

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. **Bill Number:** SB 333

House of Origin Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. **Patron:** Salim

3. **Committee:** Education and Health

4. **Title:** State plan for medical assistance services; fertility preservation treatments, etc.

5. **Summary:** The proposed legislation directs the Department of Medical Assistance Services (DMAS) to amend the state plan for medical assistance services to include a provision for payment of medical assistance for coverage of fertility preservation for individuals diagnosed with cancer who need treatment for that cancer that may cause a substantial risk of sterility or iatrogenic infertility, as defined in the bill, including surgery, radiation, or chemotherapy. The bill also establishes that it is a Class 3 felony for a health care provider to provide assisted conception treatment to a patient and use the health care provider's own gamete without the written consent of the patient.

6. **Budget Amendment Necessary:** Yes. Items 288 and 390.

7. **Fiscal Impact Estimates:** Preliminary. See Item 8.

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2025	\$2,813,803	General Fund
2025	\$9,116,197	Non-General Funds
2026	\$2,872,909	General Fund
2026	\$9,291,146	Non-General Funds
2027	\$2,976,036	General Fund
2027	\$9,620,122	Non-General Funds
2028	\$3,023,303	General Fund
2028	\$9,770,902	Non-General Funds
2029	\$3,023,303	General Fund
2029	\$9,770,902	Non-General Funds
2030	\$3,023,303	General Fund
2030	\$9,770,902	Non-General Funds

- 8. Fiscal Implications:** This bill requires DMAS to amend the state plan to cover standard fertility preservation procedures including sperm, oocyte, embryo banking, banking of reproductive tissues and storage of reproductive cells and tissues. Currently, DMAS does not cover services to promote fertility and Medicaid has no federal requirements to cover fertility testing or treatment. There are some other state Medicaid programs that cover infertility diagnostic services; however, it does not appear that any other states provide services comparable to those proposed in this bill. Utah has developed a request to the Centers for Medicare and Medicaid Services for similar fertility preservation treatments to be covered by Medicaid, but it has not yet been approved.

DMAS assumes the cost for oocyte and embryo banking treatments would be \$12,000 per freezing cycle. Based on available information, it appears that multiple freezing cycles are necessary for oocyte harvesting depending on a number of variables. For the purposes of this analysis, it is assumed that, on average, two cycles would be necessary to generate the amounts of eggs necessary for banking. In addition, it is expected that fertility medications would add \$5,000 to the cost of each oocyte banking treatment. In addition, it is assumed that ongoing storage costs would add \$1,000 per individual per year starting in the second year. By analyzing hospital claims, DMAS finds an average of 120 new members between the ages of 12 and 44 have a claim with a primary diagnosis of internal cancer each month. Two-thirds of these members are women, of which 51 percent are enrolled in Medicaid Expansion, one percent in FAMIS and 48 percent in base Medicaid. Utilization is unknown but for the purposes of this estimate DMAS assumes 30 of these members would use the new benefit. The cost is estimated to be \$10.4 million (\$2.5 million general fund) in fiscal year 2025 and \$10.6 million (\$2.5 million general fund) in fiscal year 2026.

DMAS assumes the cost for sperm banking treatment would be \$8,000. In addition, it is assumed that ongoing storage costs would add \$500 per individual per year starting in the second year. By analyzing hospital claims, DMAS finds an average of 120 new members between the ages of 12 and 44 have a claim with a primary diagnosis of internal cancer each month. One-third of these members are men, of which 61 percent are enrolled in Medicaid Expansion and 39 percent in base Medicaid. Utilization is unknown but for the purposes of this estimate DMAS assumes 15 of these members would use the new benefit. The cost is estimated to be \$1.4 million (\$0.3 million general fund) in fiscal year 2025 and \$1.5 million (\$0.3 million general fund) in fiscal year 2026.

The ongoing cost of this bill is unclear. The bill does not cover in-vitro fertilization, which can run between \$24,000 and \$36,000 and it is unknown as to when the Commonwealth's commitment to cover the cost of storage ends. While storage costs are assumed for the time horizon of this fiscal impact statement, it is unclear as to when the Commonwealth's commitment to cover the cost of storage ends. For example, it is unlikely that CMS will cover the cost of storage for individuals that lose Medicaid coverage. Should that coverage end, it is unclear as to the disposition of any preserved items.

The bill also establishes a Class 3 felony for assisted conception treatment to a patient and use the health care provider's own gamete without the written consent of the patient. For Class 3 felonies, a term of imprisonment is not less than five years nor more than 20 years

and a fine of not more than \$100,000. The Virginia Criminal Sentencing Commission indicates that existing data sources do not contain sufficient detail to estimate the number of Class 3 felony convictions related to health care providers who may misuse genetic material. By establishing a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Although the magnitude of the impact on prison beds cannot be quantified, the impact, if any, is likely to be small.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected:

Department of Medical Assistance Services
Department of Corrections
Local and regional jails
Courts

10. Technical Amendment Necessary: No

11. Other Comments: This bill is a companion to HB 278 and similar to SB 335.