Multiple Agency Fiscal Note Summary

Bill Number: 1151 2S HB	Title: Fertility services coverage

Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total $	0	0	0	0	0	0	0	0	0

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Office of Insurance Commissioner	.2	0	0	62,422	.1	0	0	22,436	.1	0	0	22,436
Total $	0.2	0	0	62,422	0.1	0	0	22,436	0.1	0	0	22,436

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	.0	0	0	.0	0	0	.0	0	0
Total $	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Marcus Ehrlander, OFM	Phone: (360) 489-4327	Date Published: Final 4/ 4/2023

Individual State Agency Fiscal Note

Bill Number: 1151 2S HB	Title: Fertility services coverage	Agency: 107-Washington State Health Care Authority

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- [X] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- [ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- [ ] Capital budget impact, complete Part IV.
- [ ] Requires new rule making, complete Part V.

Legislative Contact:	Greg Attanasio	Phone: 360-786-7410	Date: 03/10/2023
Agency Preparation:	Molly Christie	Phone: 360-725-5138	Date: 03/15/2023
Agency Approval:	Tanya Deuel	Phone: 360-725-0908	Date: 03/15/2023
OFM Review:	Marcus Ehrlander	Phone: (360) 489-4327	Date: 03/21/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached narratives.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

See attached narratives.

HCA - No cash receipts.
HBE - Indeterminate cash receipts.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached narratives.

HCA - Indeterminate expenditures.
HBE - No expenditures.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

See attached narratives.

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Bill Number: 2SHB 1151 HCA Request #: 23-207

Part II: Narrative Explanation

I. A - Brief Description of What The Measure Does That Has Fiscal Impact

This second substitute version amends SHB 1151 to:

- Specify that plans issued or renewed on January 1, 2025, must cover standard fertility preservation services including two complete oocyte retrievals and unlimited embryo transfers.
- Limit coverage from four to two complete oocyte retrievals for persons who underwent standard fertility preservations services and for persons undergoing treatment for infertility.
- Delay coverage requirements for the diagnosis and treatment of infertility to January 1, 2026.
- Give the Office of the Insurance Commissioner authority to implement, administer, and enforce coverage requirements for commercial health plans.

The Washington State Building Families Act adds new sections to 48.43 RCW and 41.05 RCW requiring large group commercial health plans and plans offered by the Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) programs to include coverage for the diagnosis and treatment of infertility and for standard fertility preservation services on or after January 1, 2025. Benefits must be extended to enrollees and covered dependents, or their surrogates, at coverage levels in parity with services unrelated to infertility.

Section 2 (New Section, RCW 48.43 – Insurance Reform) establishes requirements for coverage of standard fertility preservation services and diagnosis and treatment of infertility by commercial health plans other than small group plans. Specifically, coverage must include 1) for plans issued or renewed on January 1, 2025, standard fertility preservation services, two complete oocyte retrievals, and unlimited embryo transfers; and 2) for plans issued or renewed on January 1, 2026, diagnosis and treatment of infertility with two complete oocyte retrievals and unlimited embryo transfers. Single embryo transfer is preferred when recommended and medically appropriate.

Health plans are prohibited from including:

- Fertility medication exclusions, limitations, or other restrictions different from other covered prescription medications
- Exclusions, limitations, or other restrictions on coverage provided by or to a third party; and
- Different cost-sharing or benefit limitations for infertility services than imposed on other medical services.

These sections also establish definitions for “diagnosis and treatment of infertility,” “infertility,” “regular, unprotected sexual intercourse,” and “standard fertility preservation services.”

Section 3 (New Section, RCW 41.05 - State Health Care Authority)
Creates the same requirements as Section 2 but applies specifically to health plans offered to employees and their covered dependents under the PEBB and SEBB programs, including the Uniform Medical Plan.

Section 5 (New Section) gives the OIC authority to adopt rules to implement, administer, and enforce Section 2.

II. B - Cash Receipts Impact

None.

II. C – Expenditures
This bill has an indeterminate fiscal impact on the PEBB and SEBB programs due to an anticipated significant increase in medical costs and resulting rates for the Uniform Medical Plan and the fully insured health plans; for reasons described below, a general cost estimate is not possible at this time.

