

Multiple Agency Fiscal Note Summary

Bill Number: 1129 HB	Title: Fertility-related services
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Estimated Cash Receipts

NONE

Estimated Operating Expenditures

Agency Name	2025-27				2027-29				2029-31			
	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	69,346	.0	0	0	5,310	.0	0	0	0
Total \$	0.2	0	0	69,346	0.0	0	0	5,310	0.0	0	0	0

Estimated Capital Budget Expenditures

Agency Name	2025-27			2027-29			2029-31		
	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: Jason Brown, OFM	Phone: (360) 742-7277	Date Published: Final 1/30/2025
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Individual State Agency Fiscal Note

Bill Number: 1129 HB	Title: Fertility-related services	Agency: 107-Washington State Health Care Authority
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

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:

- 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: Kim Weidenaar	Phone: 360-786-7120	Date: 01/14/2025
Agency Preparation: Molly Christie	Phone: 360-725-5138	Date: 01/22/2025
Agency Approval: Tanya Deuel	Phone: 360-725-0908	Date: 01/22/2025
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 01/22/2025

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 narrative.

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 narrative.

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 narrative.

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 narrative.

Part V: New Rule Making Required

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

HCA Fiscal Note

Bill Number: **1129 HB**

HCA Request #: 25-015

Title: **Fertility-related services**

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

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:

- 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.

HCA Fiscal Note

Bill Number: **1129 HB**

HCA Request #: 25-015

Title: **Fertility-related services**

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.

HB 1129, The Washington State Building Families Act, adds new sections to Chapters 48.43 RCW (Insurance Reform) and 41.05 RCW (State Health Care Authority) requiring commercial health plans and plans offered by the Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) programs to include coverage for standard fertility preservation services starting January 1, 2026 and coverage for the diagnosis and treatment of infertility starting January 1, 2027. Benefits must be extended to enrollees and covered dependents, or their surrogates or donors, at coverage levels in parity with services unrelated to infertility. Additionally, the bill adds a new section to Chapter 74.09 (Medical Care) requiring coverage for standard fertility preservation services and fertility medications for enrollees in the Apple Health (Medicaid) program in parity with benefits for services and prescription drugs unrelated to infertility.

Section 2 (New Section, RCW 48.43)

Establishes requirements for coverage of infertility benefits by commercial health plans. Specifically, coverage must include 1) diagnosis and treatment of infertility and standard fertility preservation services; and 2) two complete oocyte retrievals with unlimited embryo transfers in accordance with guidelines of the American Society for Reproductive Medicine using single embryo transfer 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 (i.e., a surrogate or donor); and
- Different cost-sharing or benefit limitations for infertility services than imposed on other medical services.

This section also establishes definitions for “diagnosis and treatment of infertility,” “infertility,” “regular, unprotected sexual intercourse,” and “standard fertility preservation services.”

Section 3 (New Section, RCW 41.05)

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 4 (New Section, RCW 74.09)

Establishes requirements for coverage of standard fertility preservation services and related fertility medications by the Apple Health program. HCA and managed care organizations are prohibited from imposing exclusions, limitations, or other restrictions on coverage of these services different from those imposed on other prescription medications or services not related to infertility.

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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. Distinguish between one time and ongoing functions.

NONE

II. C – Expenditures

HCA Fiscal Note

Bill Number: **1129 HB**

HCA Request #: 25-015

Title: **Fertility-related services**

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. Distinguish between one time and ongoing functions.

Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) Program Impacts:

HCA estimates that this bill would result in significant additional annual claims liability in UMP Classic and UMP Achieve 2 that would impact the state's contribution to medical benefits for employees under the PEBB and SEBB programs (Employer Medical Contribution, or EMC). For reasons described below, a reliable cost estimate is not possible at this time.

