENERAL.—

2 (A) IN GENERAL.—The Attorney General  
3 may commence a civil action on behalf of the  
4 United States against any State; an individual,  
5 employee, official, agency head, contractor, or  
6 organization, or instrumentality acting for, or on  
7 behalf of, such a State; or any individual acting  
8 under the color of, or pursuant to, State law,  
9 that implements, enforces, or threatens to en-  
10 force a limitation or requirement that prohibits,  
11 limits, interferes with, or impedes the statutory  
12 rights of an individual, a health care provider,  
13 a health insurance issuer, or a manufacturer  
14 under subsection (a).

15 (B) EFFECT OF VIOLATIONS.—The court  
16 shall hold unlawful and set aside a limitation or  
17 requirement described in subparagraph (A) if it  
18 is in violation of subsection (a).

19 (2) PRIVATE RIGHT OF ACTION.—

20 (A) IN GENERAL.—Any individual or entity  
21 adversely affected by an alleged violation of  
22 subsection (a) may commence a civil action  
23 against an individual, employee, official, agency  
24 head, contractor, organization, or instrumen-  
25 tality acting for, or on behalf of, such a State

1 that enacts, implements, or enforces a limita-  
2 tion or requirement that prohibits, limits, inter-  
3 feres with, or impedes the statutory rights of an  
4 individual, a health care provider, a health in-  
5 surance issuer, or a manufacturer under sub-  
6 section (a).

7 (B) EFFECT OF VIOLATIONS.—The court  
8 shall hold unlawful and enjoin a limitation or  
9 requirement described in subparagraph (A) if it  
10 is in violation of subsection (a).

11 (3) HEALTH CARE PROVIDER.—

12 (A) IN GENERAL.—A health care provider  
13 may commence a civil action for relief on such  
14 provider's own behalf, on behalf of the pro-  
15 vider's staff, or on behalf of the provider's pa-  
16 tients who are or may be adversely affected by  
17 an alleged violation of subsection (a).

18 (B) EFFECT OF VIOLATIONS.—The court  
19 shall hold unlawful and enjoin a limitation or  
20 requirement described in subparagraph (A) if it  
21 is in violation of subsection (a).

22 (4) EQUITABLE RELIEF.—In any action under  
23 this section, the court may award appropriate equi-  
24 table relief, including temporary, preliminary, or per-  
25 manent injunctive relief.

1 (5) COSTS.—

2 (A) IN GENERAL.—In any action under  
3 this section, the court shall award costs of liti-  
4 gation, as well as reasonable attorney's fees, to  
5 any prevailing plaintiff.

6 (B) LIABILITY OF PLAINTIFFS.—A plain-  
7 tiff shall not be liable to a defendant for costs  
8 or attorney's fees in any non-frivolous action  
9 under this section unless such costs or attor-  
10 ney's fees are imposed by the court as part of  
11 sanctions for violations committed during the  
12 discovery process.

13 (6) JURISDICTION.—The district courts of the  
14 United States shall have jurisdiction over pro-  
15 ceedings under this section and shall exercise the  
16 same without regard to whether the party aggrieved  
17 shall have exhausted any administrative or other  
18 remedies that may be provided for by law.

19 (7) RIGHT TO REMOVE.—

20 (A) IN GENERAL.—Any party shall have a  
21 right to remove an action brought under this  
22 subsection to the district court of the United  
23 States for the district and division embracing  
24 the place where such action is pending.

1 (B) REVIEW.—An order remanding the  
2 case to the State court from which it was re-  
3 moved under this paragraph is immediately re-  
4 viewable by appeal or otherwise.

5 (d) REGULATIONS.—Not later than 180 days after  
6 the date of enactment of this Act, the Secretary of Health  
7 and Human Services shall promulgate regulations to carry  
8 out this section.

9 (e) RULES OF CONSTRUCTION.—

10 (1) IN GENERAL.—For purposes of this title, a  
11 State law, or the administration, implementation, or  
12 enforcement of a State law, constitutes a prohibi-  
13 tion, limitation, interference, or impediment on a  
14 health care provider providing, an individual receiv-  
15 ing, a health insurance issuer covering, or a manu-  
16 facturer marketing drugs or devices for fertility  
17 treatment, provided in accordance with widely ac-  
18 cepted and evidence-based medical standards of care,  
19 as described in subsection 104, if the administration,  
20 implementation, interpretation, or enforcement of  
21 such law has an effect that—

22 (A) imposes requirements or limitations  
23 that are inconsistent with providing, receiving,  
24 providing health insurance coverage for, or pro-  
25 viding drugs or devices for fertility treatment in

1           accordance with widely accepted and evidence-  
2           based medical standards of care or that other-  
3           wise violate the purpose and requirements of  
4           this Act, which may include—

5                   (i) requiring that a health care pro-  
6                   vider provide, and patients undertake,  
7                   medically unnecessary procedures and serv-  
8                   ices, including tests and procedures, pro-  
9                   viding medically inaccurate information re-  
10                  garding fertility treatment, or requiring  
11                  additional unnecessary in-person visits to a  
12                  health care provider, that are inconsistent  
13                  with widely accepted and evidence-based  
14                  medical standards of care;

15                  (ii) imposing limitations or require-  
16                  ments concerning physical offices, clinics,  
17                  facilities, equipment, staffing, or hospital  
18                  transfer arrangements of facilities where  
19                  fertility treatment is provided, or the cre-  
20                  dentials or hospital privileges or status of  
21                  personnel at such facilities, that are not  
22                  consistent with widely accepted and evi-  
23                  dence-based medical standards of care; or

24                  (iii) limiting a health care provider's  
25                  right or ability to provide, or a patient's

1 right to receive, or imposing limitations  
2 that reduce the efficacy of, fertility treat-  
3 ment in accordance with widely accepted  
4 and evidence-based medical standards of  
5 care, including retrieval of multiple eggs  
6 during oocyte retrieval; performance of in-  
7 semination procedures, including intra-  
8 uterine insemination; intracytoplasmic  
9 sperm injections to fertilize multiple  
10 human eggs; and cryopreservation of one  
11 or more eggs or embryos for fertility pres-  
12 ervation and subsequent transfer, if deter-  
13 mined appropriate by the health care pro-  
14 vider and patient;

15 (B) infringes, limits, or restricts the ability  
16 of a health care provider, patient, health insur-  
17 ance issuer, or manufacturer, to exercise or en-  
18 force their statutory rights under this title on  
19 the basis of marital status, sex (including sex-  
20 ual orientation and gender identity) or any  
21 other protected class that is covered by Federal  
22 law;

23 (C) limits a health care provider's or pa-  
24 tient's right or ability to determine the most ap-  
25 propriate disposition of fertilized eggs or em-

1 bryos, including by defining a gamete or em-  
2 bryo in such a way as to prevent the disposition  
3 of gametes and embryos;

4 (D) limits a health care provider's ability  
5 to provide, or a patient's ability to receive, fer-  
6 tility treatment via telemedicine, in accordance  
7 with widely accepted and evidence-based med-  
8 ical standards of care;

9 (E) limits or prohibits a health care pro-  
10 vider's ability to provide, or a patient's ability  
11 to receive, fertility counseling or fertility treat-  
12 ment based on the residency of the patient, or  
13 prohibits or limits the ability of any individual  
14 to assist or support a patient seeking fertility  
15 treatment;

16 (F) imposes requirements or limitations  
17 that compel health care providers to provide, or  
18 patients to receive, medically unnecessary care,  
19 or withhold medically necessary care, in a man-  
20 ner that is not consistent with widely accepted  
21 and evidence-based medical standards of care  
22 for fertility treatment, including mandating the  
23 transfer of embryos that a health care provider  
24 would not reasonably expect, based on widely  
25 accepted and evidence-based medical standards

1 of care, to lead to a healthy pregnancy or a live  
2 birth;

3 (G) limits a health care provider's right or  
4 ability to prescribe or dispense, or a patient's  
5 right or ability to receive or use, medications  
6 for fertility treatment in accordance with widely  
7 accepted and evidence-based medical standards  
8 of care, unless such a limitation is generally ap-  
9 plicable to the prescription, dispensing, or dis-  
10 tribution of medications; or

11 (H) limits a health care provider's right or  
12 ability to perform a human sperm retrieval pro-  
13 cedure in accordance with widely accepted and  
14 evidence-based medical standards of care.