Sections 2 and 3 establish requirements for coverage of infertility benefits for large group commercial health plans and PEBB and SEBB plans, including the Uniform Medical Plan (UMP). Plans must cover standard fertility preservation services, diagnosis and treatment of infertility, and assisted reproductive technology. Health plans may not impose limits on medical or pharmacy coverage for fertility services—including benefit exclusions, deductibles, copayments, coinsurance, benefit maximums, and waiting periods—that are more restrictive than those applied to non-fertility-related benefits.

Sections 2(1) and 3(1) stipulate that coverage must be provided to enrollees, including covered spouses and covered non-spouse dependents; however, Sections 2(2)(b) and 3(2)(b) specify that coverage must be extended to a third party, such as a surrogate, sperm donor, or egg donor. This analysis assumes that fertility services as described in the bill—such as fertility medications and embryo transfer—are covered for third parties. Maternal care for a surrogate (i.e., pregnancy and birth) would be covered by the individual's personal health insurance.

Broadly, medical plans in the PEBB and SEBB programs do not currently cover standard fertility preservation services, treatment for infertility, or medical costs for birth and maternal care for a surrogate who is not a PEBB or SEBB member. Specifically:

- UMP does not cover any services for the diagnosis or treatment of infertility, or for standard fertility preservation services.
- Premera plans in the SEBB program cover:
  - Diagnostic x-rays, labs, and imaging services for the diagnosis and treatment of the underlying conditions that may cause infertility; and
  - Medically necessary surgeries to correct the cause of infertility (exclusive of assisted reproduction techniques or sterilization reversal).
- Kaiser Health Plan Foundation of Washington (SEBB and PEBB) covers:
  - General counseling and a single consultation visit to diagnose infertility conditions.
- Kaiser Health Plan Foundation of the Northwest (SEBB only) covers:
  - Office visits and diagnostic imaging and laboratory tests for the diagnosis of infertility.

There is no impact to the Medicare Advantage (MA) plans offered to Medicare eligible PEBB retirees because state laws are pre-empted by Federal laws for MA and Part D offerings.

HCA is unable to establish reliable assumptions for utilization or unit cost because the benefits described in this bill are not currently (and have not historically been) offered in PEBB and SEBB medical plans. There is likely wide variation in cost across providers and pharmacies, and carriers that do not routinely offer fertility services may not have competitive network agreements with specialists who provide assisted reproductive technology or fertility preservation. Additionally, HCA does not have historical data on utilization of fertility services to estimate how many members would access benefits, and which benefits they would use. This would require more extensive research such as data requests from employers who have offered the full suite of benefits described in this bill, and whose covered populations are comparable to PEBB and SEBB in size and risk profile/demographics.

HCA is working with its contracted actuary, Milliman, to analyze the cost of covering infertility benefits in PEBB, SEBB, and Medicaid pursuant to the 2022 supplemental operating budget (ESSB 5693) and consistent with the benefits described in the December 2021 Sunrise Review. Milliman's preliminary analysis will be delivered to HCA at the end of March, and HCA's report to the legislature is due June 30, 2023. While this report does not assume any coverage for third parties (i.e., surrogates), it should provide a valid estimate for the cost of fertility services otherwise described in this bill.

Medicaid
No fiscal impact.
No impacts on the Medicaid lines of business because this legislation places the requirements under RCWs 48.43 and 41.05.

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

This bill would require all group health plans (other than small group health plans) and all plans offered to state employees and their dependents issued or renewed on/after January 1, 2025, to cover infertility diagnosis and treatment and standard fertility preservation services to the same extent as other pregnancy-related benefits.

II. B - Cash Receipts Impact

Indeterminate. Mandatory inclusion of fertility diagnosis and treatment and standard fertility preservation services covered to the same extent that other pregnancy-related benefits are provided will be a new benefit. New mandated benefits increase premiums, but the premium increase amount attributable to this new benefit is unknown at this time.

II. C - Expenditures

No fiscal impact, changes that require inclusion of this health care benefit in qualified health plans offered in the Exchange marketplace are not expected to require significant operational or Healthplanfinder system changes.

