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(Original Signature of Member)

119TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To ensure coverage for the treatment of infertility for certain conditions.

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IN THE HOUSE OF REPRESENTATIVES

Mr. NUNN of Iowa introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To ensure coverage for the treatment of infertility for certain  
conditions.

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.**

4 This Act may be cited as the “Helping to Optimize  
5 Patients’ Experience with Fertility Services Act” or the  
6 “HOPE with Fertility Services Act”.

1 **SEC. 2. ENSURING BENEFITS FOR TREATMENT OF INFER-**  
2 **TILITY AND IATROGENIC INFERTILITY.**

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
4 B of title I of the Employee Retirement Income Security  
5 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by in-  
6 serting after section 714 the following:

7 **“SEC. 714A. STANDARDS RELATING TO BENEFITS FOR**  
8 **TREATMENT OF INFERTILITY AND IATRO-**  
9 **GENIC INFERTILITY.**

10 “(a) IN GENERAL.—A group health plan or a health  
11 insurance issuer offering group health insurance coverage  
12 shall ensure that such plan or coverage provides coverage  
13 for infertility or iatrogenic infertility treatments, includ-  
14 ing—

15 “(1) the treatment of infertility, if such plan or  
16 coverage provides coverage for obstetrical services;  
17 and

18 “(2) standard fertility preservation services  
19 when a medically necessary treatment described in  
20 subparagraph (A), (B), (C), or (D) of subsection  
21 (b)(1) causes, or is expected to cause, iatrogenic in-  
22 fertility.

23 “(b) DEFINITIONS.—In this section:

24 “(1) IATROGENIC INFERTILITY.—The term ‘iat-  
25 rogenic infertility’ means an impairment of fertility

1 due to damage of reproductive organs and processes  
2 resulting from—

3 “(A) a surgical or other invasive medical  
4 procedure as a result of an injury or life-threat-  
5 ening illness, or involving a reproductive organ  
6 or process in a manner likely to cause damage  
7 to such organ or process;

8 “(B) radiation therapy;

9 “(C) chemotherapy; or

10 “(D) myeloablative conditioning.

11 “(2) INFERTILITY.—The term ‘infertility’  
12 means a disease or condition characterized by—

13 “(A) the inability to achieve spontaneous  
14 pregnancy without medical treatment after a  
15 period of at least 12 consecutive months of un-  
16 protected sexual intercourse;

17 “(B) the inability to achieve pregnancy  
18 after receiving standard clinical treatment pro-  
19 tocols under the supervision of a treating physi-  
20 cian who is a board-certified reproductive  
21 endocrinologist or obstetrician-gynecologist;

22 “(C) being incapable of reproduction to  
23 live birth based on medical and reproductive  
24 history, age, physical findings or diagnostic

1 testing of the individual, as determined by a  
2 treating physician; or

3 “(D) the inability to achieve spontaneous  
4 pregnancy on account of a diagnosed condition  
5 that is a disorder of ovulation, or a testicular  
6 or hormonal disease or disorder.

7 “(3) INFERTILITY OR IATROGENIC INFERTILITY  
8 TREATMENT.—The term ‘infertility or iatrogenic in-  
9 fertility treatment’ means treatments or procedures  
10 with the intent of facilitating a pregnancy, includ-  
11 ing—

12 “(A) such treatments or procedures that  
13 involve the handling of human egg, sperm, and  
14 embryo outside of the body, including in vitro  
15 fertilization and maturation, egg and embryo  
16 cryopreservation, egg and embryo donation, and  
17 intracytoplasmic sperm injection; or

18 “(B) such treatments or procedures that  
19 do not involve the handling of human egg,  
20 sperm, and embryo outside of the body, includ-  
21 ing ovulation induction, genetic screening and  
22 diagnosis, sperm cryopreservation, and intra-  
23 uterine insemination.

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 comprehensive coverage for infertility or  
3 iatrogenic infertility treatments, as determined by the Sec-  
4 retary in consultation with relevant stakeholders, provided  
5 to a participant or beneficiary if—

6 “(1) the participant or beneficiary has infer-  
7 tility, including iatrogenic infertility; and

8 “(2) the treatment or service is performed at a  
9 medical facility that is in compliance with standards  
10 set by appropriate Federal and State agencies.

11 “(d) FINANCIAL REQUIREMENTS AND TREATMENT  
12 REQUIREMENTS.—Any coverage provided by a group  
13 health plan or health insurance issuer in accordance with  
14 this section may be subject to coverage limits (such as  
15 medical necessity, pre-authorization, or pre-certification)  
16 and cost-sharing requirements (such as coinsurance, co-  
17 payments, and deductibles), as required under the group  
18 health plan or health insurance coverage, that are no more  
19 restrictive than the predominant coverage limits and cost-  
20 sharing requirements applied to substantially all medical  
21 and surgical benefits covered under the plan or coverage.