15 (2) CLARIFICATION.—The descriptions of spe-  
16 cific State laws that would violate the statutory  
17 rights and protections described in paragraph (1)  
18 shall not be construed to limit potential violations of  
19 the statutory rights and protections under this title  
20 to only the restrictions and limitations listed in  
21 paragraph (1), and potential violations of this title  
22 may result from novel State restrictions and limita-  
23 tions that are not listed under paragraph (1).

24 (3) EXCLUSION.—It shall not constitute a pro-  
25 hibition, limitation, interference, or impediment to a

1 health care provider providing, an individual receiv-  
2 ing, a health insurance issuer covering, or a manu-  
3 facturer marketing a drug or device for purposes of,  
4 fertility treatment under this title for an entity to  
5 act in compliance with the Food and Drug Adminis-  
6 tration's regulation of drugs, devices, biological  
7 products, human cells, tissues, or cellular or tissue-  
8 based products used in fertility treatment, consistent  
9 with widely accepted and evidence-based medical  
10 standards of care for fertility treatment.

11 **SEC. 105. APPLICABILITY AND PREEMPTION.**

12 (a) IN GENERAL.—

13 (1) GENERAL APPLICATION.—

14 (A) EFFECT ON STATE LAW.—This title  
15 supersedes any State law that is inconsistent  
16 with the statutory rights established under this  
17 title and precludes the implementation of such  
18 a law, whether statutory, common law, or other-  
19 wise, and whether adopted before or after the  
20 date of enactment of this Act.

21 (B) PROHIBITION.—No State shall admin-  
22 ister, implement, or enforce any law, rule, regu-  
23 lation, standard, or other provision having the  
24 force and effect of law that conflicts with any

1 provision of this title, notwithstanding any  
2 other provision of Federal law.

3 (2) EXCLUSION.—Preemption of State law  
4 under paragraph (1) does not apply to—

5 (A) State law regarding the resolution of  
6 disputes between 2 individuals with rights de-  
7 scribed in section 104(a)(1) with respect to the  
8 same reproductive genetic material, such as oo-  
9 cytes, sperm, fertilized eggs, and embryos; or

10 (B) any other State law, to the extent that  
11 such law does not conflict with this title and  
12 protects an individual’s right and ability to re-  
13 ceive fertility treatment in accordance with  
14 widely accepted and evidence-based medical  
15 standards of care, including any such law that  
16 holds a health care provider accountable for not  
17 providing fertility treatment in accordance with  
18 widely accepted and evidence-based medical  
19 standards of care.

20 (3) PRESERVATION OF FEDERAL PUBLIC  
21 HEALTH AUTHORITIES.—Nothing in this title shall  
22 have the effect of superseding, negating, or limiting  
23 provisions of Federal law, including the Federal  
24 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et  
25 seq.) or the Public Health Service Act (42 U.S.C.

1 201 et seq.), and regulations promulgated under  
2 such statutes, with respect to the regulation of  
3 drugs, devices, biological products, human cells, tis-  
4 sues, or cellular or tissue-based products used in fer-  
5 tility treatment.

6 (4) PRESERVATION OF HIPAA RULES.—Nothing  
7 in this title shall have the effect of superseding, ne-  
8 gating, or limiting the provisions of the privacy, se-  
9 curity, and breach notification regulations in parts  
10 160 and 164 of title 45, Code of Federal Regula-  
11 tions (or successor regulations).

12 (5) SUBSEQUENTLY ENACTED FEDERAL LEGIS-  
13 LATION.—Federal statutory law adopted after the  
14 date of the enactment of this Act is subject to this  
15 title unless such law explicitly excludes such applica-  
16 tion by reference to this title.

17 (b) DEFENSE.—In any cause of action against an in-  
18 dividual or entity who is subject to a limitation or require-  
19 ment that violates this title, in addition to the remedies  
20 specified in section 104(b), this title shall also apply to,  
21 and may be raised as a defense by, such an individual or  
22 entity.

1     **TITLE II—VETERAN FAMILIES**  
2                     **HEALTH SERVICES**

3     **SEC. 200. SHORT TITLE.**

4             This title may be cited as the “Veteran Families  
5 Health Services Act”.

6     **Subtitle A—Reproductive and Fer-**  
7             **tility Preservation Assistance**  
8             **for Members of the Uniformed**  
9             **Services**

10    **SEC. 201. DEFINITIONS.**

11            In this subtitle:

12                    (1) **ACTIVE DUTY.**—The term “active duty” has  
13                    the meaning given that term in section 101(18) of  
14                    title 37, United States Code.

15                    (2) **UNIFORMED SERVICES.**—The term “uni-  
16                    formed services” has the meaning given that term in  
17                    section 101(a)(5) of title 10, United States Code.

18    **SEC. 202. PROVISION OF FERTILITY TREATMENT AND**  
19                    **COUNSELING TO CERTAIN MEMBERS OF THE**  
20                    **UNIFORMED SERVICES AND SPOUSES, PART-**  
21                    **NERS, AND GESTATIONAL SURROGATES OF**  
22                    **SUCH MEMBERS.**

23            (a) **FERTILITY TREATMENT AND COUNSELING.**—

24                    (1) **IN GENERAL.**—The Secretary of Defense  
25                    shall make available fertility treatment and coun-

1       seling to a member of the uniformed services or a  
2       spouse, partner, or gestational surrogate of such a  
3       member.

4               (2) ELIGIBILITY FOR TREATMENT AND COUN-  
5       SELING.—Fertility treatment and counseling shall be  
6       furnished under paragraph (1) without regard to the  
7       sex, sex characteristics, gender identity, sexual ori-  
8       entation, infertility diagnosis, or marital status of  
9       the member of the uniformed services or their part-  
10      ner.

11              (3) IN VITRO FERTILIZATION.—In the case of  
12      in vitro fertilization treatment furnished under para-  
13      graph (1), the Secretary may furnish to an indi-  
14      vidual under such paragraph—

15                      (A) not more than three completed oocyte  
16                      retrievals; and

17                      (B) unlimited embryo transfers.

18              (b) PROCUREMENT OF REPRODUCTIVE GENETIC MA-  
19      TERIAL.—If a member of the uniformed services is unable  
20      to provide their reproductive genetic material, such as oo-  
21      cytes, sperm, fertilized eggs, and embryos, for purposes  
22      of fertility treatment under subsection (a), the Secretary  
23      shall, at the election of such member, allow such member  
24      to receive such treatment with donated reproductive ge-

1 netic material and pay or reimburse such member the rea-  
2 sonable costs of procuring such material from a donor.

3 (c) RULES OF CONSTRUCTION.—

4 (1) IMPACT ON EXISTING AUTHORITY.—Noth-  
5 ing in this section shall be construed to rescind the  
6 authority of the Secretary to provide in vitro fer-  
7 tilization benefits pursuant to section 1074(c)(4) of  
8 title 10, United States Code.