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 1151 2S HB	Title: Fertility services coverage	Agency: 160-Office of Insurance Commissioner

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.3	0.1	0.2	0.1	0.1
Account					
Insurance Commissioners Regulatory Account-State 138-1	47,433	14,989	62,422	22,436	22,436
Total $	47,433	14,989	62,422	22,436	22,436

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☒ Requires new rule making, complete Part V.

Legislative Contact:	Greg Attanasio	Phone: 360-786-7410	Date: 03/10/2023
Agency Preparation:	Shari Maier	Phone: 360-725-7173	Date: 03/15/2023
Agency Approval:	Michael Wood	Phone: 360-725-7007	Date: 03/15/2023
OFM Review:	Jason Brown	Phone: (360) 742-7277	Date: 03/16/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 2(1) requires group health plans, other than small group health plans, and Section 3(1) requires PEBB/SEBB fully insured group health plans, issued or renewed on or after January 1, 2025, to include coverage for the standard fertility preservation services. For persons who underwent standard fertility preservation services, coverage must include two completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine, using single embryo transfer when recommended and medically appropriate.

Section 2(2) requires group health plans, other than small group health plans, and Section 3(2) requires PEBB/SEBB fully insured group health plans, issued or renewed on or after January 1, 2026, to include coverage for the diagnosis of and treatment for infertility. Coverage must provide for two completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine, using single embryo transfer when recommended and medically appropriate.

Sections 2(3) and 3(3) requires the benefits to be provided to enrollees, including covered spouses and covered non-spouse dependents, to the same extent as other pregnancy-related benefits.

Section 2(4) prohibits group health plans, other than small group health plans, and Section 3(4) prohibits PEBB/SEBB fully insured group health plans, from including:
a. Any exclusions, limitations, or other restrictions on coverage of fertility medications that are different from those imposed on any other prescription medications.
b. Any exclusions, limitations, or other restrictions on coverage of any fertility services based on a covered individual's participation in fertility services provided by or to a third-party.
c. Any deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitation on coverage for the diagnosis infertility, treatment of infertility, and standard fertility preservation services, except as provided in this Section that are different from those imposed upon benefits for services not related to infertility.

Section 5 authorizes the Office of Insurance Commissioner to adopt rules to implement, administer, and enforce Section 2.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Section 2(1) requires group health plans, other than small group health plans, and Section 3(1) requires PEBB/SEBB fully insured group health plans, issued or renewed on or after January 1, 2025, to include coverage for the standard fertility preservation services. For persons who underwent standard fertility preservation services, coverage must include two completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine, using single embryo transfer when recommended and medically appropriate.

Sections 2(1) and 3(1) will require additional review of health plan form filings to ensure coverage for standard fertility preservation services is provided for and properly disclosed to enrollees in the forms. The Office of Insurance Commissioner (OIC) will require one-time costs, in FY2024, of 6 hours of a Functional Program Analyst 4 to update filing review standards and speed-to-market tools, update checklist documents and filing instructions, train staff, and educate

issuers. The OIC receives approximately 308 large group health plan form filings each year and assumes the new review standards will result in an additional 15 minutes of review per form filing in FY2024 and an additional 5 minutes of review per form filing in FY2025 and thereafter requiring 77 hours (308 form filings x 15 minutes) of a Functional Program Analyst 3 (FPA3) in FY2024 and 26 hours (308 form filings x 5 minutes) of a FPA3 in FY2025 and thereafter.

Section 2(2) requires group health plans, other than small group health plans, and Section 3(2) requires PEBB/SEBB fully insured group health plans, issued or renewed on or after January 1, 2026, to include coverage for the diagnosis of and treatment for infertility. Coverage must provide for two completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine, using single embryo transfer when recommended and medically appropriate.

