

HOUSE BILL REPORT

E2SSB 5702

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to requiring coverage for donor human milk.

Brief Description: Requiring coverage for donor human milk.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Trudeau, Dhingra, Lovelett, Lovick, Nguyen, Nobles, Randall, Saldaña, Stanford, Van De Wege and Wilson, C.).

Brief History:

Committee Activity:

Health Care & Wellness: 2/21/22, 2/23/22 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended By Committee)**

- Requires certain group health plans and Medicaid to provide coverage for donor human milk for inpatient use when medically necessary and other conditions are met.
- Requires the Department of Health to adopt minimum standards for milk bank safety.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 13 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Harris and Ybarra.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kim Weidenaar (786-7120).

Background:

In 2015 the Department of Health (DOH) completed a mandated benefit sunrise review for banked human milk. The proposal required state-regulated health plans and Medicaid to cover medically necessary banked human milk if: (1) the covered person is an infant under the age of 11 months; (2) a licensed provider with prescriptive authority orders the milk for the covered person; (3) the covered person's parent or legal guardian signs an informed consent form; and (4) the milk is obtained from a milk bank that meets minimum standards adopted by the DOH. The DOH strongly supported the concept of the proposed mandate, finding that there was sufficient evidence supporting the efficacy and medical necessity of banked human milk for a narrow population of preterm infants; however, the DOH concluded that the proposal did not meet the criteria for mandating coverage of banked human milk.

An International Board Certified Lactation Consultant (IBCLC) is a health care professional who specializes in the clinical management of breastfeeding. An IBCLC is certified by the International Board of Lactation Consultant Examiners. An IBCLC works in a variety of health care settings, including hospitals, pediatric offices, public health clinics, and private practice.

Providers in Washington with prescriptive authority include allopathic and osteopathic physicians and physician assistants, advanced registered nurse practitioners, dentists, naturopaths, optometrists, and podiatric physicians.

Summary of Amended Bill:

Group health plans, other than small group health plans, issued or renewed on or after January 1, 2023, health plans offered to public employees, and the Health Care Authority (HCA) for Medicaid enrollees must provide coverage for medically necessary donor human milk for inpatient use when ordered by a licensed health care provider with prescriptive authority or an International Board Certified Lactation Consultant for an infant who is medically or physically unable to receive maternal human milk or participate in chest feeding, or whose parent is medically or physically unable to produce maternal human milk or participate in chest feeding, if the infant meets any of the following criteria:

- an infant birth weight of below 2,500 grams;
- an infant gestational age equal to or less than 34 weeks;
- infant hypoglycemia;
- a high risk for development of necrotizing enterocolitis, bronchopulmonary dysplasia, or retinopathy of prematurity;
- a congenital or acquired gastrointestinal condition with long-term feeding or malabsorption complications;

- congenital heart disease requiring surgery in the first year of life;
- an organ or bone marrow transplant;
- sepsis;
- congenital hypotonias associated with feeding difficulty or malabsorption;
- renal disease requiring dialysis in the first year of life;
- craniofacial anomalies;
- an immunologic deficiency;
- neonatal abstinence syndrome;
- any other serious congenital or acquired condition for which the use of pasteurized donor human milk and donor human milk-derived products is medically necessary and supports the treatment and recovery of the child; or
- any baby still inpatient within 72 hours of birth without sufficient human milk available.

The HCA may require an enrollee to obtain expedited prior authorization to receive coverage for donor human milk. The HCA must seek any available federal financial participation under the Medical Assistance Program, the state Children's Health Insurance Program, and any other available federal funding sources.

The Insurance Commissioner must include coverage for donor human milk upon authorization by the Legislature to modify the state's essential health benefits benchmark plan.

Donor human milk must be obtained through a milk bank that meets standards adopted by the Department of Health (DOH). The DOH must establish standards for ensuring milk bank safety and at a minimum the standards must consider the clinical, evidence-based guidelines established by a national accrediting organization. The standards must address donor screening, milk handling and processing, and recordkeeping. The DOH must also review and consider requiring additional testing standards. "Donor human milk" is human milk that has been contributed to a milk bank by one or more donors. A "milk bank" means an organization that engages in the procurement, processing, storage, distribution, or use of human milk contributed by donors.

Amended Bill Compared to Engrossed Second Substitute Bill:

The striking amendment:

- limits the application of the requirement for health plans to cover donor human milk to group health plans, other than small group health plans, offered by health carriers or to public employees;
- removes the prohibition on a health plan from requiring prior authorization for coverage of donor human milk; and
- requires the Insurance Commissioner to include coverage for donor human milk upon authorization by the Legislature to modify the state's essential health benefits benchmark plan.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 8, 2022.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) All babies deserve the best chance for the best health outcomes. This bill has had strong bipartisan support and passed the Senate unanimously. Human milk is the best start for newborns based on research and can prevent many short-term and long-term complications. Not all hospitals in Washington provide human milk, which makes it an equity issue. This bill will shorten hospital stays, reduce costs, and set all children up on the strongest and healthiest path.

This bill will allow infants much needed access to donor milk and ensure safe donor milk. For extremely premature babies, a fortifier must be added to the parent's or donor milk to get the necessary nutrition. Foreign proteins found in formula can lead to devastating long-term consequences. In addition to making donor milk available, this bill requires the Department of Health to establish standards to make sure that the milk is safe. Currently, there is no regulation of milk banks at the state level and the regulation is very minimal at the federal level. This bill allows Washington to be at the forefront, setting a new and desperately needed precedent.

Necrotizing Enterocolitis is very traumatizing for parents of preterm infants. In 2012 there was a collective decision about newborn nutrition, which was to provide human milk exclusively to newborns, instead of bovine-based formula, which can have a number of problems including contamination. This bill will make a difference for these babies and prevent complications for both preterm and term babies.

Most newborns can thrive on small amounts of milk produced by their mother in the first few days; however, some newborns need supplementation. Access to donor milk early on provides numerous benefits including reducing infections, the chance of sudden infant death syndrome, and other complications. The risk of preterm birth and other complications is higher among minority populations and this bill would provide all babies the same opportunity to receive human donor milk.

(Opposed) None.

(Other) It is essential that newborns obtain the necessary nutrition. The majority of plans already cover donor milk for certain conditions as a part of a global payment or as a food while inpatient. However, because of this, the way the bill is written there are concerns that

the plans will need to renegotiate contracts to separately cover donor milk. The bill also includes broad eligibility requirements, which raises concerns about whether there would be sufficient supply of donor milk. Finally, there is also an inconsistency regarding prior authorization across the plans covered by the bill and there is a preference that the standard is consistent.

Persons Testifying: (In support) Senator Yasmin Trudeau, prime sponsor; Aly Fuller, Prolacta; Krystle Perez; and Jose Perez.

(Other) Jennifer Ziegler, Association of Washington Healthcare Plans.

Persons Signed In To Testify But Not Testifying: None.