9 (2) SOURCING OF GESTATIONAL SURROGATE OR  
10 REPRODUCTIVE GENETIC MATERIAL.—Nothing in  
11 this section shall be construed to require the Sec-  
12 retary—

13 (A) to find or certify a gestational surro-  
14 gate for a member of the uniformed services or  
15 to connect a gestational surrogate with such a  
16 member; or

17 (B) to find or certify reproductive genetic  
18 material, such as oocytes, sperm, fertilized eggs,  
19 and embryos, from a donor for a member of the  
20 uniformed services or to connect such a member  
21 with reproductive genetic material from a  
22 donor.

23 (d) DEFINITIONS.—In this section:

24 (1) FERTILITY TREATMENT.—The term “fer-  
25 tility treatment” includes the following:

1 (A) Preservation of human oocytes, sperm,  
2 or embryos for later reproductive use.

3 (B) Artificial insemination, including  
4 intravaginal insemination, intracervical insemi-  
5 nation, and intrauterine insemination.

6 (C) Assisted reproductive technology, in-  
7 cluding in vitro fertilization and other treat-  
8 ments or procedures in which reproductive ge-  
9 netic material, such as oocytes, sperm, fertilized  
10 eggs, and embryos, are handled, when clinically  
11 appropriate.

12 (D) Genetic testing of embryos.

13 (E) Medications prescribed or obtained  
14 over-the-counter, as indicated for fertility.

15 (F) Gamete donation.

16 (G) Such other information, referrals,  
17 treatments, procedures, medications, laboratory  
18 testing, technologies, and services relating to  
19 fertility as the Secretary of Defense determines  
20 appropriate.

21 (2) GESTATIONAL SURROGATE.—The term  
22 “gestational surrogate” means an individual who  
23 agrees to become pregnant through in vitro fertiliza-  
24 tion under a gestational surrogacy agreement using  
25 gametes that are not the gametes of that individual.

1           (3) PARTNER.—The term “partner”, with re-  
2           spect to a member of the uniformed services, means  
3           an individual selected by the member who agrees to  
4           be a parent, with the member, of a child born as a  
5           result of the use of any fertility treatment under this  
6           section.

7   **SEC. 203. ESTABLISHMENT OF FERTILITY PRESERVATION**  
8                           **PROCEDURES AFTER AN INJURY OR ILLNESS.**

9           (a) IN GENERAL.—The Secretary of Defense, acting  
10          through the Assistant Secretary of Defense for Health Af-  
11          fairs, shall establish procedures for the retrieval of repro-  
12          ductive genetic material, such as oocytes, sperm, fertilized  
13          eggs, and embryos, as soon as medically appropriate, from  
14          a member of the uniformed services in cases in which the  
15          fertility of such member is potentially jeopardized as a re-  
16          sult of an injury or illness incurred or aggravated while  
17          serving on active duty in the uniformed services in order  
18          to preserve the medical options of such member.

19          (b) INCLUSION OF INFORMATION IN ADVANCED DI-  
20          RECTIVES AND MILITARY TESTAMENTARY INSTRU-  
21          MENTS.—The Secretary of Defense shall ensure that any  
22          advance medical directive, as defined in section 1044c(b)  
23          of title 10, United States Code, or military testamentary  
24          instrument, as defined in section 1044d(b) of such title,  
25          completed by a member of the uniformed services includes

1 questions about the consent of the member to fertility  
2 preservation procedures under subsection (a).

3 (c) DISPOSAL OF REPRODUCTIVE GENETIC MATE-  
4 RIAL.—Subject to section 204, in accordance with regula-  
5 tions prescribed by the Secretary for purpose of this sub-  
6 section, the Secretary shall dispose of reproductive genetic  
7 material retrieved from a member of the uniformed serv-  
8 ices under subsection (a)—

9 (1) with the specific consent of the member; or

10 (2) if the member—

11 (A) has lost the ability to consent perma-  
12 nently, as determined by a medical professional,  
13 or has died; and

14 (B) has not specified the use of their re-  
15 productive genetic material in an advance direc-  
16 tive or testamentary instrument executed by the  
17 member.

18 **SEC. 204. CRYOPRESERVATION AND STORAGE OF REPRO-**  
19 **DUCTIVE GENETIC MATERIAL OF MEMBERS**  
20 **OF THE UNIFORMED SERVICES ON ACTIVE**  
21 **DUTY.**

22 (a) IN GENERAL.—The Secretary of Defense shall  
23 provide members of the uniformed services on active duty  
24 in the uniformed services with the opportunity to  
25 cryopreserve and store their reproductive genetic material,

1 such as oocytes, sperm, fertilized eggs, and embryos, prior  
2 to—

3 (1) deployment to a combat zone; or

4 (2) a duty assignment that includes a haz-  
5 arduous assignment, including—

6 (A) assignments resulting in exposure to  
7 perfluoroalkyl or polyfluoroalkyl substances;  
8 and

9 (B) such other assignments as determined  
10 by the Secretary.

11 (b) PERIOD OF TIME.—

12 (1) IN GENERAL.—The Secretary shall provide  
13 for the cryopreservation and storage of reproductive  
14 genetic material of any member of the uniformed  
15 services under subsection (a) in a facility of the De-  
16 partment of Defense or of a private entity and the  
17 transportation of such material, at no cost to the  
18 member, until the date that is one year after the re-  
19 tirement, separation, or release of the member from  
20 the uniformed services.

21 (2) CONTINUED CRYOPRESERVATION AND  
22 STORAGE.—At the end of the one-year period speci-  
23 fied in paragraph (1), the Secretary shall permit an  
24 individual whose reproductive genetic material was  
25 cryopreserved and stored as described in that para-

1 graph to select, including pursuant to an advance  
2 medical directive or military testamentary instru-  
3 ment completed under subsection (c), one of the fol-  
4 lowing options:

5 (A) To continue such cryopreservation and  
6 storage in such facility with the cost of such  
7 cryopreservation and storage borne by the indi-  
8 vidual.

9 (B) To transfer the material to a private  
10 cryopreservation and storage facility selected by  
11 the individual.

12 (C) To transfer the material to a facility of  
13 the Department of Veterans Affairs if  
14 cryopreservation and storage is available to the  
15 individual at such facility and the individual is  
16 eligible for such services.

17 (3) DISPOSAL OF REPRODUCTIVE GENETIC MA-  
18 TERIAL.—

19 (A) NO SELECTION.—If an individual de-  
20 scribed in paragraph (2) does not make a selec-  
21 tion under subparagraph (A), (B), or (C) of  
22 such paragraph, the Secretary may dispose of  
23 the reproductive genetic material of the indi-  
24 vidual not earlier than the date that is 90 days

1           after the end of the one-year period specified in  
2           paragraph (1) with respect to the individual.

3                   (B) ELECTION BY INDIVIDUAL.—At the  
4           election of an individual described in paragraph  
5           (2), the Secretary may dispose of the reproduc-  
6           tive genetic material of the individual.

7           (c) ADVANCE MEDICAL DIRECTIVE AND MILITARY  
8   TESTAMENTARY INSTRUMENT.—A member of the uni-  
9   formed services who elects to cryopreserve and store their  
10   reproductive genetic material under this section must com-  
11   plete an advance medical directive, as defined in section  
12   1044c(b) of title 10, United States Code, and a military  
13   testamentary instrument, as defined in section 1044d(b)  
14   of such title, that explicitly specifies the use of their  
15   cryopreserved and stored reproductive genetic material if  
16   such member dies or otherwise loses the capacity to con-  
17   sent to the use of their cryopreserved and stored reproduc-  
18   tive genetic material.

19           (d) AGREEMENTS.—To carry out this section, the  
20   Secretary may enter into agreements with private entities  
21   that provide cryopreservation, transportation, and storage  
22   services for reproductive genetic material.