22 “(e) PROHIBITIONS.—A group health plan and a  
23 health insurance issuer offering group health insurance  
24 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 be provided infer-  
4           tility or iatrogenic infertility treatments to which  
5           such participant or beneficiary is entitled under this  
6           section, or to providers to induce such providers not  
7           to provide such treatments to qualified participants  
8           and beneficiaries;

9           “(2) prohibit a provider from discussing with a  
10          participant or beneficiary infertility or iatrogenic in-  
11          fertility treatments or medical treatment options re-  
12          quired to be covered under this section; or

13          “(3) penalize or otherwise reduce or limit the  
14          reimbursement of a provider because such provider  
15          provided infertility or iatrogenic infertility treatment  
16          services to a participant or beneficiary in accordance  
17          with this section.

18          “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
19          tion shall be construed to—

20          “(1) require a participant or beneficiary in a  
21          group health plan or group health insurance cov-  
22          erage to undergo infertility or iatrogenic infertility  
23          treatments;

1           “(2) impact the use by a group health plan or  
2 a health insurance issuer offering group health in-  
3 surance coverage of utilization management tools; or

4           “(3) prevent a group health plan or a health in-  
5 surance issuer offering group health insurance cov-  
6 erage from contracting with providers as to the level  
7 and type of reimbursement with a provider for care  
8 provided in accordance with this section.

9           “(g) UTILIZATION MANAGEMENT TOOLS REQUIRE-  
10 MENTS.—

11           “(1) IN GENERAL.—In the case of a group  
12 health plan or a health insurance issuer offering  
13 group health insurance coverage that imposes utili-  
14 zation management tools on infertility and iatrogenic  
15 infertility treatment benefits, for the first 5 plan  
16 years that begin after the date of enactment of the  
17 Helping to Optimize Patients’ Experience with Fer-  
18 tility Services Act, such plan or issuer shall perform  
19 and document analyses of the design and application  
20 of the utilization management tool such analysis and  
21 the following information:

22           “(A) The specific plan or coverage terms  
23 or other relevant terms regarding the utilization  
24 management tools and a description of all infer-  
25 tility or iatrogenic infertility treatment benefits,

1 to which each such term applies in each respec-  
2 tive benefits classification.

3 “(B) The factors used to determine that  
4 the utilization management tool will apply to in-  
5 fertility or iatrogenic infertility treatment bene-  
6 fits.

7 “(C) The evidentiary standards used for  
8 the factors identified under subparagraph (B),  
9 when applicable, provided that every factor shall  
10 be defined, and any other source or evidence re-  
11 lied upon to design and apply the utilization  
12 management tool to infertility and iatrogenic  
13 infertility treatment benefits.

14 “(D) An analysis demonstrating that the  
15 processes, strategies, evidentiary standards, and  
16 other factors used to apply the utilization man-  
17 agement tools to infertility and iatrogenic infer-  
18 tility treatment benefits as written and in oper-  
19 ation, are consistent with, and are applied no  
20 more stringently than with clinical guidelines  
21 for infertility or iatrogenic infertility treat-  
22 ments.

23 “(E) The specific findings and conclusions  
24 reached by the group health plan or health in-  
25 surance issuer with respect to the health insur-

1           ance coverage, including any results of the anal-  
2           yses described in this paragraph that indicate  
3           that the plan or coverage is or is not in compli-  
4           ance with this section.

5           “(2) SUBMISSION PROCESS.—

6                   “(A) ANNUAL SUBMISSION.—A group  
7           health plan or health insurance issuer offering  
8           group health insurance coverage shall submit to  
9           the Secretary the analyses described in para-  
10          graph (1) annually for first 5 plan years that  
11          begin after the date of enactment of the Help-  
12          ing to Optimize Patients’ Experience with Fer-  
13          tility Services Act. For subsequent plan years,  
14          the Secretary may request that a group health  
15          plan or a health insurance issuer offering group  
16          health insurance coverage submit the analysis  
17          described in paragraph (1) in the case of poten-  
18          tial violations of this section or complaints re-  
19          garding noncompliance with this section that  
20          concern utilization management tools and any  
21          other instances in which the Secretary deter-  
22          mines appropriate.

23                   “(B) ADDITIONAL INFORMATION.—If the  
24          Secretary concludes that a group health plan or  
25          health insurance issuer has not submitted suffi-

1           cient information for the Secretary to review  
2           the analysis described in paragraph (1), the  
3           Secretary shall specify to the plan or issuer the  
4           information the plan or issuer is required to  
5           submit pursuant to subparagraph (A). Nothing  
6           in this subparagraph shall require the Secretary  
7           to conclude that a group health plan or health  
8           insurance issuer is in compliance with this sec-  
9           tion solely based upon the inspection of the  
10          analyses described in paragraph (1), as re-  
11          quested under subparagraph (A).

