Pension & Health Benefits Committee

California Public Employees' Retirement System

Agenda Item 5a

August 20, 2013

ITEM NAME: Assembly Bill 912 (Quirk-Silva) – Health Care Coverage: Fertility Preservation

As Amended July 2, 2013

Sponsors: The American Society for Reproductive Medicine and the Society for Reproductive Technology

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION

Adopt an **Oppose Unless Amended** on Assembly Bill (AB) 912 because provisions of this bill would restrict the California Public Employees' Retirement System (CalPERS) Board of Administration's (Board) authority to establish benefit plan designs that are negotiated on behalf of our members. In addition, the provisions of this bill are too broad, ambiguous, and could potentially increase costs for CalPERS health plans. Therefore, staff recommends that CalPERS health plans be exempt from this bill.

EXECUTIVE SUMMARY

AB 912 would require every large group health care service plan contract and health insurance policy that is issued, amended, or renewed, on and after January 1, 2014, to provide coverage for medically necessary expenses for standard fertility preservation services when a necessary medical treatment may directly or indirectly cause iatrogenic infertility to an enrollee or insured.

CalPERS Board's 2009-10 Health Policy Priorities for State Legislation suggest an oppose position on proposals that mandate a specific benefit design or other proposals that would limit CalPERS Board discretion in responding to market conditions. AB 912 would mandate CalPERS health plans to provide coverage beyond what is already provided for infertility services which could potentially increase costs.

STRATEGIC PLAN

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

BACKGROUND

Existing Federal Law

The Patient Protection and Affordability Care Act (PPACA) (Public Law 111-152) was signed on March 23, 2010. One of the provisions of PPACA is the establishment of state health insurance marketplaces where individuals and small employers can purchase health insurance coverage. Moreover, health insurers and plans offering coverage in these marketplaces must cover specified categories of Essential Health Benefits by 2014. Because CalPERS is a large group purchaser of health benefits, these provisions do not apply to CalPERS.

In California, the health insurance marketplace is called Covered California. All health insurers and plans offered through Covered California must provide all benefits based on a benchmark plan. Covered California has chosen Kaiser's Small Group Health Maintenance Organization (HMO) as the benchmark plan, and this plan does not cover infertility treatment or fertility preservation services. As a consequence, all the health insurers and plans offered through Covered California will not be required to provide these services.

Existing State Law

Under current law, the Knox-Keene Health Care Service Plan Act (Knox-Keene) of 1975 regulates HMOs within California through the Department of Managed Health Care (DMHC). Knox-Keene imposes approximately 40 benefit mandates upon HMO plans in California. Neither infertility treatment nor fertility preservation services are currently required benefits under Knox-Keene. There is a requirement, however, for health insurers offering group coverage regulated by the California Department of Insurance and HMOs regulated by the DMHC to offer coverage for infertility treatment. Thus, it is up to the purchaser of these policies or plans to provide these benefits. Consequently, an individual covered by one of these policies or plans may have coverage for infertility treatment but may not have coverage for fertility preservation services, and vice versa.

Current law grants the Board the authority to determine benefit design for our health care plans. In addition, the Board has the authority to contract for health care coverage with carriers providing health benefits. The plans may include hospital benefits, surgical benefits, inpatient medical benefits, outpatient medical benefits, obstetrical benefits, among others.

Iatrogenic Infertility & Fertility Preservation

Iatrogenic infertility is infertility caused by a medical intervention, including reactions from prescribed drugs or from medical and surgical procedures. Iatrogenic infertility is typically caused by cancer treatments such as radiation, chemotherapy, or surgical removal of reproductive organs, but there are many other medical interventions other than cancer treatments that can cause infertility. Patients at risk for iatrogenic

infertility need to undergo fertility preservation services before they undergo treatments that may put them at risk for becoming infertile. For example, a patient undergoing treatment for cancer would need to freeze his sperm prior to starting treatment for his cancer so his future ability to father a child is not at risk.

CalPERS Health Plans

Kaiser Permanente provides coverage for the diagnosis and treatment of involuntary infertility, and for artificial insemination, at 50 percent coinsurance. Outpatient drugs, supplements, and supplies are excluded. Kaiser also excludes coverage for services that reverse voluntary, surgically induced infertility, and services related to the procurement and storage of semen and eggs.

Blue Shield provides coverage for the diagnosis and treatment of involuntary infertility at 50 percent coinsurance. Exclusions include harvesting or stimulation of the human ovum, ovum transplants, in vitro fertilization, Gamete Intrafallopian Transfer procedure, Zygote Intrafallopian Transfer procedure or any other form of induced fertilization (except for artificial insemination), reversal of a vasectomy or tubal ligation or any resulting complications, except for medically necessary treatment of medical complications.

CalPERS self-funded health plans that are administered by Anthem Blue Cross, do not provide coverage for services to diagnose and treat infertility. Excluded services include laboratory, X-ray procedures, medication or surgery solely for the purpose of diagnosing and/or treating infertility of a Plan Member, including, but not limited to, reversal of surgical sterilization, artificial insemination, in vitro fertilization, or complications of such procedures.

