

Congress of the United States

Washington, DC 20515

August 17, 2023

Ms. Kiran Ahuja
Director
Office of Personnel Management
1900 E Street, NW
Washington, D.C. 20415

Dear Director Ahuja:

We are writing to bring to your attention a pressing matter regarding the definition of infertility used by health insurance carriers participating in the Federal Employees Health Benefit (FEHB) program. It has come to our attention that the current definition, as outlined in the 2015 technical guidance, is outdated and lacks inclusivity, particularly for the LGBTQ community.

As Members of Congress invested in recruiting and retaining the most effective Federal workforce, we would like to thank you for the Office of Personnel Management's (OPM) continued commitment to expanding coverage of fertility health care, including assisted reproduction for federal employees. By modernizing FEHB policies to make family building more affordable and inclusive we ensure the Federal Government remains a competitive employer.

The current definition of infertility used by OPM for FEHB carriers states that infertility is the condition of an individual who is unable to conceive or produce conception during a period of 1 year if the female is age 35 or younger, or during a period of 6 months if the female is over the age of 35. It further states that for women without male partners or exposure to sperm, infertility is the inability to conceive after six cycles of Artificial Insemination or Intrauterine Insemination performed by a qualified specialist using normal-quality donor sperm. These 6 cycles, including the donor sperm, are not covered by the plan as a diagnosis of infertility is not established until the cycles have been completed. Intrauterine Insemination can cost between \$500 to \$4,000 per cycle, not including the cost of donor sperm.

This definition does not consider the evolving landscape of family building and the diverse needs of individuals who require fertility health care to build their families. States and employers across the country are recognizing the importance of inclusive policies and the Federal Employees Health Benefit program must keep pace with these advancements.

Recently, Illinois updated its definition of infertility to a disease, condition, or status characterized by: (1) a failure to establish a pregnancy or to carry a pregnancy to live birth after 12 months of regular, unprotected sexual intercourse if the woman is 35 years of age or younger, or after 6 months of regular, unprotected sexual intercourse if the woman is over 35 years of age; conceiving but having a miscarriage does not restart the 12-month or 6-month term for determining infertility; (2) a person's inability to reproduce either as a single individual or with a partner without medical intervention; or (3) a licensed physician's findings based on a patient's medical, sexual, and reproductive history, age, physical findings, or diagnostic testing. And in Maine, a fertility patient is defined as an individual or couple with infertility, an individual or couple who is at increased risk of transmitting a serious inheritable genetic or chromosomal abnormality to a child or an individual unable to conceive as an individual or with a partner because the individual or couple does not have the necessary gametes for conception.

In the private sector a number of companies have led the way in expanding fertility coverage to be inclusive of all family types. Companies like JP Morgan, Mass Mutual, Intel, Facebook, Apple, and Google have all provided inclusive coverage policies in their employees' health plans.

We would like to highlight two specific concerns with the current definition of infertility used by OPM. First, the requirement of six cycles of Artificial Insemination or Intrauterine Insemination performed by a qualified specialist using normal quality donor sperm, while excluding other assisted reproductive technologies, is both arbitrary and unnecessarily restrictive. The number of cycles required in the definition does not take into account an infertility diagnosis that may occur when a patient is evaluated, leading to inconsistent and unequal coverage for individuals seeking alternative methods of conception. Furthermore, this policy creates unnecessary barriers and costs for LGBTQ people by excluding consideration of at-home inseminations.

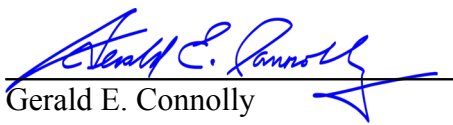
Second, the definition fails to account for same-sex couples and single individuals. By limiting coverage to these individuals only after six cycles of insemination with donor sperm, we are effectively denying them access to necessary fertility treatments, placing an undue burden on their path to parenthood.

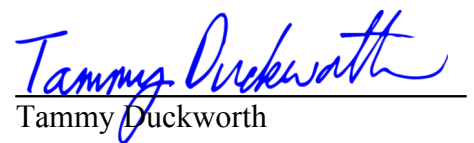
We are writing to request that OPM take immediate action to update the definition of infertility within the FEHB program guidance. We request that you work closely with relevant stakeholders, including medical professionals, advocacy organizations, including the American Society for Reproductive Medicine (ASRM) and RESOLVE, and members of the LGBTQ community working on this issue, including the National Center for Lesbian Rights and GLAD to revise the definition in a manner that is inclusive, evidence-based, and reflective of contemporary medical guidelines.

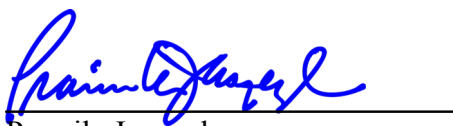
By adopting an inclusive definition that recognizes the full spectrum of reproductive needs and removing unnecessary barriers to coverage, we can ensure that all federal employees, regardless of their sexual orientation, gender identity, or marital status, have access to the comprehensive reproductive health care they deserve.