1 **SEC. 205. ASSISTANCE WITH AND CONTINUITY OF CARE RE-**  
2 **GARDING REPRODUCTIVE AND FERTILITY**  
3 **PRESERVATION SERVICES.**

4 The Secretary of Defense shall ensure that employees  
5 of the Department of Defense assist members of the uni-  
6 formed services—

7 (1) in navigating the services provided under  
8 this subtitle;

9 (2) in finding a provider that meets the needs  
10 of such members with respect to such services; and

11 (3) in continuing the receipt of such services  
12 without interruption during a permanent change of  
13 station for such members.

14 **SEC. 206. COORDINATION BETWEEN DEPARTMENT OF DE-**  
15 **FENSE AND DEPARTMENT OF VETERANS AF-**  
16 **FAIRS ON FURNISHING OF FERTILITY TREAT-**  
17 **MENT AND COUNSELING.**

18 (a) IN GENERAL.—The Secretary of Defense and the  
19 Secretary of Veterans Affairs shall share best practices  
20 and facilitate referrals, as they consider appropriate, on  
21 the furnishing of fertility treatment and counseling to in-  
22 dividuals eligible for the receipt of such counseling and  
23 treatment from the Secretaries.

24 (b) MEMORANDUM OF UNDERSTANDING.—The Sec-  
25 retary of Defense and the Secretary of Veterans Affairs  
26 shall enter into a memorandum of understanding—

1           (1) providing that the Secretary of Defense will  
2           ensure access by the Secretary of Veterans Affairs  
3           to reproductive genetic material, such as oocytes,  
4           sperm, fertilized eggs, and embryos, of veterans  
5           stored by the Department of Defense for purposes of  
6           furnishing fertility treatment under section 1720K  
7           of title 38, United States Code, as added by section  
8           212(a); and

9           (2) authorizing the Department of Veterans Af-  
10          fairs to compensate the Department of Defense for  
11          the cryopreservation, transportation, and storage of  
12          reproductive genetic material of veterans under sec-  
13          tion 204(b)(2)(A).

14 **SEC. 207. REGULATIONS.**

15          Not later than two years after the date of the enact-  
16          ment of this Act, the Secretary of Defense shall prescribe  
17          regulations to carry out this subtitle.

18                           **Subtitle B—Reproductive**  
19                           **Assistance for Veterans**

20 **SEC. 211. INCLUSION OF FERTILITY TREATMENT AND**  
21                           **COUNSELING UNDER THE DEFINITION OF**  
22                           **MEDICAL SERVICES IN TITLE 38.**

23          Section 1701(6) of title 38, United States Code, is  
24          amended by adding at the end the following new subpara-  
25          graph:

1                   “(J) Fertility treatment and counseling  
2                   under section 1720K of this title.”.

3 **SEC. 212. FERTILITY TREATMENT AND COUNSELING FOR**  
4                   **CERTAIN VETERANS AND SPOUSES, PART-**  
5                   **NERS, AND GESTATIONAL SURROGATES OF**  
6                   **SUCH VETERANS.**

7           (a) IN GENERAL.—Subchapter II of chapter 17 of  
8 title 38, United States Code, is amended by adding at the  
9 end the following new section:

10 **“§ 1720K. Fertility treatment and counseling for cer-**  
11                   **tain veterans and spouses, partners, and**  
12                   **gestational surrogates of such veterans**

13           “(a) REQUIREMENT.—

14                   “(1) IN GENERAL.—Notwithstanding any other  
15 provision of law, including the surrogacy laws of any  
16 State, the Secretary shall furnish fertility treatment  
17 and counseling for the benefit of a covered veteran  
18 to the veteran and the spouse, partner, gamete  
19 donor, or gestational surrogate of the veteran if the  
20 veteran, and the spouse, partner, gamete donor, or  
21 gestational surrogate of the veteran, as applicable,  
22 each provide informed consent for such treatment  
23 and counseling, including for each cycle of treatment  
24 authorized under this section, through a process pre-  
25 scribed by the Secretary.

1           “(2) PROVISION OF TREATMENT AND COUN-  
2           SELING.—Fertility treatment and counseling shall be  
3           furnished under paragraph (1) without regard to the  
4           sex, sexual characteristics, gender identity, sexual  
5           orientation, infertility diagnosis, or marital status of  
6           the covered veteran or their partner.

7           “(3) IN VITRO FERTILIZATION.—In the case of  
8           in vitro fertilization treatment furnished under para-  
9           graph (1), the Secretary may furnish to an indi-  
10          vidual under such paragraph—

11                   “(A) not more than three completed oocyte  
12                   retrievals; and

13                   “(B) unlimited embryo transfers.

14          “(4) COPAYMENT.—The Secretary shall only  
15          furnish fertility treatment and counseling under  
16          paragraph (1) to a covered veteran who is required  
17          to pay to the United States a copayment amount as  
18          a condition for the receipt of hospital care, medical  
19          services, or medications under this chapter if the  
20          covered veteran agrees to pay such applicable copay-  
21          ment amount to the United States for such treat-  
22          ment and counseling.

23          “(b) PROCUREMENT OF REPRODUCTIVE GENETIC  
24          MATERIAL.—

1           “(1) IN GENERAL.—If a covered veteran is un-  
2 able to provide their reproductive genetic material  
3 for purposes of fertility treatment under subsection  
4 (a), the Secretary shall, at the election of such vet-  
5 eran—

6           “(A) allow such veteran to receive such  
7 treatment with donated reproductive genetic  
8 material, if the donor provides informed consent  
9 for use of such material; and

10           “(B) pay or reimburse the veteran, donor,  
11 or a party acting on behalf of the donor the  
12 reasonable costs of procuring such material  
13 from the donor.

14           “(2) OTHER EXPENSES.—The Secretary may  
15 pay or reimburse a covered veteran a reasonable  
16 amount for personal travel and incidental expenses  
17 associated with procuring material from a donor  
18 under paragraph (1).

19           “(c) OUTREACH AND TRAINING.—The Secretary  
20 shall carry out an outreach and training program to en-  
21 sure veterans and health care providers of the Department  
22 are aware of—

23           “(1) the availability of and eligibility require-  
24 ments for fertility treatment and counseling under  
25 this section; and

1           “(2) any changes to fertility treatment and  
2           counseling covered under this section.

3           “(d) OWNERSHIP, USE, OR DISPOSITION OF REPRO-  
4           DUCTIVE GENETIC MATERIAL.—

5           “(1) IN GENERAL.—Issues or disputes regard-  
6           ing ownership of reproductive genetic material or fu-  
7           ture use or disposition of such material shall be the  
8           sole responsibility of the covered veteran, the spouse,  
9           partner, or gestational surrogate of the veteran, as  
10          applicable, and the private facility storing such ma-  
11          terial.

12          “(2) AGREEMENT REGARDING DONATED RE-  
13          PRODUCTIVE GENETIC MATERIAL.—As a condition  
14          of the use of donated gametes or embryos under this  
15          section, the third-party donor and a provider of fer-  
16          tility treatment that has entered into a contract or  
17          agreement with the Secretary to provide such treat-  
18          ment under this section are required to enter into an  
19          arrangement or agreement governing the terms of  
20          the donation, to include ultimate disposition of any  
21          remaining gametes or embryos once a covered vet-  
22          eran has exhausted the fertility treatment available  
23          under this section, unless the veteran or the spouse  
24          or partner of the veteran has agreed to assume li-  
25          ability for the continued preservation of any remain-

1 ing gametes or embryos and the Department is not  
2 party to the arrangement or agreement for such con-  
3 tinued preservation.

4 “(3) ROLE OF DEPARTMENT.—The role of the  
5 Secretary under this section is limited to furnishing  
6 the treatment and counseling required under this  
7 section when requested by a covered veteran and de-  
8 termined necessary by the Secretary.

9 “(4) OWNERSHIP AND CUSTODY OF REPRODUC-  
10 TIVE GENETIC MATERIAL.—The Secretary will not  
11 have ownership or custody of any reproductive ge-  
12 netic material obtained pursuant to treatment under  
13 this section and will not be involved in the ultimate  
14 disposition of such material or disputes between or  
15 among any parties with respect to such material.