Sections 2(2) and 3(2) will require additional review of health plan form filings to ensure coverage for the diagnosis of and treatment of infertility is provided for and properly disclosed to enrollees in the forms. The OIC will require one-time costs, in FY2025, of 6 hours of a Functional Program Analyst 4 to update filing review standards and speed-to-market tools, update checklist documents and filing instructions, train staff, and educate issuers. The OIC receives approximately 308 large group health plan form filings each year and assumes the new review standards will result in an additional 15 minutes of review per form filing in FY2025 and an additional 5 minutes of review per form filing in FY2026 and thereafter requiring 77 hours (308 form filings x 15 minutes) of a FPA3 in FY2025 and 26 hours (308 form filings x 5 minutes) of a FPA3 in FY2026 and thereafter.

Sections 2(3) and 3(3) requires the benefits to be provided to enrollees, including covered spouses and covered non-spouse dependents, to the same extent as other pregnancy-related benefits.

Section 2(4) prohibits group health plans, other than small group health plans, and Section 3(4) prohibits PEBB/SEBB fully insured group health plans, from including:
a. Any exclusions, limitations, or other restrictions on coverage of fertility medications that are different from those imposed on any other prescription medications.
b. Any exclusions, limitations, or other restrictions on coverage of any fertility services based on a covered individual's participation in fertility services provided by or to a third-party.
c. Any deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitation on coverage for the diagnosis infertility, treatment of infertility, and standard fertility preservation services, except as provided in this Section that are different from those imposed upon benefits for services not related to infertility.

Sections 2(3), 2(4), 3(3) and 3(4) will require additional review of health plan form filings to ensure benefits for infertility are covered to the same extent as other pregnancy related benefits and that fertility medication exclusions and restrictions are no different than those imposed on other prescription medications and that benefits are properly disclosed to enrollees in the forms. The OIC will require one-time costs, in FY2024, of 6 hours of a Functional Program Analyst 4 to update filing review standards and speed-to-market tools, update checklist documents and filing instructions, train staff, and educate issuers. The OIC receives approximately 308 large group health plan form filings each year and assumes the new review standards will result in an additional 15 minutes of review per form filing in FY2024 and an additional 5 minutes of review per form filing in FY2025 and thereafter requiring 77 hours (308 form filings x 15 minutes) of a FPA3 in FY2024 and 26 hours (308 form filings x 5 minutes) of a FPA3 in FY2025 and thereafter.

The provisions in Sections 2 and 3 will lead to an increase in enforcement actions. The OIC anticipates an average of one additional enforcement action per year to address allegations specific to coverage for fertility services. Enforcement actions require the equivalent of approximately 40 hours per case requiring 40 hours (1 case x 40 hours) of an Insurance Enforcement Specialist beginning in FY2025.

Section 5 authorizes the OIC to adopt rules to implement, administer, and enforce Section 2. This will require 'normal' rulemaking, in FY2024 to align current WACs, such as Subchapter L (Reproductive Health Care and Contraception) in WAC 284-43, with the new law.

Ongoing costs:
Salary, benefits and associated costs for .05 FTE Functional Program Analyst 3 and .03 FTE Insurance Enforcement Specialist.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
138-1	Insurance Commissioners Regulatory Account	State	47,433	14,989	62,422	22,436	22,436
		Total $	47,433	14,989	62,422	22,436	22,436

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.3	0.1	0.2	0.1	0.1
A-Salaries and Wages	28,449	8,846	37,295	13,296	13,296
B-Employee Benefits	9,497	3,145	12,642	4,652	4,652
C-Professional Service Contracts					
E-Goods and Other Services	9,487	2,998	12,485	4,488	4,488
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	47,433	14,989	62,422	22,436	22,436

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Functional Program Analyst 3	73,260	0.1	0.1	0.1	0.1	0.1
Functional Program Analyst 4	80,952	0.1		0.0		
Insurance Enforcement Specialist	99,516		0.0	0.0	0.0	0.0
Senior Policy Specialist	108,432	0.2		0.1		
Total FTEs		0.3	0.1	0.2	0.1	0.1

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Section 5 authorizes the Office of Insurance Commissioner to adopt rules to implement, administer, and enforce Section 2. This will require 'normal' rulemaking, in FY2024 to align current WACs, such as Subchapter L (Reproductive Health Care and Contraception) in WAC 284-43, with the new law.