Sections 2 and 3 establish requirements for coverage of infertility benefits for group commercial health plans and PEBB and SEBB plans, including the Uniform Medical Plan. Plans must cover standard fertility preservation services and diagnosis and treatment of infertility, including two completed oocyte retrievals with unlimited embryo transfers. Health plans may not impose limits on medical or pharmacy coverage for infertility—such as benefit exclusions, deductibles, copayments, coinsurance, benefit maximums, and waiting periods—that are more restrictive than those applied to non-fertility-related benefits.

Sections 2(3) and 3(3) stipulate that coverage must be provided to enrollees, including covered spouses and covered non-spouse dependents, to the same extent as other pregnancy-related benefits; however, Sections 2(4)(b) and 3(4)(b) specify that coverage must be extended to a third party, such as a surrogate, sperm donor, or egg donor. This analysis assumes that infertility 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 cover infertility benefits or medical costs for birth and maternal care for a surrogate who is not a PEBB or SEBB member, and do not cover the cost of donor materials for infertility. Specifically:

- The Uniform Medical Plan covers services related to the initial diagnosis of infertility.
- 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.

HCA's contracted actuary, Milliman, completed an analysis of the cost of covering infertility benefits in PEBB, SEBB, and Medicaid pursuant to the 2022 supplemental operating budget (ESSB 5693; Sections 211[109][d] and 139[8]; Chapter 297; Laws of 2022) and consistent with the benefits described in the December 2021 Sunrise Review. HCA's resulting report to the legislature was released June 30, 2023. While this report does not assume

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Bill Number: **1129 HB**

HCA Request #: 25-015

Title: **Fertility-related services**

any coverage for third parties (i.e., surrogates or donor materials), it provides a range of estimates for the cost of infertility coverage otherwise described in this bill.

In the report, the projected increase to plan costs for infertility and fertility preservation services not currently covered by PEBB and SEBB health plans totals nearly \$25 million dollars for 2024. Almost \$14 million is attributed to UMP costs: ~\$9 million in PEBB and ~\$4.8 million in SEBB, which would result in an assumed annual expenditure increase of \$23.5 million via an increase to both programs' EMCs.

A detailed breakdown by program, self-insured versus fully insured plans, and service type is below. It should be noted that these projections are based on historical enrollment and claims: for PEBB, 2019-2022 enrollment, excluding retirees aged 65 and over, and detailed claim line level data for all PEBB encounters from January 2019 through December 2022; for SEBB, enrollment and claims from January 2020 through December 2022. Additionally, the Milliman analysis did not establish a limit of two oocyte retrievals as described in Sections 2(2) and 3(2) of this bill, however typical utilization of IVF-related services would have been captured in the base dataset and is unlikely to exceed this limit at a population level. Full assumptions used to develop estimates are described in greater detail in the report.

	PEBB		SEBB	
	UMP	Fully Insured	UMP	Fully Insured
Diagnosis*	\$0.1	\$0.0	\$0.0	\$0.1
Assisted Reproductive Technologies (ART)	\$5.2	\$1.7	\$2.8	\$3.9
Non-assisted Reproductive Technologies (NART)	\$0.9	\$0.3	\$0.5	\$0.7
Fertility Preservation	\$0.3	\$0.1	\$0.2	\$0.3
Fertility Medications	\$2.5	\$1.3	\$1.3	\$2.7
Total	\$9.0	\$3.4	\$4.8	\$7.7

Costs in millions

Projected for plan year 2024, based on historical enrollment and claims

Adjusted for estimated member cost sharing across plans and service categories

*Incremental costs (i.e., exceeding current coverage)

True costs would likely vary from these estimates due to changes in enrollment mix, member demographics, utilization, unit cost, covered services (i.e., surrogacy and donor materials), and other factors. Additional unknowns include wide variation in cost across providers and pharmacies, access to competitive network

HCA Fiscal Note

Bill Number: **1129 HB**

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Title: **Fertility-related services**

agreements with specialists who provide assisted reproductive technology or fertility preservation, and demand for infertility and fertility preservation services.

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.

Apple Health Impacts:

The fiscal impact is indeterminate.

