

1.1 Senator ..... moves to amend S.F. No. 1704 as follows:

1.2 Page 1, line 6, after "plans" insert ", including county-based purchasing plans,"

1.3 Page 2, after line 15, insert:

1.4 "Subd. 3. **Patient discretion.** A patient has exclusive discretion over all decisions relating  
1.5 to embryo transfer, treatment, storage, and disposition."

1.6 Renumber the subdivisions in sequence

1.7 Page 3, line 7, delete "August 1, 2023" and insert "January 1, 2025"

1.8 Page 3, after line 8, insert:

1.9 "Sec. 2. Minnesota Statutes 2023 Supplement, section 256B.0625, subdivision 13, is  
1.10 amended to read:

1.11 Subd. 13. **Drugs.** (a) Medical assistance covers drugs, ~~except for fertility drugs when~~  
1.12 ~~specifically used to enhance fertility~~, if prescribed by a licensed practitioner and dispensed  
1.13 by a licensed pharmacist, by a physician enrolled in the medical assistance program as a  
1.14 dispensing physician, or by a physician, a physician assistant, or an advanced practice  
1.15 registered nurse employed by or under contract with a community health board as defined  
1.16 in section 145A.02, subdivision 5, for the purposes of communicable disease control.

1.17 (b) The dispensed quantity of a prescription drug must not exceed a 34-day supply unless  
1.18 authorized by the commissioner or as provided in paragraph (h) or the drug appears on the  
1.19 90-day supply list published by the commissioner. The 90-day supply list shall be published  
1.20 by the commissioner on the department's website. The commissioner may add to, delete  
1.21 from, and otherwise modify the 90-day supply list after providing public notice and the  
1.22 opportunity for a 15-day public comment period. The 90-day supply list may include  
1.23 cost-effective generic drugs and shall not include controlled substances.

1.24 (c) For the purpose of this subdivision and subdivision 13d, an "active pharmaceutical  
1.25 ingredient" is defined as a substance that is represented for use in a drug and when used in  
1.26 the manufacturing, processing, or packaging of a drug becomes an active ingredient of the  
1.27 drug product. An "excipient" is defined as an inert substance used as a diluent or vehicle  
1.28 for a drug. The commissioner shall establish a list of active pharmaceutical ingredients and  
1.29 excipients which are included in the medical assistance formulary. Medical assistance covers  
1.30 selected active pharmaceutical ingredients and excipients used in compounded prescriptions  
1.31 when the compounded combination is specifically approved by the commissioner or when  
1.32 a commercially available product:

2.1 (1) is not a therapeutic option for the patient;

2.2 (2) does not exist in the same combination of active ingredients in the same strengths  
2.3 as the compounded prescription; and

2.4 (3) cannot be used in place of the active pharmaceutical ingredient in the compounded  
2.5 prescription.

2.6 (d) Medical assistance covers the following over-the-counter drugs when prescribed by  
2.7 a licensed practitioner or by a licensed pharmacist who meets standards established by the  
2.8 commissioner, in consultation with the board of pharmacy: antacids, acetaminophen, family  
2.9 planning products, aspirin, insulin, products for the treatment of lice, vitamins for adults  
2.10 with documented vitamin deficiencies, vitamins for children under the age of seven and  
2.11 pregnant or nursing women, and any other over-the-counter drug identified by the  
2.12 commissioner, in consultation with the Formulary Committee, as necessary, appropriate,  
2.13 and cost-effective for the treatment of certain specified chronic diseases, conditions, or  
2.14 disorders, and this determination shall not be subject to the requirements of chapter 14. A  
2.15 pharmacist may prescribe over-the-counter medications as provided under this paragraph  
2.16 for purposes of receiving reimbursement under Medicaid. When prescribing over-the-counter  
2.17 drugs under this paragraph, licensed pharmacists must consult with the recipient to determine  
2.18 necessity, provide drug counseling, review drug therapy for potential adverse interactions,  
2.19 and make referrals as needed to other health care professionals.

2.20 (e) Effective January 1, 2006, medical assistance shall not cover drugs that are coverable  
2.21 under Medicare Part D as defined in the Medicare Prescription Drug, Improvement, and  
2.22 Modernization Act of 2003, Public Law 108-173, section 1860D-2(e), for individuals eligible  
2.23 for drug coverage as defined in the Medicare Prescription Drug, Improvement, and  
2.24 Modernization Act of 2003, Public Law 108-173, section 1860D-1(a)(3)(A). For these  
2.25 individuals, medical assistance may cover drugs from the drug classes listed in United States  
2.26 Code, title 42, section 1396r-8(d)(2), subject to this subdivision and subdivisions 13a to  
2.27 13g, except that drugs listed in United States Code, title 42, section 1396r-8(d)(2)(E), shall  
2.28 not be covered.