16 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
17 tion shall be construed to require the Secretary—

18 “(1) to find or certify a gestational surrogate  
19 for a covered veteran or to connect a gestational sur-  
20 rogate with a covered veteran; or

21 “(2) to furnish maternity care to a covered vet-  
22 eran or spouse, partner, or gestational surrogate of  
23 a covered veteran beyond what is otherwise required  
24 or authorized by law.

25 “(f) DEFINITIONS.—In this section:

1           “(1) The term ‘covered veteran’ means a vet-  
2           eran who is enrolled in the system of annual patient  
3           enrollment established under section 1705(a) of this  
4           title.

5           “(2) The term ‘fertility treatment’ includes the  
6           following:

7                   “(A) Preservation of human oocytes,  
8                   sperm, or embryos for later reproductive use.

9                   “(B) Artificial insemination, including  
10                  intravaginal insemination, intracervical insemi-  
11                  nation, and intrauterine insemination.

12                  “(C) Assisted reproductive technology, in-  
13                  cluding in vitro fertilization and other treat-  
14                  ments or procedures in which reproductive ge-  
15                  netic material, such as oocytes, sperm, fertilized  
16                  eggs, and embryos, are handled, when clinically  
17                  appropriate.

18                  “(D) Genetic testing of embryos.

19                  “(E) Medications prescribed or obtained  
20                  over-the-counter, as indicated for fertility.

21                  “(F) Gamete donation.

22                  “(G) Such other information, referrals,  
23                  treatments, procedures, medications, laboratory  
24                  testing, technologies, and services relating to

1 fertility as the Secretary determines appro-  
2 priate.

3 “(3) The term ‘gestational surrogate’ means an  
4 individual who agrees to become pregnant through in  
5 vitro fertilization under a gestational surrogacy  
6 agreement using gametes that are not the gametes  
7 of that individual.

8 “(4) The term ‘partner’, with respect to a cov-  
9 ered veteran, means an individual selected by the  
10 veteran who agrees to be a parent, with the veteran,  
11 of a child born as a result of the use of any fertility  
12 treatment under this section.”.

13 (b) CLERICAL AMENDMENT.—The table of sections  
14 at the beginning of subchapter II of chapter 17 of such  
15 title is amended by inserting after the item relating to sec-  
16 tion 1720J the following new item:

“1720K. Fertility treatment and counseling for certain veterans and spouses,  
partners, and gestational surrogates of such veterans.”.

17 (c) SUNSET OF EXISTING AUTHORITY.—The author-  
18 ity under section 234 of the Military Construction, Vet-  
19 erans Affairs, and Related Agencies Appropriations Act,  
20 2024 (division A of Public Law 118–42), or any similar  
21 authority subsequently enacted by law, shall cease on the  
22 effective date of regulations prescribed to carry out section  
23 1720K of title 38, United States Code, as added by sub-  
24 section (a).

1 **SEC. 213. ASSISTANCE WITH AND CONTINUITY OF CARE RE-**  
2 **GARDING REPRODUCTIVE AND FERTILITY**  
3 **PRESERVATION SERVICES.**

4 The Secretary of Veterans Affairs shall ensure that  
5 employees of the Department of Veterans Affairs assist  
6 veterans—

7 (1) in navigating the services provided under  
8 this subtitle and the amendments made by this sub-  
9 title;

10 (2) in finding a provider that meets the needs  
11 of such veterans with respect to such services; and

12 (3) in continuing the receipt of such services  
13 without interruption if such veterans move to a dif-  
14 ferent geographic location.

15 **SEC. 214. COORDINATION OF REPRODUCTION AND FER-**  
16 **TILITY RESEARCH FOR VETERANS.**

17 (a) IN GENERAL.—Subchapter II of chapter 73 of  
18 title 38, United States Code, is amended by adding at the  
19 end the following new section:

20 **“§ 7330E. Coordination of reproduction and fertility**  
21 **research for veterans**

22 “(a) COORDINATION OF RESEARCH REQUIRED.—The  
23 Secretary shall coordinate with the Secretary of Defense  
24 and the Secretary of Health and Human Services to con-  
25 duct research to improve the ability of the Department  
26 of Veterans Affairs to meet the long-term reproductive

1 health care needs of veterans who have a condition that  
2 affects the ability of the individual to reproduce.

3 “(b) DISSEMINATION OF INFORMATION.—The Sec-  
4 retary shall ensure that information produced by the re-  
5 search under this section that may be useful for other ac-  
6 tivities of the Department is disseminated throughout the  
7 Department.”.

8 (b) CLERICAL AMENDMENT.—The table of sections  
9 at the beginning of subchapter II of chapter 73 of such  
10 title is amended by inserting after the item relating to sec-  
11 tion 7330D the following new item:

“7330E. Coordination of reproduction and fertility research for veterans.”.

12 **TITLE III—ACCESS TO FER-**  
13 **TILITY TREATMENT AND**  
14 **CARE**

15 **SEC. 301. SHORT TITLE.**

16 This title may be cited as the “Access to Fertility  
17 Treatment and Care Act”.

18 **SEC. 302. STANDARDS RELATING TO BENEFITS FOR FER-**  
19 **TILITY TREATMENT.**

20 (a) IN GENERAL.—

21 (1) PHSA.—Part D of title XXVII of the Pub-  
22 lic Health Service Act (42 U.S.C. 300gg–111 et  
23 seq.) is amended by adding at the end the following:

1 **“SEC. 2799A-11. STANDARDS RELATING TO BENEFITS FOR**  
2 **FERTILITY TREATMENT.**

3 “(a) IN GENERAL.—A group health plan or a health  
4 insurance issuer offering group or individual health insur-  
5 ance coverage shall provide coverage for fertility treat-  
6 ment, if such plan or coverage provides coverage for ob-  
7 stetrical services.

8 “(b) DEFINITION.—In this section, the term ‘fertility  
9 treatment’ includes the following:

10 “(1) Preservation of human oocytes, sperm, or  
11 embryos for later reproductive use.

12 “(2) Artificial insemination, including  
13 intravaginal insemination, intracervical insemination,  
14 and intrauterine insemination.

15 “(3) Assisted reproductive technology, including  
16 in vitro fertilization and other treatments or proce-  
17 dures in which reproductive genetic material, such as  
18 oocytes, sperm, fertilized eggs, and embryos, are  
19 handled, when clinically appropriate.

20 “(4) Genetic testing of embryos.

21 “(5) Medications prescribed or obtained over-  
22 the-counter, as indicated for fertility.

23 “(6) Gamete donation.

24 “(7) Such other information, referrals, treat-  
25 ments, procedures, medications, laboratory testing,

1 technologies, and services relating to fertility as the  
2 Secretary determines appropriate.

3 “(c) REQUIRED COVERAGE.—A group health plan  
4 and a health insurance issuer offering group or individual  
5 health insurance coverage that includes coverage for ob-  
6 stetricial services shall provide coverage for fertility treat-  
7 ment determined appropriate by the health care provider,  
8 regardless of whether the participant, beneficiary, or en-  
9 rollee receiving such treatment has been diagnosed with  
10 infertility as defined by the American Society for Repro-  
11 ductive Medicine, if the treatment is performed at, or pre-  
12 scribed by, a medical facility that is in compliance with  
13 relevant standards set by an appropriate Federal agency.

