

**United States Senate**  
WASHINGTON, DC 20510

December 17, 2024

Ms. Chiquita Brooks-LaSure, Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Dear Administrator Brooks-LaSure:

We write to urge the Centers for Medicare and Medicaid Services (CMS) to issue guidance to states on providing coverage for fertility services, including in vitro fertilization (IVF), through their benchmark plans before the end of calendar year 2024.

Infertility affects 1 in 6 people of reproductive age.<sup>1</sup> According to the Pew Research Center, 42 percent of adults in the U.S. have used fertility treatments or know someone who has.<sup>2</sup> Fertility treatments are an essential tool to support individuals in building their families. In 2022 alone, over 91,000 —about 2.5 percent of all births in the U.S. —were born by IVF, just one of the various types of fertility treatments. Access to fertility treatment empowers individuals with autonomy and choice when navigating their reproductive journeys.

Despite significant advances in the medical treatment of infertility, such as IVF, access to and affordability of this care is severely lacking in the U.S. Costs for a single cycle of IVF have recently been estimated to range from \$15,000 to \$20,000 on average and can exceed \$30,000.<sup>3</sup> Unfortunately, current insurance coverage for fertility treatments do not meet the growing need. As of 2023, only 21 states plus Washington, D.C. have passed fertility insurance coverage laws, and only 15 of those states include coverage for IVF.<sup>4</sup> Further, data from three states — Massachusetts, Connecticut, and Rhode Island — indicate that infertility coverage mandates did not significantly raise premiums, with fertility coverage accounting for less than 1 percent of total premium costs.<sup>5</sup>

Moreover, since the overturning of *Roe v. Wade*, access to fertility treatments like IVF have been further threatened by continued attacks on reproductive freedom. This is evident in the Alabama State Supreme Court ruling, which declared that embryos created through IVF should be considered unborn children, leading to the suspension of services at several IVF clinics in the state.<sup>6</sup> Weeks later, providers in Alabama were able to offer limited IVF services after the state's governor intervened in an attempt to rectify the consequences of the state's controversial

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<sup>1</sup> <https://resolve.org/learn/infertility-101/facts-diagnosis-and-risk-factors/>

<sup>2</sup> <https://www.pewresearch.org/short-reads/2023/09/14/a-growing-share-of-americans-say-theyve-had-fertility-treatments-or-know-someone-who-has/#:~:text=As%20the%20average%20age%20when,new%20Pew%20Research%20Center%20survey.>

<sup>3</sup> <https://www.forbes.com/health/womens-health/how-much-does-ivf-cost/>

<sup>4</sup> <https://www.healthinsurance.org/faqs/does-health-insurance-cover-ivf-and-other-fertility-treatments/#:~:text=As%20of%20late%202023%2C%2021,some%20state%2Dregulated%20health%20plans.>

<sup>5</sup> <https://www.kff.org/womens-health-policy/issue-brief/coverage-and-use-of-fertility-services-in-the-u-s/>

<sup>6</sup> <https://law.justia.com/cases/alabama/supreme-court/2024/sc-2022-0579.html>

Supreme Court ruling. However, the solution the Alabama lawmakers implemented only granted broad immunity to providers while not actually addressing the issue, in which the state considers frozen embryos as children. Nineteen states have personhood provisions for fetuses in either their state or case law which could be used in the future to prohibit fertility treatments like we saw in Alabama.<sup>7</sup> Guidance from CMS to states might provide clarity for what services – performed in accordance with evidence-based standards of care – should be covered.

Now, more than ever, it is crucial to protect the right to fertility treatments and increase access to these services. Therefore, we urge CMS to issue guidance to states on how to cover fertility services through their state benchmark plans and provide technical assistance to states seeking to achieve this coverage.

Thank you for your consideration.

Sincerely,



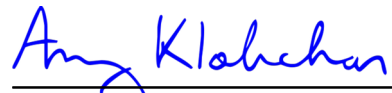
Cory A. Booker  
United States Senator



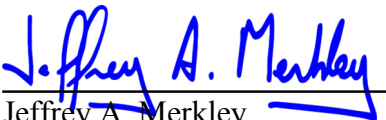
Tammy Duckworth  
United States Senator



Martin Heinrich  
United States Senator



Amy Klobuchar  
United States Senator



Jeffrey A. Merkley  
United States Senator

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<sup>7</sup> <https://www.politico.com/news/2024/02/29/states-fetus-personhood-alabama-ivf-00143973>