

# SENATE BILL REPORT

## SB 5702

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As Reported by Senate Committee On:  
Health & Long Term Care, January 31, 2022  
Ways & Means, February 7, 2022

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

**Brief Description:** Requiring coverage for donor breast milk.

**Sponsors:** Senators Trudeau, Dhingra, Lovelett, Lovick, Nguyen, Nobles, Randall, Saldaña, Stanford, Van De Wege and Wilson, C..

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/21/22, 1/31/22 [DPS-WM, w/oRec].  
Ways & Means: 2/05/22, 2/07/22 [DP2S].

**Brief Summary of Second Substitute Bill**

- Requires health plans and Medicaid to provide coverage for donor human milk for inpatient use when medically necessary.
- Requires Department of Health to adopt minimum standards for milk bank safety.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Majority Report:** That Substitute Senate Bill No. 5702 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Muzzall, Ranking Member; Conway, Holy, Keiser, Randall, Rivers, Robinson and Van De Wege.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden and Sefzik.

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*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:** Greg Attanasio (786-7410)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5702 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig, Braun, Carlyle, Conway, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

**Staff:** Sandy Stith (786-7710)

**Background:** Under the Affordable Care Act (ACA), health benefit plans must provide, at a minimum, coverage with no cost sharing, for preventive or wellness services that have a rating of A or B in the current recommendations of the United States Preventive Services Task Force (USPSTF). The USPSTF recommends, at a B grade, providing interventions before and after pregnancy to support breastfeeding. These interventions can be categorized as professional support, peer support, and formal education and may include promoting the benefits of breastfeeding, providing practical advice and direct support on how to breastfeed, and providing psychological support.

According to the American Academy of Pediatrics, breastfeeding and human milk are the standards for infant feeding and nutrition. Mother's own milk, fresh or frozen, should be the primary diet, however, if mother's milk is unavailable despite significant lactation support, pasteurized donor milk should be used.

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.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Second Substitute):** Health plans issued or renewed on or after January 1, 2023, and the state Medicaid program 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 IBCLC 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 2500 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.

Health plans and the Health Care Authority may require Expedited Prior Authorization.

The Department of Health (DOH) must adopt minimum standards for ensuring milk bank safety. The standards adopted by DOH must be consistent with clinical, evidence-based guidelines established by a national accrediting organization and must address donor screening, milk handling and processing, and record keeping. DOH shall also review and consider requiring additional standards, including but not limited to testing for the presence of the following in donated milk:

- viruses;
- bacteria; and,
- prescription and nonprescription drugs.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):**

- Modifies the definition of donor human milk to remove restrictions on additional products or processing.
- Modifies the rulemaking requirements for the Department of Health for ensuring milk bank safety to require the department to consider national accrediting organization guidelines and consider additional testing requirements for the presence of viruses, bacteria, and drugs the donated milk.
- Allows health plans and the Health Care Authority to require expedited prior authorization to receive donor human milk.

**EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):**

- Changes references to breast milk to human milk.
- Expands and further clarifies the clinical criteria for requiring coverage for donor human milk.
- Changes the definition of milk bank to remove the limitation that the bank be nonprofit.
- Changes the definition of donor human milk to allow for alterations to the milk.
- Clarifies DOH rulemaking authority.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Health & Long Term Care):**

*The committee recommended a different version of the bill than what was heard.* PRO: Access to human milk improves health outcomes for infants, including a reduced risk of infections and sudden infant death syndrome. All babies should have the same opportunities to receive human milk. Providing this coverage aligns with Department of Health recommendations from its sunrise review.

OTHER: The bill should include gender neutral language. Criteria for access to donor milk is overly broad and should require prior authorization. This may constitute a new mandated benefit, which would require the state to defray the cost for individual market plans. The bill could unintentionally reduce access to human milk fortifier.

**Persons Testifying (Health & Long Term Care):** PRO: Senator Yasmin Trudeau, Prime Sponsor; Heather McNeel; Krystle Perez; Lindsey Pervinich; Jose Perez; Aaron Everett; Lesley Mondeaux, Northwest Mothers Milk Bank.

OTHER: Katie Eilers, Washington State Department of Health; Jennifer Ziegler, Association of Washington Healthcare Plans; Dr. Melinda Elliott, Prolacta; Dr. Ray Sato; Savannah O'Malley.

**Persons Signed In To Testify But Not Testifying (Health & Long Term Care):** No one.

**Staff Summary of Public Testimony on Second Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: Access to human milk improves health outcomes for infants, including a reduced risk of infections

and sudden infant death syndrome. All babies should have the same opportunities to receive human milk. Investing in human donor milk would contribute to greater health equity and improved maternal and child outcomes. Literature suggests that every \$1 spent on non-profit human donor milk results in \$11-\$37 in savings. By supporting this bill, Washington can join over 10 states and counties that already cover donor human milk. We fully support amendments that will provide for milk bank safety.

OTHER: We support access to needed nutrition. Most health plans cover needed human milk as part of an inpatient hospital benefit, though there are variations in how this is done. We are concerned with how the criteria are structured and that there could be cost implications given that they are broad and there is no prior authorization. If this is determined to be a new mandate, and costs are identified, the state would have to defray those costs moving forward. There is a discussion about looking at the State's essential health benefit package, which is something allowed under the Affordable Care Act. If that occurs, then the state would not have to look at defraying the costs moving forward.

**Persons Testifying (Ways & Means):** PRO: Krystle Perez; Jose Perez; Aly Fuller, Prolacta.

OTHER: Chris Bandoli, Association of WA Healthcare Plans.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.