14 “(d) LIMITATION.—Cost-sharing, including  
15 deductibles and coinsurance, or other limitations for fer-  
16 tility treatment may not be imposed with respect to the  
17 services required to be covered under subsection (c) to the  
18 extent that such cost-sharing exceeds the cost-sharing ap-  
19 plied to other medical services under the group health plan  
20 or health insurance coverage or such other limitations are  
21 different from limitations imposed with respect to such  
22 medical services, except where such limitation is more fa-  
23 vorable with respect to fertility treatment. The Secretary  
24 shall promulgate interim final regulations to carry out this

1 subsection, notwithstanding the notice and comment re-  
2 quirements of section 553 of title 5, United States Code.

3 “(e) PROHIBITIONS.—A group health plan and a  
4 health insurance issuer offering group or individual health  
5 insurance coverage may not—

6 “(1) provide incentives (monetary or otherwise)  
7 to a participant, beneficiary, or enrollee to encourage  
8 such participant, beneficiary, or enrollee not to seek  
9 or obtain fertility treatment to which such partici-  
10 pant, beneficiary, or enrollee is entitled under this  
11 section or to providers to induce such providers not  
12 to provide medically appropriate fertility treatments  
13 to participants, beneficiaries, or enrollees;

14 “(2) prohibit a provider from discussing with a  
15 participant, beneficiary, or enrollee fertility treat-  
16 ment relating to this section;

17 “(3) penalize or otherwise reduce or limit the  
18 reimbursement of a provider because such provider  
19 provided fertility treatment to a qualified partici-  
20 pant, beneficiary, or enrollee in accordance with this  
21 section; or

22 “(4) on the ground prohibited under title VI of  
23 the Civil Rights Act of 1964, title IX of the Edu-  
24 cation Amendments of 1972, the Age Discrimination  
25 Act of 1975, section 504 of the Rehabilitation Act

1 of 1973, or section 1557 of the Patient Protection  
2 and Affordable Care Act, exclude any individual  
3 from coverage in accordance with this section, or  
4 discriminate against any individual with respect to  
5 such coverage.

6 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
7 tion shall be construed to require a participant, bene-  
8 ficiary, or enrollee to undergo fertility treatment.

9 “(g) NOTICE.—A group health plan and a health in-  
10 surance issuer offering group or individual health insur-  
11 ance coverage shall provide notice to each participant, ben-  
12 efiary, and enrollee under such plan or coverage regard-  
13 ing the coverage required by this section in accordance  
14 with regulations promulgated by the Secretary. Such no-  
15 tice shall be in writing and prominently positioned in any  
16 literature or correspondence made available or distributed  
17 by the plan or issuer and shall be transmitted—

18 “(1) not later than the earlier of—

19 “(A) in the first standard mailing made by  
20 the plan or issuer to the participant, bene-  
21 ficiary, or enrollee following the effective date of  
22 such regulations;

23 “(B) as part of any yearly informational  
24 packet sent to the participant, beneficiary, or  
25 enrollee; or

1 “(C) January 1, 2026;

2 “(2) in the case of a participant, beneficiary, or  
3 enrollee not enrolled in the plan or coverage on the  
4 date of transmission under paragraph (1), upon ini-  
5 tial enrollment of such participant, beneficiary, or  
6 enrollee; and

7 “(3) on an annual basis after the transmission  
8 under paragraph (1) or (2).

9 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
10 Nothing in this section shall be construed to prevent a  
11 group health plan or a health insurance issuer offering  
12 group or individual health insurance coverage from negoti-  
13 ating the level and type of reimbursement with a provider  
14 for care provided in accordance with this section.”.

15 (2) ERISA.—

16 (A) IN GENERAL.—Subpart B of part 7 of  
17 subtitle B of title I of the Employee Retirement  
18 Income Security Act of 1974 (29 U.S.C. 1185  
19 et seq.) is amended by adding at the end the  
20 following:

21 **“SEC. 726. STANDARDS RELATING TO BENEFITS FOR FER-**  
22 **TILITY TREATMENT.**

23 “(a) IN GENERAL.—A group health plan or a health  
24 insurance issuer offering group health insurance coverage

1 shall provide coverage for fertility treatment, if such plan  
2 or coverage provides coverage for obstetrical services.

3 “(b) DEFINITION.—In this section, the term ‘fertility  
4 treatment’ includes the following:

5 “(1) Preservation of human oocytes, sperm, or  
6 embryos for later reproductive use.

7 “(2) Artificial insemination, including  
8 intravaginal insemination, intracervical insemination,  
9 and intrauterine insemination.

10 “(3) Assisted reproductive technology, including  
11 in vitro fertilization and other treatments or proce-  
12 dures in which reproductive genetic material, such as  
13 oocytes, sperm, fertilized eggs, and embryos, are  
14 handled, when clinically appropriate.

15 “(4) Genetic testing of embryos.

16 “(5) Medications prescribed or obtained over-  
17 the-counter, as indicated for fertility.

18 “(6) Gamete donation.

19 “(7) Such other information, referrals, treat-  
20 ments, procedures, medications, laboratory testing,  
21 technologies, and services relating to fertility as the  
22 Secretary of Health and Human Services determines  
23 appropriate.

24 “(c) REQUIRED COVERAGE.—A group health plan  
25 and a health insurance issuer offering group health insur-

1 ance coverage that includes coverage for obstetrical serv-  
2 ices shall provide coverage for fertility treatment deter-  
3 mined appropriate by the health care provider, regardless  
4 of whether the participant or beneficiary receiving such  
5 treatment has been diagnosed with infertility as defined  
6 by the American Society for Reproductive Medicine, if the  
7 treatment is performed at, or prescribed by, a medical fa-  
8 cility that is in compliance with relevant standards set by  
9 an appropriate Federal agency.

10 “(d) LIMITATION.—Cost-sharing, including  
11 deductibles and coinsurance, or other limitations for fer-  
12 tility treatment may not be imposed with respect to the  
13 services required to be covered under subsection (c) to the  
14 extent that such cost-sharing exceeds the cost-sharing ap-  
15 plied to other medical services under the group health plan  
16 or health insurance coverage or such other limitations are  
17 different from limitations imposed with respect to such  
18 medical services, except where such limitation is more fa-  
19 vorable with respect to fertility treatment. The Secretary  
20 shall promulgate interim final regulations to carry out this  
21 subsection, notwithstanding the notice and comment re-  
22 quirements of section 553 of title 5, United States Code.

23 “(e) PROHIBITIONS.—A group health plan and a  
24 health insurance issuer offering group health insurance  
25 coverage may not—

1           “(1) provide incentives (monetary or otherwise)  
2           to a participant or beneficiary to encourage such  
3           participant or beneficiary not to seek or obtain fer-  
4           tility treatment to which such participant or bene-  
5           ficiary is entitled under this section or to providers  
6           to induce such providers not to provide medically ap-  
7           propriate fertility treatments to participants or bene-  
8           ficiaries;

9           “(2) prohibit a provider from discussing with a  
10          participant or beneficiary fertility treatment relating  
11          to this section;

12          “(3) penalize or otherwise reduce or limit the  
13          reimbursement of a provider because such provider  
14          provided fertility treatment to a qualified participant  
15          or beneficiary in accordance with this section; or

16          “(4) on the ground prohibited under title VI of  
17          the Civil Rights Act of 1964 (42 U.S.C. 2000d et  
18          seq.), title IX of the Education Amendments of 1972  
19          (20 U.S.C. 1681 et seq.), the Age Discrimination  
20          Act of 1975 (42 U.S.C. 6101 et seq.), section 504  
21          of the Rehabilitation Act of 1973 (29 U.S.C. 794),  
22          or section 1557 of the Patient Protection and Af-  
23          fordable Care Act (42 U.S.C. 18116), exclude any  
24          individual from coverage in accordance with this sec-

1           tion, or discriminate against any individual with re-  
2           spect to such coverage.

3           “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
4           tion shall be construed to require a participant or bene-  
5           ficiary to undergo fertility treatment.