This bill requires HCA to cover standard fertility preservation services. It was assumed that coverage of fertility preservation services will also require the coverage of a limited number of fertility-related medications. Coverage of such medications would require coverage for any Food and Drug Administration (FDA) indication and any indication supported in compendia, that is, coverage could not be limited to use for fertility preservation purposes.

While the fiscal impact related to fertility preservation services can be estimated using the *Fertility Treatment Benefit – Implementation Cost Analysis* report by Milliman mentioned above, it is not possible to quantify the potential impact resulting from coverage of the associated fertility medications. As such, the fiscal impact is indeterminate. An approximate fiscal impact is, however, developed based on the assumption that associated medications were limited to fertility preservation purposes.

The fiscal impact attributable to fertility preservation and the associated fertility medication when used for fertility preservation is estimated as the product of estimated per member per month costs from the report and the forecasted number of eligible member months.

- The cost attributable to fertility preservation was assumed to follow from the fertility preservation service costs estimated in the report.
- It was assumed the average per member per month cost of fertility medication for clients undergoing fertility preservation will be equal to the average estimated per member month cost of fertility medication given in the report. Given this assumption, the cost of fertility medication associated with fertility preservation was estimated as the average cost of fertility medication per utilizer per month times the estimated number of months of utilization for fertility preservation clients, scaled by the rate of fertility medication utilization across all fertility service clients.

The annual service-related impact associated with fertility preservation services, not considering the potential impact of fertility medication utilized for purposes other than fertility preservation, was estimated to be \$1.74 million, with \$1.08 million from General Fund – State. Additionally, these estimates do not consider the potential impact due to increased maternity expenditure resulting from fertility preservation clients seeking pregnancy.

Part III: Expenditure Detail

III. A - Operating Budget Expenditure

NONE

HCA Fiscal Note

Bill Number: **1129 HB**

HCA Request #: 25-015

Title: **Fertility-related services**

III. B - Expenditures by Object or Purpose

NONE

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

Part V: New Rule Making Required

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

NONE

Individual State Agency Fiscal Note

Bill Number: 1129 HB	Title: Fertility-related services	Agency: 160-Office of Insurance Commissioner
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2026	FY 2027	2025-27	2027-29	2029-31
FTE Staff Years	0.3	0.1	0.2	0.0	0.0
Account					
Insurance Commissioners Regulatory Account-State 138-1	50,831	18,515	69,346	5,310	0
Total \$	50,831	18,515	69,346	5,310	0

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:

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- 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: Kim Weidenaar	Phone: 360-786-7120	Date: 01/14/2025
Agency Preparation: Delika Steele	Phone: 360-725-7260	Date: 01/29/2025
Agency Approval: Joyce Brake	Phone: 360-725-7041	Date: 01/29/2025
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 01/30/2025

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 requires group health plans to cover standard fertility preservation services beginning January 1, 2026, and to cover the diagnosis and treatment of infertility beginning January 1, 2027. Coverage must also provide for two completed oocyte retrievals with unlimited embryo transfers.

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.

NONE.

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 requires group health plans to cover standard fertility preservation services beginning January 1, 2026, and to cover the diagnosis and treatment of infertility beginning January 1, 2027. Coverage must also provide for two completed oocyte retrievals with unlimited embryo transfers.

Plan year 2026 small group filings are received at the OIC by the insurance commissioner filing date of May 15, 2025. Training for the Health Forms Compliance Unit would be incorporated into our regular ACA plan year training with an estimate of 15 minutes for the topic. To be ready for these submissions, the Office of the Insurance Commissioner (OIC) will require one-time costs, in FY2026 (beginning on 2/1/2025), for 1.25 hours of a Health Forms Manager 2 as well as 2.5 hours of a Functional Program Analyst 4 as well as 1.25 hours of a Functional Program Analyst 3 for training and to update checklists and speed-to-market tools.