2.29 (f) Medical assistance covers drugs acquired through the federal 340B Drug Pricing  
2.30 Program and dispensed by 340B covered entities and ambulatory pharmacies under common  
2.31 ownership of the 340B covered entity. Medical assistance does not cover drugs acquired  
2.32 through the federal 340B Drug Pricing Program and dispensed by 340B contract pharmacies.

2.33 (g) Notwithstanding paragraph (a), medical assistance covers self-administered hormonal  
2.34 contraceptives prescribed and dispensed by a licensed pharmacist in accordance with section

151.37, subdivision 14; nicotine replacement medications prescribed and dispensed by a licensed pharmacist in accordance with section 151.37, subdivision 15; and opiate antagonists used for the treatment of an acute opiate overdose prescribed and dispensed by a licensed pharmacist in accordance with section 151.37, subdivision 16.

(h) Medical assistance coverage for a prescription contraceptive must provide a 12-month supply for any prescription contraceptive if a 12-month supply is prescribed by the prescribing health care provider. The prescribing health care provider must determine the appropriate duration for which to prescribe the prescription contraceptives, up to 12 months. For purposes of this paragraph, "prescription contraceptive" means any drug or device that requires a prescription and is approved by the Food and Drug Administration to prevent pregnancy. Prescription contraceptive does not include an emergency contraceptive drug approved to prevent pregnancy when administered after sexual contact. For purposes of this paragraph, "health plan" has the meaning provided in section 62Q.01, subdivision 3.

Sec. 3. Minnesota Statutes 2022, section 256B.0625, is amended by adding a subdivision to read:

Subd. 72. Coverage of infertility treatment. (a) Medical assistance covers the diagnosis of infertility, treatment for infertility, and standard fertility preservation services that are:

(1) considered medically necessary by the enrollee's treating health care provider; and

(2) recognized by either the American Society for Reproductive Medicine, the American College of Obstetrics and Gynecologists, or the American Society of Clinical Oncology.

(b) Coverage under this section must include but is not limited to ovulation induction, procedures and devices to monitor ovulation, artificial insemination, oocyte retrieval procedures, in vitro fertilization, gamete intrafallopian transfer, oocyte replacement, cryopreservation techniques, micromanipulation of gametes, and standard fertility preservation services.

(c) Coverage under this section must include unlimited embryo transfers, but may impose a limit of four completed oocyte retrievals. Single embryo transfer must be used when medically appropriate and recommended by the treating health care provider.

(d) Coverage for surgical reversal of elective sterilization is not required under this section.

(e) Coverage must meet the requirements that would otherwise apply to a health plan under section 62A.0412.

4.1 (f) For the purpose of this subdivision:

4.2 (1) "infertility" means a disease, condition, or status characterized by:

4.3 (i) the failure of a person with a uterus to establish a pregnancy or to carry a pregnancy  
4.4 to live birth after 12 months of unprotected sexual intercourse for a person under the age  
4.5 of 35, or six months for a person 35 years of age or older, regardless of whether a pregnancy  
4.6 resulting in miscarriage occurred during such time;

4.7 (ii) a person's inability to reproduce either as a single individual or with the person's  
4.8 partner without medical intervention; or

4.9 (iii) a licensed health care provider's findings based on a patient's medical, sexual, and  
4.10 reproductive history; age; physical findings; or diagnostic testing;

4.11 (2) "diagnosis of and treatment for infertility" means the recommended procedures and  
4.12 medications from the direction of a licensed health care provider that are consistent with  
4.13 established, published, or approved medical practices or professional guidelines from the  
4.14 American College of Obstetricians and Gynecologists or the American Society for  
4.15 Reproductive Medicine; and

4.16 (3) "standard fertility preservation services" means procedures that are consistent with  
4.17 the established medical practices or professional guidelines published by the American  
4.18 Society for Reproductive Medicine or the American Society of Clinical Oncology for a  
4.19 person who has a medical condition or is expected to undergo medication therapy, surgery,  
4.20 radiation, chemotherapy, or other medical treatment that is recognized by medical  
4.21 professionals to cause a risk of impairment to fertility.