6           “(g) NOTICE.—A group health plan and a health in-  
7           surance issuer offering group health insurance coverage  
8           shall provide notice to each participant and beneficiary  
9           under such plan or coverage regarding the coverage re-  
10          quired by this section in accordance with regulations pro-  
11          mulgated by the Secretary. Such notice shall be in writing  
12          and prominently positioned in any literature or cor-  
13          respondence made available or distributed by the plan or  
14          issuer and shall be transmitted—

15                 “(1) not later than the earlier of—

16                         “(A) in the first standard mailing made by  
17                         the plan or issuer to the participant or bene-  
18                         ficiary following the effective date of such regu-  
19                         lations;

20                         “(B) as part of any yearly informational  
21                         packet sent to the participant or beneficiary; or

22                         “(C) January 1, 2026;

23                 “(2) in the case of a participant or beneficiary  
24                 not enrolled in the plan or coverage on the date of

1 transmission under paragraph (1), upon initial en-  
2 rollment of such participant or beneficiary; and

3 “(3) on an annual basis after the transmission  
4 under paragraph (1) or (2).

5 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
6 Nothing in this section shall be construed to prevent a  
7 group health plan or a health insurance issuer offering  
8 group health insurance coverage from negotiating the level  
9 and type of reimbursement with a provider for care pro-  
10 vided in accordance with this section.”.

11 (B) CLERICAL AMENDMENT.—The table of  
12 contents in section 1 of the Employee Retirement  
13 Income Security Act of 1974 (29 U.S.C.  
14 1001 et seq.) is amended by inserting after the  
15 item relating to section 725 the following new  
16 item:

“Sec. 726. Standards relating to benefits for fertility treatment.”.

17 (3) IRC.—

18 (A) IN GENERAL.—Subchapter B of chap-  
19 ter 100 of the Internal Revenue Code of 1986  
20 is amended by adding at the end the following:

21 **“SEC. 9826. STANDARDS RELATING TO BENEFITS FOR FER-**  
22 **TILITY TREATMENT.**

23 “(a) IN GENERAL.—A group health plan shall pro-  
24 vide coverage for fertility treatment, if such plan provides  
25 coverage for obstetrical services.

1           “(b) DEFINITION.—In this section, the term ‘fertility  
2 treatment’ includes the following:

3           “(1) Preservation of human oocytes, sperm, or  
4 embryos for later reproductive use.

5           “(2) Artificial insemination, including  
6 intravaginal insemination, intracervical insemination,  
7 and intrauterine insemination.

8           “(3) Assisted reproductive technology, including  
9 in vitro fertilization and other treatments or proce-  
10 dures in which reproductive genetic material, such as  
11 oocytes, sperm, fertilized eggs, and embryos, are  
12 handled, when clinically appropriate.

13           “(4) Genetic testing of embryos.

14           “(5) Medications prescribed or obtained over-  
15 the-counter, as indicated for fertility.

16           “(6) Gamete donation.

17           “(7) Such other information, referrals, treat-  
18 ments, procedures, medications, laboratory testing,  
19 technologies, and services relating to fertility as the  
20 Secretary of Health and Human Services determines  
21 appropriate.

22           “(c) REQUIRED COVERAGE.—A group health plan  
23 that includes coverage for obstetrical services shall provide  
24 coverage for fertility treatment determined appropriate by  
25 the health care provider, regardless of whether the partici-

1 pant or beneficiary receiving such treatment has been di-  
2 agnosed with infertility as defined by the American Society  
3 for Reproductive Medicine, if the treatment is performed  
4 at, or prescribed by, a medical facility that is in compli-  
5 ance with relevant standards set by an appropriate Fed-  
6 eral agency.

7 “(d) LIMITATION.—Cost-sharing, including  
8 deductibles and coinsurance, or other limitations for fer-  
9 tility treatment may not be imposed with respect to the  
10 services required to be covered under subsection (c) to the  
11 extent that such cost-sharing exceeds the cost-sharing ap-  
12 plied to other medical services under the group health plan  
13 or health insurance coverage or such other limitations are  
14 different from limitations imposed with respect to such  
15 medical services, except where such limitation is more fa-  
16 vorable with respect to fertility treatment. The Secretary  
17 shall promulgate interim final regulations to carry out this  
18 subsection, notwithstanding the notice and comment re-  
19 quirements of section 553 of title 5, United States Code.

20 “(e) PROHIBITIONS.—A group health plan may not—  
21 “(1) provide incentives (monetary or otherwise)  
22 to a participant or beneficiary to encourage such  
23 participant or beneficiary not to seek or obtain fer-  
24 tility treatment to which such participant or bene-  
25 ficiary is entitled under this section or to providers

1 to induce such providers not to provide medically ap-  
2 propriate fertility treatments to participants or bene-  
3 ficiaries;

4 “(2) prohibit a provider from discussing with a  
5 participant or beneficiary fertility treatment relating  
6 to this section;

7 “(3) penalize or otherwise reduce or limit the  
8 reimbursement of a provider because such provider  
9 provided fertility treatment to a qualified participant  
10 or beneficiary in accordance with this section; or

11 “(4) on the ground prohibited under title VI of  
12 the Civil Rights Act of 1964 (42 U.S.C. 2000d et  
13 seq.), title IX of the Education Amendments of 1972  
14 (20 U.S.C. 1681 et seq.), the Age Discrimination  
15 Act of 1975 (42 U.S.C. 6101 et seq.), section 504  
16 of the Rehabilitation Act of 1973 (29 U.S.C. 794),  
17 or section 1557 of the Patient Protection and Af-  
18 fordable Care Act (42 U.S.C. 18116), exclude any  
19 individual from coverage in accordance with this sec-  
20 tion, or discriminate against any individual with re-  
21 spect to such coverage.

22 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
23 tion shall be construed to require a participant or bene-  
24 ficiary to undergo fertility treatment.

1           “(g) NOTICE.—A group health plan shall provide no-  
2 tice to each participant and beneficiary under such plan  
3 regarding the coverage required by this section in accord-  
4 ance with regulations promulgated by the Secretary. Such  
5 notice shall be in writing and prominently positioned in  
6 any literature or correspondence made available or distrib-  
7 uted by the plan and shall be transmitted—

8           “(1) not later than the earlier of—

9                   “(A) in the first standard mailing made by  
10 the plan to the participant or beneficiary fol-  
11 lowing the effective date of such regulations;

12                   “(B) as part of any yearly informational  
13 packet sent to the participant or beneficiary; or

14                   “(C) January 1, 2026;

15           “(2) in the case of a participant or beneficiary  
16 not enrolled in the plan on the date of transmission  
17 under paragraph (1), upon initial enrollment of such  
18 participant or beneficiary; and

19           “(3) on an annual basis after the transmission  
20 under paragraph (1) or (2).

21           “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—

22 Nothing in this section shall be construed to prevent a  
23 group health plan from negotiating the level and type of  
24 reimbursement with a provider for care provided in ac-  
25 cordance with this section.”.

1 (B) CLERICAL AMENDMENT.—The table of  
2 sections for subchapter B of chapter 100 of the  
3 Internal Revenue Code of 1986 is amended by  
4 adding at the end the following new item:

“Sec. 9826. Standards relating to benefits for fertility treatment.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) PHSA.—Section 2724(c) of the Public  
7 Health Service Act (42 U.S.C. 300gg-23(c)) is  
8 amended by striking “section 2704” and inserting  
9 “sections 2704 and 2799A-11”.

10 (2) ERISA.—Section 731(c) of the Employee  
11 Retirement Income Security Act of 1974 (29 U.S.C.  
12 1191(c)) is amended by striking “section 711” and  
13 inserting “sections 711 and 726”.

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by  
16 subsections (a) and (b) shall apply for plan years be-  
17 ginning on or after the date that is 6 months after  
18 the date of enactment of this Act.