The OIC receives approximately 345 health plan filings each year that will be affected by this bill and assumes that the new review standards will result in additional 20 minutes of review per form filing in FY2026, an additional 5 minutes of review per form filing in FY2027, and an additional 5 minutes of review per form filing in FY2028. Therefore, requiring 115 total hours (345 filings x 20 minutes) in FY2026, 29 total hours (345 filings x 5 minutes) in FY2027, and 29 total hours (345 filings x 5 minutes) in FY2028. The Office of the Insurance Commissioner (OIC) will require 34 hours of two Functional Program Analyst 4 as well as 85 hours of five Functional Program Analyst 3 in FY2026, 9 hours of two Functional Program Analyst 4 as well as 22.5 hours of five Functional Program Analyst 3 in FY2027, and 9 hours of two Functional Program Analyst 4 as well as 22.5 hours of five Functional Program Analyst 3 in FY2028.

Additionally, this bill will require oversight and ongoing assistance through 4 hours of a Health Forms Manager 2 as well as 8 hours of two Functional Program Analyst 4 in FY2026 to ensure compliance with the new requirements.

Section 2 requires plan year 2027 small group filings to be received at the OIC by the insurance commissioner filing date of May 15, 2026. Training for the Health Forms Compliance Unit would be incorporated into our regular ACA plan year training with an estimate of 15 minutes for the topic. To be ready for these submissions, the Office of the Insurance Commissioner (OIC) will require one-time costs, in FY2026 (beginning on 2/1/2026), for 1.25 hours of a Health Forms Manager 2 as well as 2.5 hours of a Functional Program Analyst 4 as well as 1.25 hours of a Functional Program Analyst 3 for training and to update checklists and speed-to-market tools.

The OIC, assumes that the new review standards will result in additional 30 minutes of review per form filing in FY2027

and an additional 5 minutes of review per form filing in FY2028. Therefore, requiring 172.5 total hours (345 filings x 30 minutes) in FY2027 and 30 total hours (345 filings x 5 minutes) in FY2028. The Office of the Insurance Commissioner (OIC) will require 50 hours of two Functional Program Analyst 4 as well as 125 hours of five Functional Program Analyst 3 in FY2027 and 9 hours of two Functional Program Analyst 4 as well as 22.5 hours of five Functional Program Analyst 3 in FY2028.

Additionally, this bill will require oversight and ongoing assistance through 4 hours of a Health Forms Manager 2 as well as 8 hours of two Functional Program Analyst 4 in FY2027 to ensure compliance with the new requirements.

Section (6) of this bill gives the OIC explicit rulemaking authority.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2026	FY 2027	2025-27	2027-29	2029-31
138-1	Insurance Commissioners Regulatory Account	State	50,831	18,515	69,346	5,310	0
Total \$			50,831	18,515	69,346	5,310	0

III. B - Expenditures by Object Or Purpose

	FY 2026	FY 2027	2025-27	2027-29	2029-31
FTE Staff Years	0.3	0.1	0.2	0.0	
A-Salaries and Wages	31,185	10,974	42,159	3,143	
B-Employee Benefits	9,480	3,838	13,318	1,105	
C-Professional Service Contracts					
E-Goods and Other Services	10,166	3,703	13,869	1,062	
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 \$	50,831	18,515	69,346	5,310	0

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 2026	FY 2027	2025-27	2027-29	2029-31
Functional Program Analyst 3	78,468	0.1	0.1	0.1	0.0	
Functional Program Analyst 4	86,712	0.1	0.0	0.1	0.0	
Senior Policy Analyst	131,328	0.2		0.1		
Total FTEs		0.3	0.1	0.2	0.0	0.0

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

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 (6) of this bill gives the OIC explicit rulemaking authority.

As the bill is currently written [specifically Section (2) subsections (3) and (4) that pertain to the coverage for the diagnosis and treatment of infertility], it will be very difficult to determine if a health plan is compliant and will significantly increase review time and carrier confusion. Further clarification in rulemaking could make it easier to determine if a health plan is compliant.