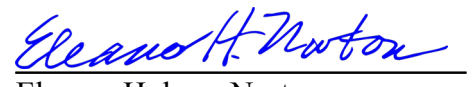
Thank you for your attention to this matter, Director Ahuja. As OPM continues to prioritize inclusive, family-building policies in the FEHB program, it is imperative that all federal employees have equal access to this suite of services. We look forward to your prompt response and to working together to address this important issue.

Sincerely,


Gerald E. Connolly
Member of Congress



Tammy Duckworth
United States Senator


Pramila Jayapal
Member of Congress


Eleanor Holmes Norton
Member of Congress



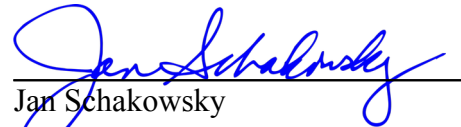
Donald S. Beyer Jr.
Member of Congress



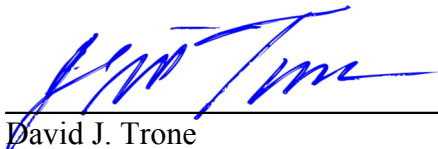
Jasmine Crockett
Member of Congress



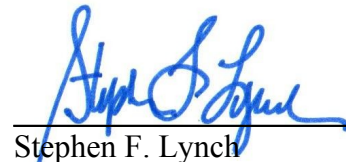
Barbara Lee
Member of Congress



Jan Schakowsky
Member of Congress
Ranking Member, Subcommittee
on Innovation, Data, and
Commerce



David J. Trone
Member of Congress



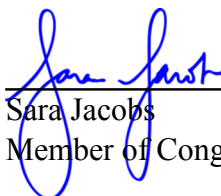
Stephen F. Lynch
Member of Congress



Nikema Williams
Member of Congress



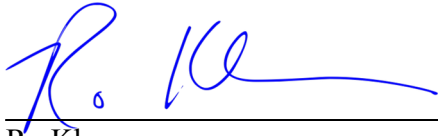
Jamie Raskin
Member of Congress



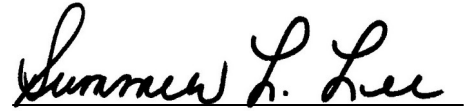
Sara Jacobs
Member of Congress



Marilyn Strickland
Member of Congress



Ro Khanna
Member of Congress



Summer Lee
Member of Congress



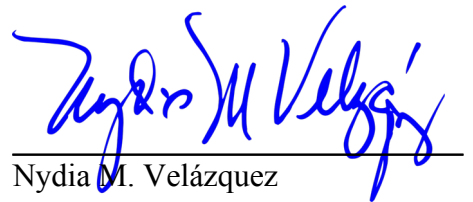
Katie Porter
Member of Congress



Chrissy Houlahan
Member of Congress



Emanuel Cleaver, II
Member of Congress



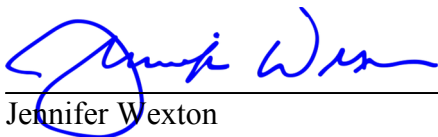
Nydia M. Velázquez
Member of Congress



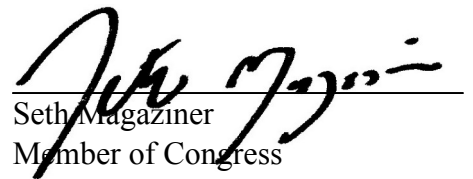
Robert Garcia
Member of Congress



Adriano Espaillat
Member of Congress



Jennifer Wexton
Member of Congress



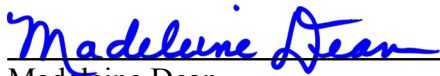
Seth Magaziner
Member of Congress



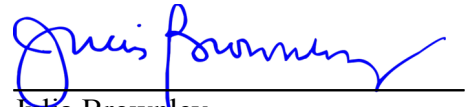
Darren Soto
Member of Congress



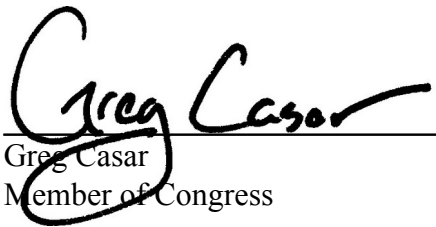
Maxwell Alejandro Frost
Member of Congress



Madeleine Dean
Member of Congress



Julia Brownley
Member of Congress



Greg Casar
Member of Congress



Dan Goldman
Member of Congress



Colin Z. Allred
Member of Congress



Mark Takano
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