19 (2) COLLECTIVE BARGAINING EXCEPTION.—

20 (A) IN GENERAL.—In the case of a group  
21 health plan maintained pursuant to one or more  
22 collective bargaining agreements between em-  
23 ployee representatives and one or more employ-  
24 ers ratified before the date of enactment of this  
25 Act, the amendments made by subsection (a)

1 shall not apply to plan years beginning before  
2 the later of—

3 (i) the date on which the last collec-  
4 tive bargaining agreements relating to the  
5 plan terminates (determined without re-  
6 gard to any extension thereof agreed to  
7 after the date of enactment of this Act), or

8 (ii) the date occurring 6 months after  
9 the date of the enactment of this Act.

10 (B) CLARIFICATION.—For purposes of  
11 subparagraph (A), any plan amendment made  
12 pursuant to a collective bargaining agreement  
13 relating to the plan which amends the plan sole-  
14 ly to conform to any requirement added by sub-  
15 section (a) shall not be treated as a termination  
16 of such collective bargaining agreement.

17 **SEC. 303. REQUIREMENT FOR STATE MEDICAID PLANS TO**  
18 **PROVIDE MEDICAL ASSISTANCE FOR FER-**  
19 **TILITY TREATMENT.**

20 (a) IN GENERAL.—Section 1905 of the Social Secu-  
21 rity Act (42 U.S.C. 1396d) is amended—

22 (1) in subsection (a)(4)(C), by inserting  
23 “(which shall include fertility treatment provided in  
24 accordance with subsection (kk))” after “family  
25 planning services and supplies”; and

1           (2) by adding at the end the following new sub-  
2           section:

3           “(kk) REQUIREMENTS FOR COVERAGE OF FERTILITY  
4 TREATMENT.—For purposes of subsection (a)(4)(C), a  
5 State shall ensure that the medical assistance provided  
6 under the State plan (or waiver of such plan) for fertility  
7 treatment complies with the requirements of section  
8 2799A–11(b) of the Public Health Service Act in the same  
9 manner as such requirements and limitations apply to  
10 health insurance coverage offered by a group health plan  
11 or health insurance issuer.”.

12           (b) TECHNICAL AMENDMENT.—Section 1903(a)(5)  
13 of the Social Security Act (42 U.S.C. 1396b(a)(5)) is  
14 amended by inserting “described in section  
15 1905(a)(4)(C)” after “family planning services and sup-  
16 plies”.

17           (c) EFFECTIVE DATE.—

18           (1) IN GENERAL.—Except as provided in para-  
19           graph (2), the amendments made by this section  
20           shall take effect on October 1, 2025.

21           (2) DELAY PERMITTED IF STATE LEGISLATION  
22           REQUIRED.—In the case of a State plan approved  
23           under title XIX of the Social Security Act which the  
24           Secretary of Health and Human Services determines  
25           requires State legislation (other than legislation ap-

1       appropriating funds) in order for the plan to meet the  
2       additional requirement imposed by this section, the  
3       State plan shall not be regarded as failing to comply  
4       with the requirements of such title solely on the  
5       basis of the failure of the plan to meet such addi-  
6       tional requirement before the first day of the first  
7       calendar quarter beginning after the close of the  
8       first regular session of the State legislature that  
9       ends after the 1-year period beginning with the date  
10      of the enactment of this section. For purposes of the  
11      preceding sentence, in the case of a State that has  
12      a 2-year legislative session, each year of the session  
13      is deemed to be a separate regular session of the  
14      State legislature.

15 **SEC. 304. MEDICARE COVERAGE OF FERTILITY TREAT-**  
16 **MENT.**

17       (a) COVERAGE.—Section 1861(s)(2) of the Social Se-  
18      curity Act (42 U.S.C. 1395x(s)(2)) is amended—

19           (1) in subparagraph (JJ), by inserting “and”  
20           after the semicolon at the end; and

21           (2) by adding at the end the following new sub-  
22           paragraph:

23           “(KK) fertility treatment (as defined in section  
24           2799A–11(b) of the Public Health Service Act);”.

1 (b) PAYMENT AND WAIVER OF COINSURANCE.—Sec-  
2 tion 1833(a)(1) of the Social Security Act (42 U.S.C.  
3 1395l(a)(1)) is amended—

4 (1) by striking “and” before “(HH)”;

5 (2) by inserting before the semicolon at the end  
6 the following: “, and (II) with respect to fertility  
7 treatment (as described in section 1861(s)(2)(KK)),  
8 the amount paid shall be equal to 100 percent of the  
9 lesser of the actual charge for the treatment or the  
10 amount determined under the payment basis deter-  
11 mined under section 1848”.

12 (c) WAIVER OF APPLICATION OF DEDUCTIBLE.—The  
13 first sentence of section 1833(b) of the Social Security Act  
14 (42 U.S.C. 1395l(b)) is amended—

15 (1) by striking “, and (13)” and inserting  
16 “(13)”;

17 (2) by striking “1861(n)..” and inserting  
18 “1861(n), and (14) such deductible shall not apply  
19 with respect to fertility treatment (as described in  
20 section 1861(s)(2)(KK)).”.

21 (d) PAYMENT UNDER PHYSICIAN FEE SCHEDULE.—  
22 Section 1848(j)(3) of the Social Security Act (42 U.S.C.  
23 1395w-4(j)(3)) is amended by inserting “(2)(KK),” after  
24 “risk assessment),”.

1 (e) CONFORMING AMENDMENT REGARDING COV-  
2 ERAGE.—Section 1862(a)(1)(A) of the Social Security Act  
3 (42 U.S.C. 1395y(a)(1)(A)) is amended—

4 (1) by striking “or additional” and inserting “,  
5 additional”; and

6 (2) by inserting “, or fertility treatment (as de-  
7 scribed in section 1861(s)(2)(KK))” after  
8 “1861(ddd)(1)”.

9 (f) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to services furnished on or after  
11 January 1, 2025.

## 12 **TITLE IV—FAMILY BUILDING**

### 13 **FEHB FAIRNESS**

#### 14 **SEC. 401. SHORT TITLE.**

15 This title may be cited as the “Family Building  
16 FEHB Fairness Act”.

#### 17 **SEC. 402. FERTILITY TREATMENT BENEFITS.**

18 (a) IN GENERAL.—Section 8904 of title 5, United  
19 States Code, is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (1), by adding at the end  
22 the following:

23 “(G) Fertility treatment benefits.”; and

24 (B) in paragraph (2)—

1 (i) by redesignating subparagraph (F)  
2 as subparagraph (G); and

3 (ii) by inserting after subparagraph  
4 (E) the following:

5 “(F) Fertility treatment benefits.”; and

6 (2) by adding at the end the following:

7 “(c) In this section, the term ‘fertility treatment’ in-  
8 cludes the following:

9 “(1) Preservation of human oocytes, sperm, or  
10 embryos for later reproductive use.

11 “(2) Artificial insemination, including  
12 intravaginal insemination, intracervical insemination,  
13 and intrauterine insemination.

14 “(3) Assisted reproductive technology, including  
15 in vitro fertilization and other treatments or proce-  
16 dures in which reproductive genetic material, such as  
17 oocytes, sperm, fertilized eggs, and embryos, are  
18 handled, when clinically appropriate.

19 “(4) Genetic testing of embryos.

20 “(5) Medications prescribed or obtained over-  
21 the-counter, as indicated for fertility.

22 “(6) Gamete donation.

23 “(7) Such other information, referrals, treat-  
24 ments, procedures, medications, laboratory services,  
25 technologies, and services relating to fertility as the

1 Director of the Office of Personnel Management, in  
2 coordination with the Secretary of Health and  
3 Human Services, determines appropriate.”.

4 (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect on the date that is 1 year  
6 after the date of enactment of this Act.