ANALYSIS

1. Proposed Changes
   Specifically, AB 912 would require large group health care service plan contract and health insurance policy that is issued, amended, or renewed, on and after January 1, 2014, to provide coverage for medically necessary expenses for standard fertility preservation services when a necessary medical treatment may directly or indirectly cause iatrogenic infertility to an enrollee or insured.

2. Restricts the Boards Authority
   The Board has the authority to negotiate health premiums, determine covered benefits, co-payments, and plan availability with carriers providing health benefits. The plans may include hospital benefits, surgical benefits, inpatient medical benefits, outpatient medical benefits, obstetrical benefits, etc. Because the Board has statutory authority to establish and negotiate benefit designs on behalf of its members, AB 912 would restrict this authority by circumventing this process in mandating our contracted health plans to provide additional infertility services.

3. Bill Too Broad

While iatrogenic infertility is typically caused by cancer treatments such as radiation and chemotherapy, there are numerous medical interventions that *have the potential* to cause iatrogenic infertility. According to the literature, these include:

- Induced abortion, for example via subsequent pelvic inflammatory disease
- Extracorporeal shock wave lithotripsy
- Abdominal surgeries in women
- Prescription drugs
  - Antihypertensives
    - Spironolactone
    - Calcium channel blockers
  - Hormones
    - Anabolic steroids
    - Testosterone
    - Antiandrogens
    - Progesterone derivatives
    - Estrogens
  - Antibiotics
    - Nitrofurantoin
    - Erythromycin
    - Tetracyclines
    - Gentamycin
  - Miscellaneous medications
    - Cimetidine
    - Cyclosporine
    - Colchicine
    - Allopurinol
    - Sulfasalazine
    - Finasteride

The bill fails to define key terms, which may lead to significant difficulty in interpreting these provisions. For example, this bill could be interpreted to mean that fertility preservation services must be offered to people who are about to take tetracycline, an antibiotic, since it “may…indirectly” cause infertility which could be a sizeable population. Interpreting the provision in the broadest sense, might result in requiring fertility preservation services be offered for any procedure or medication that includes a warning, side effect, or complication related to possible infertility, irrespective, of whether such procedure or medication actually caused infertility when undertaken.

4. Impacts to The State General Fund
   Because there are numerous medical treatments that can possibly cause iatrogenic infertility, AB 912 could result in health plans providing coverage to large numbers of enrollees whose fertility may not warrant the same level of coverage thus increasing premiums.

   The State currently contributes about 85 percent of the health premiums for State employees. Considering that this bill increases premiums, this bill would impact the State General Fund.

   Staff recommends that the bill be amended to specifically exempt CalPERS health plans.

5. California Health Benefits Review Program (CHBRP)
   The California Health Benefits Review Program (CHBRP) responds to requests from the State Legislature to provide independent analysis of the medical, financial, and public health impacts of proposed health insurance benefit mandates and repeals. CHBRP reports that total net health expenditures are projected to increase by $2.1 million due to a $2.9 million increase in premiums plus a 0.3 million increase in enrollee out-of-pocket expenses for newly covered benefits, partially offset by a net reduction in enrollee out-of-pocket expenditures for uncovered benefits ($1.1 million).

   Among California's publicly funded health insurance programs, only CalPERS HMOs are subject to AB 912. For CalPERS HMOs, CHBRP estimates that premiums would increase slightly with the impact of an average of 0.0030 percent ($0.01 per member per month). Of the increase of $119,000 in CalPERS employer expenditures, about 58 percent, or $69,000, would be State expenditures for CalPERS members who are State employees or their dependents.

   CalPERS staff disagree with the analysis which concludes that the bill will cause an overall increase of $2 million in healthcare costs in California. CHBRP has limited its analysis to the costs associated with members who will be undergoing treatment for cancer, but the bill refers to any "necessary medical treatment [that] may directly or indirectly cause iatrogenic infertility to an enrollee." The phrase "may... indirectly" causes difficulty in interpretation as numerous medical interventions other than cancer treatments "may... indirectly" cause infertility. Staff believe the overall cost is unknown, but potentially much higher than $2 million and $119,000 for CalPERS depending on how "may…indirectly" is interpreted.

BUDGET AND FISCAL IMPACTS

1. Benefit Costs
   Unknown. It's difficult to determine a fiscal impact given the uncertainty about how the bill will be interpreted. Staff believe the overall cost is unknown, but potentially greater than $119,000 to CalPERS if: 1) fertility preservation services is offered

for any procedure or medication related to possible infertility, irrespective, of whether such procedure or medication actually caused infertility when undertaken; 2) the CHBRP estimates included CalPERS members who are employees of our contracting agencies; and, 3) fertility preservation services, while not required, is offered in our Preferred Provider Organization (PPO) plans to ensure consistent coverage between the HMOs and PPOs.

2. Administrative Costs
   Unknown.

BENEFITS/RISKS

1. Benefits of Bill Becoming Law
   Allows cancer patients to preserve their fertility, providing members improved lifestyle choices and health outcomes.
2. Risks of Bill Becoming Law
   Could provide coverage to patients for a wide range of services thus increase State costs.

ATTACHMENTS

Attachment 1 – Legislative History
Attachment 2 – Support and Opposition

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DANNY BROWN, Chief
Office of Governmental Affairs

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ANN BOYNTON
Deputy Executive Officer
Benefit Programs Policy and Planning