12          “(3) REQUIRED ACTION.—

13                 “(A) IN GENERAL.—If, after review of the  
14                 analyses described in paragraph (1), the Sec-  
15                 retary notifies the group health plan or health  
16                 insurance issuer that such plan or issuer is not  
17                 in compliance with this section, the plan or  
18                 issuer—

19                         “(i) shall specify to the Secretary the  
20                         actions the plan or issuer will take to be in  
21                         compliance with this section and provide to  
22                         the Secretary additional analyses described  
23                         in paragraph (1) that demonstrate compli-  
24                         ance with this section not later than 45  
25                         days after the initial notification by the

1 Secretary that the plan or issuer is not in  
2 compliance; and

3 “(ii) following the 45-day corrective  
4 action period under clause (i), if the Sec-  
5 retary makes a final determination that  
6 the plan or issuer still is not in compliance  
7 with this section, not later than 7 days  
8 after such determination, shall notify all  
9 individuals enrolled in the applicable plan  
10 or health insurance coverage that such  
11 plan or coverage has been determined to be  
12 not in compliance with this section.

13 “(B) EXEMPTION FROM DISCLOSURE.—  
14 Documents or communications produced in con-  
15 nection with the Secretary’s recommendations  
16 to a group health plan or health insurance  
17 issuer shall not be subject to disclosure pursu-  
18 ant to section 552 of title 5, United States  
19 Code.

20 “(4) REPORT.—For plan years beginning on or  
21 after January 1, 2027, the Secretary shall submit to  
22 Congress, and make publicly available, a report that  
23 contains—

24 “(A) a summary of the analysis submitted  
25 under paragraph (1), including the identity of

1 each group health plan or health insurance  
2 issuer offering health insurance coverage that is  
3 determined to be not in compliance after the  
4 final determination by the Secretary described  
5 in paragraph (3)(A)(ii);

6 “(B) the Secretary’s conclusions as to  
7 whether each group health plan or health insur-  
8 ance issuer submitted sufficient information for  
9 the Secretary to review the analysis under para-  
10 graph (2);

11 “(C) for each group health plan or health  
12 insurance issuer that did submit sufficient in-  
13 formation under paragraph (2), the Secretary’s  
14 conclusions as to whether and why the plan or  
15 issuer is in compliance with the requirements  
16 under this section;

17 “(D) the Secretary’s specifications de-  
18 scribed in paragraph (3) for each group health  
19 plan or health insurance issuer that the Sec-  
20 retary determined did not submit sufficient in-  
21 formation for the Secretary to review the anal-  
22 yses described in paragraph (1) for compliance  
23 with this section; and

24 “(E) the actions the Secretary specifies  
25 under paragraph (3)(A)(i) that each group

1 health plan or health insurance issuer that the  
2 Secretary determined is not in compliance with  
3 this section is required take to be in compliance  
4 with this section, including the reason why the  
5 Secretary determined the plan or issuer is not  
6 in compliance.

7 “(h) NOTICE.—Beginning with the second plan year  
8 beginning after the date of enactment of the Helping to  
9 Optimize Patients’ Experience with Fertility Services Act,  
10 a group health plan and a health insurance issuer offering  
11 group health insurance coverage shall provide notice to  
12 participants and beneficiaries in such plan or coverage re-  
13 garding the coverage required by this section in accord-  
14 ance with regulations promulgated by the Secretary.

15 “(i) EFFECTIVE DATE.—This section, and the  
16 amendments made by this section, shall apply with respect  
17 to plan years beginning on or after January 1, 2027.”.

18 (b) ENFORCEMENT.—Section 502 of the Employee  
19 Retirement Income Security Act of 1974 (29 U.S.C. 1132)  
20 is amended—

21 (1) in subsection (a)(6), by striking “or (9)”  
22 and inserting “(9), or (13)”;

23 (2) in subsection (b)(3), by striking “subsection  
24 (c)(9)” and inserting “paragraphs (9) and (13) of  
25 subsection (c)”;

1           (3) in subsection (c), by adding at the end the  
2 following:

3           “(13)(A) The Secretary may assess a civil penalty  
4 against a health insurance issuer for failing to provide cov-  
5 erage for infertility or iatrogenic infertility treatments as  
6 required under section 714A, in an amount up to \$100  
7 per day, beginning on the date on which the issuer first  
8 denies such coverage and ending on the date on which the  
9 issuer approves coverage, with respect to each participant  
10 or beneficiary denied such coverage in violation of such  
11 section.

12           “(B) The Secretary may assess a civil penalty against  
13 a health insurance issuer for failing to submit an analysis  
14 as required under section 714A(g)(2), in an amount up  
15 to \$100 for each day, beginning 45 days after the date  
16 on which the Secretary notifies such issuer that the issuer  
17 is not in compliance with the requirement under section  
18 714A(g)(2), and ending on the date on which the issue  
19 submits the analysis as required.”.

20           (c) CONFORMING AMENDMENT.—Section 731(c) of  
21 the Employee Retirement Income Security Act of 1974  
22 (29 U.S.C. 1191(c)) is amended by striking “section 711”  
23 and inserting “sections 711 and 714A”.