4.22 **EFFECTIVE DATE.** This section is effective January 1, 2025, or upon federal approval,  
4.23 whichever is later. The commissioner of human services shall notify the revisor of statutes  
4.24 when federal approval is obtained.

4.25 **Sec. 4. LIFETIME LIMIT AUTHORIZATION; INFERTILITY TREATMENT.**

4.26 The commissioner of human services may impose a lifetime limit on coverage under  
4.27 Minnesota Statutes, section 256B.0625, subdivision 72, for plan years 2025, 2026, and  
4.28 2027. The commissioner may set the lifetime limit at any amount up to a maximum amount  
4.29 of \$30,000 per enrollee. The commissioner must only impose a lifetime limit under this  
4.30 section if the limit is necessary to ensure:

4.31 (1) the aggregate state cost for coverage across all enrollees for infertility treatment  
4.32 under chapters 256B and 256L, inclusive of any increase to capitation rates paid to managed

care plans and county-based purchasing plans under chapters 256B and 256L and allocable to such coverage, will not exceed the amount appropriated for such coverage for plan years 2025, 2026, and 2027; and

(2) the capitation rates paid to managed care plans and county-based purchasing plans under chapters 256B and 256L are actuarially sound.

If the commissioner imposes a lifetime limit on enrollee coverage under this section, the limit must be set at the highest amount possible to satisfy the conditions set forth in clauses (1) and (2).

Sec. 5. **BASE LEVEL ADJUSTMENT; COMMISSIONER OF COMMERCE.**

The general fund base for the Commissioner of Commerce is increased by \$6,917,000 in fiscal year 2026 and \$6,917,000 in fiscal year 2027. Of this amount, \$6,900,000 in fiscal year 2026 and \$6,900,000 in fiscal year 2027 are to pay defrayal costs for coverage of infertility treatment under Minnesota Statutes, section 62A.0412 and \$17,000 in fiscal year 2026 and \$17,000 in fiscal year 2027 are for administration of payments for defrayal costs for coverage of infertility treatment under Minnesota Statutes, section 62A.0412.

Sec. 6. **APPROPRIATION; INFERTILITY TREATMENT COVERAGE.**

Subdivision 1. **Medical assistance.** \$2,704,000 in fiscal year 2025 is appropriated from the general fund to the commissioner of human services for medical assistance coverage of infertility treatment under Minnesota Statutes, section 256B.0625, subdivision 72. The base for this appropriation is \$6,238,000 in fiscal year 2026 and \$6,284,000 in fiscal year 2027.

Subd. 2. **MinnesotaCare.** \$490,000 in fiscal year 2025 is appropriated from the health care access fund to the commissioner of human services for MinnesotaCare coverage of infertility treatment under Minnesota Statutes, section 256L.03, subdivision 1, and as set forth in Minnesota Statutes, section 256B.0625, subdivision 72. The base for this appropriation is \$1,141,000 in fiscal year 2026 and \$1,123,000 in fiscal year 2027.

Subd. 3. **Contingent appropriation.** (a) The appropriations in subdivisions 1 and 2 are contingent on a determination by the commissioner of human services, in consultation with the commissioner of management and budget, that the conditions set forth in section 4, clauses (1) and (2), are satisfied. The commissioner of human services must make this determination for plan year 2025 by January 15, 2025. If the commissioner of human services determines that either of the conditions are not met for plan year 2025, then, by January 31, 2025, the commissioner of management and budget must transfer \$15,240,000 from the

6.1 general fund to an infertility treatment contingency account in the health care access fund  
6.2 and must transfer \$2,265,000 from the health care access fund to the infertility treatment  
6.3 contingency account in the health care access fund.

6.4 (b) If the infertility treatment coverage requirement is not implemented, the commissioner  
6.5 of human services must report to the legislature the actuarial information used to determine  
6.6 the amount by which the capitation rates paid to managed care plans and county-based  
6.7 purchasing plans under Minnesota Statutes, chapters 256B and 256L, would have increased  
6.8 as the result of infertility treatment coverage."

6.9 Amend the title as follows:

6.10 Page 1, line 2, delete "the coverage for" and insert "health plans and Medical Assistance  
6.11 to cover" and after the second semicolon, insert "providing for contingent lifetime limits  
6.12 on coverage; appropriating money;"

6.13 Correct the title numbers accordingly