



# CAHP IMPLEMENTATION GUIDELINE

## SB 729 (Menjivar) Chapter 930, Statutes of 2024

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*As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.*

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### **TITLE: HEALTH CARE COVERAGE: TREATMENT FOR INFERTILITY AND FERTILITY SERVICES**

#### **BACKGROUND**

SB 729 was introduced by Senator Caroline Menjivar (D-San Fernando Valley) in February 2023 related to health plan coverage for In-Vitro Fertilization (IVF). The bill made its way through the 2023 Legislative Session before being made into a “two-year” bill in the Assembly Appropriations Committee in August 2023. However, the author resurrected the bill in August 2024 to move the bill out of the Legislature. Notably, the Assembly Appropriations Committee Chair in 2024 was Assemblymember Buffy Wicks (D-Oakland), who had carried prior versions of the bill. With a sympathetic Chair, the bill was voted out by the Assembly Appropriations Committee at the last hearing of the year. From there, the bill passed out of the Legislature in the last week of session.

This bill requires health plans in the large group market to provide coverage for the diagnosis and treatment of infertility and fertility services, including services of a maximum of three completed oocyte retrievals with unlimited embryo transfers when recommended and medically appropriate. Additionally, this bill requires that health plans operating in the small group market offer coverage for the diagnosis and treatment of infertility and fertility services. The bill was cosponsored by a variety of groups, including Insurance Commissioner Ricardo Lara, Equality California, the Alliance for Fertility Preservation, and the American Society for Reproductive Medicine, among others. The bill also received a wide variety of support from numerous health care consumer groups.

CAHP leapt into action as soon as the bill was resurrected, issuing opposition letters to the bill and furiously lobbying against the bill because the bill will dramatically increase health care costs. According to the California Health Benefits Review Program (CHBRP), SB 729 would increase health care premiums on Californians who receive their health care coverage through their employer by a staggering \$182,747,000 in the first-year post-mandate, ballooning up to \$329,941,000 in year two. Additionally, CAHP objected to the disjointed implementation of this particular coverage mandate, whereby health plans are required to cover IVF services solely to individuals who receive employer-sponsored health care.

Also troubling is the fact that SB 729 circumvents California's recent efforts to consider a new Essential Health Benefits (EHB) Benchmark Plan. The Governor, as noted in the [signing letter](#), has undertaken substantial work to further this effort, including holding public meetings and working with an actuary firm to conduct a feasibility study on what a new benchmark plan could look like. Furthermore, he advocated for IVF's inclusion and stipulated that the benefit might change while simultaneously asking the Legislature to come back and extend the implementation date. The EHB process was meant to engage in a more thoughtful and comprehensive analysis of health care affordability and accessibility instead of passing one-off mandated health benefits. Instead, we are left preparing for one specific benefit while anticipating that it might change in unknown ways.

The bill passed out of the Legislature on a somewhat bi-partisan vote in the Assembly and a strictly party-line vote in the Senate. The Governor signed SB 729 on September 29, 2024.

## REQUIREMENTS

- 1) Requires a large group health plan contract or policy of disability insurance that is issued, amended, or renewed on or after July 1, 2025, to provide coverage for the diagnosis and treatment of infertility and fertility services, including services of a maximum of three completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the ASRM using single embryo transfer when recommended and medically appropriate.
- 2) Requires for small group contracts and health insurance policies issued, amended, or renewed on or after July 1, 2025, to offer coverage for the diagnosis and treatment of infertility and fertility services.
- 3) Requires a health plan or insurer to provide coverage for the treatment of infertility and fertility services without discrimination on the basis of age, ancestry, color, disability, domestic partner status, gender, gender expression, gender identity, genetic information, marital status, national origin, race, religion, sex, or sexual orientation consistent with existing non-discrimination law.
- 3) Exempts a health benefit plan or policy entered into with the Board of Administration of the Public Employees' Medical and Hospital Act (CalPERS) until July 1, 2027.
- 4) Exempts from the provisions of this bill, religious employers and Medi-Cal managed care health plan contracts or any entity that enters into a contract with the Department of Health Care Services (DHCS), as specified.

## COMPLIANCE DATES

Unless future legislative action dictates otherwise, health plans will be required to implement the provisions of this bill beginning on July 1, 2025.

## IMPLEMENTATION ISSUES

### Applicability:

The bill's requirement to provide coverage for the diagnosis and treatment of infertility and fertility services applies to all commercial health plans with large group contracts, except specialized plans.

Health plans with small group contracts, except specialized health plans, are required to *offer* coverage for the diagnosis and treatment of infertility and fertility services.

The bill exempts Medi-Cal in totality. It also exempts CalPERS, but only until July 2027.

Implementation Issues:

Plans will need to include this new benefit into underwriting assumptions for each plan and benefit year once the bill goes into effect.

Plans should review, and make any necessary changes to, policies and procedures and member handbooks (EOCs).

Currently, there are more questions than answers surrounding the implementation of this bill, such as:

- Impact on California's Essential Health Benefits (EHB) benchmark process – The DMHC is examining a set of potential benefits to be considered for inclusion in a new benchmark plan, which may take effect in 2027. Infertility treatment is a benefit being considered.
  - Interplay with pending DMHC rulemaking for SB 600 (Fertility Preservation) – For large group products especially, there is the question of lifetime limits (which SB 729 does not have), the misalignment between oocyte retrieval limits in SB 600 and SB 729, and the fact that SB 729 allows for unlimited embryo transfers.
  - Possible drafting errors/areas for clarification – Subparagraph (2) begins by requiring a small group plan to offer coverage for the diagnosis and treatment of infertility and fertility services. However, the next sentence says, "this paragraph shall not be construed to require a small group health care service plan to contract to provide coverage for infertility services." It does not also state "fertility" like it does in the first sentence of subparagraph (2). In addition, the bill defines "infertility" but does not define "fertility services."
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